

# California State Auditor

B U R E A U O F S T A T E A U D I T S

## **Lahontan Regional Water Quality Control Board:**

*Has Not Accomplished All of Its Regulatory  
Work and Has Not Always Vigorously Acted  
Against Water Quality Violators*

November 1998  
97123

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# CALIFORNIA STATE AUDITOR

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November 12, 1998

97123

The Governor of California  
President pro Tempore of the Senate  
Speaker of the Assembly  
State Capitol  
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning the effectiveness of the Lahontan Regional Water Quality Control Board in performing its regulatory and enforcement responsibilities. This report concludes that Lahontan is not fulfilling all of its regulatory responsibilities, and uses flawed work plans to manage its workload. In addition, Lahontan has not consistently ensured prompt resolution to water quality violations. Specifically, it did not always follow up on permit violations, take enforcement actions promptly, and escalate enforcement action when dischargers failed to comply with initial actions. Further, this report concludes that the state board needs to more closely and effectively monitor regional boards and could do more to ensure that regional boards consistently address violations of water quality.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kurt R. Sjoberg".

KURT R. SJOBERG  
State Auditor

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# SUMMARY

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## **Audit Highlights . . .**

*Our review of the Lahontan Regional Water Quality Control Board revealed that it:*

- ✓ Did not always update permits promptly, complete compliance inspections, or ensure submission of self-monitoring reports.*
- ✓ Did not develop effective work plans to target or outline actions to measure its progress.*
- ✓ Has not consistently ensured prompt resolution to water quality violations.*

*Moreover, the State Water Resources Control Board needs to more effectively monitor the regional boards.*

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## **RESULTS IN BRIEF**

**L**ahontan Regional Water Quality Control Board (Lahontan) is responsible for protecting water quality within its region. However, our review revealed that Lahontan is not fulfilling all of its regulatory responsibilities. Particularly for dischargers that pose the highest threat to water quality, Lahontan did not always update permits promptly, complete compliance inspections, or ensure that dischargers submitted self-monitoring reports. Although Lahontan develops work plans to manage its workload for the coming year, these plans do not always target or outline actions that enable Lahontan to measure its progress toward completing its workload. Lahontan believes that it does not receive sufficient resources to complete all regulatory responsibilities; however, it does not always focus its limited resources on those dischargers that present the highest threats to the region’s water quality.

Also, Lahontan has not consistently ensured prompt resolution to water quality violations. For example, Lahontan did not always follow up on permit violations, did not take informal enforcement actions when violations occurred, and did not take formal enforcement actions promptly to deter or reduce future violations. In addition, Lahontan did not always escalate enforcement actions when dischargers failed to comply with initial actions. Lahontan stated that in the past, it followed a cooperative approach with violating dischargers because formal enforcement actions took substantial staff time to prepare. However, Lahontan has recently shifted emphasis towards more vigorous and prompt enforcement.

Moreover, although the State Water Resources Control Board (state board) is responsible for providing statewide oversight and administration of water quality planning and regulatory functions, it needs to more effectively monitor the regional boards. Specifically, the state board did not ensure that Lahontan developed its work plans when required, tracked and monitored data for work-plan goals, and focused work-plan goals on the highest threats to water quality. The state board also relied on flawed data to measure Lahontan’s progress. Further, the state board could do more to ensure that all regional boards consistently address water quality violations.

## RECOMMENDATIONS

To better ensure that it addresses work that represents the highest threat to the region’s water quality, Lahontan should take the following steps:

- For each of its programs, prepare work plans that encompass its key regulatory responsibilities, such as updating permits, conducting compliance inspections, and reviewing monitoring reports. These work plans should target those dischargers or sources of pollution that present the highest risk of pollution to the region’s waters. They should take into account funding constraints, rely on accurate workload data, and accomplish measurable goals.
- Monitor the performance of its program managers and water quality staff against the goals set forth in the work plans.

To better ensure the consistent enforcement of the state’s water quality laws, Lahontan should adhere to those key provisions of the statewide enforcement policy that call for continuous follow-up on enforcement actions to ensure their success. Also, when dischargers do not cooperate with its initial enforcement efforts, Lahontan should escalate enforcement actions promptly.

The state board should ensure it directs and adequately monitors the performance of the regional boards. It should evaluate the goals set in their work plans and determine whether the regional boards develop the goals based on reasonable workload standards.

To assist the regional boards in achieving a higher degree of consistency in their enforcement actions, the state board should do the following:

- Continue its efforts to develop a statewide database of ongoing and past enforcement actions that regional board staff can access when considering the proper course of action in a pending case.
- Routinely review a sample of enforcement actions from all nine regional boards, to determine whether the boards consistently adhere to the statewide enforcement policy.

## **AGENCY COMMENTS**

The California Environmental Protection Agency, the State Water Resources Control Board, and the Lahontan Regional Water Quality Control Board generally agree with our recommendations and audit findings. ■



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# INTRODUCTION

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## BACKGROUND

**N**ine Regional Water Quality Control Boards (regional boards), work together with the State Water Resources Control Board (state board) to protect California's water resources. Each regional board is composed of nine members appointed by the governor. Established by the State's Dickey Water Pollution Act in 1949, the boards are responsible for protecting surface, ground, and coastal waters of their regions.

This report focuses on one of these boards, the Lahontan Regional Water Quality Control Board (Lahontan). As illustrated in the figure on the following page, this board oversees an area covering about 20 percent of the State that contains many streams, wetlands, and hundreds of lakes, including Lake Tahoe and Mono Lake.

For fiscal year 1997-98, Lahontan's budget totaled approximately \$4 million. It manages 16 different programs with funds from 18 state and federal sources and employs approximately 45 employees at two field offices in South Lake Tahoe and Victorville.

## THE REGIONAL BOARDS SHARE RESPONSIBILITY WITH THE STATE BOARD FOR REGULATING WATER QUALITY

Since the passage of the Porter-Cologne Water Quality Control Act in 1969, the regional boards have shared responsibility with the state board for regulating water quality. The regional boards are semi-autonomous in that they make certain water quality decisions for their respective regions, such as determining waste discharge requirements. The regional boards implement the watershed management initiative, monitor compliance with permit requirements, and inspect facilities that treat industrial wastewater. They also take enforcement actions against pollution permit violators. However, the state board sets overall water quality policy and considers petitions contesting regional board actions.



The state board's Division of Water Quality (division) has additional responsibilities. The division provides fiscal and program planning support to the regional boards for water quality within the geographic boundaries of their regions. Specifically, the division provides programs that target specific types of water quality activities, including water quality monitoring, assessment, planning, standard setting, permitting and monitoring waste discharge requirements, managing nonpoint source pollution, and protecting ground water. The division also serves as the lead in coordination of the statewide watershed management initiative.

In addition, the division provides technical staff review of items appealed to the state board and those submitted as part of the basin planning process. It serves as a statewide liaison for water quality management efforts before the Legislature and various statewide and national forums, and as a principal contact for the United States Environmental Protection Agency's water quality program implementation. The division also develops statewide water quality control plans and policies that guide the regional boards' implementation of their Basin Plans. Basin Plan amendments are processed through the division for approval by the state board.

## **REGIONAL BOARD MONITORING OF POINT-SOURCE POLLUTION**

As part of their regulatory activities, the nine regional boards issue waste discharge permits and monitor compliance with these permits, primarily for point sources of pollution such as wastewater treatment plants, landfills, ski resorts, or campgrounds. To ensure compliance, the boards perform on-site inspections and require facilities to maintain adequate records. Additionally, dischargers must periodically test their waste and report the results to their regional boards. If the results do not comply with their permits, the boards may take enforcement actions.

Each regional board can take a series of enforcement actions, depending on the nature of the violation. When a minor violation has occurred, the first step is usually an informal enforcement action. Board staff typically telephone the discharger,

discuss how and why the violations occurred, and then discuss compliance. A written notice of violation is also considered an informal enforcement action. These actions give the discharger a chance to correct the violation before formal enforcement actions are taken.

