

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

RESOLUTION NO. R5-2004-0090

AMENDING THE WATER QUALITY CONTROL PLAN
FOR
THE SACRAMENTO RIVER AND SAN JOAQUIN RIVER BASINS
TO MODIFY THE BENEFICIAL USES FOR FRESHWATER AQUATIC HABITAT (WARM AND
COLD) AND REMOVE SPAWNING (SPWN) FOR WEST SQUAW CREEK, SHASTA COUNTY

WHEREAS, in 1975 the California Regional Water Quality Control Board, Central Valley Region (hereafter Regional Board) adopted the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (Basin Plan), which has been amended occasionally; and

WHEREAS, the Federal Clean Water Act (CWA) Section 303 requires the Regional Board to develop water quality objectives which are sufficient to protect beneficial uses designated for each water body found within its region; and

WHEREAS, the CWA Section 303 requires the Regional Board to review the Basin Plan at least every three years and where appropriate modify water quality objectives or beneficial uses in the Basin Plan; and

WHEREAS, the Basin Plan may be amended in accordance with the California Water Code Section 13240, et seq.; and

WHEREAS, during the last Triennial Review, the Regional Board, on 19 July 2002, adopted Resolution No. R5-2002-0126, which contained *Issue List and Work Plan for the 2002 Triennial Review of the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins*, wherein Issue 14, *Beneficial Use Designations for Surface Water Bodies Not Listed in Table II-1*, described the problem of assigning beneficial uses to non-listed water bodies based on the beneficial uses assigned to the water body to which they are tributary, as those beneficial uses may not exist in the non-listed water body; and

WHEREAS, the Basin Plan, Table II-1, *Surface Water Bodies And Beneficial Uses*, does not specifically designate beneficial uses for West Squaw Creek; however, the designated uses assigned to Lake Shasta are assigned to West Squaw Creek using the tributary rule, which include Freshwater Aquatic Life (WARM and COLD) and Spawning (SPWN); and

WHEREAS, the beneficial uses for support of Freshwater Aquatic Life does not include fish and other low pH and metal sensitive aquatic species below the Early Bird Tributary of West Squaw Creek to Shasta Lake. The beneficial uses of Spawning, as defined in the Basin Plan, are restricted to striped bass, sturgeon, shad, salmon and Steelhead, which do not exist in West Squaw Creek. These uses did not exist in this stretch of West Squaw Creek on or after November 28, 1975, the date by which uses are considered "existing" in the Federal Water Quality Standards contained in Title 40 Code of Federal Regulations (40 CFR) Section 131.3; and

WHEREAS, West Squaw Creek has been identified under the federal Clean Water Act Section 303(d) as an impaired water body due to elevated concentrations of cadmium, copper, and zinc; and

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WHEREAS, the source of the toxic levels of heavy metals and low pH solutions entering West Squaw Creek are discharges of acid rock drainage issuing from portals of abandoned copper mines in the drainage and from non-point sources, both natural and man-induced, in the West Squaw Creek watershed; and

WHEREAS, the Regional Board has issued NPDES permits and Cease and Desist Orders to Mining Remedial Recovery Company (MRRC), the owners of the abandoned mines in the West Squaw Creek watershed, specifying a 99 percent reduction in heavy metal discharges from specific point source discharges and implementation of Best Management Practices for both point and non-point sources of acid rock drainage; and

WHEREAS, MRRC has implemented remedial activities and Best Management Practices which have resulted in an overall reduction of metal loading to West Squaw Creek from both point and non-point sources by 80 percent, which includes a reduction of 95 percent from point sources; and

WHEREAS, the NPDES permit for MRRC will be revised to include a maximum mass metal loading limit at the mouth of West Squaw Creek to assure the current remedial measures remain effective and assure no backsliding of water quality, and the permit will contain language to assure that as new Best Management Practices are developed, MRRC will be required to implement these practices to continue to reduce metal loading to West Squaw Creek; and

WHEREAS, 40 CFR 131.10(g) allows States to remove a designated use which is not an existing use if the State can demonstrate that attaining the designated use is not feasible because of one of six factors including "Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct that to leave in place" (40 CFR 131(g)(3)).

