

STATE OF CALIFORNIA  
**Budget Change Proposal - Cover Sheet**  
 DF-46 (REV 08/15)

Fiscal Year 2016-17	Business Unit 3940	Department State Water Resources Control Board	Priority No. 5
Budget Request Name 3940-305-BCP-BR-2016-A1		Program 3560-Water Quality	Subprogram

Budget Request Description  
 Leviathan Mine - Implementation of Settlement Agreement

Budget Request Summary

The Lahontan Water Board requests \$211,000 ongoing General Fund and 1.9 permanent positions to support workload needed to implement and oversee provisions set forth in the "Leviathan Mine Site Work and Cost Allocation Settlement Agreement" between Atlantic Richfield Company and State Parties including the Lahontan Water Board, review Remedial Investigation and Feasibility Study work plans and reports prepared for the Leviathan Mine Superfund Site pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and participate in the Natural Resource Damage Assessment (NRDA) regarding releases from Leviathan Mine site.

Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed	
Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	Department CIO	Date

For IT requests, specify the date a Special Project Report (SPR) or Feasibility Study Report (FSR) was approved by the Department of Technology, or previously by the Department of Finance.

FSR  SPR      Project No.      Date:

If proposal affects another department, does other department concur with proposal?  Yes  No  
*Attach comments of affected department, signed and dated by the department director or designee.*

Prepared By <i>Leah Vang</i>	Date 3/24/16	Reviewed By <i>Super M. Montoya</i>	Date 3/25/2016
Department Director <i>Tom Howard</i>	Date 3/25/16	Agency Secretary <i>[Signature]</i>	Date 3/29/16

**Department of Finance Use Only**

Additional Review:  Capital Outlay  ITCU  FSCU  OSAE  CALSTARS  Dept. of Technology

BCP Type:  Policy  Workload Budget per Government Code 13308.05

PPBA	Original Signed By: Ellen Moratti	Date submitted to the Legislature 4-1-16
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# Budget Change Proposal - Cover Sheet

DF-46 (REV 08/15)

## A. Budget Request Summary

The Lahontan Water Board requests a \$211,000 ongoing General Fund and 1.9 positions to:

1. Carry out provisions set forth in the "Leviathan Mine Site Work and Cost Allocation Settlement Agreement" (Attachment A) between Atlantic Richfield Company (AR) and State Parties including the Lahontan Water Board.
2. Review Remedial Investigation (RI) and Feasibility Study (FS) work plans and reports prepared for the Leviathan Mine Superfund Site pursuant to orders from the United States Environmental Protection Agency (USEPA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).
3. Participate in the Natural Resource Damage Assessment (NRDA) for releases of pollutants associated with acidic mine drainage from the Leviathan Mine site that have impacted natural resources.

## B. Background/History

Sulfur mining activities at Leviathan Mine, conducted primarily in the 1950s and 1960s, resulted in the disturbance of approximately 250 acres of mine property, and the placement of millions of tons of mine waste in and adjacent to Leviathan and Aspen creeks. These mining activities led to the generation of acidic mine drainage that adversely affects aquatic life for miles downstream of the former mine site and may pose a risk to human health. The State of California acquired the Leviathan Mine Site (hereinafter referred to as "the Site"), in the early 1980s to address water quality problems caused by mining activities. Jurisdiction over the Site rests with the State Water Resources Control Board, which has delegated jurisdiction over cleanup work to the Lahontan Water Board.

The Lahontan Water Board manages the State's acidic mine drainage treatment operations and site infrastructure maintenance with personnel and contract resources approved by the Legislature for that purpose. To reduce discharges of acidic mine drainage to Leviathan Creek, the Lahontan Water Board has actively treated acidic mine drainage at the Site since 1999. Leviathan and Aspen creek merge downstream of the Site and then flow across US Forest Service property, lands held in trust for the Washoe Tribe of Nevada and California, Washoe tribal land, and private lands. The combined flow of Leviathan and Aspen creeks crosses into the State of Nevada as Bryant Creek, which flows into the East Fork Carson River.

In May 2000, the USEPA placed Leviathan Mine on the National Priorities List, making it a federal Superfund Site. As the manager of the Site for the State, USEPA identifies the Lahontan Water Board as a Potentially Responsible Party for cleanup of the Leviathan Mine Superfund Site. Atlantic Richfield Company (AR) is also named as a Potentially Responsible Party due to its inheritance of environmental liabilities from the Anaconda Company, which AR purchased and which had performed mining activities at the Site. The USEPA has required the Lahontan Water Board to conduct certain cleanup activities, including annual treatment of certain acidic mine drainages at the Site. AR is similarly under orders from the USEPA to treat certain acidic drainages and, also, to conduct Remedial Investigation and Feasibility Study (RI/FS) activities for the Site pursuant to CERCLA.

Current workload for the Lahontan Water Board on the Leviathan Mine Superfund Project includes the following activities:

1. Develop and manage the multiple contracts for the Site. Contractors are used to treat certain acidic mine drainage captured year-round at the Site to meet USEPA discharge criteria, collect and analyze influent and effluent water quality, maintain infrastructure, and monitor stream flows at numerous locations above, within, and downstream of the Site. Emergency spring runoff treatment requiring rapid mobilization and deployment using a temporary portable treatment system is also required in response to above average precipitation years (such as El Nino) to avoid adverse impacts to beneficial uses in the streams down gradient of the Site. Office-based and in-field oversight by Lahontan Water Board staff of multiple contract operations is required.

# Budget Change Proposal - Cover Sheet

DF-46 (REV 08/15)

2. Develop, update, and implement the site-specific health and safety plan for the Site, which includes procuring health and safety supplies, implementing health and safety controls, and maintaining annual hazardous waste operations training certification.
3. Prepare annual work plans and year-end reports required by the USEPA.
4. Represent the State on the USEPA's Leviathan Mine Technical Advisory Committee (TAC), attend TAC meetings, and make presentations to the TAC.
5. Review and provide comments on AR's RI/FS work plans and reports to USEPA to ensure the interests of the State of California are represented and protected. Attend quarterly technical meetings with USEPA and AR to discuss ongoing RI/FS activities.
6. Review and provide comments on AR reports regarding ICT, including draft and final versions of bench, pilot, and full-scale hydraulic testing reports, and construction plans for the conveyance of acidic mine drainage for ICT, and participate in technical meetings with AR regarding ICT to ensure the interests of the State of California are represented and protected.
7. Provide early coordination with the California Department of General Services on the development of a contract for ICT operations.
8. Coordinate with State Legal Counsel and AR on implementation of the "Leviathan Mine Work and Cost Allocation Settlement Agreement" (SA).

