

Response to Comments – April 19, 2011

Lake Tahoe TMDL for Sediment and Nutrients

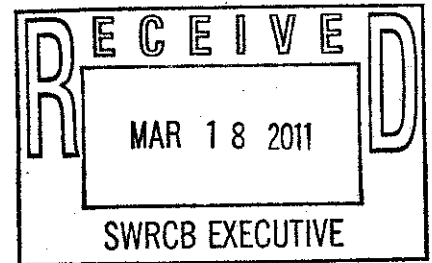
(Comment deadline 12 noon March 18, 2011)

2. Sustainable Community Advocates

Note: These Responses commonly reference previous Response to Comments from the Lahontan Water Board, which can be found at http://www.waterboards.ca.gov/lahontan/water_issues/programs/tmdl/lake_tahoe/respnse_comments091310.shtm

(If printing Response to Comments, please print double-sided for best viewing)

Sustainable Community Advocates
218 Elks Point Road, Suite 202
PO Box 1875
Zephyr Cove, NV 89448
775.588.2488



March 18, 2011

Mr. Charles R. Hoppin, Chair
Members, California State Water Resources Control Board
PO Box 100, Sacramento, CA 95812-2000
1001 I Street, 24th Floor, Sacramento, CA 95814

Re: Comment Letter - Lake Tahoe TMDL

Dear Chairman Hoppin and Members of the State Water Board:

I am writing to you as an advocate for community sustainability. In deliberating your decision on the Lake Tahoe TMDL, I respectfully urge you to consider the sustainability of your actions.

In preparing the Basin Plan Amendment in support of Tahoe TMDL adoption, staff of the Lahontan Regional Water Quality Control Board worked regularly with staff of the jurisdictions required to have a municipal stormwater permit. Staff, however, are not the people responsible for dealing with the policy and financial implications of implementing the TMDL through stormwater permits. Lahontan staff presentations to, and interactions with, elected leaders of the jurisdictions were not as diligent or effective. Accordingly, it is no surprise that your Board is receiving comment letters from Lake Tahoe jurisdictions that express grave concerns about the financial implications of compliance and that the Lake Tahoe TMDL addresses only deep water clarity and not near-shore water quality.

For the Lake Tahoe TMDL to be effective and sustainable, your Board and staff, and the boards and staff of the Lahontan Region, must do more to reach out and engage with local elected officials and community and business leaders, not just your technical colleagues in other agencies and governments. It is far too easy to sit in meeting rooms and the gilded halls of state government and hand down edicts. You must work more effectively in building partnerships to ensure the capacity and sustainability of those you ask to shoulder the burden of compliance. Because most regulations have been adopted in silos, many by single purpose agencies without the concurrent development of effective, sustainable partnerships, California has become a quagmire of tangled regulations, many with great hostility and bitterness around them. This is simply not a sustainable approach to the protections and enhancements we need for our environment, economy and our needs as a society.

I would like to reinforce and add the voice of Sustainable Community Advocates to several points in the letter you received from the City of South Lake Tahoe. You should know that the city continues to struggle with an unemployment rate of over 20 percent, a decline of 10% in its permanent population over the past decade, and stark indicators of increasing poverty among many of those who remain. El Dorado and Placer counties face similar challenges.

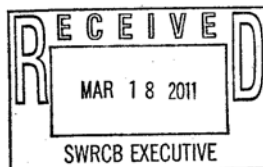
Chair Hoppin and Members of the State Water Board, page 2

Comment

Public Comment
Lake Tahoe TMDL
Deadline: 3/18/11 by 12 noon

Response

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Chair Hoppin and Members of the State Water Board, page 2

SCA(StBd)-1: Lahontan Water Board staff, partnering with the Nevada Division of Environmental Protection, developed the Lake Tahoe TMDL in close coordination with the Lake Tahoe Pathway Forum – a multi-agency stakeholder group that included diverse interests from local government, community business leaders, environmental advocates, and members at large. At least five public Pathway Forum meetings included discussion of the Lake Tahoe TMDL science and cost estimates. The Lahontan Water Board conducted a thorough outreach and education effort during the course of Lake Tahoe TMDL development. This process included targeted outreach to local elected officials, including several meetings with Caltrans District Director, Caltrans Stormwater Directors, the City of South Lake Tahoe City Council, and the El Dorado and Placer County Boards of Supervisors. Lahontan Water Board staff and executive management also met with the North and South Lake Tahoe Chambers of Commerce and presented to the Tahoe Lahontan Planning Agency Governing Board. Lahontan Water Board staff presented the Lake Tahoe TMDL information at twelve public Lahontan Water Board meetings from 2002 through adoption in 2010. At the Lahontan Water Board hearing on November 16, 2010, you attended and presented these similar concerns during the oral public testimony. The suggestion that the TMDL was developed in isolation without extensive collaboration is not supported by the public record. Nonetheless, it is vitally important to engage the public, its elected officials and business leaders to make the implementation of the TMDL a success. Your comment highlights the need to do even more outreach. The Lahontan Water Board is committed to continue efforts to reach out and build partnerships with the public and the regulated community.

