

MINUTES OF THE
BIG BEAR LAKE TMDL TASK FORCE MEETING

January 28, 2008

Agency

Regional Water Quality Control Board
Regional Water Quality Control Board
Big Bear Mountain Resorts
Big Bear Municipal Water District
Big Bear Municipal Water District
California Department of Fish and Game
California Department of Transportation
California Department of Transportation
City of Big Bear Lake (via teleconference)
City of Big Bear Lake
MACTEC
MACTEC
MACTEC
Risk Sciences (via teleconference)
San Bernardino County
San Bernardino County Flood Control District
U.S. Forest Service
Santa Ana Watershed Project Authority
Santa Ana Watershed Project Authority

Participant

Hope Smythe
Michael Perez
Betsy Martyn (McCormick, Kidman & Behrens LLP)
Scott Heule
Erika Saad
Raul Rodriguez
Cathy Jochai
Gian Villarreal (RBF)
David Lawrence
Paeter Garcia (Best Best & Krieger LLP)
Kristina Schneider
Nathan Schaedler
Sean Porter
Tim Moore
Dan Ilkay
Matt Yeager
Kurt Winchester
Mark Norton
Marie Jauregui

Call to Order & Introductions

The Big Bear Lake TMDL Task Force meeting was called to order at 10:05 a.m. by Mark Norton at San Bernardino County Flood Control District, 825 E. Third Street, San Bernardino, California. Brief introductions were made by each of the attendees.

Approval of October 30, 2007 Minutes

The October 30, 2007, Big Bear Lake TMDL Task Force minutes were approved.

Source Identification Study Report Review

Mr. Norton introduced Erika Saad who provided a brief background on the Source Identification Study, which is part of a Proposition 13 grant. She noted that Big Bear Municipal Water District worked with MACTEC to identify and establish the land use monitoring stations. A total of six locations were established. Four were located on Forest Service property, one was for the Resort area, and the other was for an urban area. The objective was to collect one dry weather sample and two wet weather sampling events. They were successful in collecting one dry weather sample from three of the six stations, but were not successful in collecting any wet weather samples. Ms. Saad noted that the stations are equipped with dedicated automatic samplers, and discussed the programming on the equipment. The purpose of the Study and data collected was to look at the various nutrient and sediment loadings from various land uses within the Watershed. Under the Proposition 13 grant, the Study also included efforts to collect the atmospheric deposition data, as well as the bacterial indicator sampling on Knickerbocker Creek, which was successfully completed in 2005-2006. The atmospheric deposition station was successfully established and a complete year's of atmospheric deposition data has been collected. MACTEC is involved in helping identify BMPs for nutrients and completing the Source Identification Study. It was noted that the Proposition 13 deadline and submittal date for the final report is March 1, 2008.

MACTEC distributed the following documents: 1) watershed location map; 2) watershed land use map; 3) watershed sub-basins maps (2); 4) Source Identification Study Report outline; 5) sediment loading comparison table; 6) dry weather total phosphorus loading comparison table; 7) air deposition comparison table; 8) BMP sizing and cost table; 9) description of the BMP selection approach; 10) common pollutant sources and applicable BMPs table; and 11) BMP selection table.

Nathan Schaedler stated that the Source Identification, as well as the BMP report is draft. Comments received today will be incorporated into both drafts. It was noted that the grant is on behalf of just BBMWD, not the agencies identified in the TMDL. Also, the recommendations for the BMPs are watershed-wide, and there will be an opportunity for comment. Ms. Saad expressed concern to the Regional Board in the way the grant is worded because it places the District in a position to speak for the other stakeholders. The goal is to identify BMPs that could control nutrients and sediments, but not dictate which BMPs are to be implemented or adopted. Mr. Schaedler commented that the initial plan is meant to be an adaptive plan. Hope Smythe commented that the report will provide direction for future steps. She emphasized that it is a planning document intended to assist in decision making.

