

**From:** [Tobi Tyler](#)  
**To:** [Tahoe Regional Planning Agency and the Marlette Lake Water System](#)  
**Subject:** Legislative Oversight Meeting July 19, 2024  
**Date:** Thursday, July 18, 2024 5:33:57 PM  
**Attachments:** [Sierra Club comments for NV Interim Leg Comm on TRPA oversight 6.7.24.pdf](#)

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I am re-submitting the comment letter I provided in June as this is relevant to Item VI, Update on Lake Tahoe Aquatic Invasive Species Program.

TRPA is aiming for using herbicides throughout Lake Tahoe, which would be a travesty since non-chemical methods of removing aquatic invasive weeds exist and are successful at removing the weeds. My comments relate to the "Control Methods Test" initiated by TRPA at the Tahoe Keys lagoons in which herbicides were used in year 1 of the test, in 2022. In a nutshell, the Sierra Club sued Lahontan Water Board for violating their own Basin Plan (rulebook) by allowing discharges of herbicides before fully examining and demonstrating the use of non-chemical methods were infeasible. The Sierra Club won that lawsuit in early May with the Judge vacating the permit as well as the environmental document, EIR/EIS. This needs to be discussed at tomorrow's meeting with an explanation of why they are not discontinuing the "test" since it was vacated or void.

Tobi Tyler  
Sierra Club's Tahoe Area Group



Date: June 6, 2024

To: Interim Nevada Legislative Committee for Review and Oversight of the TRPA and Marlette Lake

From: Tobi Tyler, Vice Chair of Sierra Club's Tahoe Area Group

**Subject:** Public Comment for the June 7, 2024 Committee Meeting – Lahontan Water Quality Control Board lawsuit brought by Sierra Club and California Sportfishing Protection Alliance

Dear Honorable Chair Daly and Members of the Committee,

I represent the Tahoe Area Group of the Sierra Club. This letter is intended to provide the background and current activities of the TRPA-approved and funded Control Methods Test Project (CMT) to control aquatic invasive weeds in the Tahoe Keys ahead of testimony during public comments on June 7, 2024. The Sierra Club and the California Sportfishing Protection Alliance recently won the lawsuit they filed against the CMT Project. TRPA is currently promoting the continuation of the project this year despite the Project's permits and environmental document having been ordered vacated by the El Dorado County Superior Court. The Court's ruling is attached.

For the past five years I have been working to make sure that California's Lahontan Water Board (LWB) abides by their Basin Plan. The Basin Plan is the regulations governing the LWB's actions within their jurisdiction, which includes Lake Tahoe. TRPA and the LWB initiated the environmental analysis for the CMT in 2019. The LWB and TRPA certified the Final Environmental Impact Statement and Environmental Impact Report (EIS/EIR) and LWB issued the permits for the CMT to the Tahoe Keys Property Owners Association (TKPOA) in January 2022. The permits authorized the first ever discharge of herbicides into Lake Tahoe's waters.

The CMT project is a "test" to basically see if herbicides kill weeds, which was never in question<sup>1</sup>. Herbicides have killed weeds in numerous projects throughout the US. The herbicides were discharged during the summer of 2022, the first year of the CMT, a few months after the permits were issued. Last summer, the CMT used non-chemical control methods (e.g. bottom barriers, ultraviolet light, and laminar flow aeration). The CMT plan called for continued use of non-chemical control methods this summer.

It is important to understand the historical background. For 57 years before 2014, the LWB prohibited dumping herbicides in Lake Tahoe. The 2014 amendment changed the Basin Plan to allow the discharge of herbicides, but required applicants to satisfy several exemption criteria

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<sup>1</sup> The stated reason was to see if a "knock-down" approach of applying herbicides followed by non-chemical methods was an effective strategy. This was clearly an attempted subterfuge to get around the Basin Plan exemption criteria. As we argued in our lawsuit, there is no allowance or recognition of "test" cases in the Basin Plan. Therefore, regardless of the motivations behind the test, the discharge of herbicides violated the Basin Plan.

before a permit to discharge herbicides can be issued. In particular, applicants must demonstrate that non-chemical control methods are ineffective/infeasible before herbicides are permitted. The applicant for the CMT, the TKPOA, did not demonstrate this, but the LWB approved the permit anyway.

The failure to satisfy this exemption criterion is not just a minor technical or regulatory issue, but a violation of a major protective regulation. During the amendment process, the Sierra Club and the interested public attempted to get assurances that the LWB would not permit herbicide discharges unless applicants fully evaluated non-chemical methods first. In the case of the CMT, the LWB ignored their own rule and refused to abide by the amended Basin Plan.

