

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – LAHONTAN REGIONAL WATERBOARD
MAY 15, 2012**

ITEM 4

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION APPROVING AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE LAHONTAN REGION (BASIN PLAN) TO REPLACE THE REGIONWIDE PESTICIDE WATER QUALITY OBJECTIVE WITH A REGIONWIDE PESTICIDE WASTE DISCHARGE PROHIBITION WITH EXEMPTION CRITERIA FOR AQUATIC PESTICIDE

DISCUSSION

On December 7, 2011, the Lahontan Regional Water Quality Control Board (Lahontan Water Board) adopted [Resolution No. R6T-2011-0102](#) amending the Basin Plan to replace the existing regionwide pesticide water quality objective, which effectively prohibits pesticides in water, with a regionwide waste discharge prohibition with exemption criteria for aquatic pesticide application. The amendment provides the Water Board the discretion to approve eligible aquatic pesticide applications. Eligible projects include those proposed for purposes of public health and safety and preservation of ecological integrity. Examples of projects that fit into these categories include vector control, fisheries management, aquatic invasive species control and projects implemented for these purposes in response to emergency situations that satisfy specific exemption criteria. The Water Board may grant a prohibition exemption and regulate the subsequent aquatic pesticide discharge under an applicable permit, such as Waste Discharge Requirements (WDRs), a National Pollution Discharge Elimination System (NPDES) permit, or a waiver of WDRs issued by the State or Regional Water Board.

Regulating aquatic pesticide use through prohibitions and conditional exemptions provides the Water Board with the opportunity to ensure pesticide applications have limited temporal and spatial impacts to the maximum extent feasible. The amendment establishes a formal prohibition on pesticides in all waters, but provides a pathway for project proponents to seek an exemption to the prohibition from the Lahontan Water Board for use of aquatic pesticides. In making its case for exemption to the Lahontan Water Board, the project proponent must furnish project specific information including the planned treatment protocol, a public notification plan, and the appropriate level of environmental analysis in compliance with the California Environmental Quality Act. Depending on the purpose of the aquatic pesticide application (e.g. fisheries management, aquatic invasive species control, vector control) varying degrees of evidence must be provided to justify the need for chemical control methods and to ensure measures to protect water quality and minimize unintended effects are built into the project. These criteria include evidence that non-chemical means are infeasible. Additional exemption criteria that must be satisfied before consideration for exemption may include submitting and implementing a mitigation plan and a monitoring and reporting program to track recovery of non-target species if affected by the proposed discharge. This approach allows the Water Board to proactively protect water quality from the unauthorized use and unintended effects of pesticides and their residues, while still allowing appropriate use of aquatic pesticides.

The amendment grants an exemption to vector control projects and emergency actions without need for a separate discretionary decision of the Water Board as long as specific project information requirements are satisfied.

Exemptions to the proposed pesticide prohibition will be granted for vector control projects that propose to apply larvicide or adulticide products covered under the Statewide National Pollutant Discharge Elimination System General Permit for Vector Control Applications (Vector Control General Permit). Larvicide and adulticide applications will mostly be authorized and covered by the Statewide General Vector Control Permit unless the Water Board determines an individual permit may be more appropriate.

The use of the piscicide rotenone is allowed in the pre-amendment Lahontan Basin Plan through use of a variance to the existing water quality objective for pesticides. The existing language allows the Water Board to grant conditional variances for rotenone applications conducted by the Department of Fish and Game (DFG) only. The amendment gives the Water Board the discretion to consider and allow the conditional use of rotenone by the United States Fish and Wildlife Service, which sometimes conducts fisheries management activities independently of DFG. Additionally, the amendment updates the current rotenone language by refining the existing control measures and monitoring requirements. Project proponents must develop appropriate metrics to evaluate the recovery of non-target organisms.

An antidegradation analysis is included in the amendment to demonstrate that the project meets the requirements of the federal and state antidegradation policies. In the antidegradation analyses, the Water Board considers the amendment changes that provide a process to authorize the use of aquatic pesticides, which have the potential to degrade existing high quality water. The antidegradation analysis finds that water quality degradation associated with aquatic pesticide discharges is not unreasonable, since projects are implemented in the best interest of people of the state, the lowering of water quality will not unreasonably affect the designated beneficial uses, and preventing all projects could result in long term degradation of surface waters in the Lahontan Region. Proposed projects are required to incorporate control measures to limit the area and duration of impacts caused by the discharge of aquatic pesticides.

While developing the amendment, staff held a series of stakeholder meetings in the northern and southern Lahontan Basin. Staff met with public and environmental health departments, water management officials, mosquito abatement districts, federal and state wildlife agencies, resource conservation districts, environmental groups, and other groups and individuals interested in the use of aquatic pesticides. Additionally, in April and May 2011, and before bringing the amendment before the Lahontan Water Board for its consideration, the Lahontan Water Board held two public hearings during the written comment period to present and solicit public testimony on the draft amendment language.

Comments presented by the Tahoe Water Suppliers Association (TWSA) and the League to Save Lake Tahoe (League) in writing and at the stakeholder and public meetings included requests to explicitly exclude Lake Tahoe from exemption eligibility, or if this request was not granted, exemption eligibility should be limited to emergency situations only. During the April and May 2011 public hearings on the basin plan amendment, the Water Board provided direction to staff to retain the language in the amendment allowing the Water Board discretion to consider projects for all surface waters of the region, including Lake Tahoe, for circumstances including those proposed for the protection of public health and safety and ecological integrity. On a project-by-project basis the Water Board prefers to use its discretion to consider, grant, or reject an exemption request.

