

**RESPONSE TO COMMENTS ON PROPOSED PERMIT (2/17/10)**

**ENCLOSURE 6**

Proposed Comment Letter No.	From	Received	Comment(s)	Response(s)
1	Don Jardine, Alpine County Board of Supervisors	3/9/2010	1	Water Board is relying on DFG's evaluation of invertebrates, as presented in the FEIR/FEIS, including Appendix F, Master Response B and DFG's evaluation of electroshocking as presented in the FEIR/FEIS, including Appendix F, Master Response D.
1			2	The Water Board does not make economic impact findings as part of its decision to issue an NPDES Permit.
1			3	Water Board finds project is necessary to achieve DFG goals.
2	Nancy Erman	3/18/2010	1	See April 5, 2010 letter from Harold Singer (Attachment 1 to this document)
2			2	Erman's 2004 letter. See Attachment 1 to Enclosure 5 (September 2, 2004 Water Board letter). Also, the Water Board is relying on DFG's evaluation of invertebrates, as presented in the FEIR/FEIS, including Appendix F, Master Response B.
2			3	Commenter does not specifically state how the proposed NPDES Permit supposedly violates the Basin Plan and the Clean Water Act, so no specific response is possible. However, to the best of our knowledge, the Discharger has complied with the conditions required of rotenone projects given in the Basin Plan. The Basin Plan, including the rotenone provisions, is consistent with the Clean Water Act, having been reviewed and approved by USEPA. When an NPDES application is received, staff reviews the package for completeness and may request more information from the discharger. Staff makes an initial determination as to whether it appears the proposed discharge meets the requirements of the Basin Plan. Staff prepares a permit and may impose additional conditions, requirements or monitoring to ensure or verify compliance with the Basin Plan. Adoption is up to the Board at a public hearing.
3	Laurel Ames, Friends of Silver King Creek	3/22/2010	1	Comment noted. Commenter provided links to Department of Fish and Game's Heritage Trout Program. It is unclear what issue the Commenter is raising. The Program is not relevant to the Water Board's decision on whether to issue an NPDES permit for the project.
3			2	See April 5, 2010 letter from Harold Singer (Attachment 2 to this document)

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3			3	<p>This is a new project. Though it has similarities to the proposed project the Water Board considered in September of 2004, several mitigation measures have been incorporated into the project, which Water Board staff consider to be significant. Please see the DFG "findings of Fact and Statement of Overriding Considerations" at <a href="http://www.dfg.ca.gov/fish/Resources/WildTrout/WT_Paiute/WT_PaiuteCutDocs.asp">http://www.dfg.ca.gov/fish/Resources/WildTrout/WT_Paiute/WT_PaiuteCutDocs.asp</a> and the Proposed NPDES Permit, Finding 19 "California Environmental Quality Act (CEQA) Compliance" at <a href="http://www.waterboards.ca.gov/lahtontan/board_info/agenda/2010/apr/usfish.shtml">http://www.waterboards.ca.gov/lahtontan/board_info/agenda/2010/apr/usfish.shtml</a> for more information on mitigation measures. Additionally, the assertion that inert ingredients will persist and continue into Nevada waters is incorrect. Potassium permanganate released from the neutralization station not only destroys rotenone in the water, but also attacks other organic compounds present in the water, such as the inert ingredients. Photooxidation and volatilization, often aided by water turbulence, also disperse many of the inert ingredients (FEIR/EIS, Appendix C). Therefore, all rotenone formulation chemicals should be non-detect at the downstream project boundary (at 30 minutes stream travel time from the neutralization station). Monitoring of the inert materials will be required below the neutralization station to verify the breakdown.</p>
3			4	<p>It is the chemical rotenone alone that is referred to as "naturally occurring." It is not intended to imply that the entire commercially-available rotenone formulation is so, and these other chemical compounds are listed in the permit, and fully assessed in the environmental document. Rotenone may be obtained by processing the roots of plants such as <u>Derris</u> and <u>Lonchocarpus</u> species, so it is "naturally occurring" in that sense.</p>
3			5	<p>Reporting requirements for the DFG certification are given in section IID of the proposed MRP.</p>
3			6	<p>This is a programmatic requirement and not a requirement for the permit. The formulation proposed is less toxic than previous formulations proposed or used in the past.</p>
3			7	<p>This is a programmatic requirement and not a requirement for the permit. DFG has not provided annual reports on progress made to create or obtain improved rotenone formulations.</p>
3			8	<p>The rotenone project eligibility criteria and conditions for variance to applicable water quality objectives are fully listed in Finding 14 of the proposed permit.</p>