WHEREAS, Regional Board staff has developed a Use Attainability Analyses (UAA) as required by 40 CFR 131.10(j) which contains a technical, scientific study of the watercourse and documents the past, current, and expected future water quality of West Squaw Creek which is severely impacted by acid rock drainage resulting in elevated concentrations of cadmium, copper and zinc and low pH waters which are toxic to aquatic life; and

WHEREAS, data shows that even with the removal of all the metal loading from identified point source discharges, West Squaw Creek will still not support fish and other low pH or metal sensitive aquatic species from below the Early Bird Portal to Shasta Lake due to non-point sources of low pH, metal laden solutions, both man induced and natural; and

WHEREAS, the draft UAA was sent for external scientific peer review in April 2003 in accordance with Health and Safety Code section 57004 and the UAA was modified to conform to the recommendation of the peer reviewers or staff has provided an explanation of why no change was made; and

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WHEREAS, the Regional Board held a public workshop and scoping meeting on 7 August 2003 to receive comments on the draft amendment and to identify any significant issues that must be considered; and

WHEREAS, Regional Board staff developed a Staff Report and draft Basin Plan Amendment based on the UAA for public review and the Staff Report and draft amendment have been modified to address the comments received or an explanation was provided as to why no change was made; and

WHEREAS, the draft Basin Plan Amendments specifically designate the existing beneficial uses of West Squaw Creek to include Municipal and Domestic Supply (MUN), Irrigation (AGR), Power generation (POW), Contact and non-contact recreation (REC-1, REC-2), and Wildlife Habitat (WILD), and modify the uses of Freshwater Habitat (WARM, COLD) below the Early Bird Tributary to Shasta Lake to not include fish and other low pH or metal sensitive aquatic species; and

WHEREAS, the proposed amendment will revise Table II-1, "Surface Water Bodies And Beneficial Uses" and Table III-1 "Trace Element Water Quality Objectives" in the Basin Plan to contain and support the proposed amendments, respectively; and

WHEREAS, The Regional Board has determined that the scientific portions of the Basin Plan Amendment are based on sound scientific knowledge, methods, and practices in accordance with Health and Safety Code section 57004; and

WHEREAS, the Regional Board has considered the costs of implementing the proposed amendment, and finds these costs to be a reasonable burden relative to the environmental benefits; and

WHEREAS, the proposed amendment is consistent with the *Federal Antidegradation Policy* (40 CFR 131.12), the *State Policy for Water Quality Control*, State Board Resolution No. 68-16 *Statement of Policy with Respect to Maintaining High Quality of Waters in California*, State Board Resolution No. 88-63, *Sources of Drinking Water Policy*, State Board Resolution No. 90-67, *Pollutant Policy Document*, *Non-point Source Management Plan*, the Regional Board's *Controllable Factors Policy*, the *Water Quality Limited Segment Policy*, and the *Antidegradation Implementation Policy* in that in that the existing beneficial uses and water quality are protected or improved, point and non-point sources of pollutants will continue to be regulated by the NPDES program, the beneficial uses of municipal and domestic water supply remain, overall metal loading to Shasta Lake and the Sacramento River and Delta will continue to be reduced, and implementation of best management practices for non-point sources of metals in the watershed shall continue to be applied; and

WHEREAS, the regulatory action proposed meets the "Necessity" standard of the Administrative Procedures Act, Government Code, section 11353, subdivision (b); and

WHEREAS, the basin planning process has been certified as "functionally equivalent" to the California Environmental Quality Act requirements for preparing environmental documents as specified in Title 23 California Code of Regulations (23 CCR) Section 3782 and is, therefore, exempt from those requirements (Public Resources Code, Section 21000 et seq.); and

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WHEREAS, the Notice of Filing and environmental checklist indicates that the amendment results in no potential for adverse effect, either individually or cumulatively, on wildlife and will protect existing and anticipated beneficial uses; and

