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MEMORANDUM

Date: February 17, 2010  
To: TRPA Governing Board  
From: TRPA Staff  
Subject: "FactSheet FollowUp" for Regional Plan Update Milestone #1: WQ and SEZ

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Requested Action: Governing Board direction that the attached FactSheet FollowUp #1 (Attachment A) has accurately portrayed the results of the first Milestone in the Regional Plan Update process and should be inserted into the FactBook behind FactSheet #1.

Staff Recommendation: Governing Board members review the attached FactSheet FollowUp #1 to ensure that it has accurately portrayed the results of the first Milestone in the Regional Plan Update process. Staff recommends that if the Board can confirm that there are no discrepancies in FactSheet FollowUp #1 and the document has accurately portrayed the results of the first Milestone in the Regional Plan Update process, it should direct staff that the document should be inserted into the FactBook behind FactSheet #1.

Requested Motion: The Board is requested to make a motion directing staff on how to proceed with FactSheet FollowUp #1. A majority straw vote of the Board is requested in order to provide staff with direction.

Background: This Water Quality and Stream Environment Zones Milestone was the first in a series of Milestone discussions to be conducted as part of the Regional Plan Update process. It took place at the January 28, 2010 Governing Board meeting. Each of the Milestones deals with a part of the Plan, and each is preceded by a Stakeholder Process to vet the proposed policy alternatives with Agency partners and constituents.

To support the discussion at the Board meeting, staff presented the Governing Board with FactSheet #1, which served as a summary of the stakeholder process for WQ and SEZs. It outlined the major issues identified by staff and stakeholders and provided a framework for the Board in making decisions and providing policy direction to staff. There were eleven (11) major issues called out in FactSheet #1. A twelfth major issue was raised and resolved at the Milestone meeting.

Staff prepared a FactSheet FollowUp for WQ and SEZ milestone #1 to recap the direction that the Governing Board gave to staff for each of the twelve (12) issues raised and voted (straw vote) on at the January 28, 2010 meeting. Staff is proposing to produce a FollowUp for every FactSheet and after every Milestone. The nature of the FollowUp documents is to be brief – essentially to memorialize the direction given. In

preparing FollowUp #1, staff listened to the actual audio from the meeting and accurately transcribed the exact motion made in support of the direction given on each issue.

Contact Information: If you have any questions, please contact Harmon Zuckerman, Director, Regional Plan Update, at [hzuckerman@trpa.org](mailto:hzuckerman@trpa.org) or (775) 589-5236 or Paul Nielsen, Water Quality/SEZ Milestone Team Lead, Regional Plan Update, at [pnielsen@trpa.org](mailto:pnielsen@trpa.org) or (775) 589-5249.

## Attachment A

# FactSheet FollowUp

## Water Quality and SEZ Milestone #1<sup>\*</sup>

### What is a FactSheet FollowUp?

A FactSheet FollowUp is a set of Milestone meeting summary notes that serve as a companion to the FactSheet prepared for each Milestone. It documents each policy issue discussed in the FactSheet, the staff proposal, and direction given by the Governing Board. The FollowUp is not intended to serve as regular minutes of the meetings. These will be prepared for the Board and made available in the usual way.

### What was the direction given by the Governing Board concerning Water Quality policy issues?

#### WQ Issue #1: Should the TRPA defer to the Forest Service's BMP Guidelines?

**Staff Proposal:** TRPA staff proposed that the alternatives for the updated Regional Plan be amended to defer to the USFS BMP Handbook as the guiding document for applying BMPs on U.S. Forest Service lands.

**Governing Board Direction:** The Governing Board directed staff to amend its proposal to read as follows: "The alternatives for the updated Regional Plan will be amended to use the USFS BMP Handbook as the guiding document for applying BMPs on U.S. Forest Service lands within the Tahoe Basin."