When it became clear that the Water Board had no intention of abiding by the requirements in their Basin Plan and issued the TKPOA a permit to dump herbicides into the Tahoe Keys lagoons in 2022 as part of the CMT, we initiated a lawsuit against the Project. Although we did not pursue an injunction and the herbicide discharge proceeded, we initiated the lawsuit to ensure that the LWB's violation of its Basin Plan was on record and to obtain a ruling assuring that future applications for herbicide use in Lake Tahoe waters would be denied unless they fully comply with the Basin Plan.

After months of careful consideration of all the facts, the judge issued the ruling we sought, voiding both the permit to discharge herbicides and the environmental document (the EIS/EIR) that is the basis for the entire CMT project.

Despite this recent ruling, the TRPA, Water Board and the League to Save Lake Tahoe currently appear to be proceeding as if nothing has happened. Yes, the League is also fully supportive of dumping herbicides in Lake Tahoe and in fact was instrumental in initiating the CMT. TRPA, TKPOA and the League held a webinar on June 5 for viewers to “Learn about [the results](#) from the second year of the three-year test, and what to expect in 2024.” The Project proponents told everyone how great the Project has been going and how they continue to gear up for this last year of “testing” despite this pesky little problem with losing the lawsuit. This effort to continue with the Project as if the ruling has no effect should be shut down immediately.

The Sierra Club's position has always been that herbicides should only be used as a last resort and non-chemical methods must be exhausted before resorting to herbicides. Any proposal to discharge herbicides in Lake Tahoe approved by the Water Board must comply with the Basin Plan, meaning non-chemical methods must be demonstrated to be ineffective before herbicides are allowed. As the ruling states: “The pesticide prohibition in the Basin Plan itself reflects the extreme care with which Lake Tahoe must be treated.”

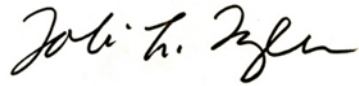
Let me be very clear, TKPOA can use non-chemical methods right now, without the CMT and even without a permit from the Water Board. They have always been capable of using non-chemical methods but have refused to adequately use these methods and instead tried to use subterfuge in the form of this test to get around the regulations.

Everyone wants an easy answer to a decades old problem that will persist until the real source of the problem with the weeds is addressed – the characteristics of the lagoons that make the infestations of aquatic invasive weeds inevitable. The very construction of the Keys in the early 1960's was destined to create an invasive aquatic weeds problem because it destroyed the largest marsh in Lake Tahoe to create houses surrounded by dead-end, stagnant lagoons that became nutrient soups over time. Until these lagoons with their stagnant, warm, nutrient-filled

waters are dealt with head on and with creative solutions, Lake Tahoe will continue to be plagued by Tahoe Keys' weeds.

Please inform TRPA that they must comply with the judge's ruling, cease and desist with the CMT, and tell TKPOA to implement non-chemical methods at an appropriate and effective scale immediately.

Thank you for your consideration of this important issue.

A handwritten signature in black ink, appearing to read "Tobi Tyler". The signature is fluid and cursive, with the first name "Tobi" and last name "Tyler" clearly distinguishable.

Tobi Tyler, Sierra Club's Tahoe Area Group Vice Chair

Email: [tylertahoe1@gmail.com](mailto:tylertahoe1@gmail.com)

Attachment: Amended Ruling dated May 2, 2024

**From:** [Tobi Tyler](#)  
**To:** [Tahoe Regional Planning Agency and the Marlette Lake Water System](#)  
**Subject:** Re: Legislative Oversight Meeting July 19, 2024  
**Date:** Thursday, July 18, 2024 7:28:27 PM

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In addition to my previous email with regard to public comments for the meeting tomorrow, please see the following:

There are many disconcerting trends with the current TRPA despite the glowing reports you'll hear today and have heard before.

1. We need scientifically-based environmental analyses with cumulative impacts analyzed on all non-exempt projects. No more fraudulent Environmental Checklists.
2. We need a basin-wide single-use plastic ban and we need it today. Yet, TRPA's attorney tells everyone they are just a planning agency, not a regulatory agency; TRPA is the ONLY agency that can do this because they ARE a regulatory agency through the Code of Ordinances. They need to take more decisive action on plastics by instituting a plastic ban.
3. TRPA is not currently complying with their Code of Ordinances or the Compact. They adopted amendments that exceeded coverage, height and density limits, yet they didn't make the findings that environmental thresholds are not being exceeded; they didn't even require site bmps.
4. Much more transparency is needed with respect to their "development cap" shell game that is so contorted that in essence there aren't any real caps at all.

Thanks

On Thu, Jul 18, 2024 at 5:30 PM Tobi Tyler [REDACTED] wrote:

I am re-submitting the comment letter I provided in June as this is relevant to Item VI, Update on Lake Tahoe Aquatic Invasive Species Program.

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