A variety of formal enforcement actions are available to ensure violators take corrective action. First, the regional board may issue a time-schedule order, which requires the discharger to take certain actions within a given period. It may also issue a cleanup and abatement order requiring the discharger to immediately clean up or terminate the discharge. Another option is to issue a cease and desist order, which also imposes a time limit on cleanup or remediation, if significant violations persist. Finally, a board can assess a monetary penalty, referred to as an administrative civil liability (ACL). If permit violations still continue, the boards can refer the discharger to the state attorney general or to the district attorney for enforcement through the courts.

## **BEST MANAGEMENT PRACTICES FOR NONPOINT SOURCES OF POLLUTION**

Measures to control nonpoint pollution, which originates from sources such as agricultural runoff, erosion from construction, acid drainage from inactive mines, or logging, differ from those controlling point sources. Under the federal Clean Water Act, the state board must identify those waters that cannot meet water quality standards without control of nonpoint sources. In addition, the state board must also identify the nonpoint sources themselves, the best management practices (BMPs) for controlling these sources, and any existing area programs aimed at curbing nonpoint pollution. BMPs are those methods or practices the State recommends to control nonpoint pollution. For example, BMPs for cattle ranchers may require them to rotate grazing sites or to build fences near streams to reduce soil and manure runoff.

To assist the regional boards with mitigating nonpoint pollution, the state board has developed a three-step approach, with the goal of using the least stringent approach necessary to

encourage dischargers to adopt BMPs. First, it advises the boards to recommend dischargers voluntarily adopt BMPs. If a discharger refuses, the boards can then request assistance from other government regulatory agencies to enforce methods to control the nonpoint pollution. As a last resort to compel compliance, the regional board may require a permit for the discharger's site.

## **SCOPE AND METHODOLOGY**

The Joint Legislative Audit Committee requested that the Bureau of State Audits review Lahontan to assess its ability to adequately manage projects, as well as its ability to work effectively with other agencies.

To understand Lahontan's responsibilities, we reviewed applicable laws, rules, and regulations. We also reviewed Lahontan's policies and procedures and its Basin Plan, which describes water quality standards, and identifies problems and control measures.

To understand the state board's role in the enforcement process, we reviewed its strategic plan and policies and evaluated the extent to which Lahontan complies with them. In addition, we assessed whether the state board implemented selected recommendations made in 1994 during a comprehensive evaluation by a review committee.

To assess Lahontan's various operations and responsibilities, we determined how Lahontan prioritizes its work, enforces regulations, assigns resources, and manages costs. We also reviewed a sample of Lahontan's regulatory activities, including updating discharger permits, receiving and reviewing discharger monitoring reports, and completing compliance inspections, to determine whether it adheres to state policies and procedures. In addition, we reviewed a sample of Lahontan's work plans and determined whether it met the goals established.

To assess its case management and follow-up efforts, we selected a sample of cases to review. Additionally, we reviewed several allegations of poor case management identified by third parties that contacted us. We also interviewed management to determine Lahontan's attempts to better coordinate and minimize duplication of effort.

To assess what the state board has done to address concerns about inconsistent enforcement actions among the regional boards, we reviewed what steps it has taken to improve the boards' enforcement activities. ■

# CHAPTER 1

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## ***The Lahontan Regional Water Quality Control Board Does Not Fulfill All of Its Regulatory Responsibilities***

### CHAPTER SUMMARY

**D**espite the importance of protecting water quality, the Lahontan Regional Water Quality Control Board (Lahontan) does not ensure that the dischargers are adequately monitored. Specifically, Lahontan does not always update permits promptly, ensure that dischargers submit self-monitoring reports, or make on-site inspections of the dischargers that pose the highest threats to water quality. Lahontan uses annual work plans to manage its workload; however, these plans do not always focus its resources on the high-risk dischargers or contain effective measurements of progress. Although its staff believe it does not receive sufficient resources to fulfill all regulatory responsibilities, Lahontan does not maximize its limited resources to protect the region's water quality.

### BACKGROUND

Lahontan, along with the other eight regional boards, issues permits under federal law that allow for discharges into navigable waters as long as certain conditions are met. These permits expire within five years. Similarly, state law allows discharges into nonnavigable waters, also under certain conditions. The State Water Resources Control Board's (state board) procedures manual states that regional boards should update permits at least every 5, 10, or 15 years, depending on the threat that the dischargers present to water quality.

The state manual classifies the potential threats to water quality into three categories. Category I, the greatest threat, describes a discharger whose violation could render a significant drinking water supply unusable, close water recreation areas, cause long-term harm to aquatic resources, or directly expose the public to toxic substances. Lahontan regulated 43 dischargers classified as



Category I in fiscal year 1997-98. Category II and III dischargers pose less of a threat to the quality of the State’s waters. Lahontan regulated 119 Category II dischargers and 421 Category III dischargers in fiscal year 1997-98.

### **LAHONTAN DOES NOT SUFFICIENTLY MONITOR WASTE DISCHARGERS**

Because Lahontan does not always promptly update or reissue permits, perform inspections, or ensure that it receives and reviews periodic monitoring reports of high-risk dischargers, it is reducing the effectiveness of preventive mechanisms established to identify water quality problems as early as possible. Although Lahontan believes that it does not receive sufficient funding to complete all of its regulatory responsibilities, we found it does not always focus its limited resources on the greatest threats to water quality.

#### **Lahontan Does Not Update All Permits Promptly**

Despite the importance of current permits, Lahontan does not complete permit updates promptly. More importantly, Lahontan’s highest risk dischargers, Category I, had the greatest percentage of outdated or expired permits at the end of fiscal year 1997-98. As Table 1 illustrates, 44 percent were not operating under current permits. In addition, we determined that 12 percent of all regulated facilities had outdated or expired permits.

**TABLE 1**

**Higher-Risk Dischargers Operating on  
Expired or Outdated Permits  
End of Fiscal Year 1997-98**

Facility Type	Expired/Outdated Permits	Total Permits	Percentage of Expired/Outdated Permits
Category I	19	43	44%
Category II	11	119	9
Category III	41	421	10
<b>Total</b>	<b>71</b>	<b>583</b>	<b>12%</b>

Source: Data obtained from the State Water Resources Control Board’s Waste Discharge System database reports dated 6-17-98.

Current permits help confirm discharge conditions. If a discharger changed its method of operation since its last permit renewal, resulting in different or additional types of waste discharges, the discharger's current permit should reflect this. The permits also help confirm that dischargers have considered the most recent technology and the best protection for water quality. When Lahontan does not update permits promptly, it reduces the preventive mechanisms established to ensure that dischargers operate facilities appropriately under accurate permit requirements.

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*Lahontan completed only 28 percent of the inspections for waste dischargers posing the highest pollution threat.*

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### **Lahontan Does Not Complete All Compliance Inspections**

Our review of 40 dischargers classified as Category I or II disclosed that Lahontan completed only 28 percent of recommended inspections during fiscal year 1996-97 and 35 percent during fiscal year 1997-98. The state board establishes the number of inspections that the regional boards should complete based on the category assigned to the discharger and the related threat to water quality. Regional boards conduct these inspections to assess whether or not the discharger is complying with its permit, keeping adequate records and reports, and meeting other important provisions related to water quality. These inspections may also serve as tools to verify the accuracy of monitoring reports the discharger sends to regional board staff.

The state board's procedures manual specifies the number of inspections that the regional boards should regularly perform. Specifically, the boards should inspect all dischargers at least annually; however, the manual states that regional boards should inspect the highest risk facilities three times a year because they pose the greatest threat to water quality.

To determine whether Lahontan had conducted inspections according to state procedures, we examined a sample of inspections for 20 Category I and 20 Category II facilities. We did not review inspections for Category III facilities as these sites pose a lower threat to water quality. As Table 2 indicates, during fiscal years 1996-97 and 1997-98, Lahontan completed only 28 percent of the inspections for the Category I facilities we reviewed. For the Category II facilities, Lahontan completed only 27 percent of the inspections during fiscal year 1996-97, and 45 percent during fiscal year 1997-98. In addition, we found that six of the facilities we

sampled had not been inspected once during the two fiscal years we reviewed. As with the other preventive mechanisms we discuss in the report, failure to complete compliance inspections reduces the ability to identify potential water quality problems.

