CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

ITEM NO. 7

LATE REVISION

MEETING OF APRIL 14, 2010
SOUTH LAKE TAHOE, CALIFORNIA

WASTE DISCHARGE REQUIREMENTS AND NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT FOR CALIFORNIA DEPARTMENT OF FISH AND GAME CUTTHROAT TROUT RESTORATION PROJECT

Alpine County

The following late revisions are proposed. Deletions are in *Strikeout* and insertions are *Underlined*.

Page 16, Finding 16, insert text where indicated:

The beneficial uses of Silver King Creek as set forth and defined in the Basin Plan are: Municipal and Domestic Supply, Agricultural Supply; Groundwater Recharge; Water Contact Recreation; Non-contact Recreation; Commercial and Sport Fishing; ; Cold Freshwater Habitat, Wildlife Habitat; Rare, Threatened or Endangered Species; and Spawning, Reproduction, and Development.

Page 17, Finding 19, replace entire text of finding 19 with the following:

17. California Environmental Quality Act (CEQA) Compliance

This action to adopt an NPDES permit is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) in accordance with Section 13389 of the California Water Code.

Though the Water Board's adoption of this NPDES permit is exempt from CEQA, pursuant to California Code of Regulations, title 14, section 15096, subdivision (g)(2), the Water Board is nonetheless proceeding as a CEQA Responsible Agency. The Water Board has evaluated the Paiute Cutthroat Trout Restoration Project EIS/EIR for potentially significant impacts to water quality, concurs in the EIS/EIR's findings regarding significant water quality-related effects, and finds that there are no additional feasible, less-damaging alternatives or mitigation measures that would accomplish the project's objectives except for rotenone application.

While adoption of this NPDES permit by the Water Board is exempt from CEQA, Section 5.3 of the State Implementation Policy (SIP) requires public entities requesting exceptions from meeting CTR priority pollutant criteria/objectives to submit CEQA documentation to the Water Board for approval. In 1994, the Discharger completed a Programmatic Environmental Impact Report entitled

Rotenone Use for Fisheries Management, July 1994. In addition, in 2009 the US Fish and Wildlife Service and the Discharger completed a joint NEPA/CEQA environmental document "Paiute Cutthroat Trout Recovery Project, Silver King Creek, Humboldt-Toiyabe National Forest, Alpine County, California," and filed a CEQA Notice of Determination for the project with the Governor's Office of Planning and Research on March 17, 2010 This CEQA documentation has been submitted to the Water Board and Water Board hereby finds the DIscharger in compliance with SIP, Section 5.3 CEQA requirements.

California Code of Regulations, title 14, section 15096, subdivision (g)(2) states: "When an EIR has been prepared for a project, the Responsible Agency shall not approve the project as proposed if the agency finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment."

California Code of Regulations, title 14, section 15096, subdivision (h) states: "The Responsible Agency shall make the findings required by Section 15091 for each significant effect of the project and shall make the findings in Section 15093 if necessary."

The Water Board's approval of this project will result in the following potentially significant and unavoidable impacts pursuant to California Code of Regulations, title 14, section 15091, subdivision (a), even with the implementation of all feasible mitigation:

(1) The proposed Action could result in the loss of individual benthic macroinvertebrate taxa, potentially including rare (unquantified) and/or unidentified species endemic to Silver King Creek.

(2) The proposed Action will result in temporary changes in species composition in non-target aquatic invertebrate communities.

Pursuant to California Code of Regulations, title 14, section 15093, subdivision (a)(1), "changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR" that apply to both impacts (1) and (2) above include:

- Removal of Tamarack Lake from the project area after extensive monitoring efforts during the Summer of 2009 that determined the lake is to be fishless.

- Use of CFT Legumine™ (liquid rotenone), a formulation that does not contain *pipeornyl butoxide* (pbo) a substance that has been shown to increase toxicity to aquatic macroinvertebrates. In addition, this formulation has been shown not to have adverse human health concerns.

- Use of the lowest concentration of formulated rotenone, yet still maintain efficacy to reduce impacts non-target aquatic organisms.

- The Discharger will conduct pre-project amphibian surveys, and if any amphibians are encountered, the Discharger will relocate them to outside the project treatment area.

- The Discharger will identify fishless areas (tributary headwaters, springs, and seeps) that will not provide refugia for fish seeking to escape the chemical treatment and can be maintained in a fishless condition. These areas will serve as aquatic macroinvertebrate refugia for post-project recolonization. These designated non-treatment areas will be mapped (GPS) and flagged. These areas will not be chemically treated.

