

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

RESOLUTION R6T-2011-0102

**APPROVAL OF AMENDMENT TO THE
WATER QUALITY CONTROL PLAN FOR THE LAHONTAN REGION
TO REPLACE THE REGIONWIDE PESTICIDE WATER QUALITY OBJECTIVE WITH
A REGIONWIDE WASTE DISCHARGE PROHIBITION ON PESTICIDES WITH
EXEMPTION CRITERIA FOR AQUATIC PESTICIDE APPLICATIONS
AND CERTIFICATION OF SUBSTITUTE ENVIRONMENTAL DOCUMENTATION**

The California Regional Water Quality Control Board, Lahontan Region, (Lahontan Water Board) finds:

1. The proposed amendment to the Water Quality Control Plan for the Lahontan Region (Basin Plan) was developed in accordance with Water Code section 13240 et seq.
2. Pursuant to Public Resources Code section 21080.5, the Resources Agency has approved the Regional Water Boards' basin planning process as a "certified regulatory program" that adequately satisfies the California Environmental Quality Act (CEQA) (Public Resources Code section 21000et seq.) requirements for preparing environmental documents. (Cal. Code Regs., tit. 14, §15251, subd. (g); Cal Code Regs., tit. 23, § 3777.) The Substitute Environmental Documentation for this project includes the staff report; the language for the proposed amendment; the environmental checklist that identifies potentially significant adverse environmental impacts of the Basin Plan amendment, including any reasonably foreseeable significant adverse environmental impacts associated with the potential methods of compliance with the exemption, and mitigation measures to reduce those potential impacts; an analysis of alternatives; findings consistent with section 15091 of the CEQA Guidelines; a statement of overriding considerations consistent with section 15093 of the CEQA Guidelines; responses prepared by staff to address comments provided during the public review period, and this resolution.

The project is an amendment to the Water Quality Control Plan for the Lahontan Region that will establish a regionwide prohibition for pesticides in water in Chapter 4 of the Basin Plan. This prohibition will replace the existing regionwide water quality objective for pesticides. The amendment will give the Lahontan Water Board discretion to allow exemptions to the pesticide prohibition for aquatic pesticide treatments proposed for purposes of protecting public health or safety or ecological integrity and only if such projects satisfy specific exemption criteria.

The amendment also includes minor revisions to discussion of pesticide use throughout Chapters 3, 4, and 5 of the Basin Plan that are affected by the prohibition

language. These revisions include revising the language pertaining to rotenone use, which provides the Lahontan Water Board with discretion to allow the conditional use of rotenone by the United States Fish and Wildlife Service, in addition to uses currently proposed by the Department of Fish and Game. The amendment updates the current rotenone language by (1) refining the existing control measures and monitoring requirements for fisheries management programs, and (2) providing appropriate metrics to evaluate recovery of non-target organisms.

3. In the development and adoption of the amendment, the Lahontan Water Board considered factors in Water Code section 13241, and has concluded the requirements to comply with the amendment are reasonable and necessary in order to allow aquatic pesticide use for projects meeting specific exemption criteria while maintaining protection of water quality and past, present and probable future beneficial uses of water. The waste discharge prohibition coupled with exemption criteria will preserve the ability of the Lahontan Water Board to protect water quality from pesticide discharges while allowing specific aquatic pesticide projects to be carried out under Board oversight. The amendment provides the Lahontan Water Board the discretion to approve eligible aquatic pesticide applications carried out to protect public health, public safety, or ecological integrity. Such an approval includes granting an exemption to the prohibition and subsequently regulating the aquatic pesticide discharge under an applicable permit, such as individual or general Waste Discharge Requirements (WDRs), a National Pollution Discharge Elimination System (NPDES) permit, or a waiver of WDRs issued by the State or Regional Water Board.
4. The substitute environmental documentation concludes that the adoption of the Basin Plan amendment, which will allow the conditional use of aquatic pesticides, may have less-than-significant environmental impacts in many cases where aquatic pesticides are applied. As described in the Statement of Overriding Considerations, the SED also acknowledges and accepts the potential for significant environmental impacts for some uses of aquatic pesticides where long-term benefits to the people and environment of California outweigh those potentially significant environmental impacts.
5. CEQA scoping meetings were conducted on July 29, 2009 in Bishop, July 30, 2009 in Victorville, and July 31, 2009 in South Lake Tahoe. A notice of the CEQA scoping meetings was provided on the Water Board's website, printed in newspapers of record and was sent to interested parties, including public and environmental health departments, mosquito abatement districts, water management officials, federal and state wildlife agencies, resource conservation districts, environmental groups, and other individuals interested in the use of aquatic pesticides.
6. A Notice of Filing, the staff report, substitute environmental documentation, including a CEQA environmental checklist, and the draft basin plan amendment were prepared and distributed to interested individuals and public agencies on March 21, 2011 for review and comment in accordance with state environmental regulations

(California Code of Regulations, title 23, section 3775 et seq.) and federal Clean Water Act regulations (40 Code of Federal Regulations (CFR) Parts 25 and 131.)