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3			9	The 5 degrees C water temperature requirement is given in the Order, Discharge Specification B.9 for the purpose of ensuring project effectiveness (See Late Revision). The text the commenter gives refers to unaided rotenone breakdown. Potassium permanganate treatment of the rotenone in the neutralization zone of the project should break down residual rotenone and other formulation chemicals within 15 to 30 minutes of contact time, rather than days. Water quality monitoring of all rotenone formula constituents will be done at the lower project boundary and other locations by both the Discharger and Water Board staff.
3			10	CFT Legumine, the only rotenone formulation allowed in the Proposed permit, does not contain piperonyl butoxide (PBO), PBO is generally considered to have negative effects on non-target organisms, such as benthic macroinvertebrates. Of the Proposition 65 listed chemicals, CFT Legumine has no trichloroethylene, and has significantly lower treatment concentrations of toluene and naphthalene than other rotenone formulations considered.
3			11	Water Board Staff will also be collecting independent water quality samples during the project. No benzene or trichloroethylene is in the formulation, and treatment concentrations of toluene and naphthalene are extremely low. For toluene, treatment concentrations in the stream will range from 0.111 to 0.222 ppb; the maximum contaminant level is 150 ppb. For naphthalene, treatment concentrations are proposed at 0.25 ppb; the maximum contaminant level is 17 ppb.
3			12	The Final EIR/EIS and related documents have been available at the DFG website since about March 15, 2010. See answers to comments 10 and 11 concerning rotenone formulations and Proposition 65 considerations.
3			13	The Final EIR/EIS and related documents have been available at the DFG website since about March 15, 2010. The alternatives evaluated in the Final EIR/EIS have not changed from the DEIR/DEIS circulated during spring/summer 2009.
3			14	Water Board is relying on DFG's evaluation of electroshocking as presented in the FEIR/FEIS, including Appendix F, Master Response D.
3			15	The Water Board must only determine the purpose of the project is restoration and protection of a threatened or endangered species and does not have to agree with whether the project restores PCT in its historic range. DFG has provided information in its EIR/EIS Appendix F, Master Response C: Paiute Cutthroat Trout Historic Range and the Water Board is relying on this information for its findings (although not a permit requirement).
3			16	The Water Board must only determine the purpose of the project is restoration and protection of a threatened or endangered species and does not have to make a finding regarding the potential for genetic bottlenecking of PCT populations. See DFG's

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				discussion of this topic in the EIR/EIS, Chapter 5.1 "Threat of Hybridization" Section for more information.
3			17	See Answer to Comment 15
3			18	The Water Board must only determine the purpose of the project is restoration and protection of a threatened or endangered species.
3			19	The Water Board is not required to make findings related to economics or cost-effectiveness.
3			20	Comment noted. Comments 20-31 all concern specifics of the EIR. Water Board, as a Responsible Agency is relying on the FEIR as it relates to the proposed alternative and its effects on water quality. The Water Board is not required to specifically respond to comments on the EIR.
3			21	Comment noted.
3			22	Comment noted.
3			23	Comment noted.
3			24	Comment noted.
3			25	Comment noted.
3			26	Comment noted.
3			27	Comment noted.
3			28	Comment noted.
3			29	Comment noted.
3			30	Comment noted.
3			31	Comment noted.
3			32	Tamarack Lake is no longer within the project area, and will not be chemically treated.
4	Patty Clary, Californians for Alternatives to Toxics		1	The response to comments for the incorporated letter (Laurel Ames and Friends of Silver King Creek) are given above in comment letter 3.
4			2	The Final EIR/EIS and related documents have been available at the DFG website since about March 15, 2010.
4			3	See April 5, 2010 letter from Harold Singer (Attachment 3 to this document)

