

---

## Lahontan Regional Water Quality Control Board

August 1, 2022

Chad Dibble, Deputy Director  
Wildlife and Fisheries Division  
California Department of Fish and Wildlife  
715 P Street  
Sacramento, CA 95814

Lahontan Water Board Prosecution Team  
2501 Lake Tahoe Blvd.  
South Lake Tahoe, CA 96150

### **Information Request: Proposed Order No. R6V-2022-XXXX California Department of Fish and Wildlife, Hot Creek Fish Hatchery, Settlement Agreement and Stipulation for Entry of Order**

The Advisory Team, on behalf of the Lahontan Regional Water Quality Control Board (Water Board), would like to ask the following questions regarding the proposed Settlement Agreement and Stipulation for Entry of Order (Settlement Agreement). The Water Board must have all pertinent information in hand before considering adoption of a final Settlement Agreement. Responses to the following questions must be received by **August 31, 2022**.

#### **QUESTIONS:**

1. The State Water Resources Control Board's Policy on Supplemental Environmental Projects (SEP Policy) indicates that SEPs cannot include actions which the settling party, or any other regulated third party, is likely to be required to perform, such as part of an existing settlement or order in another legal action. The proposed SEP is located at a California Department of Fish and Wildlife (CDFW) facility that is operated and maintained by CDFW. Please confirm whether the SEP is a project that would likely be required to be performed under normal operation and maintenance of a CDFW facility.
2. It is unclear the anticipated water savings the SEP is projected to achieve. Is the 19 million gallons per day (MGD) water demand of Fish Creek Hatchery expected to go down upon implementation of the SEP or is the expectation that the SEP will help

the hatchery not exceed 19 MGD? What is the projected volume of water savings in MGD?

3. The SEP Policy includes a list of projects that are not allowable as SEPs, including “Projects that are expected to become profitable to the settling party within the first five years of implementation (within the first three years for SEPs implemented by settling parties that are small businesses or small communities) are prohibited. After that time period, profitable projects where the environmental or public health benefit outweighs the potential profitability to the settling party may be allowable with approval by the Director of OE.” This SEP is located at a CDFW facility and is expected to result in changes at the facility that could presumably result in a cost savings. Please describe whether implementation of the project would result in any profit to CDFW and if so, when the project is expected to be profitable?
4. The SEP Policy indicates “that the Water Boards may allow a settling party to satisfy up to 50 percent of the monetary assessment imposed in an ACL order arising out of a settlement by completing or funding one or more eligible SEPs.” When the Water Board proposes an order containing a SEP that exceeds 50 percent of the total adjusted monetary assessment, the Director of the Office of Enforcement may approve that proposed settlement when: (1) There is compelling justification to do so due to exceptional circumstances; or (2) In cases where the SEP is located in or benefits a disadvantaged community (DAC), an environmental justice (EJ) community or a community that has a financial hardship, or where the SEP substantially furthers the human right to water. The settlement in section II, #23 indicates that the proposed settlement would suspend the entire \$120,000.00 penalty pending SEP completion because the 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.” Can you please characterize how the Tribe will benefit from the water savings of the SEP given the location of the Tribe’s supply wells relative to the Fish Springs Hatchery supply wells? Does the SEP have benefits to the Tribe other than providing additional drinking water supply (e.g., habitat benefits, benefits to cultural resources, agricultural water supply)?
5. The SEP Policy indicates that the “SEP description in the stipulated order must address how the project will comply with the California Environmental Quality Act (CEQA) and these requirements shall be incorporated into the time schedule for the SEP.” The SEP description did not address how the project will comply with CEQA, nor did the Scope of Work, Schedule and Budget (Attachment C) include CEQA requirements in the schedule. Please revise the SEP description to explain how the project will comply with CEQA, and revise the Scope of Work, Schedule and Budget (Attachment C) to include requirements related to CEQA compliance for SEP implementation.

If you have procedural questions or need clarification regarding the questions posed in this letter prior to responding, the Advisory Team is available by conference call or a virtual meeting to help answer your inquiries. Please contact me at (530) 542-5412 or at [mike.plaziak@waterboards.ca.gov](mailto:mike.plaziak@waterboards.ca.gov) to schedule a conference call or a virtual meeting.



MICHAEL R. PLAZIAK, PG  
EXECUTIVE OFFICER

cc: Nancee Murray, California Dept. of Fish and Wildlife  
Leslie MacNair, California Dept. of Fish and Wildlife  
Heidi Calvert, California Dept. of Fish and Wildlife  
Matthew Norris, California Dept. of Fish and Wildlife  
David Boyers, State Water Board  
Wendy Wyels, State Water Board  
Elizabeth Beryt, State Water Board  
Ben Letton, Lahontan Water Board  
Patrice Copeland, Lahontan Water Board  
Timothy J. Middlemis-Clark, Lahontan Water Board  
Robert Tucker, Lahontan Water Board  
Cathe Pool, Lahontan Water Board  
Jan Zimmerman, Lahontan Water Board