



# Sierra Forest Legacy

Protecting Sierra Nevada Forests and Communities



August 24, 2011 sent via internet to: ForestPlan\_Comments@waterboards.ca.gov

Gayland Lee  
Division of Water Quality  
State Water Resources Control Board  
1001 I Street, 15<sup>th</sup> Floor  
Sacramento, CA 95814

Comments re: USFS Waiver



These comments are from Sierra Forest Legacy (SFL) in addition to the letter we have signed on to from the WQMP environmental coalition with led signature of John Buckley.

1. The monitoring and enforcement of BMPs for roads, timber harvest, erosion control, culvert sizing, etc. need to recognize the failure of existing BMPs for these activities and the legacy of past management that continues to impact water quality years-to-decades after the logging activity is completed. These legacy issues are coming to light in a recent Watershed Improvement Needs (WIN) FOIA request we are still receiving from the national forests in the Sierra Nevada. SFL sent in a timely FOIA with plenty of time for a Forest Service 20-day mandatory response. The Forest Service chose to delay its response with questionnaires about the purpose of our FOIA which was clearly explained in the initial FOIA letter.

Based upon this delay, SFL will be submitting additional comments during the public comment period at the October hearing (if not sooner) regarding timber and road related BMPs, erosion control prioritization and other issues that come to light from the Forest Service FOIA response.

Attachment C-the Monitoring and Reporting Program fails to adequately address legacy logging road compaction and infiltration issues, culvert failures, road failures in a systematic manner with a prioritization system for the most serious legacy problems on each forest. The Forest Service WIN program is critical to identifying water quality issues by the forest hydrologist and should directly inform the BMPEP monitoring program with a clear priority list and timelines for restoration.

The Region 5 Forest Service *Ecological Restoration Initiative* is highlighting the need for protection of water quality in the Sierra Nevada. The Forest Service must be required to specifically commit staff and funding to address current and legacy logging road issues in the Sierra Nevada.

2. The BMP program for timber management, roads, stream crossings and related logging activities relies on appropriate implementation and effective mitigation. The Forest Service reliance on the BMPEP program must ensure the protection of water quality from at-risk activities, especially in the areas such as the Lake Tahoe Basin Management Unit (LTBMU) of the Forest Service. Lake Tahoe is considered an outstanding pristine waterbody by Federal EPA. Under such scrutiny the public expects the Forest Service to talk seriously the implementation of BMPs for roads, erosion control and timber management. In October 19th of 2009 the Lahontan RWQCB issued several notices of violation to the LTBMU for failure to implement winterizing BMPs ahead of a pending storm front. (see attached Notice of Violation 10-19-09 for the Angora Fire area and the Sacramento Bee article of 11-3-09).

This LTBMU event in October 2009 in the Lake Tahoe Basin is a prime example of why the Forest Service should NOT be granted increased authority to use remotely sensed BMPs EP programs to protect water quality. The cavalier manner in which the Forest Service at the LTBMU displayed its lack of concern over a pending winter storm event is truly astounding and represents a clear example of what will happen to the waters of California under state jurisdiction if limits are placed on Regional Boards and their ability to require project specific, on-site implementation and effectiveness and forensic monitoring in moderate and high risk areas. If this type of violation can happen at Lake Tahoe, with over \$1.2 billion dollars of taxpayer funds spent on protecting the water quality at Lake Tahoe, then it can happen anywhere.

The potential to move to more remote sensing of BMP compliance and less RWQCB oversight of implementation and effectiveness monitoring should be resisted in the Waiver by the State Water Board. The Forest Service is attempting to limit monitoring costs but have not proven to be responsible stewards under the CWA both in failure to fund watershed restoration programs and in failure to implement effective BMPs.

The Waiver should require Regional Board oversight and tighter requirements for BMP implementation and effectiveness by adding clear specific targets and timelines for erosion control for legacy roads, culverts, timber management and other logging related programs.

Sincerely,



Craig Thomas, Executive Director  
Sierra Forest Legacy  
P.O. Box 244  
Garden Valley, CA 95633

## Forest Service hit with violations at Tahoe projects

**mweiser@sacbee.com**

PUBLISHED TUESDAY, NOV. 03, 2009

The U.S. Forest Service has been cited for water quality violations at five Lake Tahoe projects, including a controversial logging operation in the 2007 Angora fire burn area.

Several violations caused significant erosion into Lake Tahoe streams, according to the Lahontan Regional Water Quality Control Board, which issued the notices. Erosion is a key cause of declining clarity in the storied alpine lake.

The Forest Service disputes some of the findings by the water board.

