

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

Order No. R6V-2022-XXXX
California Department of Fish and Wildlife
Hot Creek Fish Hatchery
Settlement Agreement and Stipulation for Entry of Order

Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Settlement Agreement and Stipulation for Order) is entered into by and between the California Regional Water Quality Control Board, Lahontan Region Prosecution Team (Prosecution Team) and the California Department of Fish and Wildlife (CDFW) (collectively, "Parties"), and is presented to the California Regional Water Quality Control Board, Lahontan Region (Lahontan Water Board), for adoption as an Order, by settlement, pursuant to Government Code section 11415.60.

Section II: RECITALS

1. CDFW owns and operates the Hot Creek Fish Hatchery, a cold water concentrated aquatic animal production facility. The Hatchery produces about 250,000 pounds of catchable rainbow trout and 1.25 million fingerling rainbow trout, cutthroat trout, and golden trout per year. In addition, the Hatchery produces approximately 10 million domestic rainbow trout eggs and incubates about 1.75 million wild trout eggs per year.
2. The Hot Creek Hatchery consists of two hatcheries, two spawning houses, fingerling tanks, fingerling troughs, brood ponds, production ponds, four production raceways and three wastewater settling ponds. Wastewater is discharged to a tributary to Hot Creek, and to Hot Creek, both of which are waters of the United States.
3. On June 14, 2006, the Lahontan Water Board adopted Waste Discharge Requirements (WDR) Order R6V-2006-0027 (NPDES CA0102776) which includes effluent limitations and other requirements regarding the discharge from the Hot Creek Hatchery. The WDRs were effective on June 15, 2006. On March 10, 2021, the Lahontan Water Board adopted WDR Order R6V-2021-0014, which became effective on May 1, 2021. WDR Order R6V-2021-0014 contains updated requirements and rescinds WDR Order R6V-2006-0027.
4. On May 11, 2009, the Lahontan Water Board's Assistant Executive Officer issued Time Schedule Order (TSO) No. R6V-2009-0016 for the Hot Creek Fish Hatchery. Among other items, the TSO includes interim effluent limitations for nitrate+nitrite and flow. The interim limitations were in effect until May 11, 2014, or when CDFW

was able to come into compliance with the WDR effluent limitations.

5. On January 11, 2010, the Lahontan Water Board's Cleanup and Enforcement Division Manager issued amended TSO No. R6V-2009-0016-A1 to further clarify the interim effluent limitations for nitrate+nitrate and flow. The clarified limitations were in effect until May 11, 2014 or when CDFW was able to come into compliance with the WDR effluent limitations.
6. On April 15, 2010, the Lahontan Water Board adopted Administrative Civil Liability Order (ACLO) No. R6V-2010-0016 for the Hot Creek Fish Hatchery. The ACLO imposed \$225,000 in Mandatory Minimum Penalties (MMPs) for effluent limitation violations that occurred between August 1, 2006 and May 31, 2009. This matter has been settled.
7. On June 4, 2014, the Lahontan Water Board's Executive Officer issued amended TSO No. R6V-2009-0016-A2 which extended the interim effluent limitations for nitrate+nitrate and flow to May 11, 2019 or when CDFW was able to come into compliance with the WDR effluent limitations, whichever was sooner.
8. On June 30, 2016, the Lahontan Water Board's Assistant Executive Officer issued Settlement Offer No. R6V-2016-0040, offering CDFW an opportunity to participate in an expedited payment program for two MMP violations at the Hot Creek Fish Hatchery. On September 22, 2016, the Offer was executed through signature of Settlement Order No. R6V-2016-0040. CDFW subsequently paid \$6,000 to settle the two violations; this matter has been settled.
9. On June 21, 2021, the Prosecution Team issued a Notice of Violation (NOV) describing alleged effluent limitation violations at the Hot Creek Fish Hatchery which occurred between June 1, 2009 and April 30, 2021. CDFW responded with documentation showing that many of the alleged violations were in error. The Prosecution Team reviewed the information and issued a revised NOV dated October 15, 2021. In an email dated November 1, 2021, CDFW agreed with the technical basis for the violations listed in the revised NOV.
10. The CDFW Hot Creek Fish Hatchery is subject to \$120,000 in mandatory minimum penalties for effluent limitation violations that took place between June 1, 2009 and April 30, 2021 (recognizing that two penalties were previously settled, as described in Finding 8).
11. California Water Code (Water Code) section 13385, subdivisions (h) and (i) require assessment of mandatory penalties as follows:

Water Code section 13385, subdivision (h)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

Water Code section 13385, subdivision (h)(2) states:

For the purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitation contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more, or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

Water Code section 13385, subdivision (i)(1) states, in part:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- (A) Violates a waste discharge requirement effluent limitation.
- (B) Fails to file a report pursuant to Section 13260.
- (C) Files an incomplete report pursuant to Section 13260.
- (D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

12. Water Code section 13385.1 (a)(1) requires the assessment of mandatory penalties for certain failures to submit monitoring reports, and states:

For the purposes of subdivision (h) of section 13385, a 'serious violation' also means a failure to file a discharge monitoring report required pursuant to section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations.

13. Water Code section 13385 subdivision (j)(3) states that mandatory penalties do not apply when effluent limitation violations are in compliance with a cease and desist order or a time schedule order, and states in part:

Subdivisions (h) and (i) do not apply to any of the following:...(3) A violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule

order issued pursuant to Section 13300 or 13308, if all of the following requirements are met:

(A) The cease and desist order or time schedule order is issued on or after July 1, 2000, and specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i).