As shown in Table 1 below, for fiscal year 2015-16 the Lahontan Water Board has position authority for 5.1 staff working on Leviathan Mine.

**Table 1. Resource History**  
(Dollars in thousands)

Program Budget	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
Authorized Expenditures	\$1,595	\$1,656	\$1,260	\$1,278	\$2,542	\$2,422
Actual Expenditures	\$1,553	\$758	\$1,240	\$1,177	\$2,412	\$2,422
Authorized Positions	4.6	4.6	4.0	3.6	5.1	5.1

## Problem Statement

As a result of litigation between AR (plaintiff) and the Lahontan Water Board, State Water Board, and State of California (defendants) regarding Leviathan Mine, the parties reached a settlement in March 2015. The terms of the settlement are documented in the "Leviathan Mine Site Work and Cost Allocation Settlement Agreement" (SA). The SA requires AR to complete the RI/FS for the Site pursuant to CERCLA. Provided specific provisions of the SA are satisfied, the SA also requires the Lahontan Water Board to treat certain acidic mine drainages AR is currently under USEPA orders to treat, using conveyance and treatment systems constructed, commissioned, and currently operated by AR. Lahontan Water Board takeover of AR's conveyance and treatment system is to occur after AR successfully demonstrates its system can satisfy specific performance criteria for the treatment of a combination of certain acidic mine drainages that are currently being treated by separate Lahontan Water Board and AR treatment systems. Treatment of this combination of certain acidic mine drainages is referred to as Interim Combined Treatment (ICT).

Operating ICT will require the Lahontan Water Board to review and observe ICT system design, operation, and maintenance activities to verify that SA criteria have been satisfied, and to acquire a complete understanding of ICT in order to develop and implement contracts for operating ICT in compliance with USEPA orders. This intensive systems observation and analysis, and contract development will begin spring 2016 and likely continue through spring 2018, and be in addition to operating the Lahontan Water Board's existing acidic mine drainage treatment system in compliance with USEPA orders.

## Budget Change Proposal - Cover Sheet

DF-46 (REV 08/15)

If AR successfully demonstrates that their treatment system satisfies specified criteria, the Lahontan Water Board's sole responsibility for providing ICT by means of AR's treatment system in compliance with USEPA orders will remain in effect until a final remedy is implemented under CERCLA. The SA requires the Lahontan Water Board to complete the final remedy, also known as the Remedial Action, which includes designing, constructing, and long-term operation and maintenance of the final remedy for the Site. The Lahontan Water Board will, in part, use resources identified in this request to review reports and other documents related to developing and approving the final remedy.

In accordance with the SA, AR will pay for a portion of the activities carried out by the Lahontan Water Board, including ICT implementation and completing the final remedy. The SA outlines a process for tracking both AR and the Lahontan Water Board expenditures on the project for purposes of crediting and allocating costs between the two parties. While outlined, the SA cost-tracking system has yet to be developed.

### C. State Level Considerations

The Leviathan Mine is a pollution source owned by the State of California. USEPA has designated the Lahontan Water Board, as manager of the site for the State, as a Potentially Responsible Party responsible for cleanup of the site. The litigation and settlement with AR regarding Leviathan Mine has involved the Lahontan Water Board, the State Water Board, the Department of Justice, the Department of Fish & Wildlife, and the Governor's Office, and additional State parties are signatories to the final SA. The settlement was judged by the State's legal team to reduce the State's potential costs and uncertainties associated with a trial. The additional staff resources requested in this BCP are needed to ensure the interests of the State of California remain adequately represented and protected as provisions under the SA become effective, as the CERCLA process progresses towards implementation of a final remedy, and as the various Trustees performing the Natural Resource Damage Assessment for Leviathan Mine (including the Washoe Tribe of Nevada and California, California Department of Fish & Wildlife, US Fish & Wildlife, and the US Forest Service) work towards a final settlement.

The BCP provides resources to help carry out Governor Brown's priorities on the environment and water for the 21<sup>st</sup> century. Restoring the environment impacted by the Leviathan Mine is important for the damaged ecosystems and will positively affect tourism and recreation, which is essential to the long-term prosperity of many businesses in the area. The remedy for Leviathan Mine will restore the quality of water used by Washoe Tribe members (a disadvantaged community), and improve opportunities for both recreational and agricultural uses downstream of the Site. The actions described in this proposal are consistent with the Governor's Action Plan for California's environment in that they are necessary to protect the State's surface waters from non-point sources of contaminants.

The BCP also is consistent with the California Environmental Protection Agency's Environmental Justice program through the conducting of an environmental protection program and activities that afford protection for the disadvantaged community affected by Leviathan Mine. Actions contemplated by this proposal are consistent with the State Water Board's 2010 Strategic Plan because they are intended to make "surface waters safe for drinking, fishing, swimming, and support healthy ecosystems and other beneficial uses." Further, the BCP is consistent with goals of the State Water Board's 2010 Strategic Plan Update, including Goal 1 – implement strategies to fully support the beneficial uses of impaired waters, Goal 3 – increase sustainable local water supplies available for meeting existing and future beneficial uses, and ensure adequate flows for fish and wildlife habitat, and Goal 4 – comprehensively address water quality protection and restoration. In addition, the proposed actions include monitoring that is consistent with the environmental indicator system maintained by the Environmental Protection Indicators for California project. Finally, the BCP supports state and federal plans and policies to prepare for and address the impacts associated with climate change, such as the USEPA's 2015/2016 El Nino Contingency Plan for Leviathan Mine, which increases wet-season field inspection activity and preparation for anticipated increases in storm frequency and intensity.

## Budget Change Proposal - Cover Sheet

DF-46 (REV 08/15)

This BCP is required to implement the SA that the Department of Justice negotiated for the State. The State agreed to the following provisions pursuant to the SA:

XIII.B.4 Availability of Sufficient Funds – The Regional Board and State Board each represent and warrant that, upon the Effective Date, they will, in accordance with State law, take such measures as may be necessary to authorize or obtain authorizations for the payment, provisioning, obligation, or appropriation of funds required for the Regional Board to perform and satisfy its contractual obligations under this Agreement; notwithstanding the foregoing, nothing contained herein shall be interpreted as a commitment to appropriate, obligate, or pay funds in contravention of State law.