Any projects at Tahoe that disturb the soil are required to maintain erosion-control devices and to stop work at project sites by Oct. 15. They're also required to ensure erosion-control measures are in place when a storm is forecast.

Those things allegedly didn't happen in the five projects that received violation notices, issued between Oct. 19 and 26 after inspections by water board staff.

The most serious violation claimed by the water board involves a project to remove "hazard trees" burned in the Angora fire in South Lake Tahoe.

Inspectors visited the project site Oct. 13 and 14 during a storm, and said they found heavy erosion from logging areas into Angora Creek, a tributary of Lake Tahoe. They said they found little effort to prevent erosion.

"It was mostly the lack of any kind of control measures that stood out," said Lauri Kemper, supervising engineer at the water board.

On another visit Oct. 15, Lahontan inspectors quizzed two Forest Service employees – a watershed specialist and project inspector – about rules for installing erosion controls.

"Neither ... employee could articulate the process," the violation notice states.

Cheva Heck, spokeswoman for the Forest Service Lake Tahoe Basin Management Unit, acknowledged her agency didn't do enough to prevent erosion in the Angora logging area.

"We do agree we failed to prepare that area adequately for the storm," she said. "It's certainly been a long and difficult project, but we aren't offering any excuses."

She said, however, that her agency did nothing wrong in the four other projects that got violation notices.

Of these, the most serious of the disputed violations involves a bridge being built across Tallac Creek. Water quality officials visited the project during the same storm, and said they found some erosion controls had failed.

Heck said problems at the site were caused, in part, by an underground drainage failure triggered by the storm that could not have been avoided.

"In four of the five cases, we are not going to be concurring with Lahontan's conclusions," she said.

At an Oct. 19 inspection, the bridge contractor told inspectors the Forest Service had not informed him of the Oct. 15 deadline to winterize the project site, the water board reported.

State water law does not allow Lahontan to fine federal agencies for first offenses, only for subsequent violations at the same projects. Lahontan does have the power to order cleanup and abatement work, and it did so in each of the five cases.



# California Regional Water Quality Control Board Lahontan Region



Linda S. Adams  
Secretary for  
Environmental Protection

2501 Lake Tahoe Boulevard, South Lake Tahoe, California 96150  
(530) 542-5400 • Fax (530) 544-2271  
www.waterboards.ca.gov/lahontan

Arnold Schwarzenegger  
Governor

October 19, 2009

Terri Marceron  
US Forest Service - LTBMU  
35 College Drive  
South Lake Tahoe, CA 96150

**CERTIFIED MAIL: 7008 1300 0001 6173 2258**

IN THE MATTER OF VIOLATION OF LAHONTAN )  
WATER RESOURCES CONTROL BOARD )  
RESOLUTION R6T-2007-008, WAIVER OF WASTE )  
DISCHARGE REQUIREMENTS FOR DISCHARGES )  
RELATED TO TIMBER HARVEST AND )  
VEGETATION MANAGEMENT ACTIVITIES ISSUED )  
TO THE US FOREST SERVICE – LTBMU AND )  
THE WATER QUALITY CONTROL )  
PLAN FOR THE LAHONTAN REGION )  
EL DORADO COUNTY, WDID NO. 6AT50908027 )

**NOTICE OF  
VIOLATION**

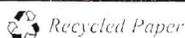
The purpose of this letter is to inform you that you are in violation of: (1) the Lahontan Water Resources Control Board Resolution R6T-2007-008, Waiver of Waste Discharges Related to Timber Harvest and Vegetation Management Activities issued to the US Forest Service – LTBMU for the Angora Hazard Tree Removal Project (hereafter referred to as the "Timber Waiver"); and (2) the Water Quality Control Plan for the Lahontan Region (Basin Plan). The US Forest Service is the land owner and responsible party for the Angora Hazard Tree Removal Project; therefore, the US Forest Service is responsible for ensuring compliance with both the Timber Waiver and the Basin Plan.

### Background

On July 2, 2008, you submitted a Notice of Intent to comply with the terms of the Timber Waiver for the Angora Hazard Tree Removal Project (hereafter referred to as the "Project"). The Basin Plan requires you to winterize (i.e., stabilized or protected to prevent soil movement) all project sites by October 15 as a condition of continuing work.

On October 14, 2009, Water Board staff received a grading season exception request ("variance request") for the Project from the LTBMU dated October 9, 2009. The variance was requested to allow the LTBMU to continue log skidding and chipping past the October 15 grading deadline. The variance request requires certification under penalty of law that the "project site will be fully winterized in accordance with waste

*California Environmental Protection Agency*



discharge requirements by October 15, 2009." The variance request was certified via signature by LTBMU staff; however, the Project was not winterized in accordance with waste discharge requirements (i.e., the Timber Waiver) on October 15, 2009. Due to Project area and weather conditions, no variance request was granted for the Project to continue soil disturbance work, other than for the purposes of winterization. On October 15, 2009 permission was granted to conduct winterization work only.

