

MINUTES OF THE
BIG BEAR LAKE TMDL TASK FORCE MEETING

February 26, 2008

Agency

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

Participant

Raul Rodriguez
Betsy Martyn (McCormick, Kidman & Behrens LLP)
Brent Tregaskis
Mike Stephenson
Scott Heule
Cathy Jochai
Gian Villarreal (RBF)
David Lawrence
Paeter Garcia (Best Best & Krieger LLP)
Tim Moore
Matt Yeager
Robert Taylor
Mark Norton
Marie Jauregui

Call to Order & Introductions

The Big Bear Lake TMDL Task Force meeting was called to order at 9:31 a.m. by Mark Norton at the San Bernardino County Public Works Building, 825 E. Third Street, San Bernardino, California. Brief introductions were made by each of the attendees.

Approval of January 28, 2008 Minutes

The January 28, 2008, Big Bear Lake TMDL Task Force minutes were unanimously approved.

Draft Task Force Agreement Comments

An email from Cathy Jochai and one from Matt Yeager containing comments on the Draft Task Force Agreement were distributed. Ms. Jochai noted that she has not yet heard from her agency's legal counsel. She briefly discussed her comment, which pertained to Exhibit B, *Estimates and Projections of Future Year Costs*. Caltrans agreed to an equal cost share in FY 2007-08, but did not agree to that for FY 2008-09 or future years. They believed that the future years' cost shares would be pro-rata shares. Thus, as stated in her email, she requests that Caltrans' share be \$43,700, which is 10% of the projected budget for FY 2008-09. It was noted that the amount would change with each fiscal year's budget. Furthermore, *page 9, Section IV, Item B* of the Task Force Agreement states that the cost shares "...shall be shared equally by the TMDL TASK FORCE PARTIES, except as otherwise specified in this Agreement." It was suggested that the language be changed to "...shall be shared by the TMDL TASK FORCE PARTIES, as described in Exhibit B."

Matt Yeager briefly discussed his comments, noting that he has not yet heard from his agency's legal counsel. The first pertained to Big Bear Mountain Resorts (Resorts). He noted that, although the Resorts are mentioned (*Recitals Item 3*), their obligations under the TMDL need to be clarified. Brent Tregaskis commented that after recent discussions, they are proposing to join the Task Force on a year-by-year basis and are willing to contribute \$20,000 for FY 2007-08 and 2008-09, which will reduce the overall cost share for the other parties. In addition, they are willing to provide in-kind services via monitoring for FY 2008-09 at the stations that the Task Force deems necessary. Tim Moore briefly discussed the issues with having a consultant/contractor perform the monitoring, and emphasized the value of having staff on the mountain perform the monitoring (*e.g.*, efficiency, travel costs, etc.). It was noted that Regional Board staff or SCCWRP may volunteer to provide training.

Mr. Yeager's second comment was in regards to the third sentence of *Section VII – Withdrawal and Termination* on Page 10 of the Task Force Agreement. It was noted that “not” will be removed from the sentence. Mr. Yeager's third comment was concerning *Section VIII – No Joint and Several Liability for Non-compliance with TMDL Requirements* on page 11. He does not feel that the statement is necessary. After brief discussion, it was decided that the statement “no joint and several liability is intended to be created by this agreement” be added.

Robert Taylor commented that, although the U.S. Forest Service (USFS) cannot provide monetary contributions, they can provide in-kind services. They have \$20,000 on their workplan that must be encumbered by the end of their fiscal year (September 30) for the Big Bear Lake TMDL. Mr. Moore provided a couple of suggestions for the \$20,000. One was that the USFS may be able to cover the analysis costs under an existing vendor contract. In other words, the \$20,000 would be paid directly to the University from the USFS for the costs of analysis. Thus, it allows the \$20,000 cost for analysis that is normally shared by the City of Big Bear Lake and San Bernardino County to be used more flexibly. Discussion briefly ensued. It was noted that the collection work that the USFS is doing will be shown as an in-kind service, which is for informational purposes only. The second suggestion was in regards to the TMDL task – *definition of calculation of natural background loads*. It was assumed that this task would be the ideal method for the USFS to make their contribution and remain on Forest Service land. The USFS could determine what the runoff flows would be if the watershed was in a pristine forest condition. In essence, the USFS would establish controlled monitoring stations outside urbanized developed areas to develop site specific runoff coefficients for what the natural loads ought to be. Mr. Yeager noted that SCCWRP is working on a similar effort and suggested looking at their study/methodology/results. Discussion briefly ensued.

Mr. Taylor noted that the State of California Forest Service will be receiving \$6.6 Million to repair legacy roads. All the Forest Services have been asked to submit their request for projects to the regional office by March 6th. Mr. Taylor asked the Task Force for information on roads that are in need of repair. Mr. Moore suggested Knickerbocker Creek.

Mr. Taylor briefly discussed his agency's legal counsel's comments, noting that they preferred the September 2007 draft rather than the current draft. Mr. Taylor relayed the following modifications to version five of the Task Force Agreement from his legal counsel.