One of the Lake Tahoe TMDL's scientific peer reviewers, Professor Lewis, had concerns about the "enormous cost" of the implementation phase and recommended "outlining the results that could be obtained for expenditures of 50 percent or 25 percent of the proposed expenditure." Professor Lewis also noted that it is necessary that any evidence of failure in a specific control strategy lead to the cessation and reformulation of the control strategy, rather than inertial continuation of expenditures on an ineffective strategy. Project such as this often founder on the inflexibility of the action plan once implementation begins."

The City believes it is vitality important that the State Board and Lahontan provide direction as to a funding strategy and implementation plan so that local jurisdictions are better able, in difficult financial times, to assess and budget for the costs associated with implementation of the TMDL.

Sustainable Community Advocates believes the Environmental Protection Agency, through Region IX, should join in developing funding strategies and support for implementation.

Sustainable Community Advocates is proud to be working in partnership with Tahoe's local governments, the Tahoe Regional Planning Agency, and business and community leaders, including those in education, health and wellness, environmental innovation, and workforce development, to engage and implement strategies designed to revitalize and "environmentally redevelop" Lake Tahoe's aging infrastructure and built environment. Consistent with these efforts, we emphasize another paragraph in the City's letter to your Board.

The City, as well as all other jurisdictions in the Lake Tahoe Basin, face the extraordinarily difficult task of balancing State and federal water quality mandates with federally mandated TRPA thresholds and general public services. Thus, the City believes it is vitally important to be able to show citizens and visitors that financial investments in water quality do more than just improve deep water lake clarity. The City believes the TMDL should include a means of accounting for water quality benefits which also provide ancillary benefits to the community and/or attain TRPA thresholds. Allowances for increased commercial floor area (and a mechanism for a more cost effective transfer of existing floor area - comment added by SCA), relaxation of coverage requirements for linear public service projects, and increased building allocations are just some examples that may serve as crediting "rewards" for achieving the goal set by this ambitious Plan. Concessions (SCA prefers the use of meaningful incentives, rather than "concessions") should be provided to agencies and jurisdictions that implement projects which address other federally mandated thresholds, particularly those of TRPA.

Finally, Sustainable Community Advocates adds its voice of support to the City and others who have requested that the State Water Board and Lahontan commit to a prompt and thorough review of processes and pollutant sources contributing to near-shore water quality degradation, and to the development of appropriate standards, indicators and actions to help support partnerships, programs, and projects to reverse the very visible decline of Lake Tahoe's near-shore water quality. This decline impacts local residents and visitors and the overall experience of Lake Tahoe as a world-class environment and resource.

Chair Hoppin and Members of the State Water Board, page 3

Respectfully submitted for your consideration,

Comment

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SCA(StBd)-2: The Lahontan Water Board responded to the City of South Lake Tahoe's comment letter. This is the same comment the City submitted in its November 2, 2010 letter to the Lahontan Water Board. Previous response CLST-38 directly responded to the comment. Also, the Administrative Record contains Appendix B which has the Lahontan Water Board responses to scientific peer review comments. In Appendix B, response WL-42 is a direct response to Professor Lewis's peer review comment the City cites, and that response is reproduced in entirety, below:

WL-42: The Water Board and NDEP estimate that the resources necessary to achieve required load reductions from the urban uplands will be roughly \$100 Million per year for the next fifteen years. While the Water Board and NDEP acknowledge the challenge of dedicating such resources in the current economic climate, the magnitude of the commitment is similar to the amount spent during the past ten years of erosion control, stormwater treatment, and restoration efforts in the Tahoe Basin. The TMDL Implementation Plan requires each implementer to assess its baseline load and devise its own pollutant load reduction strategy to meet the load reduction requirements. Therefore, each implementer can weigh cost as a factor when choosing its load reduction actions for each year.

As part of developing the Lake Tahoe TMDL, considerable state and federal resources were used to produce the Pollutant Reduction Opportunity Report (PROv2). The PROv2 estimated costs of reasonably foreseeable implementation measures and evaluated implementation feasibility. Tahoe basin project implementers and funders actively participated in source category technical work groups to produce the most current and relevant information. The PROv2 is available for all public and project implementers to reference. Since the Lahontan Water Board has given flexibility to each Municipal NPDES Stormwater permittee to design individual Pollutant Load Reduction Plans that achieve certain performance targets, the project implementers can select the load reduction methods that they believe are the most cost effective.

The Lahontan Water Board has also supported efforts to develop stormwater management and load estimation tools and supported local government efforts to obtain federal and state grant funds for water quality improvement projects. Over the past two years, the Lahontan Water Board has been managing a federally-funded Support Services contract to assist the urban jurisdictions in using the stormwater load estimation tools specifically for the purpose of calculating a baseline load. Because each government agency faces unique budget challenges, it would not be appropriate for the State or Lahontan Water Board to "provide direction as to a funding strategy".