14. WDR Order No. R6V-2006-0027, Effluent Limitations and Discharge Specifications IV.A.1.b. includes, in part, the following: "The discharge of Hot Creek Hatchery wastewater shall maintain compliance with the following effluent limitations at Discharge Points 001, 002, 003, and 004, with compliance measured at Monitoring Locations M-001, M-002, M-003, and M-004..."

Parameter	Units	Effluent Limitations		
		Average Monthly	Maximum Daily	Instantaneous Maximum
Flow	MGD	--	6.9	--
		--	6.5	--
		--	3.8	--
		--	2.5	--
Total Suspended Solids (TSS) ^a	mg/L	6.0	--	15.0
Formaldehyde	mg/L	0.65	1.3	--
Nitrate+Nitrite (as N)	mg/L	0.23	0.31	--
Potassium Permanganate	mg/L	0.12	0.25	--
Settleable Solids	mL/L	0.1	--	--

^a Limit is 6.0 mg/L net over levels in influent

15. According to CDFW's self-monitoring reports, the Hot Creek Fish Hatchery committed fourteen (14) serious violations of Group I constituents contained in WDR Order No. R6V-2006-0027 between June 1, 2009 and April 30, 2021. The violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels by more than 40 percent. The mandatory minimum penalty for these 14 serious violations is forty-two thousand dollars (\$42,000).
16. According to CDFW's self-monitoring reports, the Hot Creek Fish Hatchery committed two (2) serious violations of Group II constituents contained in WDR Order No. R6V-2006-0027 between June 1, 2009 and April 30, 2021. The violations

are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels by more than 20 percent. The mandatory minimum penalty for these two serious violations is six thousand dollars (\$6,000).

17. According to CDFW's self-monitoring reports, the Hot Creek Fish Hatchery committed thirty-two (32) non-serious (chronic) violations of the effluent limitations contained in WDR Order No. R6V-2006-0027 between June 1, 2009 and April 30, 2021. Twenty-three (23) violations are subject to mandatory minimum penalties because these violations were preceded by three or more similar violations within a six-month period. The mandatory minimum penalty for these 23 non-serious (chronic) violations is sixty-nine thousand dollars (\$69,000).
18. CDFW submitted one late self-monitoring report between June 1, 2009 and April 30, 2021. Because this report was designed to ensure compliance with the effluent limitations in WDR Order No. R6V-2006-0027, each complete period of 30-days following the submittal deadline is a serious violation subject to mandatory minimum penalties. There was one (1) 30-day period following the submittal deadline; therefore, the mandatory penalty for this late report is three thousand dollars (\$3,000).
19. The total amount of mandatory minimum penalties assessed for the cited effluent limitation violations is **one hundred twenty thousand dollars (\$120,000)**. A detailed list of the effluent limitation violations is included in Attachment A, a part of this Order. This Order addresses administrative civil liability for violations that are specifically listed in Attachment A as subject to mandatory minimum penalties.
20. On January 20, 2022, CDFW requested that the entire \$120,000 penalty be suspended upon completion of a Supplemental Environmental Project (SEP). The proposed SEP would install a modern recirculation system at the mid-point of the raceways at the Fish Springs Fish Hatchery. This system would remove water after being used by the fish in the upper 500 feet of the raceways, pass the water through an aeration/degassing tower, and return the water for use by fish in the lower 500 feet of raceways. The improved water quality for the lower section of the raceways would reduce the need for fresh water, which is obtained from groundwater wells. This reduced groundwater use will increase the flow at Fish Springs (which surfaces near the Hatchery), as well as benefit the regional groundwater table.
21. Water Code section 13385(l) allows a discharger to complete a SEP in lieu of paying the full amount of a mandatory minimum penalty, as quoted in relevant part below.

(l)(1) In lieu of assessing penalties pursuant to subdivision (h) or (i), the state board or the regional board, with concurrence of the discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the enforcement policy of the state board. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the

penalty amount that may be directed to be expended on a supplemental environmental project may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).

(2) For the purposes of this section, a “supplemental environmental project” means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action under this section.

22. Government Code section 11415.60 provides authority for the Lahontan Water Board and CDFW to stipulate to broad settlement terms. This section has been interpreted by the State Water Resources Control Board (State Water Board) as allowing for parties to stipulate for expenditure on a SEP in an amount up to 100% of the liability amount imposed pursuant to Water Code section 13385 (h) and (i), so long as certain conditions prescribed by the State Water Resources Control Board’s *Policy on Supplemental Environmental Projects* are met.
23. The State Water Board’s *Policy on Supplemental Environmental Projects* states the Director of Office of Enforcement may approve a SEP in an amount greater than 50 percent of the assessed penalty if a SEP is “located in or benefits a DAC [disadvantaged community]... or where the SEP substantially furthers the human right to water.” CDFW’s proposed SEP will benefit the Big Pine Paiute Tribe, a disadvantaged community, by reducing groundwater usage at the Fish Springs Fish Hatchery, which will result in additional groundwater available for the Tribe’s use as a drinking water supply. In a memo dated April 30, 2021, attached hereto as Attachment A and incorporated by reference, the Director of the Office of Enforcement provided blanket approval to exceed the 50 percent limit for SEPs located in or benefitting a DAC, an EJ Community, or a community that has a financial hardship, or where the SEP substantially furthers the human right to water.