## RESPONSE TO COMMENTS ON PROPOSED PERMIT (2/17/10)

Proposed Comment Letter No.	From	Received	Comment(s)	Response(s)
5	Sam Davidson, Trout Unlimited		1	Letter of support. No response needed.
6	Nancy Erman	3/22/2010	1	See April 5, 2010 letter from Harold Singer (Attachment 1 to this document)
6			2	See response to comment letter 3, comment 3
6			3	See response to comment letter 3, comment 4
6			4	Consistent with Basin Plan conditions for rotenone projects, the Monitoring and Reporting Program (MRP) of this Order, section IID requires: "Within two years of the last treatment for a specific project, a fisheries biologist or related specialist from the DFG must assess the restoration of applicable beneficial uses to the treated waters, and certify in writing that those beneficial uses have been restored." Note that this is restoration of beneficial uses, such as cold water habitat, not necessarily a certification that all the aquatic species in the same composition as pre-project. For species composition, Chapter 3 of the Basin Plan relating to water quality objectives for rotenone projects states: "The reduction in fish diversity associated with the elimination of non-native game fish or exotic species may be part of the project goal, and may therefore be unavoidable. However, non-target aquatic populations (e.g., invertebrates, amphibians) that are reduced by rotenone treatments are expected to repopulate project areas within one year. Where species composition objectives are established for specific water bodies or hydrologic units, the established objective(s) shall be met for all nontarget aquatic organisms within one year. For this watershed, the Basin Plan does not contain a species composition objective, therefore, no species composition objective is imposed in this permit (See Finding 21). The permit does require certification of beneficial use restoration two years from project completion.
6			5	Comment noted.
6			6	Statements made in the permit on this matter are based on information received from DFG. The Water Board has no evidence that this information is false.
6		7	All chemical constituents of CFT Legumine, its allowed treatment concentrations and analytical reporting limits are given in Table 1 of the Order. The MRP clearly identifies the required monitoring of all these chemical constituents.	
6		8	The Order requires all CFT Legumine Label requirements be followed (See Late Revision - Discharge Specifications, section B.2), including the 50 ppb maximum rotenone concentration for stream applications. Note that the Discharger will apply rotenone at a 25 ppb rate, except in stream reaches where local environmental conditions, such as extreme turbulence, could result in excessive loss of rotenone in-stream.	

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6			9	DFG proposes use of potassium permanganate to break down the rotenone formulation continuously during the application of rotenone to prevent a 'poisonous cloud' from leaving the project area. Although water quality samples are limited, fish in cages downstream of the neutralization station will serve as continuous monitoring to ensure chemicals in toxic amounts are not leaving the project boundary.
6			10	According to the EIR/EIS, the adsorbed rotenone is immobilized and biodegrades in-place, rather than being released to the water column.
6			11	See response to comment 10 – no change in permit is needed.
6			12	We have reviewed the product label and require that label conditions be adhered to. We typically do not attach individual product labels to permits, partly because label requirements may change during the course of the active permit, and updating would be cumbersome. See response to comment 7 (also, see Late Revision related to application specifications).
6			13	2004
7	Julia Olson	3/22/2010	1	See April 5, 2010 letter from Harold Singer (Attachment 4 to this document)

**Attachments:**

1. Letter dated April 5, 2010 to Don and Nancy Erman
2. Letter dated April 5, 2010 to Laurel Ames
3. Letter dated April 5, 2010 to Patricia Clary
4. Letter dated April 5, 2010 to Julie Olson



**Linda S. Adams**  
*Secretary for  
Environmental Protection*

## Lahontan Region

2501 Lake Tahoe Boulevard, South Lake Tahoe, California 96150  
(530) 542-5400 • Fax (530) 544-2271  
<http://www.waterboards.ca.gov/lahontan>



**Arnold Schwarzenegger**  
*Governor*

### ATTACHMENT 1 OF ENCLOSURE 6

April 5, 2010

[sent via e-mail only]

Nancy A. Erman  
Dr. Don C. Erman  
43200 East Oakside Place  
Davis, CA 95618

**SUBJECT: REQUEST FOR CONTINUANCE OF CONSIDERATION OF  
ISSUANCE OF NPDES PERMIT TO THE CALIFORNIA DEPARTMENT OF  
FISH AND GAME FOR ROTENONE APPLICATIONS TO SILVER KING CREEK**

In your letter dated March 21, 2010, addressed to Jack Clarke, Water Board Chair you requested that the Water Board continue the consideration of the NPDES Permit to the California Department of Fish and Game (Department) allowing for the application of rotenone to Silver King Creek. The basis for your request was that the Department certified its Environmental Impact Report (EIR) on March 15, 2010 and filed the Notice of Determination on March 17, 2010, which was five days prior to the due date for comments on the proposed NPDES permit. Additionally, you indicated that a June 15, 2009 letter from the Department and the United States Fish and Wildlife Service (USFWS), the other project proponent, indicated that the Water Board would consider the permit for the application of rotenone at least 30 days after the EIR was certified. Lastly, you indicated that the USFWS has not issued its Record of Decision (ROD) for the project so it is premature for the Water Board to act.