II.F.1 Reservation with Respect to Future Funding Commitments and Reimbursement Process – Notwithstanding any other provision of this Agreement, Atlantic Richfield reserves, and this Agreement is without prejudice to, the right to assert and bring future Claims against the State Parties if, following the Effective Date, sufficient funds are not obtained by or made available to the Regional Board, regardless of cause, to enable it to satisfy its obligations for the performance and payment of Response Actions and Response Costs, as specified in this Agreement, and as a consequence of such inability, Atlantic Richfield is or may be ordered or otherwise required by EPA, another United States agency, a tribe, or a state to perform Response Actions or pay Response Costs in excess of its obligations under this Agreement. Likewise, the State Parties reserve, and this Agreement is without prejudice to, the right to assert and bring future Claims against Atlantic Richfield if, following the Effective Date, sufficient funds are not obtained by or made available to Atlantic Richfield, regardless of cause, to enable it to satisfy its obligations for the performance and payment of Response Actions and Response Costs, as specified in this Agreement, and as a consequence of such inability, the Regional Board is or may be ordered or otherwise required by EPA, another United States agency, a tribe, or a state to perform Response Actions or pay Response Costs in excess of its obligations under this Agreement.

II.E. General Reservations of Rights (1) – Atlantic Richfield reserves, and this Agreement is without prejudice to, all rights it has against the State Parties, and the State Parties each reserve, and this Agreement is without prejudice to, all rights they have against Atlantic Richfield, with respect to all matters not expressly included within the releases and covenants not to sue set forth in Section II.A and II.B of this Agreement. Notwithstanding any other provision of this Agreement, Atlantic Richfield reserves all rights against the State Parties, and the State Parties reserve all rights against Atlantic Richfield, with respect to: (1) Claims for failure by the State Parties or Atlantic Richfield, as the case may be, to comply with or meet a requirement of this Agreement.

This trio of SA provisions, in part, maintains AR's right to bring Claims against State Parties, including the Lahontan Water Board and State Water Resources Control Board, if "sufficient funds are not obtain or made available to the Regional Board, regardless of cause, to enable it to satisfy its obligations..." Significant portions of this BCP have been identified as necessary to ensure that the Lahontan Water Board can fulfill its SA obligations (e.g., appropriate ICT review, observation, analysis, and contract development and implementation), in addition to adequately representing and protecting the State's interest in these matters.

### **D. Justification**

USEPA will continue to require the Lahontan Water Board, through existing USEPA orders, to conduct ongoing pollution abatement (including the treatment of acidic mine drainage and maintenance of site infrastructure) and monitoring activities at Leviathan Mine until a final remedy is fully implemented under CERCLA. Therefore, continued funding at the current level is needed to address those ongoing activities. The BCP requests additional position authority and funding for the requested positions to address new work resulting from:

## Budget Change Proposal - Cover Sheet

DF-46 (REV 08/15)

1. The SA between the State Parties and AR, including:
  - a. Preparing for and subsequent taking over ICT operations and responsibilities for complying with USEPA Order, including meeting ICT discharge requirements, until a final remedy is implemented.
  - b. Reviewing AR's future (quarterly reports) RI/FS costs for purposes of accepting or disputing crediting such costs.
  - c. Developing and maintaining a cost crediting system to track future AR and Lahontan Water Board costs related to RI/FS activities, ICT implementation, and final remedy development and implementation.
2. Responding to recent (December 2015) requests from the U.S Department of Justice on behalf of the Natural Resource Damage Assessment (NRDA) Trustees to participate in the NRDA process. Participation includes providing information and participating in future meetings in an effort to assist NRDA Trustees and AR in the NRDA settlement process.

### Interim Combined Treatment (ICT)

Under orders from the USEPA, the Lahontan Water Board and AR seasonally operate and maintain independent systems for the treatment of distinct sources of acidic mine drainage at the Site. Pursuant to the SA, AR has conducted bench-, pilot-, and limited full-scale hydraulic testing to begin demonstrating that AR's system, referred to as the HDS Treatment System, provides a cost-effective means to treat drainage that has been historically routed to the State's treatment system in combination with drainage that has been historically routed to the HDS Treatment System. AR has proposed the HDS Treatment System as a means to provide ICT. Pursuant to the SA, subsequent to AR's successful demonstration that the HDS Treatment System satisfies specific performance criteria at full-scale, the Lahontan Water Board becomes obligated to take on responsibility for the seasonal implementation of ICT until a final remedy is implemented under CERCLA. With the takeover of ICT, the Lahontan Water Board also becomes responsible for meeting all USEPA discharge criteria for the drainage AR has historically treated, in addition to the drainage the Lahontan Water Board has historically treated.

During the 2016 field season, Lahontan Water Board staff will have an opportunity to observe and document AR's full-scale treatment of combined acidic mine drainage by means of the HDS Treatment System. Observation and documentation of treatment system performance by the Lahontan Water Board is critical to verify that the system has satisfied specific performance criteria. Should the HDS Treatment System satisfy specific performance criteria, observation and documentation of treatment system operations will enable Lahontan Water Board to become familiar with system limitations, peculiarities, and potential contracting issues prior to Lahontan Water Board takeover of operations.

The first-hand knowledge gained by Lahontan Water Board during this time will be critically important moving forward, especially with regard to the development of State contracts for ICT. Once the Lahontan Water Board takes over ICT, observation and documentation of contractor performance will be necessary to ensure that the contractor satisfies the various contract provisions, and to bring a working knowledge regarding system performance and overall Site activities. Without observation and documentation of full-scale operations, it will not be possible for Lahontan Water Board to consider insights gained by observation prior to initiation of the contract development process. Lahontan Water Board staff would have to rely solely on the information put forward by AR for operating and maintaining the treatment system.

Without firsthand experience and observation of the treatment system operations, the likelihood for plant upsets leading to the discharge of acidic mine drainage to Leviathan Creek and contract issues (i.e. disputes and claims by the State's contractor) will increase significantly.

The Lahontan Water Board requests additional staff resources to conduct the following activities:

1. Observe and document AR's full-scale field treatment of combined acidic mine drainage by means of the HDS Treatment System.
2. Observe and document ICT performed by Lahontan Water Board contractors.

## Budget Change Proposal - Cover Sheet

DF-46 (REV 08/15)

3. Track and update the State contract for ICT.
4. Track and report Water Board costs for ICT (pursuant to the SA), procure equipment and supplies in support of Water Board field staff.

The additional staff resources needed to implement the above-listed ICT activities is 1.2 positions {0.6 Water Resource Control Engineer (WRCE) and 0.6 Staff Services Analyst (SSA)}. A WRCE is needed to provide field observation and documentation of ICT operations, and to assist DGS in developing, implementing, and subsequently updating contracts for ICT. An SSA is needed to assist the engineer with document preparation, Water Board cost tracking/reporting, and administrative activities in support of Water Board field staff, including procurement and vehicle maintenance.