Section III: STIPULATIONS

The Parties stipulate to the following:

24. **Administrative Civil Liability:** CDFW hereby agrees to the imposition of an administrative civil liability totaling **one hundred twenty thousand dollars (\$120,000)** for effluent limitation violations at the Hot Creek Fish Hatchery. Further, CDFW agrees that the entire \$120,000 penalty shall be suspended pending completion of a SEP as set forth in Paragraph 20 of Section II and Paragraph 25 of Section III of this Order.
25. **Description of SEP:** The SEP would involve installation of a water recirculation system at the Fish Springs Hatchery. Water used at this Hatchery is supplied by two groundwater production wells. For a large part of the year, the Hatchery pumps

at least 19 million gallons per day (mgd) of groundwater to support fish health, growth, and overall survival. CDFW proposes to install a modern recirculation system at the mid-point of the raceways at the Hatchery. The system would remove water after being used by the fish in the upper 500 feet of the raceways, pass the water through an aeration/degassing tower, and return the water for use by fish in the lower 500 feet of raceways. The improved water quality for the lower section of the raceways would reduce the need for the addition of fresh groundwater into the raceways. The project includes installation of three pumps with electric motors; piping; design and installation of an aeration/degassing tower; and installation of a propane back-up generator to provide power during outages.

The project will result in a significant water savings of groundwater both onsite and within local aquifers, which will in turn provide additional groundwater for use as drinking water for nearby communities, including the Big Pine Paiute Tribe, a disadvantaged community (see the Lahontan Water Board's January 2015 *Environmental Justice Program Implementation* report). The re-use of water within the raceways also builds resilience to climate change impacts.

The Fish Springs Hatchery is near the town of Big Pine, in Inyo County. The Fish Springs Hatchery is within the Owens River Watershed, as is the Hot Creek Hatchery; therefore, this SEP meets the geographic nexus requirement of the SEP Policy.

CDFW has confirmed that it has dedicated a minimum of \$1,000,000 to this project. The project has not yet begun. CDFW will conduct engineering review/design, contracting, procurement, and installation of the recirculation system. Because the Fish Springs Hatchery is a State facility, all stages of the project will be conducted per California Department of General Services regulations. CDFW believes that the project can be completed within 36 months of the Lahontan Water Board's acceptance of this Settlement Agreement. Attachment C of this Order contains a detailed scope of work, budget, and schedule.

26. **SEP Requirements:** CDFW's SEP meets the characteristics of an acceptable SEP as specified in Water Code section 13385(l)(2) as follows:
- a. Environmentally beneficial project: CDFW's SEP will result in less groundwater being pumped for the Hatchery and therefore more groundwater available for other beneficial uses, including drinking water for a disadvantaged community. In addition, the reuse of water is an action to enhance resilience to climate change. CDFW's project will include electric pumps and a propane generator, which will result in less harmful air emissions than traditional diesel equipment.
 - b. "Voluntarily" agrees to undertake: The SEP is not otherwise required of CDFW by any rule or regulation of any federal, state, or local entity.

c. In settlement of an enforcement action: CDFW's commitment to implement the SEP is included in this Order, a legally enforceable settlement document. The Fish Springs Hatchery Mid-Pond Recirculation Project has not commenced and will not commence prior to the adoption of this Order.

27. **SEP Completion Date:** The SEP shall be completed in its entirety no later than June 30, 2025 ("SEP Completion Date"). If circumstances beyond the control of CDFW prevent completion of the SEP by that date, the Executive Officer may extend the SEP Completion Date in writing. CDFW must send its request for an extension in writing with the necessary justification to the Executive Officer a minimum of 30 days prior to the SEP Completion Date.
28. **Representations of CDFW:** As a material consideration for the Lahontan Water Board's acceptance of this Order, CDFW represents that it will utilize the funds outlined in Paragraph 24, as well as additional other funds, to complete the SEP. CDFW understands that its promise to implement the SEP, in its entirety and in accordance with the schedule for implementation, is a material condition of this settlement of liability between CDFW and the Lahontan Water Board. CDFW represents that it will spend the SEP amount as described in this Order, and that within 30 days of the completing the SEP, it will provide written certification, under penalty of perjury, that CDFW followed all applicable environmental laws and regulations in implementing the SEP including the California Environmental Quality Act (CEQA) (14 CCR § 15000 et seq.) and the federal Clean Water Act (33 U.S.C. § 1251 et seq.).
29. **Publicity:** Whenever CDFW or its agents or subcontractors publicizes one or more elements of the SEP, it shall state in a **prominent manner** that the project is being undertaken as part of the settlement of an enforcement action by the Lahontan Water Board against CDFW.
30. **Progress Reports:** CDFW shall provide quarterly progress reports as follows:

Monitoring Period	Report Due Date
January 1 – March 31	May 1
April 1 – June 30	August 1
July 1 – September 30	November 1
October 1 – December 31	February 1

The first quarterly progress report is due August 1, 2022. Reports shall be addressed to Robert Tucker and submitted to Lahontan@waterboards.ca.gov. The reports shall, at a minimum, provide the following information:

- a. A description of SEP activities conducted during the Monitoring Period;
- b. An accounting of SEP expenditures for the Monitoring Period; and