Pursuant to California Code of Regulations title 14, section 15093, subdivision (a)(1), a change or alteration required in, or incorporated into, the project to avoid or substantially lessen the significant environmental effect of impact (1) above only, is the identification by the Discharger of fishless tributary headwaters, springs, and seeps that will not provide refugia for fish seeking to escape the chemical treatment and can be maintained in a fishless condition. These designated non-treatment areas will be mapped (GPS), flagged, and will not be chemically treated. These areas will additionally serve as aquatic macroinvertebrate refugia for post-project recolonization. Additionally, the Water Board has imposed application specifications that prohibit the Discharger from applying rotenone when water temperatures are less than 5°C, to assure the effectiveness of treatment.

As a Responsible Agency, the Water Board pursuant to the California Code of Regulations, title 14, section 15093, subdivision (a)(3), the Water Board considers these potentially unavoidable adverse environmental effects. The adverse effects are "acceptable" because of the economic, legal, social, technological or other benefits of the project. These benefits include:

- Restoration of the native species Paiute Cutthroat Trout a federally threatened species representing heritage resources that future generations should be able to enjoy. These species of fish are of ecological, educational, historical, recreational, esthetic, economic, and scientific value to the people of this state, and the conservation, protection, and enhancement of these species and their habitat is of statewide concern.

- More than doubling the existing habitat for Paiute cutthroat trout in the Silver King watershed. The reach of Silver King Creek between Llewellyn Falls and Silver King Canyon that will be established has more complexity and diversity than the existing habitat occupied by the Paiute cutthroat trout. The population estimates for the existing non-native hybridized populations downstream of Llewellyn Falls are approximately double that of the Paiute populations upstream of Llewellyn Falls.

- Removal of the principal threat to the continued existence of Paiute cutthroat trout by eliminating sources of hybridized fish in close proximity to existing populations of the sub-species, which will effectively isolate the species in the Silver King Creek basin.

- Reduced threats from genetic bottlenecking and stochastic environmental events (e.g., forest fires and floods) through the expansion of habitat and connectivity with other populations within the Silver King Watershed.

- Accomplishing a critical and necessary step leading to the goal of eventually delisting the Paiute cutthroat trout from the federal Threatened Species List.

- Maintenance and expansion of fishless habitats in headwater habitats and lakes within the Silver King Creek watershed for the benefits of sensitive native amphibians and invertebrates.

- Restoration of native species in the Carson-Iceberg Wilderness is a benefit and the enhancement of the genetic diversity of the Paiute cutthroat trout will allow for less management by the Discharger, and would preserve and enhance the long-term wilderness and ecological values.

The Water Board finds that the biological and ecological, social, and other benefits of the project outweighs the significant and unavoidable adverse impacts of the project and is therefore "acceptable", pursuant to California Code of Regulations, title 14, section 15093, and consistent with the Discharger's statement of overriding considerations (CDFG, 2010[12]).

[12] CDFG, 2010. CEQA Findings of Fact And Statement of Overriding Considerations of the California Department of Fish And Game for the Paiute Cutthroat Trout Restoration Project, March 8, 2010.

Page 23, Application Specifications B.2, insert text where indicated:

Rotenone applications must be made in accordance with label specifications. Consistent with label detoxification requirements, formula concentrations may not exceed one part per million (50 parts per billion rotenone concentration).

Page 23, Application Specifications B.7, insert text in the first sentence where indicated:

The Discharger must conduct thorough surveys of springs, seeps, and headwaters in the project area no more than two weeks prior to treatment according to the protocol given in the Monitoring and Reporting Program.

Page 23, Application Specifications B.9, insert text in the first sentence where indicated and delete indicated text:

The Discharger is prohibited from applying rotenone treatments when water temperatures are below 5℃, to ensure the effectiveness of treatment.
~~The Discharger shall conduct these surveys of springs, seeps, and headwaters in the project area no more than two weeks prior to treatment according to the protocol given in the Monitoring and Reporting Program. The Discharger shall not treat any of these sites they determine to be fishless (where insufficient habitat or water volume exists at time of treatment to contain a fish).~~

MRP, Section II Reporting, add entire subsection D:

D. The Discharger shall submit a report to comply with condition 3 of Basin Plan Section 4.9, which states: "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. A project will be considered to have been completed upon written acceptance by the Regional Board's Executive Officer of such certification."