### Review AR Quarterly Cost Reports

Pursuant to the SA, for purposes of allocating costs between the Lahontan Water Board and AR, AR is required to submit quarterly cost reports to the Lahontan Water Board for review and verification that the reported expenditures satisfy the requirements under the SA for cost crediting. These quarterly cost reports are often extensive, sometimes containing invoices from ten or more contractors and subcontractors. Additional staffing is required by the Lahontan Water Board to review AR's quarterly cost reports. If AR's quarterly cost reports are not reviewed, the likelihood that AR will receive credit for claimed expenses that do not qualify for a credit under the SA will increase. This outcome would result in greater cost to the State in the implementation of a final remedy for the Site.

The additional staff resources needed to review AR's quarterly cost reports is 0.4 positions (0.4 SSA). An SSA is needed to conduct the review of AR quarterly cost reports to verify whether the reported expenditures satisfy the requirements under the SA for cost crediting, and to inform AR when they do not satisfy the requirements. This resource request is based upon actual staff resources spent reviewing AR's first cost report submitted spring 2015, and provided cost documentation for nine quarters. This activity was not anticipated by past funding requests for Leviathan Mine.

### Review RI/FS Documents on Accelerated Schedule

USEPA has directed AR to accelerate the schedule for submission of RI/FS work plans and reports with the intent of decreasing the overall duration of the RI/FS process. The accelerated schedule has resulted in a more concentrated work load (review and comment upon documents) for the Lahontan Water Board. In addition, the scope of the required RI/FS work has expanded beyond that anticipated by previous funding requests. As a responsible party for the Site, it is imperative that the Lahontan Water Board continue to review and comment upon RI/FS documents, as these documents will provide the basis for the selection of a final remedy for the Site which will have long term implications for the State. In addition, review by Lahontan Water Board is necessary for purposes of ensuring that Lahontan Water Board requirements continue to be considered in the development and implementation of RI/FS activities and the selection of a final remedy for the Site. Without adequate review of RI/FS documents, the State reduces its control in shaping the final remedy for the Site to ensure that human health and the environment are protected and that the long-term costs for the remedy are the lowest possible to achieve that protection, as the State will be responsible for completing and long-term operation of the final remedy.

The additional staff resources needed to review RI/FS work plans, reports and studies is 0.2 positions (0.2 WRCE). A WRCE is needed to review AR RI/FS documents on USEPA's accelerated schedule. The effect of USEPA's compressed schedule was not anticipated by past funding requests for Leviathan Mine.

### Participate in the NRDA Process

Lahontan Water Board staff and legal counsel representing the State (including the Office of the Chief Counsel, Attorney General's office, and outside legal counsel to the Lahontan Water Board) believe that Lahontan Water Board involvement for purposes of reviewing and commenting upon the Trustee's damage assessments and AR's damage assessments, and assessing if all data is being appropriately used in the various assessments could be beneficial for working relationships with the various Trustees. Lahontan Water Board staff involvement with reviewing damage assessments and data use may assist the Trustees in moving closer to or achieving settlement. A settlement would avoid expenditure of additional time and resources by the

## Budget Change Proposal - Cover Sheet

DF-46 (REV 08/15)

Trustees and other parties involved in the NRDA process, as the process would continue to slowly continue through the remainder of the CERCLA process, absent an early settlement. Some may also view Lahontan Water Board participation as providing a disadvantaged community (Washoe Tribe of Nevada and California) with free technical assistance. Withholding Water Board participation in the NRDA settlement discussions could have a cooling effect with the Trustees and/or AR, all of whom the Lahontan Water Board is involved with through the CERCLA process and SA. This activity was not anticipated by past funding requests for Leviathan Mine.

The additional staff resources needed to participate in the NRDA process is 0.1 positions (0.1 WRCE). A WRCE (0.1 position) is needed to review damage assessments, attend meetings, and coordinate with legal counsel on the NRDA process.

### Summary of Resource Needs:

The proposed additional resources needed for the project consist of the following:

- 0.9 pos – Water Resource Control Engineer
- 1.0 pos – Staff Services Analyst

- E. Outcomes and Accountability** The principal outcome of the BCP proposal is increased staffing to enable the Lahontan Water Board to:
1. Satisfy agreed upon provisions set forth in the SA, including provisions for the implementation of ICT, tracking and reporting of Water Board ICT costs, and verification of AR RI/FS costs for purposes of cost crediting.
  2. Provide adequate review of AR quarterly cost reports to help ensure that AR only receives credit for qualifying expenses, as described in the SA. Limiting cost credits to only qualifying RI/FS expenses will also avoid inappropriately increasing State costs associated with implementing the final remedy, as outlined in the SA.
  3. Continue to provide meaningful input and maintain knowledge regarding the various RI/FS that will be used in selecting a final remedy for the Site even as USEPA imposes a shorter schedule for completing RI/FS documents, and the scope of those documents grows.
  4. Review and comment upon the damage assessments proposed by Trustees to assess if all data is being appropriately used in the various assessments would likely be beneficial for working relationships with the various Trustees.

### **F. Analysis of All Feasible Alternatives**

1. Provide additional personnel allocation and funding to allow staff to: observe and document AR's full-scale field treatment of combined acidic mine drainage by means of the HDS Treatment System, observe and document ICT performed by Lahontan Water Board contractors, track and update the State contract for ICT, track and report Water Board costs for ICT (pursuant to the SA), procure equipment and supplies in support of Water Board field staff, continue to review AR quarterly cost reports to verify whether the reported expenditures satisfy the requirements under the SA for cost crediting, review AR RI/FS documents on USEPA's accelerated schedule, attend meetings, and coordinate with legal counsel on the NRDA process.

Pros: This alternative allocates adequate staff resources to implement the SA between the State Parties and AR that the Department of Justice negotiated for the State, thereby reducing the likelihood of Lahontan Water Board failing to meet SA obligations, resulting in further litigation between parties to the SA, and providing the opportunity for the State to gather critically important field information for future contracts for the implementation of ICT. This alternative also decreases the likelihood for plant upsets leading to the discharge of acidic mine drainage to Leviathan Creek in violation of USEPA

## Budget Change Proposal - Cover Sheet

DF-46 (REV 08/15)

orders. This alternative also decreases the likelihood of contract issues while the system is under State control that may lead to unforeseen and significant additional costs for the State and provides the State with appropriate participation in the RI/FS process on an USEPA-accelerated schedule. This alternative allows for Water Board participation in the NRDA process assisting the Trustees and AR to reach a settlement, potentially saving all parties valuable time and resources.