- c. A description of SEP activities planned for the next Monitoring Period.
31. **Final SEP Report and Certification of Expenditures:** Within 30 days of completing the SEP, CDFW shall submit a Final SEP Report identifying all completed SEP-related work and providing a certified statement by a responsible official documenting CDFW's expenditures in implementing the SEP. In making such certification, the official may rely upon normal project tracking systems that capture employee time expenditures and external payments to outside vendors or contractors. CDFW shall provide any additional information requested by the Executive Officer that is reasonably necessary to verify SEP-related completed work and CDFW's expenditures.
 32. **Third Party Audit:** Upon completing the SEP, or failure to complete the SEP, and at the discretion of the Executive Officer, CDFW, at its sole cost, shall submit a report prepared by an independent third party acceptable to the Executive Officer providing such third party's professional opinion that CDFW has expended money in the amounts claimed. Such information shall be provided to the Executive Officer within three months of the Executive Officer's request for the third-party audit.
 33. **Lahontan Water Board Acceptance of Completed SEP:** Upon CDFW's satisfaction of its obligations under this Settlement Agreement and Stipulation for Order, the completion of the SEP, and any audits, the Executive Officer shall issue a "Satisfaction of Order." The issuance of the Satisfaction of Order shall terminate any of CDFW's further obligations under this Settlement Agreement and Stipulation for Order.
 34. **Failure to Expend All Suspended Administrative Civil Liability Funds on the Completed SEP:** In the event that CDFW is not able to explain to the reasonable satisfaction of the Executive Officer that it has spent the entire SEP amount on the completed SEP, CDFW shall pay the difference between the suspended \$120,000 and the amount that CDFW can reasonably demonstrate was actually spent on the SEP as an administrative civil liability. Such payment shall be made to the State Water Resources Control Board Cleanup and Abatement Account after service of the Executive Officer's determination.
 35. **Failure to Complete the SEP:** If the SEP is not fully implemented within the SEP time schedule required by this Order, or there has been a material failure to satisfy a milestone requirement, CDFW shall be liable to pay the entire suspended amount of \$120,000, or some portion thereof less the value of the completion of any milestone requirement. Unless otherwise ordered, CDFW shall not be entitled to any credit, offset, or reimbursement from the Lahontan Water Board for expenditures made on the SEP prior to the failure to complete the SEP. Upon a determination by the Executive Officer that an amount of the suspended liability is due, the amount owed shall be paid to the State Water Resources Control Board Cleanup and Abatement Account after service of the Executive Officer's

determination. Payment of the assessed amount shall satisfy the City's obligations to implement the SEP in its entirety.

36. **Lahontan Water Board is Not Liable:** Neither the Lahontan Water Board members nor the Lahontan Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by CDFW, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Order, nor shall the Lahontan Water Board, its members or staff be held as parties to or guarantors of any contract entered into by CDFW, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Order. CDFW covenants not to sue or pursue any administrative or civil claim or claims against any State Agency or the State of California, or their officers, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Order.
37. **Compliance with Applicable Laws:** CDFW understands that payment of administrative civil liability in accordance with the terms of this Order or compliance with its terms is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged herein may subject CDFW to further enforcement, including additional administrative civil liability.
38. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
39. **Matters Addressed by Stipulation:** Upon adoption by the Lahontan Water Board or the Executive Officer issuing the proposed Order as final, this Order represents a final and binding resolution and settlement of all claims, violations or causes of action alleged herein. The provisions of this Paragraph are expressly conditioned on CDFW's full satisfaction of the obligations described in Section III, Paragraphs 25, 27, 30 and 33.
40. **Public Notice:** CDFW understands that this Order will be noticed for a 30-day public comment period prior to consideration by the Lahontan Water Board or the Executive Officer. If significant new information is received that reasonably affects the propriety of presenting this Order to the Lahontan Water Board for adoption, the Prosecution Team Lead may unilaterally declare it void and decide not to present it to the Lahontan Water Board. CDFW agrees that it may not rescind or otherwise withdraw its approval of this Order.
41. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting this Order by the Lahontan Water Board or the Executive Officer and its review by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such

objections and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

42. **Interpretation:** This Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. CDFW is represented by counsel in this matter.
43. **Modification:** This Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties and approved by the Lahontan Water Board or the Executive Officer. All approvals and decisions of the Lahontan Water Board and the Executive Officer under the terms of this Order shall be communicated to CDFW in writing. No oral advice, guidance, suggestions or comments by employees or officials of the Lahontan Water Board regarding submissions or notices shall be construed to relieve CDFW of its obligation to obtain any final written approval required by this Order.
44. **If the Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Lahontan Water Board or Executive Officer, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Lahontan Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including but not limited to:
 - a. Objections related to prejudice or bias of any of the Lahontan Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Lahontan Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing in this matter; or
 - b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.
45. **Waiver of Hearing:** CDFW has been informed of the rights provided by California Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Lahontan Water Board prior to the adoption of the Order.
46. **Waiver of Right to Petition or Appeal:** CDFW hereby waives its right to petition the Lahontan Water Board's adoption of the Order for review by the State Water

Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court. This explicit waiver of rights includes potential future decisions by the Lahontan Water Board, or its delegate related to this Order, including but not limited to time extensions and other terms contained in this Order.

47. **Covenant Not to Sue:** CDFW covenants not to sue or pursue any administrative or civil claim(s) against any state agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter covered herein.
48. **Authority to Bind:** Each person executing this Order in a representative capacity represents and warrants that he or she is authorized to execute it on behalf of and to bind the entity on whose behalf he or she executes it.
49. **Effective Date:** The obligations in this Order are effective and binding only upon the entry of an Order by the Lahontan Water Board or Executive Officer which incorporates the terms of this Order.
50. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.
51. **Counterpart Signatures:** This Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
Lahontan Region

--Original signed by Ben Letton --

By: _____
Ben Letton
Assistant Executive Officer

--June 8, 2022--

Date: _____

California Department of Fish and Wildlife

--Original signed by Chad Dibble--

By: _____
Deputy Director, Wildlife and Fisheries Division

--June 7, 2022--

Date: _____

Order of the Lahontan Water Board

This Order incorporates the foregoing Settlement Agreement and Stipulation for Entry of Order.

