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## Lahontan Regional Water Quality Control Board

July 27, 2020

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File: Environmental Doc Review  
Inyo County

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Governor's Office of Planning & Research

**Jul 27 2020**

**STATE CLEARINGHOUSE**

### **Comments on the Notice of Intent to Adopt a Negative Declaration for the Pine Creek Mine Hydroelectric Project, Inyo County, Pine Creek Mine, LLC, State Clearinghouse Number 2020069038**

Lahontan Regional Water Quality Control Board (Water Board) staff received a Notice of Intent to adopt a Negative Declaration for the above-reference project (Project) on June 24, 2020. The notice, which included a draft Initial Study/Negative Declaration (IS/ND) and associated appendices, was prepared by the State Water Resources Control Board (State Water Board) and submitted in compliance with provisions of the California Environmental Quality Act (CEQA). The proposed Project is to construct and operate of 1.5-megawatt hydroelectric turbine within an existing mine adit of the former Pine Creek Mine; the power generated would be sold to a local utility or wholesale grid. An existing concrete plug in the adit, combined with the aquifer and groundwater sources draining through the mine adit system, will provide the necessary head for the power generation system. Water exiting the turbine and penstock will be routed to an existing pond; from there, water will flow over the pond's concrete spillway and into Morgan Creek just upstream of the confluence with Pine Creek. Because the Project will require licensing under the Federal Energy Regulatory Commission, the State Water Board will issue any required Federal Clean Water Act (CWA), Section 401 Water Quality Certification, and is acting as lead agency for CEQA.

Lahontan Water Board staff, acting as a responsible agency, is providing these comments to specify the scope and content of the environmental information germane to our statutory responsibilities pursuant to CEQA Guidelines, California Code of Regulations (CCR), title 14, section 15096. We encourage the State Water Board to consider our comments on the proposed Project and the environmental review documents, as outlined below.

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PETER C. PUMPHREY, CHAIR | PATTY Z. KOUYOUMDJIAN, EXECUTIVE OFFICER

**COMMENTS ON THE PROPOSED PROJECT AND ON THE IS/ND**

1. The Lahontan Water Board regulated waste discharges associated with the former Pine Creek Mine under Board Order No. 6-00-93. Authorized waste discharges included the discharge of Group C mining waste to four unlined tailings ponds located adjacent to Pine Creek, downstream of the proposed Project. The location of these tailings ponds relative to the Project site is shown on Figure 2 of the IS/ND (Appendix A). When the mine ceased operation, the tailings ponds were closed leaving the waste in-place and capping the waste with a vegetated final cover system installed over top. Other closure activities included the placement of rip-rap to protect the toe of the closed tailings ponds adjacent to Pine Creek from erosion, and other storm water/drainage controls to protect the closed tailings ponds from washout. Compared to other types of mining wastes, Group C mining wastes have the lowest threat to water quality, the main threat being sedimentation and turbidity to surface waters. In 2014, the Lahontan Water Board found that the Pine Creek Mine closure activities were complete and that post-closure monitoring showed that the site in its closed state posed little threat to water quality; consequently, the Lahontan Water Board rescinded the waste discharge requirements and relieved the discharger from further monitoring and reporting. Documents related to the former Pine Creek Mine are available on GeoTracker under the [Pine Creek Operation Mill](https://geotracker.waterboards.ca.gov/profile_report.asp?global_id=L10005420973) site ([https://geotracker.waterboards.ca.gov/profile\\_report.asp?global\\_id=L10005420973](https://geotracker.waterboards.ca.gov/profile_report.asp?global_id=L10005420973)).

Our primary concerns with the proposed Project are the potential effects development and construction might have on the closed tailings ponds. It is crucial that any future development on or near the former Pine Creek Mine site does not affect the integrity of the closed tailings ponds' final cover system or the drainage/storm water and erosion control systems installed as part of the approved closure plan for the mine. The integrity of the closed tailings ponds must be maintained to contain the wastes that are buried in-place. Increased flows to Morgan Creek as result of Project implementation has the potential to breach the containment of the closed tailings ponds. A breach in the containment would result in waste discharges to Pine Creek and could lead to significant impacts to the quality of surface waters in Pine Creek and to downstream riparian habitats. As such, it is critical that post-Project flow rates match pre-Project flow rates.