Cons: This alternative result in a minor increase in positions and personnel services.

2. Provide additional contract resources and contract out the following activities: observe and document AR's full-scale field treatment of combined acidic mine drainage by means of the HDS Treatment System, observe and document ICT performed by Lahontan Water Board contractors, track and update the State contract for ICT, track and report Water Board costs for ICT (pursuant to the SA), procure equipment and supplies in support of Water Board field staff, review AR quarterly cost reports to verify whether the reported expenditures satisfy the requirements under the SA for cost crediting, review AR RI/FS documents on USEPA's accelerated schedule, attend meetings, and coordinate with legal counsel on the NRDA process.

Pros: This alternative results in a savings in personnel costs.

Cons: Every contract entered into by the Lahontan Water Board must comply with Government Code Section 19130(a) or (b) which requires thorough consideration of civil servants that could perform the work. The Lahontan Water Board already employs civil servants that are fully qualified to perform the work outlined in this proposal. Therefore, efforts to contract this work would likely be unsuccessful. In the unlikely event that contract could be awarded for this work, the duration of State contracts is limited to a 3-year term. The relatively short duration of contracts could result in the need to bring in a new contractor every three years. This would put additional burden on Lahontan Water Board staff to participate in the contracting process and to bring new contractors up to speed every three years. Additionally, contracting out the work would fail to take advantage of the extensive Lahontan Water Board technical experience that will serve the State well in representing and protecting the State's interest at and below the Site.

3. Do not provide personnel to conduct the needed work (No Action).

Pros: No additional personnel allocation to the Lahontan Water Board.

Cons: This alternative does not allocate adequate staff resources to implement the SA between the State parties and AR thereby increasing the likelihood for further litigation between parties to the SA resulting from Lahontan Water Board's failure to perform as specified in the SA. This alternative also eliminates the opportunity for the State to gather critical field information for future contracts for the implementation of ICT thereby increasing the likelihood for plant upsets leading to the State discharging untreated or partially treated acidic mine drainage to Leviathan Creek in violation of USEPA orders. This alternative also increases the possibility of potential adverse impacts to downstream landowners (U.S. Forest Service, Washoe Tribe of Nevada and California, private interest), and could lead to contract issues that may impose significant additional costs while the system is under State control. This alternative does not provide the State with the resources needed to meet USEPA's accelerated schedule for review of RI/FS work plans and reports thereby reducing the State's ability to provide input into the RI/FS process and decreasing the State's overall role in the selection of a final remedy for the Site for which the State is responsible. Finally, this alternative does not allocate staff resources necessary to ensure that AR and Lahontan Water Board costs are appropriately credited, potentially resulting in increased design, operations, and maintenance cost for the State. This alternative does not allow for Water Board participation in the NRDA process thereby eliminating the opportunity for the Water Board to assist in reaching a settlement.

Alternative cost: Unknown, but potentially significant litigation costs to reimburse AR or the USEPA for conducting the required work that the Lahontan Water Board could not perform. Potential additional costs for fines from USEPA.

# Budget Change Proposal - Cover Sheet

DF-46 (REV 08/15)

## 4. Redirect Existing Resources.

Pros: No additional personnel allocation to the Lahontan Water Board.

Cons: If work at Leviathan Mine were to be funded by redirecting existing resources (assuming such redirection were possible), such as from the Storm Water, Non-point Source Programs, or TMDLs, work in these other programs would be compromised and likely would not be consistent with direction and authorization from the State Water Board and the Legislature. Completion of necessary tasks would be limited or delayed and work products may be substandard. Performance measures and program outcomes in those programs and the Leviathan Mine project would be adversely affected.

Alternative cost: Unknown, but potentially significant litigation costs to reimburse AR or the USEPA for conducting the required work that the Lahontan Water Board could not perform. Potential additional costs for fines from USEPA.

## G. Implementation Plan

July 2016 – June 2018:

- New SSA (1.0): develop system for tracking/reporting Water Board costs on ICT, provide administrative support to technical staff, and review AR quarterly cost reports.
- New WRCE (0.9): observe and document full-scale operation of AR's HDS Treatment System by AR contractors, review RI/FS documents; and participate in NRDA for the project.

July 1, 2018 – June 2021

- SSA (1.0): provide cost tracking/reporting and administrative support for ICT activities and review AR quarterly cost reports.
- Existing WRCE (0.9): observe and document operation of ICT by State contractors and review RI/FS documents, and participate in NRDA for the project.

H. Supplemental Information  None  Facility/Capital Costs  Equipment  Contracts  Other

OTHER: Leviathan Mine Site, Work and Cost Allocation Settlement Agreement, Term Sheet (attached)

## I. Recommendation

Alternative 1: To provide additional personnel allocation and funding to allow staff to observe and document AR's full-scale field treatment of combined acidic drainage by means of the HDS Treatment System, observe and document ICT performed by Lahontan Water Board contractors, track and update the State contract for ICT, track and report Water Board costs for ICT (pursuant to the SA), continue to review AR quarterly cost reports to verify whether the reported expenditures satisfy the requirements under the SA for cost crediting, review AR RI/FS documents on USEPA's accelerated schedule, attend meetings, and coordinate with legal counsel on the NRDA process.

Failure to fund the recommended alternative will (1) increase the likelihood for further litigation between parties to the SA resulting from failure to perform as specified in the SA, (2) impair the State's ability to gather necessary field information for future contracts for the implementation of ICT, (3) increase the likelihood for plant upsets leading to the discharge of acidic drainage to Leviathan Creek, (4) result in the State not having adequate resources to keep up with USEPA's schedule for review of RI/FS work plans and reports process thereby decreasing the State's overall role in the section of a final remedy for the Site, and (5) would eliminate Water Board participation in the NRDA process.