1. In accepting the foregoing Settlement Agreement and Stipulation for Entry of Order, the Lahontan Water Board has considered, where applicable, each of the factors prescribed in California Water Code section 13327. The Lahontan Water Board's consideration of these factors is based upon information obtained by the Lahontan Water Board staff in investigating allegations or otherwise provided to the Lahontan Water Board.
2. Issuance of this Settlement Agreement and Stipulation for Entry of Order is being taken for the protection of the environment and to enforce the laws and regulations administer by the Lahontan Water Board. As such, it is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code, sections 21000 et seq.), in accordance with California Code of Regulations, title 14, sections 15307, 15308, and 15321.

Pursuant to California Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, Lahontan Region.

Mike Plaziak
Executive Officer

Date: _____

- Attachment A: April 30, 2021 Memorandum from the Director of the Office of Enforcement Regarding approval of DAC/EJ SEPs greater than 50% of a total monetary liability
- Attachment B: Mandatory Minimum Penalties for the period of June 1, 2009 to April 30, 2021.
- Attachment C: SEP Scope of Work, Schedule and Budget



Attachment A



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

TO: Regional Board Executive Officers
Regional Board Assistant Executive Officers
Regional Board Enforcement Coordinators
Chief Deputy Director, Division of Water Rights
Chief Deputy Director, Division of Water Quality
Chief Deputy Director, Division of Drinking Water

FROM: Yvonne West, Director
Office of Enforcement

DATE: April 30, 2021

SUBJECT: OE Director's approval of DAC/EJ SEPs greater than 50% of a total monetary liability

The Policy on Supplemental Environmental Projects (SEP Policy) provides guidance to the Regional Boards, the Division of Water Rights, the Division of Water Quality and the Division of Drinking Water and its Districts on how to include Supplemental Environmental Projects (SEPs) in settlement agreements. Generally, the SEP Policy limits the value of a SEP to 50 percent of the total monetary liability. (State Water Board, Policy on Supplemental Environmental Projects (2017), p. 9.) However, the SEP Policy creates an exception that allows certain kinds of SEPs to exceed the 50 percent limit. This exception applies to both discretionary enforcement actions and mandatory minimum penalties (MMPs) imposed pursuant to Water Code section 13385, subdivisions (h) and (i). Specifically, the Policy provides:

The Director of OE may approve a proposed settlement to fund a SEP in an amount greater than 50 percent of the total adjusted monetary liability assessment after making evidence and/or policy-based findings that:

- (1) There is a compelling justification to do so due to exceptional circumstances; or
- (2) In cases where the SEP is located in or benefits a DAC (Disadvantaged Community), an EJ (Environmental Justice) Community, or a community that has a financial hardship, or where the SEP substantially furthers the human right to water. (*Id.* at p.10.)

This memo shall serve as a blanket approval from the Director of OE to exceed the 50 percent limit for SEPs located in or benefitting a DAC, an EJ Community, or a community that has a financial hardship, or where the SEP substantially furthers the human right to water. It is sufficient for the prosecution team to e-mail the Director of OE with a basic description of the proposed SEP and an explanation about how it falls into one of the specific listed categories. Prosecution team staff, in coordination with their counsel, should provide written notice by e-mail to the Director of OE at least 10 days before posting the settlement agreement for public comment. If the SEP does not fit within one of the specific categories, I will inform the prosecution team in writing that the blanket approval does not apply. In that case, the prosecution team may request approval of the SEP based on a compelling justification due to exceptional circumstances, in accordance with the notification process provided on page 9 of the SEP Policy:

If a Regional Board or Division proposes an order containing a SEP that exceeds 50 percent of the total adjusted monetary assessment, it shall affirmatively notify the Director of OE of that proposal. The notification shall describe in detail the proposed SEP, the settlement value of the SEP, the reasons by it proposes to accept the SEP in lieu of a monetary liability payment, and the specific facts regarding why exceptional circumstances that constitute compelling justification exist to justify exceeding the 50 percent limit.

Requests for approval of SEPs exceeding 50 percent limit pursuant to the exceptional circumstances exception should also be submitted via e-mail by the prosecution team. Determinations as to whether exceptional circumstances constitute

compelling justification for exceeding the 50 percent limit will be made on a case by case basis.

ATTACHMENT B
RECORD OF VIOLATIONS FOR ASSESSING MANDATORY MINIMUM PENALTIES

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
HOT CREEK FISH HATCHERY, MONO COUNTY

RECORD OF VIOLATIONS (June 1, 2009 – April 30, 2021) MANDATORY PENALTIES
Data reported under Monitoring and Reporting Program R6V-2006-0027

Table A. Effluent Violations Subject to Mandatory Penalties

(Final Revision Oct 15, 2021)

Item	Date	Parameter	Units	Permit Limit	Measured	Period	CIWQS	Remark/ Penalty	Notes/ Monitoring Report
*	12/1/2008	Flow at M-003	MGD	3.8	4.0	Maximum daily	815938	5	Last violation listed under ACLO R6V-2010-0016
<i>January 11, 2010: Interim limits for flow and nitrate+nitrite found in TSO R6V-2009-0016-A1 are in effect.</i>									
1	2/28/2010	KMMO4 at M-002	mg/L	0.12	0.125	Av. Monthly	875988	3	1 st Q 2010 report
2	6/7/2010	TSS at M-003	mg/L	15.0	27.8	Daily Maximum	879233	1/\$3,000	June 2010 monthly report
3	12/6/2010	TSS at M-001	mg/L	15.0	20.5	Daily Maximum	906509	3	4 th Q 2010 report
4	12/31/2010	TSS at M-001	mg/L	6.0	7.3	Av. Monthly	1073014	3	4 th Q 2010 report
5	12/31/2011	TSS at M-001	mg/L	6.0	10.45	Av. Monthly	918198	1/\$3,000	Dec 2011 monthly report (influent = ND)
6	12/31/2011	TSS at M-002	mg/L	6.0	9.3	Av. Monthly	918197	1/\$3,000	Dec 2011 monthly report (influent = 0.3)
7	2/28/2013	KMNO4 at M-004	mg/L	0.12	0.137	Av. Monthly	1072861	3	March 2013 report
8	7/23/2013	Formaldehyde at M-004	mg/L	1.3	4.5	Daily Maximum	1072862	2/\$3,000	September 2013 report
9	7/31/2013	Formaldehyde at M-004	mg/L	0.65	4.05	Av. Monthly	1072863	2/\$3,000	September 2013 report
10	10/7/2013	TSS at M-001	mg/L	15.0	16.5	Daily Maximum	962647	3	October 2013 report (influent = 0.3)
11	10/31/2013	TSS at M-001	mg/L	6.0	6.8	Av. Monthly	1072859	4/\$3,000	October 2013 report (influent = 0.3)