**TABLE 2**

**Lahontan Regional Water Quality Control Board  
Conducted Few of the Recommended Inspections  
Fiscal Years 1996-97 and 1997-98**

Facility Type	Inspections Completed	Inspections Recommended per State's Procedures Manual	Percentage of Recommended Inspections Completed
<b>1996-97</b>			
Category I	17	60	28%
Category II	12	44	27
<b>1997-98</b>			
Category I	17	60	28
Category II	20	44	45

**Lahontan Does Not Ensure That Dischargers Submit Monitoring Reports**

Not only does Lahontan fail to update a significant number of its highest risk permits, but it also does not ensure that dischargers submit self-monitoring reports, analyzing samples of their waste. Lahontan heavily relies on dischargers to police themselves by submitting these reports, which are crucial to the discovery of water quality violations. Yet, Lahontan does not always take steps to obtain the reports, thus reducing the opportunity to identify potential or actual water quality problems as early as possible.

Similar to permits and inspections, the frequency with which dischargers must submit these reports to the regional boards for review depends on the threat that the discharger presents to the region's water quality. For instance, dischargers may be required to submit monitoring reports monthly, quarterly, semi-annually, or annually.

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*Of those dischargers required to report, 21 percent did not submit even half of their self-monitoring reports during 1997-98.*

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To find out whether Lahontan is ensuring that dischargers submit self-monitoring reports, we reviewed a list of these reports from fiscal years 1996-97 and 1997-98. We further reviewed those dischargers required to submit reports and found that 16 percent did not submit at least half of the required monitoring reports during 1996-97. We also found 21 percent did not submit at least half of the required reports during 1997-98.

In addition, in all but one case, we found no evidence that Lahontan followed up with these facilities and attempted to obtain missing reports. Specifically, we selected a total of nine cases where the facility had submitted half or fewer of the required reports. In eight of these cases, Lahontan could not verify it had taken steps to obtain these reports.

According to Lahontan's executive management, it strives to meet work-plan goals that reflect current resource allocations because it lacks sufficient funding to achieve regulatory requirements.

## **LAHONTAN'S WORK PLANS HAVE FLAWS**

Lahontan developed its work plans to manage its workload effectively. Currently, the state and regional boards require work plans for some of the core programs under their management, although they develop work plans for other programs as needed. During fiscal year 1997-98, the state board required work plans for seven essential programs, including the National Pollutant Discharge Elimination System program and the Stormwater program. The boards use work plans to plan and organize workloads, establish common priorities, and serve as a contract between the state and regional boards. In addition, the work plans should match resources with goals and can assist the regional boards in prioritizing workloads when there are insufficient resources. Without effective work plans, the regional boards are less able to do the following:

- Ensure accountability among staff and management.
- Demonstrate how the activities will have a positive impact on the region's water quality.
- Ensure that water quality staff do not duplicate each other's efforts.

- Target efforts on those dischargers that present the highest risk of polluting the region’s waters.

We selected and reviewed six work plans that related to programs under Lahontan’s management, including Chapter 15, Nonchapter 15, National Pollutant Discharge Elimination System, Stormwater, Nonpoint Source, and Underground Storage Tanks programs. These work plans represented 56 percent of program funding sources for Lahontan during the fiscal year 1997-98.

### **Lahontan Did Not Always Focus Efforts on the Highest Priority Work**

Despite the fact that its annual work-plan goals are below the State’s regulatory goals, Lahontan did not always achieve even those goals. For example, in its 1996-97 National Pollutant Discharge Elimination System program work plan, Lahontan agreed to update five permits and perform 47 inspections; however, it updated no permits and completed only 14 inspections. Similarly, in its 1997-98 work plan, Lahontan committed to update seven permits and perform 41 inspections, but updated only four permits and 31 inspections.

Further, when Lahontan did not meet its work-plan goals, it did not always focus its limited resources on cases that posed the greatest threat to water quality. As explained earlier in this chapter, dischargers in Category I pose the highest threat to water quality, yet, despite their small numbers, they also have the highest percentage of expired or outdated permits. For example, for the Nonchapter 15 program, the 1997-98 work plan included a commitment of 19 permit updates for all categories of dischargers. Although Lahontan planned to update one Category I, one Category II, and 17 Category III permits, it only completed Category III updates. It completed no Category I or Category II updates. Clearly, Lahontan did not focus on the permits with the highest threat to water quality and, in failing to do so, is not effectively achieving its mission to maintain and protect water quality.

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*Although work plans include commitments to update all permit categories, Lahontan completed none for Categories I and II but completed updates in Category III, the lowest risk dischargers.*

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### **Work Plans Did Not Always Contain Measurable Goals**

During our review of selected work plans, we noted that some work plans did not contain measurable or effective goals designed to improve water quality. Instead, some of these work plans were largely a list of activities. Examples of measurable goals include quantified targets for specific activities, such as an

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*Without workload standards, Lahontan is less able to gauge its progress in meeting goals and prioritizing its work, which is especially important in times of limited resources.*

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objective to complete a specific number of reviews or inspections, improve water quality by a target date, or a plan to reduce a certain number of violations or enforcement actions within a certain time period. In addition, although other work plans reviewed did include specific, measurable program tasks, we noted in one instance the stated goal was well below previous achievements, resulting in an ineffective and essentially meaningless goal because it did not challenge staff to manage program resources efficiently. A contributing factor to Lahontan's work-plan goal deficiencies is the lack of workload standards. Without workload standards, those measures management uses to evaluate staff's work output, Lahontan is less able to develop and monitor goals, to measure its effectiveness, or to prioritize its workload when sufficient funds are not available to complete all tasks.

One work plan that contained vague and immeasurable activities related to the Nonpoint Source program. This program is designed to control nonpoint sources of pollution caused by activities such as agriculture, mining, or logging. To address nonpoint source problems, the state board's work plan for fiscal year 1997-98 listed statewide objectives to reduce pollution from nonpoint sources and to measurably improve water quality; however, Lahontan's work plan contained nothing more than a list of proposed tasks, rather than goals that would result in measurable improvements to water quality. The work plan included commitments to coordinate grant administration, provide outreach activities to educate the public in best management practices (BMPs) for controlling nonpoint sources of pollution, and plans to oversee various watershed projects to control the impact from nonpoint sources. Completion of these tasks does not demonstrate or measure how water quality within the region will be improved or maintained. While the program manager acknowledged the merits of linking activities for the Nonpoint Source program to water quality improvements, Lahontan has not yet done so for most of these projects.

The Stormwater program requires permits for certain storm water dischargers, including municipalities with populations of 100,000 or more, designated industrial activities, and construction activities that disturb more than five acres of land. Lahontan's work plan for the program contained two activities that were measured and tracked; however, 9 of 11 activities in the work plans were vague and immeasurable.

Additionally, Lahontan should develop work plans that focus on tasks that measurably benefit its water bodies. For example, it could establish a minimum percentage of pollution reduction within a watershed that demonstrates the benefits derived outweigh the costs of its efforts to reduce pollution. Another example would be to establish a target number of newly identified dischargers that it plans to persuade to implement BMPs within a specific time period. One of the objectives stated in the Nonpoint Source program work plan is to achieve measurable improvement in water quality by focusing resources in targeted watersheds, those in the Upper and Lower Truckee, Carson, Upper Owens, and Mojave rivers; however, Lahontan has not shown that completion of its work plan will measurably improve water quality.

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*The work plan for one program establishes goals that are far below prior years' accomplishments.*

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The work plan for the Chapter 15 program also was flawed. Although it contained a goal that was measured and tracked in earlier years, the goal was far below Lahontan's previous accomplishments. Specifically, the 1996-97 and 1997-98 work plans described a mission to ensure adequate protection of water quality for landfill and mining activities by completing its goals to update permits, conduct on-site inspections, and review discharger's monitoring reports. During fiscal year 1996-97, Lahontan reviewed 403 monitoring reports despite a goal of 86. Nevertheless, it established a work-plan goal of 80 for fiscal year 1997-98, although it actually reviewed 233.