A participant commented that he would like to have an opportunity to comment on the report prior to adoption or approval. Another participant requested clarification regarding the purpose of the report. Ms. Smythe stated that the report is intended to fulfill the grant requirements. The Regional Board will be looking at the report and recommendations, and will be working with the stakeholders to evaluate the recommendations identified as either appropriate or not appropriate. The Regional Board is not going to turn around and ask that the recommendations in the report be implemented by a December of 2008. Although there will be an opportunity to comment on the recommendations, Ms. Smythe is concerned because the report needs to be submitted before the grant ends, and the short turn around time after comments. It was noted that there was a requirement to seek input from the stakeholders on potential BMPs, which is one of the purposes of today's meeting. She suggested that the stakeholders allow MACTEC and BBMWD submit the report to fulfill their grant requirements, and the Regional Board would welcome comments for up to a six-month period. However, any revisions that need to occur would most likely be the Task Force's responsibility.

Another participant expressed concern stating that written documents, regardless of being draft or not, tend to be true. Ms. Saad suggested including a statement in the body of the report emphasizing that it is a planning document intended to assist in decision making, and although it offers recommendations, it is up to the stakeholders to determine whether or not those recommendations are feasible. A participant suggested including the statement that the BMPs are intended to be evaluated for feasibility.

Mr. Schaedler referred to the outline handout noting that it is the Table of Contents of the Report. He commented that, in general, the purpose of the report is to summarize and characterize the water quality and air deposition data that has been gathered. Because not a lot of water quality characterization data has been gathered, MACTEC is compiling other relevant information for the purposes of being able to calculate loadings. It establishes a baseline of where the Watershed is right now. They look at the current loadings by land use and compare it to the TMDL goals (*i.e.*, sediment and phosphorus). Mr. Schaedler referred to the tables, which summarizes the loading calculations for each land use in the Watershed and how it compares to the TMDL. He briefly discussed each table, noting that the data used to calculate the loadings is very limited. Some of the recommendations in the reports are to allow for interim process to gather more data over the next three years as a means to calculate more realistic, current load calculations. Thus, it will provide a better picture of where the current loadings are with respect to TMDL goals. He noted that sediment is for both wet-weather and dry-weather TMDLs. Phosphorus, on the other hand, is for dry-weather only TMDLs. However, there may eventually be a wet-weather TMDL. Ms. Smythe commented that the Regional Board has indicated the need for a wet-weather TMDL, which will occur once adequate data is collected.

Tim Moore asked how MACTEC's estimated existing loads compare to the estimated existing loads that the Regional Board prepared as part of the TMDL. Mr. Schaedler stated that the loading estimates varied significantly. A comparison will be included in the report for informational purposes. A participant expressed concern, noting that it will be difficult to accept the report because of the limited data. Mr. Schaedler understood the concern, and noted that it will be emphasized in the report that the calculations are based on limited data which need to be fine tuned. He noted that the exercise for the report can be done again once better data is gathered. A participant suggested that the word "recommendations" not be included in the document. Mr. Moore commented that he thought it would be okay to consider the document as an alternatives analysis. Fundamentally, the Task Force is mostly concerned with reductions in nutrients. However, it seems that MACTEC has been working toward BMPs that are targeted for meeting the sediment TMDL. It is his understanding that the sediment TMDL is likely to be withdrawn by the Regional Board. If the Task Force needs to ensure that the alternatives are considered mostly for their potential to annex nutrients. In other words, if the alternative does not have a nutrient alternative, it is less valuable to the Task Force. He suggested that the document be called an alternatives analysis. He also suggested that it may be useful to use the real data to back calculate to a shedding coefficient and compare it to the Regional Board's shedding coefficient. Discussion briefly ensued.