Table A. Effluent Violations Subject to Mandatory Penalties

(Final Revision Oct 15, 2021)

Item	Date	Parameter	Units	Permit Limit	Measured	Period	CIWQS	Remark/ Penalty	Notes/ Monitoring Report
12	5/5/2014	TSS at M-003	mg/L	15.0	21.9	Daily Maximum	975757	1/\$3,000	May 2014 lab report (influent average = 1.35)
<i>June 4, 2014: Interim limits for flow and nitrate+nitrite found in TSO R6V-2009-0016-A02 are in effect.</i>									
13	6/30/2014	Settleable Solids/ M-001	mL/L	0.1	1.05	Av. Monthly	993160	1/\$3,000	June 2014 lab report.
--	3/31/2015	Nitrate+Nitrite at M-003	mg/L	0.23	0.59	Av. Monthly	990207	(1)	Penalty assessed in R6V-2016-0040
--	7/6/2015	TSS at M-004	mg/L	15.0	24.9	Daily Maximum	994943	(1)	Penalty assessed in R6V-2016-0040
14	11/5/2018	TSS at M-002	mg/L	15	18	Instantaneous Maximum	1054302	3	November 2019 report (influent = 0.9)
<i>May 11, 2019: Interim limits found in TSO R6V-2009-0016-A02 expire.</i>									
15	1/31/2020	Settleable Solids/ M-002	ml/L	0.1	0.25	Av. Monthly	1074897	1/\$3,000	Q1 2020 report
16	11/30/2020	Settleable Solids/ M-003	ml/L	0.1	0.27	Av. Monthly	1093431	1/\$3,000	Q4 2020 report
<i>April 30, 2021: Order R6V-2006-0027 is rescinded and replaced by Order R6V-2021-0014</i>									

Table B. Reporting Violations Subject to Mandatory Penalties

Item	Report	Due Date	Date Submitted	# of 30-day periods after due date	# of serious violations	Penalty	CIWQS
1	September 2014	11/1/2014	12/15/2014	1	1	\$3,000	1074901

Table C. Nitrate-Nitrite and Flow Violations after TSO R6V-2009-0016-A02 expired.

Item	Date	Parameter	Units	Permit Limit	Measured	Period	CIWQS	Remark/ Penalty	Notes/ Monitoring Report
1	6/3/2019	Flow at M-003	mgd	3.8	5.7	Maximum Daily	1061369	3	June 2019 monthly report
2	7/16/2019	Flow at M-003	mgd	3.8	6.2	Maximum Daily	1062087	3	July 2019 report
3	7/31/2019	Nitrate+Nitrite at M-001	mg/L	0.23	0.26	Av. Monthly	1065603	3	Q3 2019 report

Table C. Nitrate-Nitrite and Flow Violations after TSO R6V-2009-0016-A02 expired.

Item	Date	Parameter	Units	Permit Limit	Measured	Period	CIWQS	Remark/ Penalty	Notes/ Monitoring Report
4	7/31/2019	Nitrate+Nitrite at M-002	mg/L	0.23	0.25	Av. Monthly	1065608	4/\$3,000	Q3 2019 report
5	7/31/2019	Nitrate+Nitrite at M-003	mg/L	0.23	0.36	Av. Monthly	1065607	1/\$3,000	Q3 2019 report
6	7/31/2019	Nitrate+Nitrite at M-004	mg/L	0.23	0.49	Av. Monthly	1065609	1/\$3,000	Q3 2019 report
7	8/13/2019	Flow at M-001	mgd	6.9	7.7	Maximum Daily	1064139	4/\$3,000	August 2019 report
8	8/13/2019	Flow at M-003	mgd	3.8	6.4	Maximum Daily	1064138	4/\$3,000	August 2019 report
9	9/9/2019	Flow at M-003	mgd	3.8	6.0	Maximum Daily	1065602	4/\$3,000	September 2019 report
10	10/10/2019	Flow at M-003	mgd	3.8	7.8	Maximum Daily	1067277	4/\$3,000	Oct 2019 report
11	10/10/2019	Flow at M-004	mgd	2.5	2.7	Maximum Daily	1067278	4/\$3,000	Oct 2019 report
12	10/31/2019	Nitrate+Nitrite at M-002	mg/L	0.23	0.24	Av. Monthly	1069533	4/\$3,000	Q4 2019 report
13	10/31/2019	Nitrate+Nitrite at M-003	mg/L	0.23	0.30	Av. Monthly	1069529	4/\$3,000	Q4 2019 report
14	10/31/2019	Nitrate+Nitrite at M-004	mg/L	0.23	0.4	Av. Monthly	1069530	1/\$3,000	Q4 2019 report
15	1/31/2020	Nitrate+Nitrite at M-001	mg/L	0.23	0.25	Av. Monthly	1073415	4/\$3,000	Q1 2020 report
16	1/31/2020	Nitrate+Nitrite at M-002	mg/L	0.23	0.26	Av. Monthly	1073416	4/\$3,000	Q1 2020 report
17	1/31/2020	Nitrate+Nitrite at M-003	mg/L	0.23	0.25	Av. Monthly	1073414	4/\$3,000	Q1 2020 report
18	1/31/2020	Nitrate+Nitrite at M-004	mg/L	0.23	0.29	Av. Monthly	1073417	4/\$3,000	Q1 2020 report
19	4/20/2020	Flow at M-002	mgd	6.5	6.7	Maximum Daily	1075650	4/\$3,000	April 2020 report
20	5/13/2020	Flow at M-003	mgd	3.8	4.1	Maximum Daily	1076337	4/\$3,000	May 2020 attachment
21	6/29/2020	Flow at M-003	mgd	3.8	4.0	Maximum Daily	1077598	4/\$3,000	June 2020 report
22	7/7/2020	Flow at M-003	mgd	3.8	4.1	Maximum Daily	1078013	4/\$3,000	July 2020 report
23	9/29/2020	Flow at M-003	mgd	3.8	4.5	Maximum Daily	1080541	4/\$3,000	September 2020 report