I have reviewed your request and discussed it with the Water Board Chair. Despite the issues raised in your letter, the Chair has decided to place consideration of issuance of the NPDES Permit on the Water Board's April 14-15, 2010 meeting agenda. At the meeting, the Water Board will consider the comments submitted on the proposed NPDES permit and may consider your request to continue the matter.

Our rationale for not continuing the consideration of the Permit includes:

1. Agencies and the public have had at least 30 days to review and comment on the proposed NPDES permit after the draft EIR was circulated.

2. Despite the fact that the Water Board has made findings as a CEQA responsible agency for this particular matter, the issuance of an NPDES permit is exempt from CEQA pursuant to Water Code section 13389
3. The Department did not recirculate the final EIR before certification thereby indicating that there were no significant changes in the final EIR from the draft EIR.
4. Any issues you have with the final EIR should be directed to the Department, the lead agency for the EIR, and not to the Water Board, a responsible agency under the California Environmental Quality Act (CEQA) for this particular matter. .
5. The June 15, 2009 letter you cited was not signed by the Water Board. While the letter may have given you certain expectations, the Water Board is not bound by the commitments made by other agencies.
6. The CEQA finding in the NPDES permit to be considered by the Water Board has been modified from that in the proposed permit. The Water Board will accept comments on this modified CEQA finding when it considers adoption of the permit.
7. The Water Board is not required to wait for a federal agency to issue its ROD approving the EIS before it considers a permit for a project.
8. The Department has requested a permit to implement the project as analyzed in its EIR, described in its Report of Waste Discharge, and as reflected in the proposed permit. If the Water Board adopts a NPDES permit for the project, as proposed, and the Department wishes to make a material change in its proposed project due to the inconsistency of its project with that approved by the USFWS in its ROD, the Department would need to submit a revised report of waste discharge before it could implement a revised project.

If you have any questions on any aspect of this letter, please contact me at (530) 542-5412 or [hsinger@waterboards.ca.gov](mailto:hsinger@waterboards.ca.gov).

Sincerely,



Harold J. Singer  
Executive Officer



## Labontan Region



**Linda S. Adams**  
Secretary for  
Environmental Protection

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**Arnold Schwarzenegger**  
Governor

### ATTACHMENT 2 OF ENCLOSURE 6

April 5, 2010

[sent via e-mail only]

Laurel Ames  
P.O. Box 7443  
South Lake Tahoe, CA 96158  
[laurel@watershednetwork.org](mailto:laurel@watershednetwork.org)

**SUBJECT: REQUEST FOR CONTINUANCE OF CONSIDERATION OF  
ISSUANCE OF NPDES PERMIT TO THE CALIFORNIA DEPARTMENT OF  
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I have reviewed your request and discussed it with the Water Board Chair. Despite the issues raised in your letter, the Chair has decided to place consideration of issuance of the NPDES Permit on the Water Board's April 14-15, 2010 meeting agenda. At the meeting, the Water Board will consider the comments submitted on the proposed NPDES permit and may consider your request to continue the matter.

Our rationale for not continuing the consideration of the Permit includes:

1. Agencies and the public have had at least 30 days to review and comment on the proposed NPDES permit after the draft EIR was circulated.

2. Despite the fact that the Water Board has made findings as a CEQA responsible agency for this particular matter, the issuance of an NPDES permit is exempt from CEQA pursuant to Water Code section 13389
3. The Department did not recirculate the final EIR before certification thereby indicating that there were no significant changes in the final EIR from the draft EIR.
4. Any issues you have with the final EIR should be directed to the Department, the lead agency for the EIR, and not to the Water Board, a responsible agency under the California Environmental Quality Act (CEQA) for this particular matter. .
5. The June 15, 2009 letter you cited was not signed by the Water Board. While the letter may have given you certain expectations, the Water Board is not bound by the commitments made by other agencies.
6. The CEQA finding in the NPDES permit to be considered by the Water Board has been modified from that in the proposed permit. The Water Board will accept comments on this modified CEQA finding when it considers adoption of the permit.
7. The Water Board is not required to wait for a federal agency to issue its ROD approving the EIS before it considers a permit for a project.
8. The Department has requested a permit to implement the project as analyzed in its EIR, described in its Report of Waste Discharge, and as reflected in the proposed permit. If the Water Board adopts a NPDES permit for the project, as proposed, and the Department wishes to make a material change in its proposed project due to the inconsistency of its project with that approved by the USFWS in its ROD, the Department would need to submit a revised report of waste discharge before it could implement a revised project.