Water Board staff inspected Project sites on October 13, 2009 and October 15, 2009, and observed very few Best Management Practices (BMPs) implemented, and many areas of disturbed soil that were not winterized. No waterbars had been installed on roads used for the project with the exception of a few pre-project waterbars. A temporary stream crossing and road which were to be removed or decommissioned by October 15 were still in place. Approximately 1.5 inches of rain occurred October 13 & 14, 2009. Staff observed sediment-laden stormwater discharges from the disturbed soils on the project sites into Angora Creek on October 13, 2009. Angora Creek is a tributary to Lake Tahoe and is both a water of the State and water of the US. Lake Tahoe is an Outstanding National Resource Water, and is included on the Clean Water Act section 303(d) list of impaired waterbodies. Fine sediment and nutrients are the pollutants impairing Lake Tahoe.

On October 15, 2009, Water Board staff discussed BMP implementation procedures with an LTBMU Project inspector and watershed specialist. Water Board staff were attempting to gain insight on how LTBMU BMP requirements contained in the Project's Decision Memo (prepared pursuant to the National Environmental Policy Act [NEPA]), were translated into on-the-ground actions. Specifically, Water Board staff inquired about the process which LTBMU staff and contractors follow to implement project requirements, including the selection, timely implementation, inspection, and maintenance of BMPs, and who was responsible for ensuring this process was met. Neither LTBMU employee could articulate the process.

### **Violation – Basin Plan Grading Deadline**

Lahontan Regional Water Quality Control Board Resolution No. R6T-2007-0008, Attachment A: Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest and Vegetation Management Activities includes General Conditions I.B.1. which states:

“The discharger must comply with all requirements of applicable water quality control plans...”

The Water Quality Control Plan for the Lahontan Region (Basin Plan), Chapter 5, Water Quality Standards and Control Measures for the Lake Tahoe Basin, Subchapter 5.3, Best Management Practices, states:

"...BMP which both the Regional Board and TRPA require to be implemented is the regional grading deadline...All project sites must be adequately winterized by October 15..."

Due to rainfall on October 13 and 14, and the resulting saturated soil conditions, Project areas were not accessible by grading equipment needed to construct erosion control measures following the storm. In order to meet the October 15 grading deadline, erosion control structures needed to be completed **prior** to the October 13, 2009 storm.

Refer to enclosed photos 1-4, showing lack of erosion control measures on Project sites on October 13, 2009. An inspection by staff members of the Water Board and the Tahoe Regional Planning Agency on October 15, 2009, revealed that the site was not winterized at that time, in violation of the Basin Plan.

### **Violation – Basin Plan Waste Discharge Prohibition**

The Water Quality Control Plan for the Lahontan Region (Basin Plan), Chapter 5, Water Quality Standards and Control Measures for the Lake Tahoe Basin, Subchapter 5.2, Waste Discharge Prohibitions, states:

"The discharge, attributable to human activities, of solid or liquid waste materials, including soil, silt, clay, sand and other organic and earthen materials, to surface waters of the Lake Tahoe Basin, is prohibited."

Inspections conducted on October 13 and 14 revealed sediment discharges into Angora Creek and its tributaries from roads and landings in the Project area due to lack of erosion control structures. Refer to photos 4-6 showing sediment-laden stormwater discharging into Angora Creek from a road in the Project area. No waterbars or other stormwater control measures were installed to prevent the discharge.

### **Violation – Timber Waiver**

Lahontan Regional Water Quality Control Board Resolution No. R6T-2007-0008, Attachment A: Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest and Vegetation Management Activities includes General Conditions I.B.1. which states:

"The discharger shall conduct timber harvest activities . . .in accordance with the final environmental document prepared pursuant to the National Environmental Policy Act (NEPA) and decision document for timber harvest activities on federal lands."

The Decision Memo for Implementation of the Angora Hazard Tree Removal Project (3-21-08), Appendix B – Summary of Best Management Practices (BMP) for the LTBMU Angora Hazard Tree Removal Project includes BMP 1-13: Erosion Prevention & Control Measures During Timber Sale Operations. BMP 1-13 states:

"Erosion control work shall be completed by the grading deadline (i.e., October 15 or another date identified in a grading extension)."