Table C. Nitrate-Nitrite and Flow Violations after TSO R6V-2009-0016-A02 expired.

Item	Date	Parameter	Units	Permit Limit	Measured	Period	CIWQS	Remark/ Penalty	Notes/ Monitoring Report
24	10/5/2020	Flow at M-003	mgd	3.8	4.7	Maximum Daily	1081352	4/\$3,000	October 2020 report
25	11/24/2020	Flow at M-003	mgd	3.8	4.3	Maximum Daily	1083180	4/\$3,000	November 2020 report
26	1/21/2021	Flow at M-003	mgd	3.8	4.6	Maximum Daily	1086345	4/\$3,000	January 2021 report
27	1/31/2021	Nitrate+Nitrite at M-001	mg/L	0.23	0.47	Av. Monthly	1088943	1/\$3,000	Q1 2021 report
28	1/31/2021	Nitrate+Nitrite at M-002	mg/L	0.23	0.49	Av. Monthly	1088948	1/\$3,000	Q1 2021 report
29	1/31/2021	Nitrate+Nitrite at M-003	mg/L	0.23	0.43	Av. Monthly	1088944	1/\$3,000	Q1 2021 report
30	1/31/2021	Nitrate+Nitrite at M-004	mg/L	0.23	0.41	Av. Monthly	1088951	1/\$3,000	Q1 2021 report
31	2/19/2021	Flow at M-003	mgd	3.8	3.9	Maximum Daily	1087868	4/\$3,000	February 2021 report
32	3/1/2021	Flow at M-003	mgd	3.8	4.1	Maximum Daily	1088924	4/\$3,000	March 2021 report

Remarks:

1. Serious violation: Category 1 pollutants (TDS, TSS, settleable solids, nitrate+ nitrite) that exceed the effluent limitation by 40% or more.
2. Serious Violation: Category 2 pollutants (formaldehyde) that exceed the effluent limitation by 20% or more.
3. Chronic violation not subject to MMPs: the violation falls within the first three violations within a 180-day period.
4. Chronic violation subject to MMP: (flow, pH, potassium permanganate). Four or more violations within a 180-day period.
5. Supporting violation for which MMPs were assessed in ACLO-R5V-2010-0016. Used to determine the 180-day period for non-serious violations.

Summary: \$120,000 in MMPs

Tables A and B	Table C
Group I serious violations: 7	Group I serious violations: 7
Group II serious violations: 2	Group II serious violations: 0
Serious reporting violations: 1	Non-serious violations subject to MMPs: 22
Non-serious violations subject to MMPs: 1 (Non-serious violations not subject to MMPs: 6)	(Non-serious violations not subject to MMPs: 3)
Total violations subject to MMPs: 11 x \$3,000= \$33,000	Total violations subject to MMPs: 29 x \$3,000 = \$87,000

Attachment C.1

Project Milestones and Dates

Design Period: 6 months, completed by 11/30/2022 (includes design of required infrastructure for new generator and mid-pond aerator tower motors)

Material Procurement: 24 months; completed by 11/30/2024 (global supply chain disruptions due to the COVID-19 Pandemic and war in Eastern Europe have affected the availability of materials and components for electrical panels and generators)

Construction: 6 months; completed by 05/31/2025

Budget

Site work: \$128,035

Mid-pond repairs: \$650,641

Generator and LP tank installation: \$652,602

Electrical installation: \$237,372

Contingencies: \$51,350

Total for project: \$1,720,000

Attachment C.2



Proposal



California Fish and Wildlife
Bishop Fish Hatchery – Mid Pond Boosters

Layne Christensen – Scope of Work

Part 1. Mobilization / Demobilization

1. Mobilization and demobilization of all equipment and personnel necessary to complete 1 Mid Pond Booster Station. Pricing includes transportation, mobile equipment, for all internal combustion engine fuel necessary to perform this scope. Also included are personnel per diem and lodging for the duration of the proposed scope. Final clean up will be performed under this line item. Upon completion of the work under this contract, the Contractor shall remove all remaining excess materials, waste, rubbish, debris, temporary facilities and other equipment from the site.

Part 2. Backup Generator

1. Emergency backup power will be supplied by a permanently installed generator capable of providing adequate power to the well. The generator will be capable of producing 400KV. The generator will have a fuel tank capable of a run duration of 24hrs. Generator will be installed upon a steel re-enforced concrete base and anchored securely. Installation will include 3” Steel fuel lines run under ground between a 2000-gallon fuel tank and the generator. Concrete filled steel bollards will be installed around the fuel tank to assist in preventing vehicle or equipment impact.