The Governing Board also stated that TRPA should not purely defer to the USFS BMP Handbook in developing the TRPA BMP Manual. Rather, the USFS BMP Handbook should serve as the foundation for developing the forested uplands portion of the TRPA BMP Manual.

#### WQ Issue #2: How will the updated Regional Plan improve BMP compliance in the Basin?

**Staff Proposal:** Staff proposed to add a policy to all three action alternatives in the Water Quality Subelement that states: "TRPA will develop and implement a focused enforcement strategy to accelerate BMP compliance in high-priority areas as informed by the TMDL and assist local jurisdiction implementation of stormwater management plans."

**Governing Board Direction:** A policy will be added to all three action alternatives in the Water Quality Subelement that states: "TRPA will develop and implement a focused enforcement, implementation, maintenance, and inspection strategy to

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<sup>\*</sup> Milestone Meeting #1 was held on January 28, 2010 at the TRPA Offices, Stateline, NV.

accelerate BMP compliance in high-priority areas as informed by the TMDL and assist local jurisdiction implementation of stormwater management plans using state-of-the-art technology and allowing for new technologies.”

The Governing Board also directed staff to include in the updated BMP Manual the flexibility for property owners to install “equal or superior” BMPs which may not specifically be identified in the Manual.

**WQ Issue #3: The Forest Service BMPs should not be evaluated by a separate entity, as they already have their own annual BMP evaluation process.**

**Staff Proposal:** TRPA staff supports the rigorous technical evaluation of BMP effectiveness because the assumptions associated with the TMDL are only as good as the technology that will be relied on to reduce identified pollutants of concern. TRPA staff did not propose any changes to the Regional Plan alternatives regarding evaluation of the BMPs on USFS lands.

**Governing Board Direction:** The Board concurred with the staff proposal.

**WQ Issue #4: The TMDL has resulted in an unfunded regulatory mandate for the jurisdictions.**

**Staff Proposal:** Based on the level of TMDL load reduction expected from the local jurisdictions, the state and federal programs in place to help fund achievement of TMDL requirements, and TRPA’s proposed land use incentives, staff did not propose to change the Regional Plan alternatives in response to this concern.

**Governing Board Direction:** The Board directed staff to consider the impacts of federal TMDL requirements on water quality management and to advise and assist local jurisdictions in meeting their federal obligations.

**WQ Issue #5: General agreement with the proposal to change the pelagic (deep water) Threshold standard for transparency from a winter mean to an annual average.**

**Staff Proposal:** TRPA staff proposed a single amendment to the Water Quality Threshold. This proposal would honor the scientific rationale and programmatic guidance provided by the TMDL for establishing a single protective standard for measuring transparency.

**Governing Board Direction:** The Board concurred with the staff proposal.

**WQ Issue #6: Why isn’t staff proposing other Threshold changes to protect Lake Tahoe, specifically in the littoral zone?**

**Staff Proposal:** Within the next few years, there will be adequate data collected, and TRPA staff will propose to create a suite of littoral standards.

**Governing Board Direction:** The Board directed staff to create a suite of littoral standards before the first [next] Five-Year Threshold Review.

**WQ Issue #7: Is Secchi transparency the only way to measure the health of the pelagic zone?**

**Staff Proposal:** After the update of the Plan, TRPA plans to propose augmenting its transparency standard with a clarity standard so that all three agencies can converge around one singular transparency standard and one singular clarity standard by which to evaluate deep water quality.

**Governing Board Direction:** The Board concurred with the staff proposal.

**WQ Issue #8: Private sector representatives recommended the use of a pro forma economic analysis to inform the allocation- and incentive-based system for land use regulation.**

**Staff Proposal:** Staff proposed to perform this analysis to inform TRPA on ways to achieve Water Quality and Land Use Program goals by developing incentives that provoke positive responses from project proponents and investment decision-makers.

**Governing Board Direction:** The Board directed staff, through the TRPA Land Use Program, to conduct an analysis to better inform its transfer ratios and land use incentive packages in cooperation with local government and private sector representatives.