Other comments provided by the TWSA, the Nevada Department of Environmental Protection, and the California Department of Public Health prompted language modifications to notify potentially affected parties of proposed projects, including the associated precautions and use restrictions. The amended language, which went before the Lahontan Water Board for consideration, and was further refined at the public hearing before adoption, requires a project proponent to consult with potentially affected water purveyors at Lake Tahoe prior to submitting the exemption request to the Water Board. For projects in the Outstanding National Resource Water, water purveyors will be involved with project design, mitigation measures, and monitoring prior to project implementation.

During the State Board's public comment period for the amendment, the TWSA and the League expressed concerns similar to those previously submitted and addressed during the Lahontan Water Board's public comment periods. Some of the same concerns were also articulated in an online petition to "Keep Pesticides out of Lake Tahoe Waters."

POLICY ISSUE

Should the State Water Board approve the amendment to the Basin Plan to replace the regionwide pesticide water quality objective with a regionwide pesticide waste discharge prohibition with exemption criteria for aquatic pesticide use?

FISCAL IMPACT

Lahontan Water Board and State Water Board staff work associated with or resulting from this action will be addressed with existing and future budgeted resources.

REGIONAL BOARD IMPACT

Yes, approval of this resolution will amend the Lahontan Regional Water Board's Basin Plan.

STAFF RECOMMENDATION

That the State Water Board:

1. Approves the Basin Plan amendment adopted under Lahontan Water Board Resolution No. R6T-2011-0102.
2. Authorizes the Executive Director or designee to submit the Basin Plan amendment adopted under Lahontan Water Board Resolution No. R6T-2012-0102, as approved, and the administrative record for this action to the California Office of Administrative Law and the Basin Plan amendment to the U.S. EPA for approval.

State Water Board action on this item will assist the Water Boards in reaching Goal 4 of the Strategic Plan Update: 2008-2012 to comprehensively address water quality protection and restoration, and the relationship between water supply and water quality, and describe the connections between water quality, water quantity, and climate change, throughout California's water planning processes. In particular, approval of this item will assist in fulfilling Action 4.3.1 to work with external stakeholders to identify and prioritize opportunities to provide resources to address basin planning issues of mutual concern determined through the regular triennial review process to update the Basin Plans.

DRAFT

STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2012-

APPROVING AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE LAHONTAN REGION TO REPLACE THE REGIONWIDE PESTICIDE WATER QUALITY OBJECTIVE WITH A REGIONWIDE PESTICIDE WASTE DISCHARGE PROHIBITION WITH EXEMPTION CRITERIA FOR AQUATIC PESTICIDE USE

WHEREAS:

1. On December 7, 2011, the Regional Water Quality Control Board for the Lahontan Region (Lahontan Water Board) adopted [Resolution No. R6T-2011-0102](#), an amendment to the Water Quality Control Plan for the Lahontan Region ([Basin Plan amendment](#)), to replace the regionwide pesticide water quality objective with a regionwide pesticide waste discharge prohibition with exemption criteria for aquatic pesticide use.
2. The Lahontan Water Board found that the analysis contained in the California Environmental Quality Act (CEQA) “Substitute Environmental Documents” for the proposed Basin Plan amendment, including the CEQA checklist, the final staff report entitled “Staff Report and Substitute Environmental Documentation for Proposed Amendments to the Water Quality Control Plan for the Lahontan Region Revising the Regionwide Water Quality Objective to a Regionwide Waste Discharge Prohibition,” and the responses to comments comply with the State Water Board’s regulations for the implementation of CEQA, as set forth in the California Code of Regulation, Title 23, sections 3775 through 3781. The State Water Board has reviewed the Substitute Environmental Documents for the Basin Plan amendment and concurs with Lahontan Water Board’s findings and determination including the Statement of Overriding Considerations.
3. The Lahontan Water Board also adopted the Basin Plan amendment pursuant to the “Necessity” standard of the Administrative Procedures Act, Government code section 11353, subdivision (b).
4. The Lahontan Water Board found the Basin Plan amendment is consistent with the Statement of Policy with Respect to Maintaining High Quality of Waters in California ([State Water Board Resolution No. 68-16](#)) and the federal Antidegradation Policy (40 C.F.R. § 131.12).
5. The State Board finds that the Basin Plan amendment is in conformance with Water Code section 13240, which specifies that regional water quality control board may revise basin plans, and section 13242, which requires a program of implementation for achieving water quality objectives.
6. A Basin Plan amendment does not become effective until approved by the State Water Board and until the regulatory provisions are approved by the Office of Administrative Law (OAL). The Basin Plan amendment must also receive approval from the U.S. Environmental Protection Agency (U.S. EPA).

D R A F T

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves the Basin Plan amendment adopted under Lahontan Water Board Resolution No. R6T-2011-0102.
2. Authorizes and directs the Executive Director or designee to submit the Basin Plan amendment adopted under Lahontan Water Board Resolution No. R6T-2011-0102 to OAL for approval of the regulatory provisions and the U.S. EPA for approval of the Basin Plan amendment.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on May 15, 2012.

Jeanine Townsend
Clerk to the Board