## RECOMMENDATIONS

To better ensure that it addresses work that represents the highest threat to the region's water quality, Lahontan should take the following steps:

- Within each program, prepare work plans that encompass its key regulatory responsibilities, such as updating permits, conducting compliance inspections, and reviewing monitoring reports. These work plans should target those dischargers or sources of pollution that present the highest risk of pollution to Lahontan's waters and consider funding constraints, contain accurate workload data, and establish measurable goals.
- Monitor the performance of its program managers and water quality staff against the goals set forth in the program work plans. ■

## CHAPTER 2

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### ***Lahontan Regional Water Quality Control Board Has Not Consistently Ensured Resolution to Water Quality Violations***

#### CHAPTER SUMMARY

**L**ahontan has not always followed up on violations of permit requirements with enforcement actions or issued them promptly. It also has not always escalated enforcement actions when dischargers have failed to comply with initial enforcement actions. Lahontan stated that because of the substantial time and resources required to complete formal enforcement actions, such as monetary penalties referred to as administrative civil liabilities (ACLs), it generally takes a cooperative approach to gain compliance. Unfortunately, this cooperative approach did not lend itself to resolving problems caused by dischargers with a history of failing to correct water quality problems. Lahontan has recently received additional funding for enforcement and has also recently begun more vigorous and prompt enforcement efforts.

#### **LAHONTAN DOES NOT ALWAYS ENSURE THAT RESPONSIBLE PARTIES RESOLVE WATER QUALITY PROBLEMS PROMPTLY**

Effective enforcement is an integral component of the state and regional boards' efforts to deter violators and protect the environment. Once the regional board identifies that a violation of the water quality laws has occurred, the violating discharger must promptly identify the underlying cause of the pollution and clean up the contamination. To ensure corrective action, the regional board may take an initial enforcement action, usually to get the violating discharger to clean up a contaminated site, or submit a required progress report. In addition, the regional board must routinely follow up with violating dischargers to ensure compliance.



Lahontan has not always ensured that dischargers violating the State's water laws and affecting the water quality, remedy their problems. Specifically, in 11 of the 35 cases that we selected for review, Lahontan had not promptly followed up on violations. In one instance, Lahontan issued a permit to a discharger for the application of municipal wastewater sludge to land to be used for growing agricultural crops. The permit prohibited the discharge or runoff of the sludge, so it required the discharger to design and install structures to prevent runoff.

In response to complaints about potential flooding and runoff from this site, Lahontan's staff inspected the site and issued a report in October 1994. In its report, Lahontan concluded that current flood control measures may not comply with permit requirements, but the discharger verbally agreed to comply with the permit by improving flood control measures around the facility; however, Lahontan did not ensure compliance. In February 1998, the discharger's site flooded, resulting in a permit violation. Although Lahontan issued a notice of violation in March 1998 for the incident, it may have prevented this threat to water quality, if in 1994, it had ensured that the discharger addressed the insufficient flood control structures.

In another example, a South Lake Tahoe service station leaked gasoline into the surrounding groundwater. The business owner was repeatedly unresponsive to Lahontan's orders, and Lahontan did not enforce them. In 1985, Lahontan issued a cleanup and abatement order directing the owner to characterize the extent of the contamination by installing monitoring wells, and testing all underground storage tanks and pipelines. It also required the owner to submit a plan to clean up polluted groundwater. In addition, according to Lahontan, it required the business owner to submit periodic status reports outlining its progress in cleaning up the site.

The business owner conducted cleanup of the site, and continued monitoring and submitting reports until December 1986. From December 1986 to May 1989, the business owner failed to submit the required progress reports and Lahontan staff failed to request them. Furthermore, even though Lahontan staff finally requested the reports in May 1989, the business owner did not submit them until December 1990. Because Lahontan had not monitored the site for nearly four years, the contamination from this site persisted and eventually spread off-site. At one point, a local public drinking water well was temporarily shut down to prevent the contamination from eventually seeping into it.

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*Even though one business owner failed to clean up a contaminated site as repeatedly ordered, Lahontan did not enforce its initial orders.*

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Currently, Lahontan’s management believes the responsible party has made significant progress in cleaning up the site, having removed and upgraded underground storage tanks, and installed new equipment to remove contaminated groundwater. Although the local public utility district, which maintains drinking water supplies, acknowledged that its drinking water well is currently not in jeopardy, it still believes that contamination from this site poses a risk until the owner completely cleans it up.

In a third example, we found that Lahontan again failed to take timely enforcement action. Specifically, Lahontan found that a mining operation under its jurisdiction had failed to submit 21 monitoring reports within the required time frames from March 1995 to October 1997. Ten of the 21 reports, or nearly half, were at least 100 days past due. Nonetheless, Lahontan staff did not take any enforcement action until March 1998, when it finally issued an administrative civil liability (ACL) citing the discharger for failing to submit these reports on time and violating other water quality provisions.

Although we commend Lahontan for eventually issuing an ACL against the discharger, we found that Lahontan failed to initiate earlier and less stringent enforcement actions. For instance, Lahontan should have issued a notice of violation to the discharger when it first began submitting late monitoring reports; however, according to the supervising engineer of one office, the staff failed to issue any because the database that tracks the status of monitoring reports was not properly maintained. By failing to take prompt enforcement actions early on, Lahontan runs the risk that violations could grow into greater threats to water quality. The state board has acknowledged that some of its databases are flawed. In Chapter 3, we discuss the steps being taken by the state board to upgrade its databases.

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*The failure of the regional board to take prompt enforcement action early on can allow violations to grow into even greater threats to water quality.*

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### **LAHONTAN DOES NOT ALWAYS ESCALATE ENFORCEMENT ACTIONS WHEN APPROPRIATE**

Of the 35 discharger cases we reviewed, we found 6 instances where the regional board had not appropriately escalated enforcement action. According to the state board’s enforcement policy, when initial enforcement is not effective, the regional board is to escalate the action.

In another case involving a gasoline service station in South Lake Tahoe, the owner allowed fuel to leak into the groundwater, threatening local drinking water. When the contamination was discovered in 1983, Lahontan issued a cleanup and abatement order requiring the responsible party to clean up the contamination and install monitoring wells for continued testing. Although the owner removed the leaking tanks, Lahontan had concerns that the cleanup efforts were not complete; however, the owner paved over the site. Subsequent samples from monitoring wells indicated continuing contamination. Even though the owner had blatantly ignored Lahontan's requests, Lahontan management issued only a second cleanup and abatement order rather than escalate enforcement.

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*In one case, even though the owner blatantly ignored Lahontan's requests, rather than escalate enforcement, Lahontan merely issued a second cleanup and abatement order.*

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This second order again required the owner to clean up the site and continue monitoring. In response, the owner proposed a plan to pump out the polluted groundwater and continue monitoring the groundwater for contamination. However, the owner failed to submit required monitoring reports for almost three years. In addition, Lahontan staff cannot confirm whether the owner ever pumped out the contaminated groundwater because they failed to adequately monitor this case. Despite such actions, Lahontan then issued a letter of noncompliance, rather than a more stringent enforcement action.

Although the owner renewed monitoring after Lahontan directed it to do so, it took no actions to clean up the pollution. As a result, monitoring reports in September 1993 showed high concentrations of contamination. In addition, 1995 monitoring reports indicated that the contamination had spread. The analysis from these reports led Lahontan's staff to conclude that a new release had occurred since the 1983 contamination. The situation worsened to the point that the contamination began to threaten nearby public drinking water wells. In response, Lahontan issued a third cleanup and abatement order on October 1997. However, the responsible party again failed to meet most of the conditions of this order. Lahontan's staff responded to these violations by recommending an ACL fine; however, Lahontan's management failed to escalate enforcement and chose instead to issue an amended cleanup and abatement order with revised timelines. By failing to escalate enforcement actions when less stringent enforcement actions were clearly ineffective, Lahontan did not meet its mission to protect and enhance the State's waters.

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*The board preferred a cooperative approach with dischargers, but this approach did not resolve problems caused by dischargers with a poor compliance history.*

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Lahontan staff stated that formal enforcement actions, such as ACLs, require a substantial amount of time and resources to complete. In the past, as a result of limited resources available for enforcement, Lahontan relied on a cooperative approach to gain compliance from violating dischargers. This cooperative approach did not lend itself to resolving problems caused by dischargers with a poor history of compliance. However, according to Lahontan staff, it received additional funding for enforcement efforts beginning in 1997-98 and has recently shifted its focus towards more vigorous enforcement. This is an important change, which we agree is necessary and appropriate. When dischargers do not promptly resolve water quality contamination and pollution, it can lead to serious environmental consequences, such as threatening public water supplies.