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Chair Hoppin and Members of the State Water Board, page 3

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Response

SCA(StBd)-3: The Lahontan Water Board does not have authority to regulate land-use, such as commercial floor area and building allocations. The TRPA is the bi-state agency with that authority. Accordingly, Lahontan Water Board staff is working directly with TRPA on its Lahontan Plan update to help TRPA staff craft regulatory provisions that complement TMDL implementation. TRPA Executive Director Joanne Marchetta wrote in an October 7, 2010 letter to the Lahontan Water Board:

"TRPA is updating the Lahontan Plan for the Lake Tahoe Region and incorporating strategies to implement the TMDL is a primary goal of this effort. The TRPA Governing Board endorsed the proposed TMDL related goals and policies at the July 27, 2010 Board meeting. Currently, in collaboration with Lahontan Region staff, TRPA is developing implementation measures for inclusion in the Lahontan Plan. In July 2009, the Governing Board endorsed the updated Environmental Improvement Program which includes cost estimates for implementing TMDL capital projects across federal, state, local and private sectors. Incorporation of the TMDL into the Lahontan Region Basin Plan and TRPA's Lahontan Plan represents an important opportunity to merge TRPA and state water quality policies. This consistency across agencies increases effectiveness and operational efficiency of our respective agencies.

The Lake Clarity Crediting Program, which is not specifically part of this TMDL, is anticipated to be used to assess compliance with Municipal NPDES Stormwater permit conditions. The Crediting Program Handbook has been available to the public for more than one year and contains protocols describing how municipal permittees can register load reductions and monitor facility conditions to ensure compliance with anticipated permit requirements.

The TMDL, combined with the future renewed Municipal NPDES Permit and associated Monitoring and Reporting requirements provide consistent water quality metrics and assessment methods to allow development/redevelopment to move forward and other land-use issues can be resolved with TRPA.

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Chair Hoppin and Members of the State Water Board, page 3

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SCA(StBd)-5: Comments regarding nearshore water quality were addressed orally at the Lahontan Water Board hearing on November 16, 2010, and the Lahontan Water Board considered various stakeholders comments regarding this issue when it made its decision.

The Lahontan Water Board has long been aware of nearshore issues, such as increased algae growth, and the public familiarity with the nearshore of Lake Tahoe has heightened the focus on efforts to address these issues. The Lahontan Water Board is not idle with respect to addressing nearshore concerns. The Lake Tahoe TMDL will result in reducing nutrient inputs to the nearshore, which is expected to improve nearshore conditions. Available information indicates that nearshore water quality is impacted by pollutants in urban stormwater runoff. The increased amount of attached algae is likely caused by elevated nutrient concentrations. The TMDL implementation plan specifically targets urban stormwater runoff, and the implementation actions to reduce pollutants influencing deep water transparency are expected to positively effect nearshore water quality conditions. Additionally, the Lahontan Water Board actively funds projects and supports policy efforts to control aquatic invasive species in the nearshore area.

The Basin Plan contains water quality objectives specific to the whole of Lake Tahoe. The only water quality objective for Lake Tahoe specific to the nearshore is that turbidity not exceed 3 Nephelometric Turbidity Units (NTU) in waters too shallow to measure clarity, and this objective may not be appropriate for the nearshore (Taylor et al. 2003). Without nearshore specific objectives and indicators it is difficult to link the specific cause and effect of pollutants to determine the proper recourse and there is no yardstick to measure progress towards restoring and maintaining the nearshore. Nonetheless, the problems in the nearshore should not postpone adoption of the TMDL for the deep water transparency objective. Over a decade and tens of millions of dollars have been spent studying the causes of the decline in Lake Tahoe's transparency. Now that we have identified the cause of the transparency loss and have developed a plan for reducing pollutant loads to the Lake, it does not make sense to put off implementation of those objectives because of problems in the nearshore, especially when we strongly believe that those same actions that will improve the deep water transparency will also benefit water quality in the nearshore. Furthermore, the TMDL implementation plan gives the Municipal NPDES Stormwater permittees the flexibility in meeting waste load allocations to put greater emphasis on programs and plans that provide other benefits that the permittee may choose to prioritize, such as benefits to the nearshore.

Steve Teshara
Principal

cc: **Mr. Tony O'Rourke, City Manager, City of South Lake Tahoe**
Honorable Members, South Lake Tahoe City Council
Ms. Joanne Marchetta, Executive Director, Tahoe Regional Planning Agency
The Honorable Norma Santiago, El Dorado County District 5 Supervisor;
Chair, Tahoe Regional Planning Agency Governing Board
Mr. Tom Miller, County Executive Officer, Placer County
Mr. Larry Sevison, TRPA Governing Board Member representing Placer County
Ms. B Gorman, President and CEO, Lake Tahoe South Shore Chamber of Commerce
Mr. Ron Treabess, Interim Executive Director, North Lake Tahoe Chamber of Commerce
Mr. Michael Ward, Project Manger, Tahoe Prosperity Center
Mr. Harold Singer, Executive Officer, Lahontan Regional Water Quality Control Board
Mr. Patrick Wright, Executive Director, California Tahoe Conservancy
Mr. Jared Blumenfeld, Regional Administrator, EPA Region IX

Comment

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