**STATE WATER RESOURCES CONTROL BOARD  
FISCAL YEAR 2016-17  
BUDGET CHANGE PROPOSAL**

**LEVIATHAN MINE FEASIBILITY STUDY AND COMBINED TREATMENT**

Positions Requested FY 2016-17	Workload	Workload Standard	Basis for Standard
WRCE 0.6	<p><b>Observe Full-Scale Demonstration of High Density Sludge (HDS) Treatment System, Observe Contractor Performance Under State Contract for Interim Combined Treatment*</b></p> <p>Observe treatment operations during AR's full-scale demonstration of HDS Treatment System performance and collect information pertinent to the development of a State contract for operating the treatment system. After full-scale demonstration is complete, observe contractor performance under a State contract for Interim Combined Treatment.</p>	<p>Observe treatment performance, collect information pertinent to the development of a State contract for operating the HDS Treatment System, and observe contractor performance under a State contract for operating the HDS Treatment System. 1065 hours = 0.6 PYs.*</p>	<p>Water Board staff experience in i) preparing and managing State contracts for treatment systems at the mine site, ii) overseeing contractor performance under State contracts, iii) operating on-site treatment systems;</p>
SSA 0.6 Total 1.2	<p>Track and update State contract for Interim Combined Treatment.</p> <p>Perform administrative tasks including development and implementation of a system for tracking/reporting Water Board costs for Interim Combined Treatment; procure equipment/supplies in support of Water Board field staff.</p>	<p>Participate in tracking and updating State contracts for Interim Combined Treatment. 355 hours = 0.2 PYs. Develop and implement a system for tracking/reporting Water Board costs for Interim Combined Treatment and procure equipment/supplies in support of Water Board field staff. 710 hours = 0.4 PYs.</p> <p>*Based on an annual operation schedule for the HDS Treatment System of 24 hours/day, 7 days/week, for up to 29 weeks.</p>	<p>knowledge of proposed operation schedules for AR's full-scale demonstration period and long-term operations; experience in procurement of equipment, supplies, etc. to support Water Board field staff; cost documentation requirements under the Leviathan Mine Work and Cost Allocation Settlement Agreement.</p>

**STATE WATER RESOURCES CONTROL BOARD  
FISCAL YEAR 2016-17  
BUDGET CHANGE PROPOSAL**

**LEVIATHAN MINE FEASIBILITY STUDY AND COMBINED TREATMENT**

Positions Requested FY 2016-17	Workload	Workload Standard	Basis for Standard
<b>Review AR Quarterly Cost Reports</b>			
SSA 0.4 Total 0.4	Review AR quarterly cost reports to verify that claimed RI/FS costs paid by AR satisfy the requirements under the Leviathan Mine Work and Cost Allocation Settlement Agreement for reimbursement.	Review AR quarterly cost reports. 710 hours = 0.4 PYs.	Water Board staff experience in reviewing AR quarterly cost reports; Water Board staff discussions regarding the appropriate level of cost review with representatives from the Department of Administrative Services and the Office of the Chief Counsel.
<b>Review RI/FS Documents on Accelerated Schedule</b>			
WRCE 0.2 Total 0.2	Provide technical review and comments on RI/FS documents submitted on USEPA's accelerated schedule for completion of the RI/FS process under CERCLA.	Review RI/FS documents submitted on USEPA's accelerated schedule. 360 hours = 0.2 PYs.	Water Board staff experience in reviewing RI/FS documents, and submittal/review schedule prepared by AR for RI/FS documents.
<b>Participate in the Natural Resources Damage Assessment (NRDA) Process</b>			
WRCE 0.1 Total 0.1	Review damage assessments, attend meetings, and coordinate with legal counsel on the NRDA process.	Review damage assessments, attend NRDA meetings, and coordinate with legal counsel on the NRDA process. 180 hours = 0.1 PYs.	Water Board staff experience in attending NRDA meetings, and legal counsel recommendations for level of participation.
<b>Total: 1.9 PYs</b>			

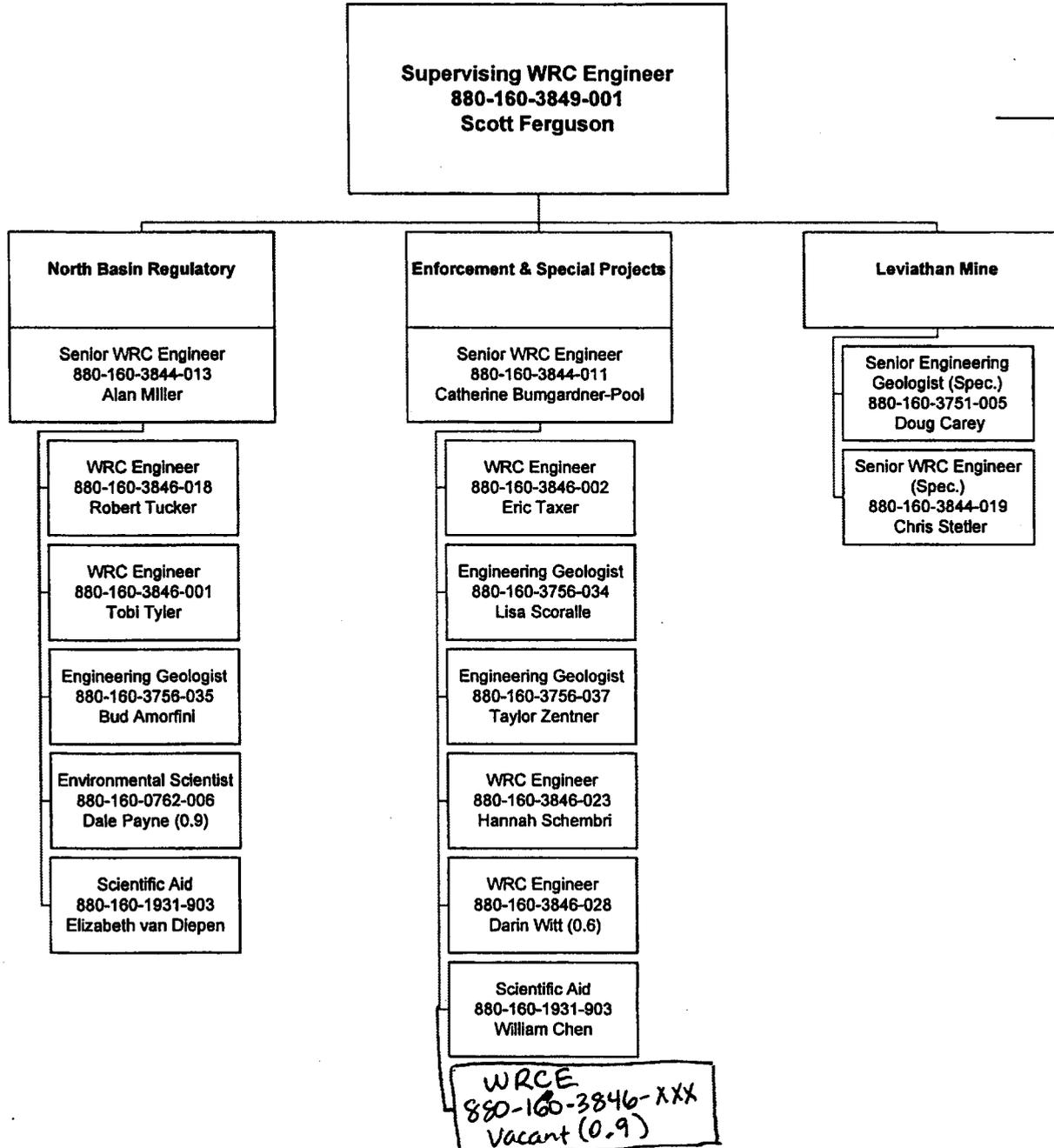


*proposed*  
**LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD  
 REGION 6- SOUTH LAKE TAHOE**