WHEREAS, the draft amendment, Staff Report, UAA, Notice of Filing, and environmental checklist have been prepared, noticed and circulated to interested individuals and public agencies for review and comment in accordance with state and federal environmental regulations (23 CCR Section 3775, 40 CFR 25, and 40 CFR 131); and

WHEREAS, the Regional Board held a public hearing on 22 April 2004, for the purpose of receiving testimony on the draft Basin Plan amendment. Notice of the public hearing was sent to all interested persons and published in accordance with California Water Code, section 13244; and

WHEREAS, a Basin Plan amendment must be approved by the State Board, Office of Administrative Law (OAL), and U.S. Environmental Protection Agency (USEPA) before becoming effective; and

WHEREAS, the Regional Board finds that the amendment to the Basin Plan was developed in accordance with California Water Code Section 13240, et seq.:

THEREFORE BE IT RESOLVED, pursuant to Section 13240, et seq. of the California Water Code, the Regional Board, after considering the entire record, including oral testimony at the hearing, hereby approves the staff report and adopts the amendment to the Basin Plan as set forth in Attachment 1; and be it further

RESOLVED, that the Executive Officer is directed to forward copies of the Basin Plan amendment to the State Board in accordance with the requirements of Section 13245 of the California Water Code; and be it further

RESOLVED, that the Regional Board requests that the State Board approve the Basin Plan amendment in accordance with the requirements of Sections 13245 and 13246 of the California Water Code and forward it to OAL and the USEPA; and be it further

RESOLVED, if during its approval process the State Board or OAL or USEPA determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Regional Board of any such changes; and be it further

RESOLVED, the Executive Officer is authorized to sign a Certificate of Fee Exemption and following approval of the Basin Plan amendment by the USEPA submit this Certificate in lieu of payment of the Department of Fish and Game filing fee to the Secretary for Resources; and be it further

RESOLVED, the environmental documents prepared by Regional Board staff pursuant to Public Resources Code Section 21080.5 are hereby certified and, following approval of the Basin Plan

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amendment by the State Board, the Executive Officer shall file a Notice of Decision with the State Clearinghouse.

I, THOMAS R. PINKOS, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Central Valley Region, on 9 July 2004.

Original signature on file

THOMAS R. PINKOS, Executive Officer

ATTACHMENT 1

RESOLUTION NO. 5-2004-XXX

**Amendments to the Water Quality Control Plan for the Sacramento
River and San Joaquin River Basins to Modify
the Beneficial Uses for Freshwater Aquatic Life (WARM AND COLD) and
Spawning (SPWN) for West Squaw Creek, Shasta County**

Additions to Chapter II: Present And Potential Beneficial Uses

Table II-1, *Surface Water Bodies And Beneficial Uses*,

Below line 12, add new line and add 12(a) to first column.

On line 12 (a), add West Squaw Creek under Surface Water Bodies.

Add the letter E under Municipal and Domestic Supply, Irrigation, Power, Contact Recreation, Other Noncontact Recreation, and Wildlife Habitat.

Add the letter and superscript E^a for Warm and Cold Freshwater Habitat.

Add to Legend at bottom of table: ^(a)Cold and Warm Freshwater Habitat does not include fish or other metal or pH sensitive aquatic species in West Squaw Creek from Early Bird Tributary to Shasta Lake.

Table II-1 should read as shown on next page.

Additions to Chapter III: Water Quality Objectives

Table III-1, *Trace Element Water Quality Objectives*

Add the following to describe the Applicable Water Bodies for Cadmium:

Cadmium	0.00022 ^c	Sacramento River and its tributaries above State Highway 32 bridge at Hamilton City <u>except for West Squaw Creek from the Early Bird Tributary to Shasta Lake</u>
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This addition is intended to carry through to Copper and Zinc as it currently does