### **LAHONTAN HAS RECENTLY CHANGED ITS ENFORCEMENT APPROACH**

In March 1998, the staff of Lahontan's executive office convened a meeting expressly to discuss the subject of enforcement. Specifically, Lahontan discussed its operating strategy for dealing with permit violations, waste discharge requirements, and the State's water quality laws. At this meeting Lahontan management made it clear that staff would adhere to the 1996 statewide enforcement policy. It also adopted a new strategy towards enforcement that focused efforts on higher threats to water quality. Consistent with this new emphasis on vigorous enforcement, the state board in 1997-98 allocated additional funds to Lahontan expressly for enforcement activities. In spite of these new resources for enforcement, Lahontan realizes that more emphasis on enforcement may come at the expense of other regulatory activities, particularly for dischargers that pose lower threats to water quality, such as those in Categories II and III, as discussed in Chapter 1. The state board also recognizes that Lahontan must modify other annual program commitments if additional resources are redirected to enforcement.

### **RECOMMENDATION**

To better ensure the consistent enforcement of the water quality laws, Lahontan should follow those key provisions of the statewide enforcement policy that call for continuous follow-up on enforcement actions to ensure that the initial enforcement taken

is producing the desired result. It should continue efforts begun in March 1998 to focus on more vigorous enforcement. When it becomes clear that a discharger is not cooperating with its initial enforcement efforts, Lahontan should escalate the action promptly to a more stringent step, such as issuing an ACL. ■

# CHAPTER 3

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## ***The State Water Resources Control Board Needs to Monitor the Regional Boards More Effectively***

### CHAPTER SUMMARY

The state board could do more to ensure that violations of water quality are consistently addressed by the nine regional boards. Specifically, the state board has not implemented a recommendation of a 1994 external review committee to periodically examine a sample of enforcement actions to help ensure consistency among the nine regional boards. In a June 1998 compliance review, the state board concluded that consistency problems still exist among the regional boards. One improvement that the state board has agreed to make to improve consistency among the regional boards is to establish an administrative civil liability (ACL) database that tracks enforcement actions for similar violations from across the State.

Additionally, the state board has not always been effective in monitoring Lahontan's progress in managing its workload. Specifically, the state board did not always develop, or ensure that Lahontan developed, required work plans. The state board also did not always oversee Lahontan's accomplishment of its work-plan goals. In addition, the state board did not ensure that Lahontan's work plans targeted the highest threats to water quality and contained effective goals for measuring actual progress in completing its workload. Finally, the state board relied on flawed data to measure Lahontan's progress on its work-plan goals.

### **THE STATE BOARD COULD IMPROVE ITS MANAGEMENT OF LAHONTAN'S WORK PLANS**

Although work plans are an important management tool that the state board uses to monitor the effectiveness of regional boards, it could improve monitoring of Lahontan's work plans. While the state board has an established process for monitoring

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*While the state board has established oversight processes, we found several lapses in its monitoring of Lahontan.*

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how well the regional boards are accomplishing the goals in their work plans, we found several lapses in its monitoring of Lahontan. Specifically, the state board did not develop, and did not ensure that Lahontan developed, a complete work plan for the Stormwater program. In another instance, the state board did not monitor progress on one of the work-plan goals within Lahontan's Chapter 15 program. In a third instance, work plans did not include effective goals for measuring progress. Finally, the state board used flawed data to measure Lahontan's accomplishments.

The state board required work plans for seven designated programs during fiscal year 1997-98, including the Stormwater program. Although the state board developed a work plan for this program during fiscal year 1996-97, it failed to develop a complete one for fiscal year 1997-98. According to the state board's Stormwater program manager, he developed a draft work plan; however, it was never finalized.

In another instance, we found that the state board never monitored one of the work-plan goals for the Chapter 15 program that governs solid waste disposal sites and mining activities. For both fiscal years 1996-97 and 1997-98, the work plans included a goal that required regional boards to review all closure plans for landfills within 120 days of receipt. The work plan indicated that the state board would track progress of this commitment; however, the state board has not tracked it for both years. When asked, the state board's Chapter 15 program manager said that other higher priority work was assigned to the state board, diverting efforts away from monitoring of work plans.

As we discussed in Chapter 1, Lahontan's work plans had flaws, including a lack of focus on high-priority threats to water quality, and a lack of measurable and effective goals. According to the state board's Stormwater program manager, the work plans did not include more measurable goals because the program was relatively new and did not lend itself to measurable goals. Instead, most of the program's time and resources have been devoted to education and outreach activities. In addition, the state board's Nonpoint Source program manager stated that the nature of the program makes it very difficult to gauge success in accomplishing program goals. For instance, much of the effort to curtail nonpoint pollution involves educating the public, participating in groups that develop methods for controlling

nonpoint pollution, and managing projects funded by nonpoint source moneys. The state board's program manager contends that measuring the benefits of these types of activities is not easily done.

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*While we agree that defining measurable goals is not easy, we believe it is imperative that the state board ensure all regional boards' efforts positively impact the quality of California's water.*

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Although we agree that measurable goals are not always easily defined, we believe that it is imperative that the state board ensure that its efforts and the efforts of the regional boards are positively impacting the quality of the State's waters. Therefore, the state board should ensure that regional boards develop work plans that clearly define measurable goals demonstrating that the regional boards' efforts produce worthwhile results—in other words, improve water quality. Also, to ensure it is able to gauge whether a work plan outlines a set of accomplishments that is within the reach of the regional board's staff, the state board needs to ensure that work plans are based on acceptable workload standards.

Despite efforts to capture and monitor work-plan goals and accomplishments, the state board's data used to monitor Lahontan's progress was incomplete and flawed. For instance, the state board reported that Lahontan had either issued or updated a total of 92 permits for Nonchapter 15 dischargers during the fiscal year 1996-97. Nonchapter 15 program regulations cover ski resorts, campgrounds, and a variety of other sites. However, we found problems with 47 of these permits, or 51 percent. Specifically, we confirmed with Lahontan's management that 25 of these reported permits were counted twice. Additionally, Lahontan could not verify that it had updated or issued another 22 permits. Because the state board did not reconcile its data on workload accomplishments with Lahontan's records, it relied on this flawed data and incorrectly assessed Lahontan's progress towards meeting its work-plan goals. It is critical that the state and regional boards establish reconciliation procedures so that the new database, discussed below, receives and maintains reliable information.

The data we used to track how well the regional boards are accomplishing their tasks originated from the state board's Waste Discharge System (WDS), a database developed in 1985. The state and regional boards use the database to track basic facility and permit information. Both the state board and regional boards have acknowledged that the database is unreliable. This was confirmed more recently in an internal review by the



state board's Compliance Assurance and Enforcement Unit (CAEU). As a result, the state board recently submitted a plan to the Department of Information Technology to develop a more reliable database to track the regional boards' performance.

## **THE STATE BOARD DOES NOT ENSURE THAT REGIONAL BOARDS CONSISTENTLY ADDRESS THREATS TO WATER QUALITY**

In 1994, a review committee consisting of representatives of the state and regional boards, as well as representatives from the regulated community and environmental groups, met to critically evaluate the responsibilities and programs of the regional and state boards. During its evaluation, the committee examined the issue of consistent enforcement. In its report, the committee presented a series of recommendations intended to better ensure that enforcement actions among the nine regional boards are consistent. Specifically, the committee recommended establishing an Office of Statewide Consistency. It also recommended the development of an enforcement policy to ensure consistent, predictable, and fair enforcement actions.

Although the state Water Code outlines possible enforcement actions, the regional boards have substantial discretion in determining specific enforcement measures. For instance, when determining how much the boards should fine a discharger for a water quality violation, the code requires them to take into account numerous factors, such as the nature, circumstance, extent, and gravity of the discharge, and whether it can be cleaned up, as well as the ability of the discharger to pay a fine; however, the boards ultimately decide on the amount of the fine. The fact that the law enables regional boards such flexibility may lead to the public perception that the nine boards issue fines inconsistently. The following example illustrates the broad discretion the code affords regional boards in determining ACL amounts.