Edmund G. Brown, Jr.  
 Governor

Patty Z. Kouyoumdjian  
 Executive Officer  
 February 1, 2016



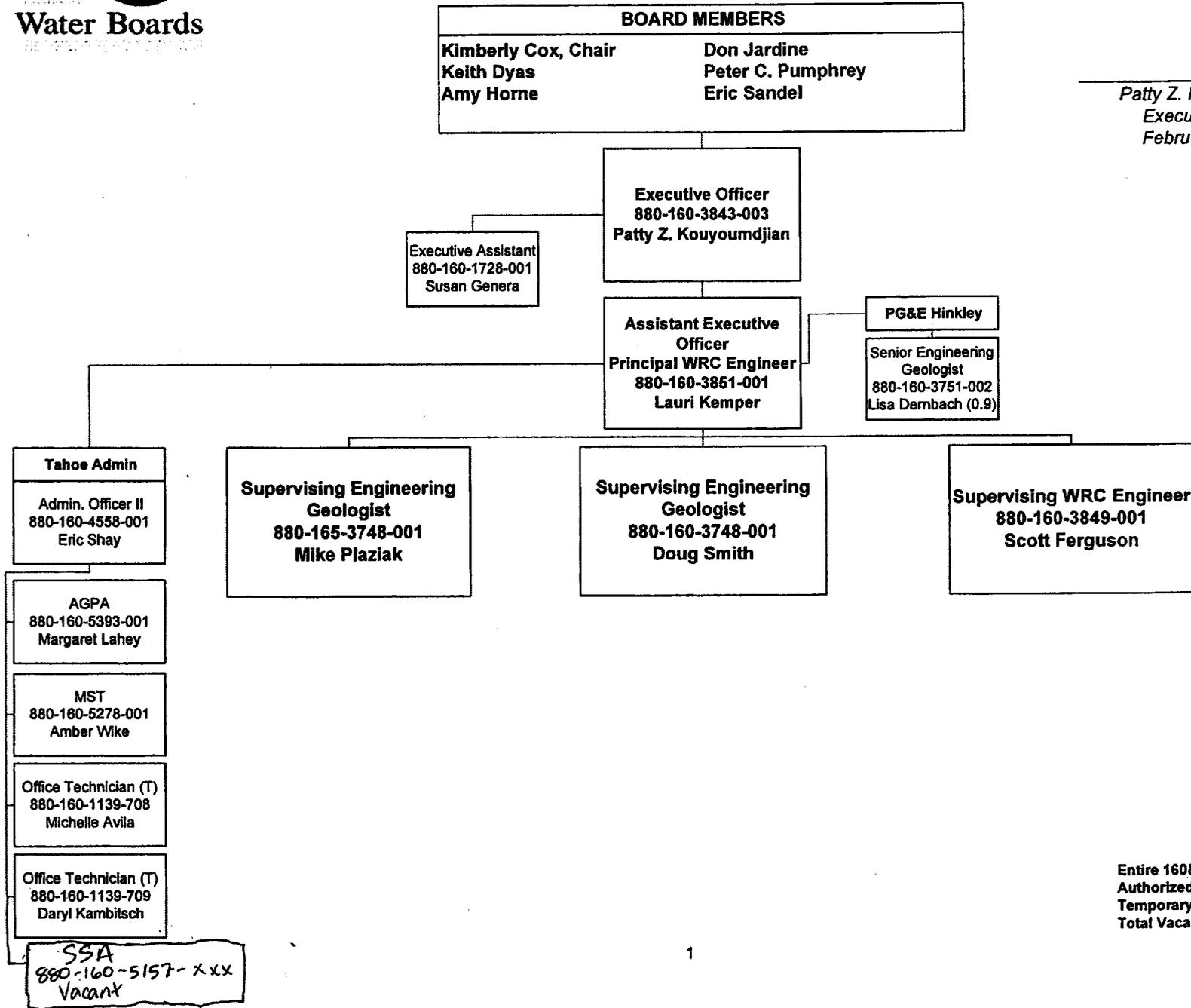


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 February 1, 2016*



Entire 160&165 Org.: 71.90  
 Authorized positions: 57.90  
 Temporary blanket positions: 14.0  
 Total Vacancies: 0