2. A single 2000-gallon tank will be furnished and installed to accommodate the 400KV generator. The tank will be fabricated to the latest ASME code, Section VIII, Division 1. The tank will be equipped with liquid withdrawal and vapor withdrawal port. This tank is also equipped with safety relief valving.
3. A steel reinforced concrete pad will be installed approx. 50' from any other structure per regulatory specifications to accommodate the tank. The pad will be approximately 25' x 6' x 6" and be formed and poured with 4500PSI pea gravel pump mix concrete.

3. Mid Pond Boosters

1. The equipment to remain in place shall be adequately supported, protected, and maintained until work is complete. Existing catwalk panels will be inspected during the time of removal, to determine serviceability.
3. Disconnect and remove three engine drives and properly dispose of equipment. All equipment assumed to be scrapped or recycled unless otherwise specified by the customer.
4. Return equipment to Layne shop for inspection and identification. Existing pumps will be used as reference in the design build of the replacement booster pumps. Our goal is to not negatively impact the plants' ability to perform aeration and filtration operations while work is being performed. One existing operational booster will remain in place until the adjacent booster is replaced, and operational. Unless specified by the customer, all equipment that is being replaced will be properly disposed of upon completion of the project.
5. Three discharge lines will consist of 14" Schedule 10 – 304 Stainless Steel. Flanges, elbows, Tees, and caps will also consist of 304 Stainless steel.



All connections will be fabricated and welded. Initial fitment will take place On-site, while finishing fabrication will take place in shop. All connections will be gasketed and utilize stainless steel bolting. The replacement discharge pipeline will emulate the existing configuration.

6. Existing pipe stands and support structure will be replaced as necessary with a combination of custom and standard saddle type stands. All stands will be anchored to existing cement or cemented in place.

7. Three complete axial flow booster pumps will be installed to replace the existing worn, and non-operational equipment. These pumps will include the following:
 - 50 HP Premium Efficient, 1175 RPM, 480V US Motors, 1 11/16" Driver Sinewave Equip with 1 year manufacturer's warranty.

 - New Fabricated Steel Discharge Head with 3M Fusion bond epoxy coating, packing assembly, and Goulds top column flange. Head windows will be equipped with expanded steel framed protective doors with latches.

 - Column Pipe will be coated ID/OD 3M Epoxy. One end will be flanged to accommodate the pump bowl discharge case.

 - Line Shaft will consist of 416 Stainless Steel, Stabilized by Stainless steel retainers With rubber bearing inserts.

 - Pump Bowls will consist of a single stage designed to produce 5100 Gallons Per Minute, with a total head of 22'. The Suction bells will have installed, 316 Stainless Steel Basket strainers to protect the pump internals from large solids.

 - All bolting and fasteners will be Stainless Steel.



- Booster Pumps will be installed on new sole plates if necessary. Sole plates will be welded permanently into place, and heads will be bolted down using stainless steel bolting.
8. Emergency backup power to the mid pond boosters will be supplied by a permanently installed generator capable of providing adequate power to run all three 50hp booster pumps. The generator will be capable of producing 400KW in the event simultaneous operation of the boosters is required. The generator will have a fuel tank capable of a run duration of 24hrs at full load (three boosters)
Additional run duration can be expected when generator is not powering all three booster pumps simultaneously.
 9. Concrete slab to poured to accommodate new backup emergency generator. Approximate size will be 10' x 6' x 6"
 10. Concrete will be allowed to cure for 48 hours prior to commencement of additional work. Concrete will reach maximum strength after 28 days of cure time. Full cure time will be utilized prior to the installation of any attachments.
 11. Left over concrete material, spillage, debris, will be removed and hauled off site during final cleanup.

Part 4. BID SCHEDULE

Bid prices shall include all labor, equipment, apparatus, material, facilities transportation, insurance, taxes permits, shop drawings, overhead, profit, mobilization costs, incidentals, and any other costs necessary to furnish, deliver, install or perform work under the subject bid item in conformance with the plans, specifications, and permits complete.



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4/21/22

RE: CA Department of Fish & Wildlife Upgrade Project for Bishop, Mojave, & Fillmore Hatcheries, Design Build.

Clarification and Terms & Conditions as Part of the Agreement:

- Milestone Invoicing for Generators per manufacturers:
 - Upon delivery of approved submittal drawings (15%)
 - Upon completion of generator ordering (45%)
 - Upon shipment of equipment (25%)
 - Upon installation of the generators (10%)
 - Start-up (5%)
- Milestone Invoicing for Electrical Materials per manufacturers:
 - Upon delivery of approved submittal drawings (15%)
 - Upon completion of electrical panels ordering (45%)
 - Upon shipment of equipment (25%)
 - Upon installation of the panels (10%)
 - Start-up (5%)
- Electrical proposal & pricing based on new conduit and trenching. If some existing conduit can be used, the invoice will show a deduct on the conduit that utilized.
- Per client, no permits are need for all electrical work on owned and leased property by CDFW. Electrical will be self-inspected by Engineering Department of CDFW to confirm best installation, practices, & to code.
- Per client, unforeseen conditions will be discussed & approved as a change order.
- Pricing is based on current pricing plus 10% price escalation on the cost.
- Engineering services & drawings are not provided.
- Submittal drawings & information for pumps, motors, generators, & electrical will be provided for approval
- CA Prevailing Wage Rates are estimated for this project
- Pump design is based on limited information & assumptions. Actual design will be per test pump data from rehabilitation & test pumping.

Mark Howard
Business Development Manager, Wester Region
Area Manager, Santa Paula CA