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*The fact that the law provides each regional board wide discretion and flexibility may lead to the public perception that fines are inconsistently levied.*

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A wastewater treatment plant discharged approximately 19 million gallons of raw sewage into a nearby river. The staff of the governing regional board determined the maximum fine for the plant was as high as \$194 million. Nevertheless, after considering several mitigating circumstances in accordance with the code, the regional board levied a \$35,000 fine. Although the regional board appropriately considered the provisions of the code, this example aptly shows how much discretion the boards have.

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*The Compliance Assistance and Enforcement Unit reported that some boards are not regulating all dischargers in their regions—in fact, one board was not regulating hundreds of facilities.*

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As mentioned earlier in this chapter, in November 1997, the state board established the CAEU to monitor enforcement activities of the regional boards. In March 1998, during its assessment of the boards' activities, the CAEU confirmed earlier concerns of the 1994 review committee about consistent enforcement of the water quality laws. Specifically, it reported that due to insufficient funding, some boards are not regulating all the dischargers in their regions. In fact, one board acknowledged it was not regulating hundreds of facilities. Additionally, the CAEU found the boards do not agree on the criteria that determines which sites have permits and are regularly monitored.

The CAEU also reported variability among the regional boards in how information is reported to the state board, in the application of state board policies, and in staff training. In response, the boards agreed there were some deficiencies, citing a lack of resources and the lower priority that is afforded to enforcement activities, as well as the time-consuming nature of formal enforcement. One regional board indicated its staff clearly prefer to use formal enforcement actions only as a last resort. Likewise, another board stated it was reluctant to pursue formal enforcement actions, and its staff relied on voluntary compliance. Variability due to these and other causes will decrease the chances of fair and consistent enforcement among the regional boards.

The 1998 findings of the CAEU validated the concerns about consistent enforcement among the regional boards expressed in 1994 by the review committee. In fact, in 1994 the review committee recommended that the state board periodically review a sample of the boards' enforcement actions. This recommendation was intended to address the concerns from members of the regulated community about inconsistent enforcement responses. As we discussed earlier, the regional boards have an array of enforcement actions that are available to them and can exercise wide discretion in determining monetary penalties that are assessed against violators. For these reasons, we believe it is a good idea to have the state board periodically monitor the enforcement actions of the regional boards to ensure consistent application of the statewide policy. However, the state board has thus far rejected this recommendation and does not plan to review a sample of enforcement actions by the regional boards.

The 1994 review committee also found that the current information system used to track the nine boards' enforcement actions provided unreliable and disjointed information. The committee recommended that the state board establish a new statewide management information system to track all enforcement actions statewide. To address this recommendation, the state board has taken steps to establish a database for enforcement actions that impose a monetary penalty, or ACLs. Once this database is in place, the regional boards may voluntarily query the database to identify similar violations and the resulting enforcement actions. The state board believes that the database will result in more uniform enforcement because the regional boards will be able to compare the actions other boards have taken. In addition to this database, the state board has recently sought approval for a second, more comprehensive database that will, among other things, link water quality violations and corresponding enforcement actions.

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*While we believe databases provide good tools, they do not fully satisfy the need for improved monitoring of enforcement actions.*

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We believe that the two databases, though good tools, do not entirely satisfy the need for improved monitoring of enforcement actions. While voluntary and decentralized use of the databases may improve consistency, the process will not provide the state board with evidence that consistency is improving. For this reason, we believe that the state board should fully implement the original recommendation of the 1994 review committee, which included periodically reviewing a sample of enforcement cases falling outside statewide guidance to ensure regional boards are taking consistent and appropriate actions.

## RECOMMENDATIONS

The state board should ensure that it develops work plans and adequately monitors the performance of each of the regional boards against the goals set forth in the work plans. It should also ensure the boards develop goals based on workload standards that staff can reasonably expect to accomplish.

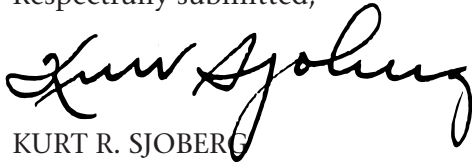
To assist the regional boards in achieving a higher degree of consistency in their enforcement actions, the state board should do the following:

- Continue its efforts to develop a statewide database of ongoing and past enforcement actions that regional board staff can query when considering the proper course of action in a pending case.

- Review, on a routine basis, a sample of enforcement actions representing all nine regional boards, to determine that they are consistently following the statewide enforcement policy.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,



KURT R. SJOBERG  
State Auditor

Date: November 12, 1998

Staff: Steven Hendrickson, Audit Principal  
Tammy Bowles, CPA  
Scott Denny  
James Sandberg-Larsen, CPA

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# APPENDIX

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## **PROGRAM DESCRIPTIONS**

During our audit of the Lahontan Regional Water Quality Control Board, we reviewed six programs and related work plans. Brief descriptions of those programs follow.

### **Chapter 15 program**

This program requires regulation of treatment, storage, and disposal of wastes discharged to land and related to landfills and mining activities.

### **National Pollutant Discharge Elimination System program**

This federal program requires the regulation of point-source discharges of wastewaters to surface waters of the State. Point-source discharges generally originate from a single identifiable source.

### **Nonchapter 15 program**

This program requires the regulation of point source discharges not otherwise regulated by the National Pollutant Discharge Elimination System and Chapter 15 programs, discussed above. Some examples of dischargers regulated under this program are ski resorts, campgrounds, and hotels.

### **Underground Storage Tank program**

This program requires the regional boards to oversee cleanup of sites contaminated by leaking underground storage tanks. The State places the obligation for site cleanup on the parties responsible for the contamination. The regional boards are also responsible for approving closure of underground storage tank sites once they determine that no additional investigation or cleanup is required. The State also administers an Underground Storage Tank Cleanup Fund to reimburse cleanup costs.

### **Stormwater program**

This program requires the regulation of certain storm water dischargers including municipalities with populations of 100,000 persons or more, designated industrial activities, and construction activities that disturb more than five acres of land.

### **Nonpoint Source program**

This program is designed to control nonpoint sources of pollution. Nonpoint sources are generally those from dispersed activities, such as agriculture, grazing, logging, abandoned mines, construction, and storm water runoff. ■

*Agency's response to the report provided as text only:*

California Environmental Protection Agency  
555 Capitol Mall, Suite 525  
Sacramento, California 95814

November 2, 1998

Mr. Kurt R. Sjoberg  
State Auditor  
555 Capitol Mall, Suite 300  
Sacramento, California 95814

Dear Mr. Sjoberg:

Thank you for the opportunity to review the November 1998 draft report of the audit of the California Regional Water Quality Control Board, Lahontan Region prepared by the Bureau of State Audits. Please find enclosed responses from both the State Water Resources Control Board and the Lahontan Regional Water Quality Control Board.

Your report identifies a number of areas where we can make improvements. Also noted in your report are the measures taken before the audit and are still underway to address consistency in compliance programs, improving data collection and dissemination, and aligning existing resources to address priority water quality issues within the Watershed Management Initiative. We have made significant progress and will continue to make improvements in each of these areas. For example, we created and assigned additional resources to the Compliance Assurance and Enforcement Unit, and evaluated our information management needs and developed a "System for Water Information Management" scheduled for deployment in 1999. During my tenure as Secretary, we increased resources for compliance and enforcement during the last two budget years. While it is a function of an audit to measure the performance of a program by its output, it is also important to keep in mind that the outcome of a program is a better measure of environmental protection. We believe that water quality is being well protected in California. As Secretary for Environmental Protection, I will ensure that protecting the quality of California's water resources continues to receive the highest priority.