Additional detail regarding BMPs for erosion control is contained in the Decision Memo Appendix B. BMP 1-16 states that "all landings will be ditched and outsloped for proper drainage . . . ." BMP 1-17 states that "drainage dips will be installed on haul routes and main skid trails at an average spacing of 150 linear ft." Refer to photos 1-7 in Appendix A, showing lack of erosion control structures in the Project area.

On August 5, 2009, a Project modification, which amended the Decision Memo, was agreed to by Water Board and LTBMU staff regarding the method of stream crossing in Unit 5 at crossing 11 on Angora Creek. The Project modification document states:

"The crossing will be removed prior to October 15, unless otherwise agreed upon between the LTBMU and Lahontan staff."

Refer to Photo 7, taken on October 15, 2009, showing the crossing 11 on Angora Creek in place. An email received on October 13, 2009 from LTBMU staff states that "Crossing 11 is still in as there are still logs in the Seneca Pond landing that still need to be chipped."

On September 1, 2009, a Project modification, which amended the Decision Memo, was agreed to by Water Board and LTBMU staff to allow the construction of a new, temporary road in the Project area in Unit 5 near Mule Deer Drive. The Project's Timber Sale Contract #211729 was amended to reflect this agreement, and states:

"The road shall be decommissioned by October 15, 2009, unless a variance to the October 15 soil disturbance prohibition date is granted."

An email received on October 13, 2009 from LTBMU staff indicates that the temporary road has not been decommissioned.

During the week of October 5-9, 2009, The National Weather Service predicted a rain event for October 12 and 13, 2009. The storm was forecast to result in rainfall amounts of up to 3 inches. On October 12, 2009, the National Weather Service was predicting a 100% chance of heavy rain. The Decision Memo for Implementation of the Angora Hazard Tree Removal Project (3-21-08), Appendix B – Summary of Best Management Practices (BMP) for the LTBMU Angora Hazard Tree Removal Project includes BMP 1-13: Erosion Prevention & Control Measures During Timber Sale Operations. BMP 1-13 states:

"Erosion control measures will be kept current, which means daily, if precipitation is likely, or at least weekly, when precipitation is predicted."

As demonstrated in the enclosed photos, erosion control measures were not installed, despite National Weather Service forecasts of the October 13, 2009 storm event.

**Action Needed**

You are subject to enforcement action for the aforementioned failures to comply with the Timber Waiver and the Basin Plan. Future enforcement actions may be taken for continued non-compliance. The quality and speed of actions you take to restore compliance will be considered in the type and extent of enforcement actions we will pursue.

With that background, I request you to:

1. **Immediately** cease any and all new soil disturbance activities. You are only authorized to **stabilize** areas already disturbed by Project activities.
2. To completely stabilize all disturbed soils on Project sites by **October 23, 2009**, including decommissioning roads, trails, and removing temporary crossings as described in the Decision Memo and project documents which may amend the Decision Memo.
3. Decommission the former primary access road at the Seneca Drive entrance to Unit 5 by **October 23, 2009**.
4. Submit a report to the Lahontan Water Board by **October 30, 2009**, which describes and documents the completion of site stabilization activities per identified project area. Documentation must include photo documentation.

Please contact Anne Holden at (530) 542-5450, or me at (530) 542-5436, if you have any questions regarding this matter.



LAURI KEMPER, P.E.  
Supervising Water Resource Control Engineer  
North Lahontan Watersheds Division

Enclosure: Photos 1-7

cc (with enclosure): Lahontan Water Board members  
TRPA/Nicole Rinke, Joanne Marchetta, Brian Hirt  
USEPA/Jack Landy  
USFS Regional Office/Randy Moore  
USFS Regional Forester's Representative/Mike Chapel  
State Water Board/Dorothy Rice

## Photos

**Photo 1: Forest Road 17E49, north of Seneca Pond in Unit 5 on October 13, 2009. No erosion control structures are installed.**



**Photo 2: Forest Road 17E49, north of Seneca Pond in Unit 5 on October 15, 2009. No erosion control structures are installed.**



**Photo 3: Landing near Seneca Pond in Unit 5 on October 13,2009. Note lack of erosion control structures. Stormwater was running from landing, down road to discharge into Angora Creek (see Photo 4).**



**Photo 4: Road downslope of landing shown in Photo 3. No erosion control structures are installed. Stormwater was running from landing, down road, discharging into Angora Creek.**



**Photo 5: Sediment-laden stormwater discharging from road and crossing 11 into Angora Creek. No erosion control structures are installed.**



**Photo 6: Sediment-laden stormwater discharge entering Angora Creek from road and crossing.**



**Photo 7: Crossing 11 on Angora Creek still in place on October 13, 2009. Due to increased streamflow and saturated soils, crossing 11 is still in place on October 15, 2009.**