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Table II-1

SURFACE WATER BODIES AND BENEFICIAL USES

	Surface Water Bodies (1)	Hydro Unit Number	MUN		Agriculture		Industry			Recreation			Freshwater Habitat(2)		Migration		Spawning		WILD	NAV
			Municipal and Domestic Supply	Irrigation	Stock Watering	Process	Service Supply	Power	Contact	Canoeing (1) and Rafting	Other Noncontact	Warm	Cold	Warm (3)	Cold (4)	Warm (3)	Cold (4)			
																		AGR		
1	McCloud River	505.	E					E	E	P	E	E	E				E	E		
2	Goose Lake	527.20	E	E	E			E	E		E	E	E				E	E		
	Pit River																			
3	North Fork, South Fork, Pit River	526.00	E	E	E			E	E	P	E	E	E			E	E	E		
4	Confluence of Forks to Hat Creek	526.35	E	E	E			E	E	E	E	E	E			E	E	E		
5	Fall River	526.41	E	E	E			E	E	E	E	E	E				E	E		
6	Hat Creek	526.30		E				E	E	E	E	E	E				E	E		
7	Baum Lake	526.34						E	E		E	E	E				P	E		
8	Mouth Of Hat Creek To Shasta Lake	526.	E	E	E			E	E	E	E	P	E			E	E	E		
9	Sacramento River																			
10	Source To Box Canyon Reservoir	525.22		E	E				E		E		E						E	
	Lake Siskiyou	525.22						E		E		E	E				P	E		
11	Box Canyon Dam to Shasta Lake	525.2		E	E			E	E	E	E	E	E			E	E	E		
12	Shasta Lake	506.10	E	E				E	E	E	E	E	E			E	E	E		
12(a)	West Squaw Creek		E	E				E	E	E	E	E	E					E		
13	Shasta Dam To Colusa Basin Drain		E	E	E		E	E	E	E	E	E	E	E	E	E	E	E	E	E
14	Whiskey Town Reservoir	524.61		E	E			E	E	E	E	E	E		E	E	E	E		E
15	Clear Creek Below Whiskeytown	524.62	E	E	E			E	E	E	E	E	E		E	E	E	E		
16	Cow Creek	507.3	P	E	E			E	E	P	E	E	E		E	E	E	E		
17	Battle Creek	507.12		E	E			E	E	E	E	E	E		E	E	E	E		
18	Cottonwood Creek	524.3	E	E	E	P	P	P	E	E	E	E	E		E	E	E	E		
19	Antelope Creek	509.63	E	E	E			E	E		E	E	E		E	E	E	E		
20	Mill Creek	509.42	E	E	E			E	E		E	E	E		E	E	E	E		
21	Thomes Creek	523.10		E	E			E	E		E	E	E		E	E	E	E		
22	Deer Creek	509.20	E	E	E			E	E		E	E	E		E	E	E	E		
23	Big Chico Creek	509.14		E	E			E	E	E	E	E	E		E	E	E	E		
24	Stony Creek	522.00		E	E			E	E	E	E	E	P		E	E	E	E		
25	East Park Reservoir	522.33						E	E		E	E	P			E	E	E		
26	Black Butte Reservoir	522.12		E	E			E	E		E	E				E	E	E		
27	Butte Creek																			
28	Sources to Chico	521.30	E	E	E			E	E			E	E		E	E	E	E		
29	Below Chico, Including Butte	520.40		E	E			E	E	E		E	E		E	E	E	E		
28	Colusa Basin Drain	520.21		E	E			E	E	E		E	P		E	E	E	E		

Legend: E = Existing Beneficial Uses
 P = Potential Beneficial Uses
 L = Existing Limited Beneficial Use

Note: Surface waters with the beneficial uses of Groundwater Recharge (GWR), Freshwater Replenishment (FRSH), and Preservation of Rare and Endangered Species (RARE) have not been identified in this plan. Surface waters of the Sacramento and San Joaquin River Basins falling within these beneficial use categories will be identified in the future as part of the continuous planning process to be conducted by the State Water Resources Control Board.

(a) = Cold And Warm Freshwater Habitat does not include fish or other metal or pH sensitive aquatic species in West Squaw Creek from Early Bird Tributary to Shasta Lake