Sincerely,

*(Signed By:)*  
Peter M. Rooney  
Secretary for Environmental Protection

Enclosures

cc: See next page.



cc: Mr. Walt Pettit, Executive Director  
State Water Resources Control Board

Mr. Harold Singer, Executive Officer  
Lahontan Regional Water Quality Control Board

*Agency's response to the report provided as text only:*

State Water Resources Control Board  
901 P Street  
Sacramento, California 95814

TO: Peter Rooney  
Secretary for the Environment  
California Environmental Protection Agency (Cal/EPA)

FROM: Walt Pettit  
Executive Director  
**EXECUTIVE OFFICE**

DATE: November 2, 1998

SUBJECT: RESPONSE COMMENTS TO THE BUREAU OF STATE AUDITS' DRAFT  
REPORT ON THE LAHONTAN REGIONAL WATER QUALITY CONTROL  
BOARD

State Water Resources Control Board (State Board) staff have reviewed the confidential draft Bureau of State Audits report entitled "Lahontan Regional Water Quality Control Board: Has Not Accomplished All of Its Regulatory Work and Has Not Always Vigorously Acted Against Water Quality Violators", transmitted on October 27, 1998. While we generally agree with the recommendations of the draft audit, we have a few comments and responses to the specific State Board related recommendations that we would like to offer for consideration. These are shown below. The Lahontan Regional Water Quality Control Board (Regional Board) has prepared a separate set of comments (attached) for those recommendations that apply directly to the Regional Board.

In reviewing the report and the recommendations, it is important to keep in mind the unique relationship of the State and Regional Board. Unlike many state agencies with regional offices, there is not a direct reporting relationship between the State and Regional Boards. The Regional Boards were established as semi-autonomous agencies by the Legislature to strike a balance between local input and regional policy setting and the need for statewide oversight. While the State Board performs budget, statewide policy and appeal functions, it does not directly implement programs at the Regional Boards. It is responsible, however, for ensuring a coordinated and consistent effort by the Regional Boards. Portions of the report could be interpreted to imply a more direct and traditional interaction.

## General Comments:

1. Many of the concerns raised by the auditors, in their review of FY 1996/97 and FY 97/98 work, are shared by the State and Regional Water Boards. The Boards have recognized and are addressing key areas such as the need for 1) increased targeting of limited resources to water quality problems; 2) improvement of databases as important management and tracking tools; and 3) increased emphasis on timely and consistent enforcement. Together the State and Regional Boards have made important strides in these areas. As high priorities, we expect our current efforts will result in significant improvements in our operations. Highlights of these current FY 1998/99 efforts are:

- Strategic Watershed Management Initiative - The draft report correctly points out the need to align existing resources with areas of greatest water quality need and risk. The 1995 Strategic Plan for the State and Regional Boards laid out a process to begin a significant shift in Water Board operations to do just this. We have worked diligently to plan and implement this transition. The Watershed Management Chapters, recently prepared by each Regional Board, provide a framework to begin to align individual program activities/workplans and resources with identified areas of water quality need, on an integrated watershed basis. We, and U.S.EPA (a major partner in this process), have made substantial progress in this area; FY 1998/99 and 99/00 are critical implementation years. The work to date has been accomplished by internal redirection of resources; additional resources have been made available this year.
- Significantly Increased Enforcement Focus - The State and Regional Boards have been responsive to enforcement concerns raised by the External Program Review (EPR) Committee. Enhanced enforcement has been a major emphasis at the State and Regional Boards since the EPR. In response to the EPR, the State and Regional Boards developed consensus on a statewide Enforcement Policy (adopted by the State Board in 1996). During FY 1997/98, the State and Regional Boards directed 18 new positions to enforcement activities; an additional 11 positions were added in FY 1998/99. The State Board created the Compliance Assurance and Enforcement Unit to coordinate and evaluate enforcement activities taken statewide. Key staff were assigned in each Regional Board to assure that enforcement and compliance actions are consistent and responsive. The June 1998 Compliance Assurance and Enforcement Strategy, referenced in the draft report, is one of the products of this effort.

While our ultimate goal is to increase compliance and thereby decrease the need for enforcement actions, we know that for the near term there is a need to increase enforcement actions statewide. Approximately 150 water quality enforcement actions were taken during FY 1997/98. This represents a 50% increase in actions over the previous annual averages

directly resulting from the increased staffing and increased emphasis overall in the regulatory program.

- Reengineering of Information Management Systems and Structure - In 1996, the State and Regional Boards began an intensive review of data management systems; the flaws of the existing system were clear and new system design was necessary. The State and Regional Board Information Technology Steering Team and consultants developed a design and proposal for a "System for Water Information Management (SWIM). A Feasibility Study Report (FSR) was completed in May 1998. The FSR is expected to be approved before the end of the year. Deployment at the Regional Boards will begin early in 1999. The SWIM system will make permitting, compliance and enforcement data available to all regulatory program managers as well as their staff.

We appreciate that the draft report mentions some of these activities. We would be pleased to discuss these ongoing efforts in greater detail.

2. The draft report makes several comparisons between accomplishments and the State and Regional Board's Administrative Procedures Manual (APM). The text implies that the APM "requires" certain activities. The APM is in fact, a guidance document; it establishes internal direction from the State to the Regional Boards. The text should be modified to reflect that the APM is guidance and that the numeric targets (numbers of inspections per facility etc.) are goals intended to attain reasonable oversight of dischargers routine operations, with actual attainment varying based on available resources and competing priorities.

①\*

3. The State Board program managers are charged with coordinating the development of yearly program workplans. They work with individual Regional Board staff to set regional goals and performance measures within the context of the statewide program priorities, region specific needs and existing budgets. We agree that improvements in the workplan development and monitoring process are needed. We will be re-evaluating our Statewide workplan process in FY 1999/00 to increase the integration of program workplans with the Regional Board Watershed Management Chapters to target the areas of highest water quality need and to more clearly define workload data and performance measurement.

### **Comments On The Auditor's Recommendations to the State Board:**

Report Recommendations:

"The State Board should ensure it directs and adequately monitors the performance of the Regional Boards. It should evaluate the goals set in their work plans and determine whether the Regional Boards develop the goals based on reasonable workload standards. To assist the

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\*California State Auditor's comments on this response begin on page R-11.

Regional Boards in achieving a higher degree of consistency in their enforcement actions, the State Board should do the following:

- Continue its efforts to develop a statewide database of ongoing and past enforcement actions that Regional Board staff can access when considering the proper course of action in a pending case.
- Routinely review a sample of enforcement actions from all nine Regional Boards to determine whether the nine Regional Boards consistently adhere to the statewide enforcement policy.”

Response:

As noted above, the State Board, in conjunction with the Regional Boards, will evaluate the current process of workplan development and monitoring. We have a pilot project underway to develop an initial set of workload standards. We will also be continuing our efforts to complete implementation of our SWIM system to increase the availability of permitting, compliance and enforcement data available to all managers and staff; improvement of management reporting systems is one of the highest priority elements of its design. At completion, the system will readily allow comparisons between workplan targets for performing inspections and those actually accomplished; quick identification of missing or overdue reports by permittees; automatic flagging of significant violations; and summary violation and enforcement history upon which to evaluate the need to escalate enforcement for continuing violations. Sampling and comparison of violation circumstances, factors weighed and actions taken will be much more easily conducted. We will continue to seek greater consistency through implementation of the Compliance Assurance and Enforcement Strategy and the SWIM system. The Compliance Assurance and Enforcement Unit will be working directly with the Regional Boards to implement these changes and to evaluate the need for any modifications to our approach.

Thank you for the opportunity to comment on the draft

Attachment

cc. Harold Singer, Lahontan Regional Water Quality Control Board  
Dale Claypoole  
Barbara Evoy

*Agency's response to the report provided as text only:*

TO: Walt Pettit, Executive Director  
State Water Resources Control Board

FROM: Harold J. Singer  
Executive Officer  
**LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD**

DATE: November 2, 1998

SUBJECT: RESPONSE COMMENTS TO THE BUREAU OF STATE AUDITS'  
DRAFT REPORT ON THE LAHONTAN REGIONAL WATER QUALITY  
CONTROL BOARD

Thank you for the opportunity to review the November 1998 draft audit of the California Regional Water Quality Control Board, Lahontan Region (Regional Board) prepared by the Bureau of State Audits.

