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The Department respectfully disagrees with the Board that the project purpose (commercial vs. restoration) does not change the project's potential impacts when the project purpose is habitat restoration resulting in long-term water quality benefits. Thus, the Department still recommends that projects on private lands that are conducted for habitat restoration and in close collaboration with a natural resource agency (i.e. an agency with the purpose of managing and improving conditions for wildlife, fish, and plants), be included in Category 1. The Board response to a previous, similar comment was that the project purpose, whether restoration or commercial, does not matter—the risk to water quality is the same. This leads us to question the inclusion of Category 1 eligibility criterion 3: why is there a limit as to the purpose of the 300 foot defense zone—why not for a goshawk nest or native fishes spawning habitat or a riparian corridor—rather than subdivision boundaries, private parcel lot lines, and/or around non-linear structures and facilities?

The Department understands that project proponents can petition the Executive Officer under Water Code section 13269 for reduced reporting and/or monitoring requirements, but that will not reduce the workload for Lahontan Board and Department staff.

The response "DFG 14" stated that "Water Board staff chose to stipulate parcel size under eligibility criterion 2 of Category 1 so as to limit piece-mealing or staggered implementation on larger parcels. Water Board staff specified certain conditions for Categories 1 and 2 to ensure such activities are self-limiting". With regard to parcel size versus project size, for fuels reduction and/or habitat restoration, staggered implementation may be preferable, due to unforeseeable events....such as drought, catastrophic wild fire, which many of these projects are trying to prevent, or severe rain on snow events. Fish and wildlife projects often benefit more from projects that are phased into smaller implementation sections, as often the benefits strived for are long term, rather than short-term. Some habitat needed for life history components may be reduced during project implementation, but will be improved after an appropriate amount of time. Examples of parameters that may be impacted in the short term for long term gain, where projects would best be staggered, include those affecting cover, food sources, and nesting habitat. In addition, often funding is limited, necessitating smaller projects.

The Department would appreciate additional clarification to the "Evergreen 11" comments with regard to pile burning and broadcast burning where the author asserts that Title 14 CCR prohibits broadcast burns but allows pile burns within the WLPZ.

Category 2 (page 15, 7b), Category 4 (page 19, 15c), and Category 6 (page 25, 20a) all state that there will be no placement of burn piles within the water body buffer zones, although it is allowed in the Tahoe or Truckee areas with a few caveats. Board personnel acknowledged at our meeting on May 4, 2009, that this was a grammatical error, and that there is a proposed language change to clarify that burn piles will be allowed within the water body buffer zone, with conditions, outside of the Tahoe/Truckee areas. The Department suggests that prohibiting burn piles within 25 feet of a watercourse should be adequate language to convey the desired protections

for waters outside of the Tahoe/Truckee HUs, as the 100-year floodplain often cannot readily be determined in a simple, cost-effective manner, and, thus, is not a realistic delineation for on-the-ground work. In addition, 100-year flood plains are not applicable in many higher gradient waters in the Lahontan Region. Bankfull areas may be applicable and usable, but may be closer than 25 feet, and can be difficult to ascertain.

Category 2, 7c, states that broadcast burning is allowed, as long as active ignition does not occur within the water body buffer zone. The Department questions the rationale for allowing broadcast burns but not burn piles within 25 feet of a watercourse. Our perception is that a burn pile would be easier to control, easier to prevent ash input to water, and without conducting a literature search on the subject, at least one experiment showed no short-term effects on soils from pile burning. While broadcast burning may be appropriate in some instances, it seems inconsistent to not allow burn piles.

Category 4, criterion 2 allows up to one dry class III water crossing per five acres. This would allow for up to 128 stream crossings per square mile on streams that, by definition, are capable of transporting sediment to higher order streams. The number of allowable stream crossings should be limited on a frequency of placement based upon linear distance of a waterbody, not surface area.

It appears that any burn piles or any mechanical encroachment within 25 feet of a water source requires enrollment into Category 6. The Department appreciates the revisions that have been made from the last version, however, our previous comments about work within the water body buffer zone still hold—linear distance from water of proposed work sites should be based on parameters such as vegetation type, gradient, and soil type rather than an across-the-board designation. As pointed out during our May 4, 2009 meeting, there are often terraces adjacent to watercourses that are within 25 feet, but are of such a gradient that sediment or ashes would be either directed away from the stream or blocked with vegetation.

With regard to herbicide applications, the Department understands that “The Tahoe Weed Coordinating Group MOU” allows this group to conduct activities without waiver coverage. The Department suggests that this opportunity be offered to other non-profits and agency groups outside of the Tahoe/Truckee area with the same purpose of invasive weed eradication.

The Department still believes that more pro-active public education should occur with regard to this waiver—especially for populations in areas that are likely to conduct activities that would fall under Category 1 and or from parcel owners adjacent to watercourses. The perception exists that projects will be implemented without knowledge that water protections must be incorporated. Existing impacts in urban areas (parcels 3 acres or less) such as non-permeable substrates that alter flow patterns, pesticide/fertilizer use in yards, et cetera, when combined with vegetation projects that will now be allowed—unregulated and not monitored—would induce more impacts than 3 acre size vegetation management projects on larger parcels!

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On page 5, under 8a, Category 1 lists projects that do not pose a significant threat to water quality. The Department suggests adding to the list: projects on public and private land with the sole purposes of plant, fish and/or wildlife habitat restoration and/or solely for invasive species (or invasive plant) removal where a California or Federal Natural Resources Agency/Department has determined no detrimental effects or no effects with mitigation.

Condition 16 under Category 4 allows for the use of herbicide other than Borax or Sporax. However, unlike the general Category 4 where the project can start upon receipt of application, there is a 30 day notice period for projects involving herbicide application. This condition/caveat should be in bold.

In Attachment J, the effectiveness monitoring form for Categories 5 and 6 describes significant sediment erosion and delivery to water as being greater than one cubic yard. Depending upon the size of the water body, species present, size of sediment particles (e.g., clays versus gravels), and the timing of the erosion, "significant" could be substantially less than one cubic yard!

In Attachment K, the application and monitoring form for Category 6, it may be beneficial to include "affiliation" for the 'Natural Resource Professional' under contact information.

The Department suggests providing guidelines of what may cause an impact to water quality for private individuals conducting projects--especially with regard to Category 1 projects.

The Department appreciates and supports the attempt to streamline the process of notification for waivers of discharge and to reduce potential threats to water quality and hopes that our recommendations have assisted in accomplishing this goal.

If you have any questions or comments, please contact Ms. Dawne Becker via email at dbecker@dfg.ca.gov or at the letterhead telephone number or address.

Sincerely,



Brad Henderson
Habitat Conservation Supervisor

cc: Dawne Becker
Troy Kelly
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