If you have any questions on any aspect of this letter, please contact me at (530) 542-5412 or [hsinger@waterboards.ca.gov](mailto:hsinger@waterboards.ca.gov).

Sincerely,



Harold J. Singer  
Executive Officer



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Governor

### ATTACHMENT 3 OF ENCLOSURE 6

April 5, 2010

[sent via e-mail only]

Patricia M. Clary, Executive Director  
Californians for Alternatives to Toxics  
315 P Street  
Eureka, CA 95501  
[patty@alt2tox.org](mailto:patty@alt2tox.org)

**SUBJECT: REQUEST FOR CONTINUANCE OF CONSIDERATION OF  
ISSUANCE OF NPDES PERMIT TO THE CALIFORNIA DEPARTMENT OF  
FISH AND GAME FOR ROTENONE APPLICATIONS TO SILVER KING CREEK**

In your undated letter addressed to me you requested that the Water Board continue the consideration of the NPDES Permit to the California Department of Fish and Game (Department) allowing for the application of rotenone to Silver King Creek. The basis for your request was that the Department certified its Environmental Impact Report (EIR) on March 15, 2010 and filed the Notice of Determination on March 17, 2010, which was five days prior to the due date for comments on the proposed NPDES permit. Additionally, you indicated that a June 15, 2009 letter from the Department and the United States Fish and Wildlife Service (USFWS), the other project proponent, indicated that the Water Board would consider the permit for the application of rotenone at least 30 days after the EIR was certified. Lastly, you indicated that the USFWS has not issued its Record of Decision (ROD) for the project so it is premature for the Water Board to act since the USFWS may modify the project.

I have reviewed your request and discussed it with the Water Board Chair. Despite the issues raised in your letter, the Chair has decided to place consideration of issuance of the NPDES Permit on the Water Board's April 14-15, 2010 meeting agenda. At the meeting, the Water Board will consider the comments submitted on the proposed NPDES permit and may consider your request to continue the matter.

Our rationale for not continuing the consideration of the Permit includes:

1. Agencies and the public have had at least 30 days to review and comment on the proposed NPDES permit after the draft EIR was circulated.

**California Environmental Protection Agency**

2. Despite the fact that the Water Board has made findings as a CEQA responsible agency for this particular matter, the issuance of an NPDES permit is exempt from CEQA pursuant to Water Code section 13389
3. The Department did not recirculate the final EIR before certification thereby indicating that there were no significant changes in the final EIR from the draft EIR.
4. Any issues you have with the final EIR should be directed to the Department, the lead agency for the EIR, and not to the Water Board, a responsible agency under the California Environmental Quality Act (CEQA) for this particular matter. .
5. The June 15, 2009 letter you cited was not signed by the Water Board. While the letter may have given you certain expectations, the Water Board is not bound by the commitments made by other agencies.
6. The CEQA finding in the NPDES permit to be considered by the Water Board has been modified from that in the proposed permit. The Water Board will accept comments on this modified CEQA finding when it considers adoption of the permit.
7. The Water Board is not required to wait for a federal agency to issue its ROD approving the EIS before it considers a permit for a project.
8. The Department has requested a permit to implement the project as analyzed in its EIR, described in its Report of Waste Discharge, and as reflected in the proposed permit. If the Water Board adopts a NPDES permit for the project, as proposed, and the Department wishes to make a material change in its proposed project due to the inconsistency of its project with that approved by the USFWS in its ROD, the Department would need to submit a revised report of waste discharge before it could implement a revised project.

If you have any questions on any aspect of this letter, please contact me at (530) 542-5412 or [hsinger@waterboards.ca.gov](mailto:hsinger@waterboards.ca.gov).

Sincerely,



Harold J. Singer  
Executive Officer

T:DFG PCT NPDES response to continuation.doc



**Linda S. Adams**  
Secretary for  
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## Labontan Region

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**Arnold Schwarzenegger**  
Governor

### ATTACHMENT 4 OF ENCLOSURE 6

April 5, 2010

[sent via e-mail only]

Julia A. Olson  
Counsel for CATs and Wilderness Watch  
Wild Earth Advocates  
2985 Adams Street  
Eugene, OR 97405  
JAOEARTH@AOL.COM

**SUBJECT: REQUEST FOR CONTINUANCE OF CONSIDERATION OF  
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**California Environmental Protection Agency**

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If you have any questions on any aspect of this letter, please contact me at (530) 542-5412 or [hsinger@waterboards.ca.gov](mailto:hsinger@waterboards.ca.gov).

Sincerely,



Harold J. Singer  
Executive Officer