**General Comments:**

The audit report recommends three general areas in which the Regional Board could improve its operations. These recommendations will help the Regional Board to better achieve its mission: to preserve and enhance the quality of California's water resources for the benefit of present and future generations. We agree with the recommendations and have the following comments and context that may be useful to you.

As acknowledged in the audit report, the Regional Board had, prior to the audit, taken steps to address shortcomings in its compliance program. In order to ensure statewide consistency, the Regional Board and its staff, working closely with the State Water Resources Control Board (State Board), is committed to taking additional steps to improve its regulatory and compliance program.

**Specific Comments:**

Comments On Chapter 1 - Regulatory Responsibilities

The audit report uses the State and Regional Board's Administrative Procedures Manual (APM) as a basis for measuring the Regional Board's accomplishments. The APM is a guidance document for the Boards. The APM sets internal goals; actual accomplishments will vary

① depending on available resources and competing priorities. We feel a better measure is level of effective accomplishment using existing resources.

② The audit report is critical of the way resources are allocated and used. We understand how the auditors reached the conclusions based on review of the APM, program workplans and other assorted documents. However, there is a larger context to the allocation of our resources. It is based on the variety of known threats to water quality in our Region and our various methods we use to address these threats. For instance, while reissuance of permits is a worthwhile goal for a number of reasons (several of which are cited in the report), it may not be the highest priority water quality activity in a watershed. Facilities awaiting permit renewal continue to operate under their approved water quality permits; other new or proposed activities may pose a larger water quality threat.

② The allocation of resources within the Lahontan Region is complex given the nature of water quality threats. Most management guidance and numeric workplan tasks cited in the report, relate to traditional point source program activities. There are relatively few point source discharges to waters of the Lahontan Region. One of the most significant threats to many of the high quality waters of the region is the cumulative impact of innumerable construction and storm water discharges (Category III dischargers). These discharges are typically handled by waivers of waste discharge requirements. Staff invests considerable time working with project proponents during the development of a project to ensure that water quality protection measures are incorporated into project design. These types of activities have historically not been measured in terms of resources expended or waivers issued, yet they represent a significant effort in our regulatory program. We believe that the water quality benefit from addressing these types of discharges often outweigh the benefits of permit renewal and frequent inspections of our Category I dischargers. Thus, we have directed significant resources towards this effort, in lieu of periodic permit updates and multiple inspections each year for Category I dischargers. It is our belief that, in the big picture, we are focusing our resources on the sources of pollution posing the highest overall risk.

The use of resources allocated to specified functions can be improved. We intend to focus the resources that are currently devoted to permit updates and inspections to addressing Category I dischargers before Category II and III dischargers. As an example, we will inspect all Category I dischargers once per year before devoting resources to Category II or III dischargers. However, it is not possible to achieve the APM requirement of three inspections per year without eliminating all inspection of lower category dischargers. We do not believe this is a prudent use of resources.

Another factor in our allocation of resources is the statewide "Watershed Management Initiative" (WMI) that was adopted by the State Board in 1995 as part of the Strategic Plan. It is our belief that the most important remaining water quality gains can be made from modifications to activities that generate non-point pollution. However, traditional regulatory methods will not be as effective as they were against point-source dischargers, given the nature, diversity and number

of these activities. The goal of the WMI is to develop and implement strategies to address these non-point sources. We made a conscious decision to divert resources from traditional regulatory activities to the WMI effort.

We acknowledge shortcomings in achieving specific workplan commitments. It is our responsibility to document when other unanticipated priority work interferes with our ability to meet these commitments, and we intend to make this a priority.

### Comments On Chapter 2 - Compliance Program

The Regional Board has numerous compliance and enforcement processes that it can use to address violations. There are two categories of enforcement: those that require or prohibit activities in order to obtain compliance with applicable requirements, and those that “penalize” for violations. Depending on the nature of the violation, the Regional Board can require a discharger to take certain actions, can penalize the discharger, or can do both.

The audit report implies that the issuance of a new cleanup and abatement order (CAO) may not have been the appropriate action in certain situations. It remains our position that the issuance of new CAOs in the cases cited in the audit report were appropriate actions given the state of our knowledge of the facts at that time. As more information became available about a problem and a discharger’s response thereto, it became apparent that an existing CAO may not have been adequate to address the situation. In some situations, even though a discharger has not complied with all the tasks of a prior CAO, it may be entirely appropriate to issue a new CAO. However, as pointed out in the audit, the Regional Board did not always take the action that was necessary to address the failure of the discharger to fully comply with the old order.

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### **Comments on the Auditor’s Recommendations to the Regional Board:**

The report recommended: “To better ensure that it addresses work that represents the highest threat to the region’s water quality, Lahontan should take the following steps:

- For each of its programs, prepare work plans that encompass its key regulatory responsibilities such as updating permits, conducting compliance inspections, and reviewing monitoring reports. These work plans should target those dischargers or sources of pollution that present the highest risk of pollution to the region’s waters and should take into account funding constraints, rely on accurate workload data, and be designed to accomplish measurable goals.
- Monitor the performance of its program managers and water quality staff against the goals set forth in the workplans.”



As described above, we believe that most of our resources are focused on the highest threat to the region's water quality. We acknowledge that we need to do a better job of describing the integration of the WMI program with our existing regulatory program and that some additional focusing of resources is needed within the traditional regulatory program. We further believe that the Information Management System being developed by the State Board will better enable us to track the progress of our talented staff in meeting workplan commitments. Additionally, unanticipated new work and roadblocks in achieving workplan commitments needs to be accurately tracked and documented, including necessary modification to workplan commitments.

Additionally, the report recommended: "To better ensure the consistent enforcement of the state's water quality laws, Lahontan should follow those key provisions of the statewide enforcement policy that calls for continuous follow up on ongoing enforcement actions to ensure they produce the desired result. Also, when dischargers do not cooperate with its initial enforcement efforts, Lahontan should escalate enforcement actions promptly."

Prior to the audit, the Regional Board recognized this problem and has already taken specific actions to address the issue. In early 1998 the Regional Board approved a shift in priorities. This action has resulted in the allocation of more staff resources to compliance and enforcement, and ultimately to more enforcement actions. The Regional Board is committed to maintaining this posture.

If you have any questions on this response or would like to discuss any issue in more detail, please contact me at (530)542-5412.

cc: Lahontan Regional Water Quality Control Board Members

# COMMENTS

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## ***California State Auditor's Comments on the Response From the State Water Resources Control Board***

To provide clarity and perspective, we are commenting on the state board response to our audit. The numbers correspond to the numbers we have placed in the response.

- ① Text modified to exclude reference to "required".

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# COMMENTS

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## ***California State Auditor's Comments on the Response From the Lahontan Regional Water Quality Control Board***

To provide clarity and perspective, we are commenting on the regional board's response to our audit. The numbers correspond to the numbers we have placed in the response.

- ① In an effort to gain a complete understanding of Lahontan's effectiveness in completing its workload, we measured Lahontan's accomplishments against both the state board's administrative procedures manual and Lahontan's annual work plans. The annual work plans set forth goals that are below the standards in the manual and are intended to reflect existing resources. As we state on page 16, Lahontan did not always achieve even the work-plan goals.
- ② Lahontan needs to develop an integrated work plan that incorporates all of its workload and prioritizes threats to water quality. However, because Lahontan does not have such a plan, we could only measure its effectiveness with the tools available. These are the same tools that Lahontan would use to evaluate how well it is achieving its objectives, that is the state board's standards and its own work plans. Although we believe that Lahontan attempts to focus its resources appropriately, the evidence did not always demonstrate its efforts were successful. We believe that an integrated plan would assist Lahontan and others to better measure Lahontan's effectiveness.
- ③ In its response, Lahontan implies that our view of the events related to the noncompliant discharger was clearer due to the passage of time. However, when it issued the second and third cleanup and abatement orders Lahontan was aware that the discharger had an obvious history of noncompliance. As discussed on page 22, Lahontan issued the second order after the discharger blatantly ignored concerns about incomplete cleanup efforts and paved over the site. In addition, Lahontan issued a letter of noncompliance because the discharger failed to submit required monitoring reports for almost three years. Finally, Lahontan issued a third order because the discharger took no actions to clean up the pollution.