7. During the written public comment period, two public hearings were held on April 13, 2011 and May 11, 2011 to solicit public testimony regarding the proposed Basin Plan amendment.
8. Lahontan Water Board staff considered public comments received and realized that some key changes to the proposed basin plan amendment language were necessary. On September 30, 2011, a subsequent Notice of Filing, a revised staff report, a CEQA environmental checklist, and the revised draft basin plan amendment were recirculated to interested individuals and the public. The scope of the recirculation was to solicit public input on modifications to the proposed amendment since it was last sent out for public review on March 21, 2011. This second public comment period was also conducted in accordance with state environmental regulations (California Code of Regulations, title 23, section 3775 et seq.) and federal Clean Water Act regulations (40 CFR Parts 25 and 131.)
9. The Lahontan Water Board heard and considered all written public comments and all testimony presented at duly noticed public hearings held at its regular meetings on April 13, 2011, May 11, 2011, and December 7, 2011.
10. The record as whole, including the staff report and environmental checklist, indicates that this amendment is consistent with the provisions of the State Water Resources Control Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality Waters in California" and the federal anti-degradation policy prescribed in 40 CFR section 131.12. The anticipated changes in water quality associated with discharges of aquatic pesticides that may be allowed under the amendment will not unreasonably affect present and anticipated beneficial uses of such water.

Lahontan Water Board staff acknowledge that projects may result in a temporary lowering of water quality. California Water Code, section 13241 recognizes that it is possible for the quality of water to be degraded to some degree without unreasonably affecting beneficial uses. While the presence of aquatic pesticides may temporarily lower water quality, control measures that are built into the project (to satisfy exemption criteria and permit requirements) will limit the temporal and spatial extent of any impacts to water quality. As such, water quality is maintained at levels that comply with water quality objectives and at levels capable of supporting beneficial uses.

The staff report analyzes emergency and vector control projects for consistency with the requirements of the state and federal anti-degradation policies. For all other aquatic pesticide projects, when filing an exemption request, project proponents must supply project-specific information that will allow the Water Board to determine

whether the project is consistent with the provisions of federal and state anti-degradation regulations.


11. Based on the entire record, including the environmental checklist and staff report, and public comments and staff's responses to comments, the Lahontan Water Board has determined that adoption of the proposed amendments to the Basin Plan may have, either individually or cumulatively, potentially significant impacts on the environment, specifically in the areas of biological resources, greenhouse gas emissions, water quality, hazardous materials and indirect effects on human beings. The environmental documentation includes a Statement of Overriding Considerations in which the Lahontan Water Board finds that the anticipated long-term benefits of this Basin Plan amendment outweigh and render acceptable the potentially significant impacts that were unable to be mitigated to levels less than significant. Serious public health, safety, and economic implications could result if the amendment is delayed and uses of aquatic pesticides to protect health, safety, and maintain the integrity of the environment continue to be prohibited. In effect, the amendment will make it possible for the Lahontan Water Board to allow the conditional use of pesticides for projects vital to public health and safety and ecological preservation which benefit the people and the environment of California as a whole.
12. The Lahontan Water Board finds that the analysis contained in the staff report, the proposed amendment, the environmental checklist, the alternatives analysis, the CEQA findings and Statement of Overriding Considerations, and the responses to public comments comply with the requirements of the State Water Board's certified regulatory CEQA process, as set forth in California Code of Regulations, title 23 section 3775 et seq.
13. The proposed amendment meets the necessity standard of the Administrative Procedures Act, Government Code section 11353, subdivision (b).

THEREFORE BE IT RESOLVED THAT:

1. The Lahontan Water Board considered the information and analysis provided in the Substitute Environmental Documentation prepared by Lahontan Water Board staff pursuant to Public Resources Code Section 21080.5, and the Lahontan Water Board certifies that the Substitute Environmental Documentation reflects the independent judgment of the Lahontan Water Board and complies with all applicable requirements.
2. The Lahontan Water Board adopts the amendment to the Water Quality Control Plan for the Lahontan Region to replace the existing regionwide water quality objective for pesticides with a regionwide prohibition for pesticide application to water with exemption criteria for aquatic pesticide use.

3. The Executive Officer is directed to forward copies of the Basin Plan amendment and the administrative record to the State Water Board in accordance with requirements of section 13245 of the Water Code.
4. The Lahontan Water Board requests that the State Water Board approve the Basin Plan amendment in accordance with the requirements of sections 13245 and 13246 of the Water Code and forward them to the California Office of Administrative Law (OAL) and the U.S. Environmental Protection Agency for approval.
5. Following approval of the Basin Plan amendment by the State Water Board and OAL, the Executive Officer shall file a Notice of Decision with the Resources Agency. The record of the final Substitute Environmental Documentation shall be retained at the Lahontan Water Board's office at 2501 Lake Tahoe Boulevard, South Lake Tahoe, California, in the custody of the Lahontan Water Board's administrative staff.
6. If, during its approval process, Lahontan Water Board staff, State Water Board or OAL determines that minor, non-substantive changes to the amendment language or supporting staff report are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Lahontan Water Board of any such changes.

I, Harold J. Singer, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Lahontan Region on December 7, 2011.


HAROLD J. SINGER
EXECUTIVE OFFICER