Review of Potential BMPs for Control of Nutrients and Sediments

Mr. Schaedler referred to the BMP tables, noting that they reference CASQA and U.S. Forest Service numbers. There was a brief discussion regarding the efficiency estimates. It was noted that the BMPs are intended to be more generic. Mr. Moore requested that the BMPs that are uniquely effective in low to moderate conditions be highlighted. Discussion briefly ensued regarding the table, CASQA references, and the Water Quality Management Plan requirements. It was noted that the BMPs listed are not meant for implementation purposes; they are meant for evaluation. An implementation guideline will be included in the report.

Mr. Moore expressed concern regarding the phases, noting that the implementation/clock would begin from the time the data dictates that something must be done. Mr. Schaedler asked if it would be more sensible to have the report focus on Year One to Year Three and re-evaluate after Year Three. Discussion briefly ensued regarding data and BMPs. A participant commented that it would be useful if the report clearly identified which BMPs would do what and under what program they would need to be implemented.

It was noted that the *BMP Sizing and Cost* handout is for discussion purposes only and will not be included in the report. Mr. Schaedler briefly discussed the handout. The report will stop at the end of Phase One, and only describe what Phases Two and Three will be. A generic time frame, without specification to a calendar year, also will be provided. A participant inquired whether the Task Force members should comment on the report given the short time frame. Mr. Moore stated that it is always better to comment, but it is appropriate to note that there is a distinction between a deliverable that is being provided for under the grant and a deliverable that would normally be provided for under the TMDL. Furthermore, the report would not be considered a TMDL deliverable until the Task Force is ready to declare it so. A TMDL deliverable and a grant deliverable are different things and should be separated. There was concern on how the report would be used. Mr. Moore suggested including it as part of the comments that, although the report is useful, it does not represent a commitment from the Task Force. Mr. Moore said that it would be helpful for MACTEC to describe the amount of data they think would be adequate to be able to make decisions as to whether to move from Phase One to Phase Two to Phase Three.

A draft report will be sent to Ms. Saad by the end of the week. The report will then be sent to the stakeholders for comment. Comments should be forwarded to MACTEC by February 14, 2008.

Draft Task Force Agreement Comments

The City of Big Bear Lake's legal counsel's comments were distributed. San Bernardino County's legal counsel had some reservations with the *Withdrawals* section, but nothing too significant. Matt Yeager recently provided his legal counsel with the City of Big Bear Lake's legal counsel's comments. Betsy Martyn stated that the Resorts have an issue with Section 2B on Page 8, as well as the *No Third Party Beneficiary* language. The issue is that the Resorts have been trying to work with the City of Big Bear Lake so that they don't need to be a part of the Agreement, but, in fact, is carrying out the obligations under the TMDL. The Resorts had a conversation with the Regional Board and submitted the modified MOU as requested. They have not heard back from the City of Big Bear Lake. Her last understanding is that the City will move forward with the proposed draft MOU, but will not sign it. As of now, the City and the Regional Board have not worked out the issue between them. Thus, the Resorts request to either participate as a non-voting, non-funding party so they have the benefit of the other work that the consultants have been doing, or leave the Agreement open as to their efforts to work with the City of Big Bear Lake. Ms. Martyn cannot see how the Resorts can be included without moving forward with the City of Big Bear Lake. Mr. Moore inquired about how the Regional Board would evaluate the Resorts' compliance with the TMDL in that scenario (non-voting, non-funding). Michael Perez noted that he will have to go back and look at the TMDL. As far as the Agreement is concerned, Mr. Perez is not sure how it works out. He stated that before the Regional Board excludes responsibility, he will have to discuss it with the Resorts. David Lawrence stated that the City of Big Bear Lake is not open to signing the MOU at this point. Ms. Martyn stated that, in order to enable the Task Force to move forward, she requests that the language be modified. Matt Yeager commented that he would like to be clear about the status of the Resorts. He also commented that it seems the Task Force Agreement could be in conflict with the TMDL. Both the TMDL and the Task Force Agreement need to be consistent. Mr. Lawrence stated that he does not think the City of Big Bear Lake has the legal authority or the intent to take on the TMDL responsibility for the Resorts. Mr. Norton commented that it was his understanding that the Resorts, the City of Big Bear Lake, Ms. Martyn, and Regional Board staff were willing to accept the revised MOU.