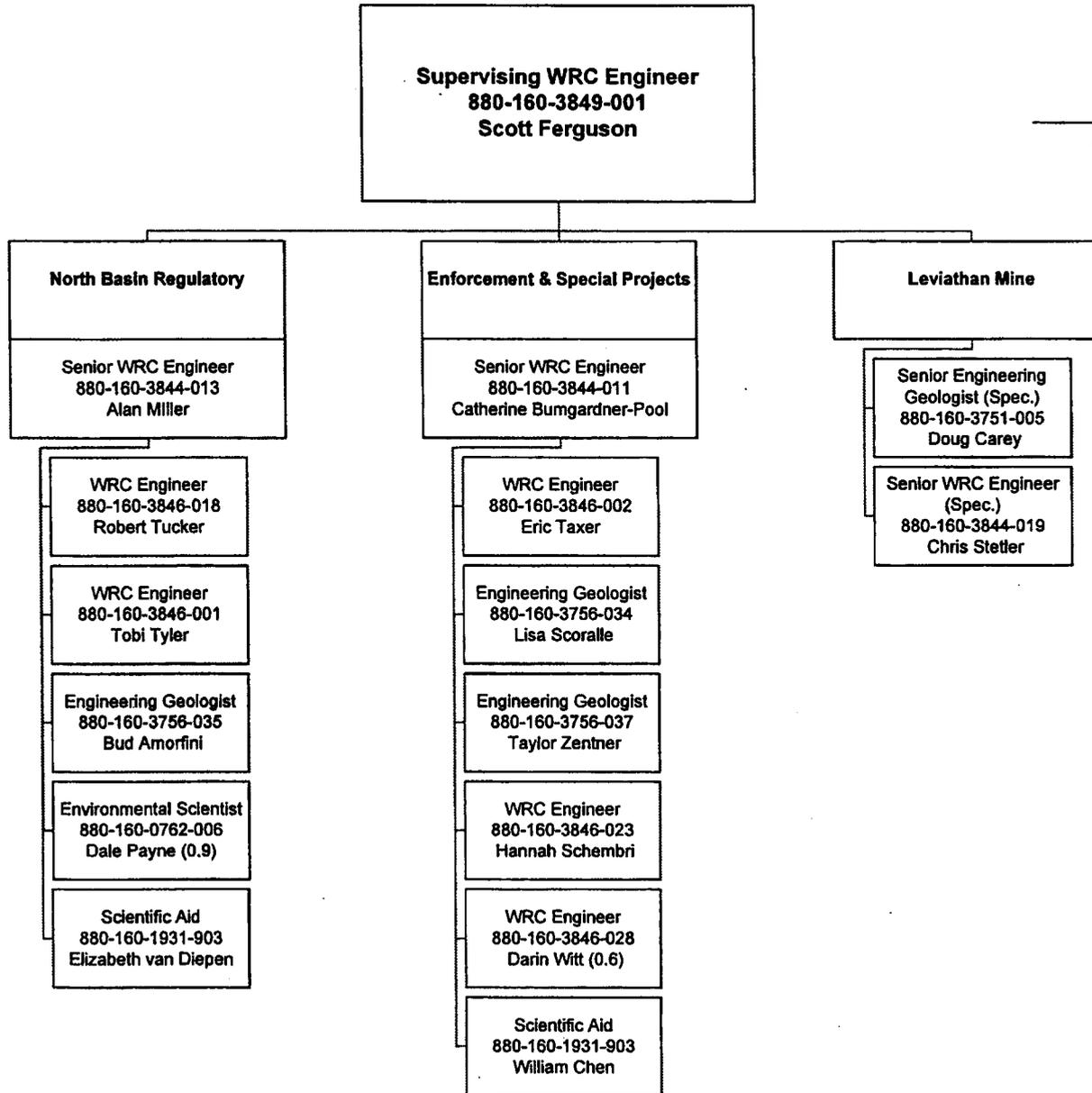
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**LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD  
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February 1, 2016



current

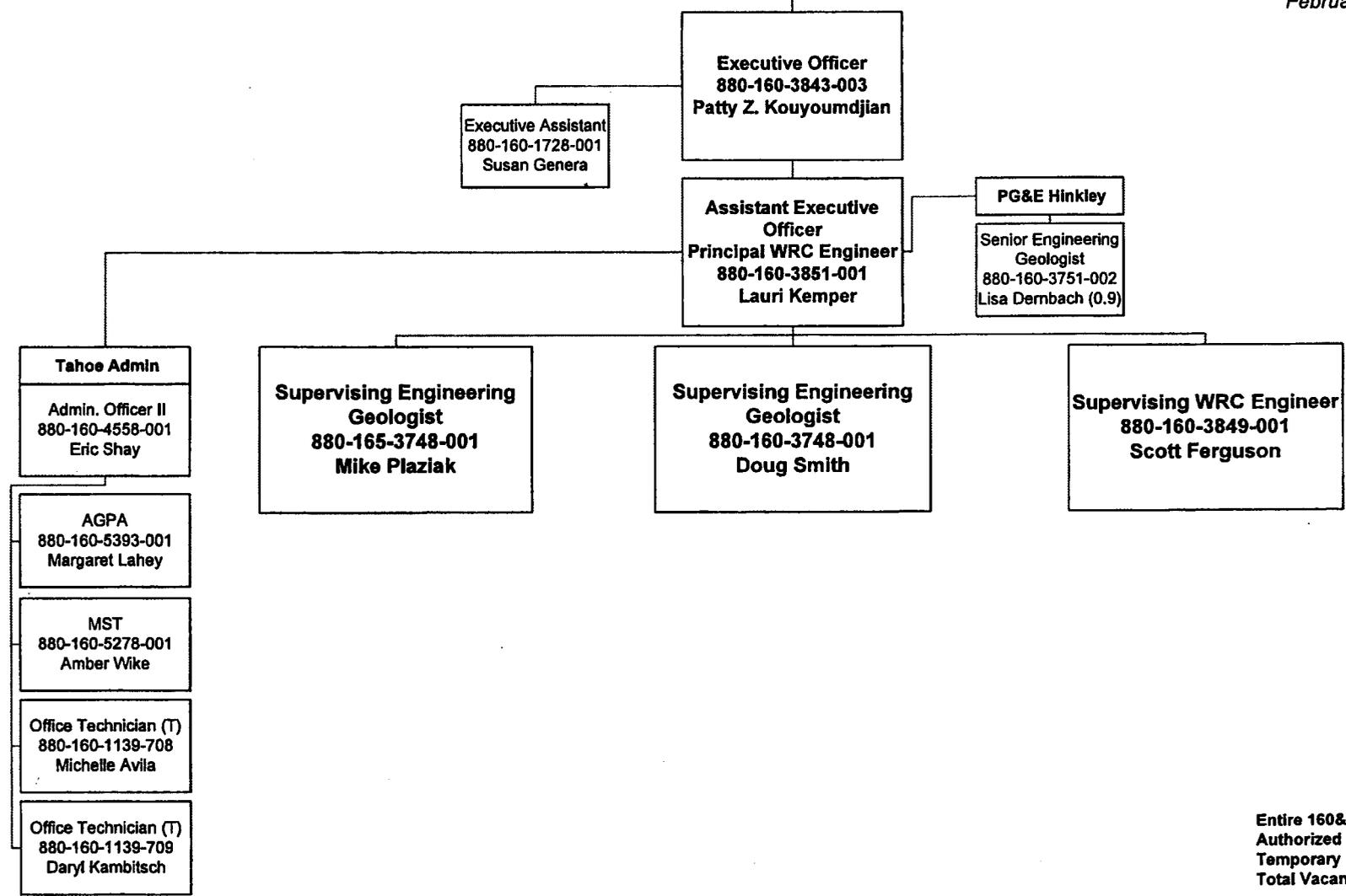
# LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD REGION 6- SOUTH LAKE TAHOE



Edmund G. Brown, Jr.  
Governor

BOARD MEMBERS	
Kimberly Cox, Chair	Don Jardine
Keith Dyas	Peter C. Pumphrey
Amy Horne	Eric Sandel

Patty Z. Kouyoumdjian  
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