**WQ Issue #9: Concern exists over the proposed alternatives treatment of BMP point-of-sale requirements.<sup>2</sup>**

**Staff Proposal:** Staff proposed that the Project Description and Matrix include the following policy considerations in the alternatives:

<b>Alternative 1</b>	<b>Alternative 2</b>	<b>Alternative 3</b>	<b>Alternative 4</b>
No point-of-sale policy proposed, only require disclosure	Require point-of-sale implementation of BMPs or post a financial guarantee	No point-of-sale policy proposed, only require disclosure	Require point-of-sale implementation of BMPs

**Governing Board Direction:** The Board directed staff to revise Alternative 2 to include increased disclosure requirements (which may or may not, depending on research) include amending the Real Property Disclosure Statement to require that it be disclosed to buyers of real property in the Tahoe Basin that there are BMP requirements. Amend Alternative 3 to require point-of-sale BMPs or post a financial guarantee.

Staff will amend the Project Description and Matrix to reflect the Board's direction and the following policy considerations in the alternatives:

<b>Alternative 1</b>	<b>Alternative 2</b>	<b>Alternative 3</b>	<b>Alternative 4</b>
No point-of-sale policy proposed, only require disclosure	<del>Require point-of-sale implementation of BMPs or post a financial guarantee</del> <u>Increased BMP point-of-sale real property disclosure requirements</u>	<del>No point-of-sale policy proposed, only require disclosure</del> <u>Require point-of-sale implementation of BMPs or post a financial guarantee</u>	Require point-of-sale implementation of BMPs

**What was the direction given by the Governing Board concerning Stream Environment Zones policy issues?**

**SEZ Issue #1: Establishing TRPA regulatory definitions for permanent SEZ disturbance might affect Lahontan's and the Forest Service's regulatory programs and resource management operations.**

**Staff Proposal:** In response to this concern, TRPA staff proposes to coordinate with partner agencies during development of the regulatory definition for permanent disturbance. The intent will be to develop a regulatory definition that:

1. Provides adequate protection for SEZs.
2. Is consistent with state wetlands and SEZ policies to the extent possible.

<sup>2</sup> This issue was raised at the January 28, 2010 meeting. It was not included in the FactSheet.

3. Does not unnecessarily burden forest fuels and vegetation management projects with compensatory mitigation requirements.

**Governing Board Direction:** The Board directed staff to coordinate with partner agencies during development of regulatory definitions for SEZ and permanent disturbance.

**SEZ Issue #2: Why is staff recommending Alternative 2's flexible approach to Compensatory Mitigation for New Disturbance in SEZs?**

**Staff Proposal:** Staff proposed to revise the compensatory mitigation requirement under Alternative 2 to include a variable, project-specific mitigation-to-impact ratio that will range from 1.5:1 to 4:1 instead of 2:1 to 4:1.

**Governing Board Direction:** The Board amended staff's proposal to read as follows: "Staff proposes to revise the compensatory mitigation requirement under Alternative 2 to include a variable, project-specific mitigation-to-impact ratio that will range from 1.5:1 to 4:1 instead of 2:1 to 4:1 in evaluation of new and relocated disturbances."

**SEZ Issue #3: TRPA's proposal to create definitions for the different types of compensatory SEZ mitigation may create conflict with the operations of other agencies.**

**Staff Proposal:** Although TRPA has agreed to continue to engage the Forest Service and CTC on this issue, no change to the Project Description or Matrix was proposed. TRPA's position is that the definitions proposed under Alternatives 2, 3, and 4 will be consistent or compatible with state and federal regulatory program definitions.

**Governing Board Direction:** The Board directed staff to ensure that the definitions proposed under Alternatives 2, 3, and 4 be consistent or compatible with state and federal regulatory program definitions as related to enhancement, restoration, and creation.