Page 5, Section I, Item B

The Forest Service legal counsel felt that it would be more clear if it was written as “Except for FOREST SERVICE and as otherwise provided in this Agreement, the PARTIES shall:”.

Page 5, Section I, Item C

The Forest Service legal counsel felt that “...federal government and may be unable to participate in each and every aspect of Section IA to the same extent as other parties.” should be re-added into the text.

Page 9, Section IV, Item A

The Forest Service legal counsel said that because of the Anti-Deficiency Act, the Forest Service cannot obligate the future time of its personnel without a Congressional appropriation response. Also, Forest Service legal counsel had a question about specifying the Atmospheric Deposition Determination as a Forest Service task because in an earlier version of the Agreement listed the responsible party of the task as “TBD”. To resolve the issue, it was suggested that “...under Section II.A, above” be replaced with “...as provided herein.”

The Forest Service legal counsel rewrote the last sentence to read as “...monitoring data will depend on the available funding appropriated to San Bernardino National Forest.” Mr. Moore commented that his understanding was that the Forest Service's participation was contingent upon Congress. The rewritten text, in his opinion, seems to allow the Forest Service to continue to be members of the Task Force even if they cannot fund their obligation, which is not the Task Force's intent. Mr. Taylor will discuss the comment to his legal counsel. It was noted that the San Bernardino National Forest is listed under Recital J of the Task Force Agreement. It was suggested that “supported appropriated for” be replaced with “by” in the last sentence.

Mr. Taylor noted that the U.S. Forest Service cannot agree to the section as drafted. It was noted that the section was added by the City of Big Bear Lake. The Forest Service legal counsel suggested that: 1) "Except for the Forest Service" be included before the first sentence; and 2) the sentence "As to the FOREST SERVICE, any award of attorneys and consultants fees shall be only to the extent permitted under Federal law" be added after the first sentence.

Mr. Yeager expressed concern regarding the Task Force Agreement process. He emphasized the inefficiencies with having legal counsels review iterations of the Task Force Agreement before they finish reviewing a previous iteration. It was suggested that a final draft be completed, and a meeting with each agency's legal counsel be scheduled. Both a redlined and a clean version of the Task Force Agreement, reflecting the comments received at today's meeting, will be sent to the Task Force. Mr. Norton requested that the comments from the U.S. Forest Service be sent to him electronically.

FY 07-08 Invoicing

The Task Force agreed to have the invoices sent now. Because the Task Force Agreement likely will not be approved by the end of this fiscal year, it was decided that the invoices for this fiscal year be sent from Big Bear Municipal Water District. Once the Task Force Agreement is in place, the invoices will come from SAWPA. Mr. Yeager will check with his agency's Accounting Department to see which process will be easier. The invoices will be sent thereafter.

Review Risk Sciences Tasks proposed this fiscal year

Mr. Moore noted that the task to *submit documentation to support deleting copper and sediment from 303(d) list in 2008 update* may be deleted because he was recently informed by the Regional Board that they will not need it for sediment (copper was submitted earlier in the fiscal year). Mr. Moore will verify with Hope Smythe. If there is no need for the document, the \$11,000 that is allocated for this task will be removed from the budget, thereby lowering the cost share for each agency.

Additionally, the task to *submit documentation to support revision of beneficial use designations and related water quality objectives for pathogen indicator bacteria in Knickerbocker Creek* (\$19,000) will be moved to the FY 08-09 budget.

Mr. Moore also is tasked to *review and comment on proposed additions to 303(d) list in 2008*. He stated that if there are no new additions that impact this Task Force, then the \$10,000 that is allocated for the task will be removed from the budget, thereby lowering the cost share for each agency. He will verify whether there are any new additions to the 303(d) list that would impact the Task Force with Ms. Smythe.

Discussion briefly ensued regarding the *Watershed-wide and In-Lake Nutrient Monitoring Program* (\$25,000) and QAPPs. It was noted that of the \$25,000 that is allocated for this task, only \$5,000 has been spent. The other \$20,000 remains unencumbered. Mr. Moore stated that, if all goes well, the QAPP should be able to be approved for \$5,000, which will leave \$15,000 in unencumbered funds. Furthermore, he believes that Tasks 5-8 will be complete this fiscal year. Mr. Yeager requested that it be verified whether a QAPP is, in fact, a requirement of the TMDL. He understands that QA/QC procedures need to be SWAMP compliant. It was noted that Task 6 will be changed to QA/QC rather than QAPP. Mr. Moore stated that if the Regional Board accepts the suggestion to make minor changes to the existing QAPP, then it will be done. It was noted that sampling will begin on July 1, 2008, and monitoring will not occur until the required documents are approved.

Schedule Next Meeting

The next meeting is tentatively scheduled for Tuesday, April 15, 2008, at 9:30 a.m. at San Bernardino County Public Works.

Adjournment

There being no further business for review, the meeting adjourned at 11:36 a.m.