Paeter Garcia noted that he does not have a clear understanding of whether the revised MOU was drafted by someone at the Regional Board, whether it will have to go to the full Board, or whether it has an implication for the full TMDL. He noted that the City of Big Bear Lake has reviewed the administrative record for the adoption of the TMDL. The original MOU had a limited scope, so that way the Resorts did not have to obtain an individual WDR. The City of Big Bear Lake entered into an MOU with the Resort, and as a result, Task 1.2 was removed from the TMDL. However, the Regional Board did not remove the Resort's obligations to comply with the other various tasks in the TMDL. If the Regional Board drafted the revised MOU, he would like for Regional Board staff to contact the City of Big Bear Lake. The way the City's comments are drafted in the TMDL Task Force Agreement, the Resorts made it clear that they do not want to be party to the Agreement. Ms. Martyn stated that the revised MOU was drafted by the Resorts and contains provisions requested by the Regional Board via teleconference. Furthermore, there needs to be an alternative agreement with the Resorts so the Task Force can move forward. Ms. Martyn suggests that the Resorts be a non-voting, non-funding party or work under the City of Big Bear Lake. She still feels that Section 2B is already true.

Mr. Norton is concerned that the Agreement could be held up for a significant amount of time. He used other Task Force efforts as an example noting that Amendments have been made to other Task Force Agreements. Furthermore, it may be worthwhile to expedite the Agreement review so invoices can be sent out. He asked the City of Big Bear Lake, San Bernardino County, and CalTrans if, based on the feedback today, they would prefer to keep Section 2B as it is or add the Resorts as a non-funding, non-voting party. Mr. Yeager stated that he would need to discuss it with his legal counsel. Mr. Moore clarified that if the Resort was a non-voting, non-funding party to the Task Force Agreement, they would still be covered by the deliverables. If Section 2B is removed from the Agreement, the Resorts would not be listed on any of the other documents from the Task Force. If the Resorts are not on the Task Force

Agreement, they are automatically excluded from any deliverables produced by the Task Force. Mr. Norton recommended that the Task Force proceed without the Resorts and keep the Agreement as is. However, if the Resorts wish to join the Task Force at a later date, an Amendment can be done at that time.

CalTrans has not yet received comments from their legal counsel, but will follow-up. The U.S. Forest Service is still reviewing the Task Force Agreement. Kurt Winchester stated that he does not see any major issues except for the exhibits. His understanding is that the U.S. Forest Service part of participation is in the data collection and monitoring of Federal lands, not monetary participation. It was noted that it was intended for the U.S. Forest Service contribution be through in-kind services. Mr. Norton noted that the change will increase the other parties' cost share. The budget will be revised based on the present discussion. It was suggested that another block be included under U.S. Forest Service activities. It was noted that the in-kind service will be adequate for the U.S. Forest Service contribution and an invoice will not be sent to them.

Scott Heule said that he is unsure as to how BBMWD can still have a say in what is important while still being fair to the Task Force. Mr. Yeager suggested that BBMWD be an advisory member. Mr. Moore agreed, noting that BBMWD could be an advisory member with voting rights. He also advised that the BBMWD only vote on the items/issues that affect them, and abstain from voting on items/issues that affect the other stakeholders.

Comments on the draft Task Force Agreement are due to Mark Norton by Friday, February 15th.

It was requested that the status of the Regional Board's review of the two monitoring plans that were submitted last fall be placed on the February 26, 2008, TMDL Task Force Agenda for discussion.

Schedule Next Meeting

The next meeting is scheduled for Tuesday, February 26, 2008, at 9:30 a.m. at San Bernardino County Public Works.

Adjournment

There being no further business for review, the meeting adjourned at 12:30 p.m.