2. We support the continued "run-of-mine" flows from the adit and the development of an "Initial Fill Plan" to monitor and regulate the rate and magnitude of flow from the adit, especially the rate and magnitude of flows that pass through the point of discharge to Morgan Creek. We recommend the Project proponent include in this plan detailed procedures for maintenance (both routine and unplanned) as well as a suite of contingency measures that could be implemented should any of the pressure sensors and/or other electronic monitoring devices fail.

3. The beneficial uses of all waters of the state within the Lahontan Region are outlined in Chapter 2 of the Water Quality Control Plan for the Lahontan Region (Basin Plan). The surface waters in and around the Project area are located within the Upper Owens Hydrologic Area of the Owens watershed (Hydrologic Area No. 603.20). The Project proposes to discharge directly to Morgan Creek, which is a tributary to Pine Creek. The IS/ND correctly lists the beneficial uses for Pine Creek but does not include the beneficial uses for Morgan Creek. Morgan Creek is considered a “minor surface water” in accordance with the Basin Plan and is assigned the following beneficial uses: municipal and agricultural supply (MUN, AGR), industrial supply (IND), groundwater recharge (GWR), recreation (REC-1, REC-2), commercial and sport fishing (COMM), cold water habitat (COLD), wildlife habitat (WILD), rare or endangered species habitat (RARE), and water quality enhancement (WQE). We request that the IS/ND be revised to identify the beneficial uses of Morgan Creek and, as necessary, include an analysis of the Project’s potential impacts to water quality and hydrology with respect to those beneficial uses.
4. On page 84 of the IS/ND and again on page 86, it is stated that “Hydropower Generation” (POW) is an identified beneficial use. For the record, POW is a designated beneficial use for Pine Creek, but is not a specific designated beneficial use for Morgan Creek.
5. Water quality objectives (WQOs), both numerical and narrative, for all waters of the state within the Lahontan Region are outlined in Chapter 3 of the Basin Plan. We appreciate that the IS/ND included reference to the numerical WQOs that are specific to Pine Creek. In addition to those numerical WQOs, there are many narrative WQOs that apply to all surface waters depending on the designated beneficial uses assigned to the waterbody (beginning page 3-3 of the Basin Plan). For example, the temperature WQO is dependent upon whether a water is designated WARM or COLD; for waters designated COLD, such as Pine Creek and Morgan Creek, the temperature shall not be altered. As another example, the turbidity WQO for all surface waters is such that increases in turbidity shall not exceed natural (background) levels by more than 10 percent. The IS/ND should reference all applicable WQOs for the surface waters within the Project area. It is these objectives that should be used when evaluating thresholds of significance for Project impacts.
6. The IS/ND indicates that a “Water Quality Protection and Monitoring Plan” will be developed as part of the Project, though details of the plan were not provided in the environmental document. We envision that the purpose of the Water Quality Protection and Monitoring Plan would be to detect at the earliest possible detection changes in water quality that could affect the beneficial uses of Morgan Creek and Pine Creek. We recommend that this plan be prepared in consultation with State Water Board and Lahontan Water Board staff and be required to be approved by State Water Board staff prior to completion of Project construction. At minimum, the plan should include the following: a list of the numeric and narrative WQOs that apply to both Morgan Creek and Pine Creek; a

list of the monitoring parameters, monitoring frequencies, and laboratory methods for each parameter; a map showing monitoring locations (at least one upstream of the discharge, one downstream of the discharge, and one of the discharge itself); and a list of contingency measures that could be implemented should monitoring indicate that WQOs are or are close to being exceeded. The effectiveness of the Water Quality Protection and Monitoring Plan should be evaluated biennially (every two years) and updates to the plan made, as necessary, based on that evaluation.

7. The IS/ND indicates that a "Plug Maintenance and Repair Plan" will be prepared and that it will include a requirement to inspect the plug following any magnitude 5.0 or greater earthquake. We recommend that the plan specify how the Project proponent will discern whether an inspection is warranted following an earthquake event. One recommendation would be to refer to the Modified Mercalli Intensity Scale VI or higher for equivalent ground shaking generated by a significant earthquake of Richter magnitude 5.0 or higher as contained with the United States Geological Survey [Earthquake Hazard Program Magnitude/Intensity Comparison](https://earthquake.usgs.gov/earthquakes/map/) map (<https://earthquake.usgs.gov/earthquakes/map/>).
8. The Baseline Aquatic Habitat Monitoring Survey (Appendix E) only evaluates Pine Creek. Please note that Morgan Creek has the RARE beneficial use designation, Pine Creek does not. Also, the survey is from 2013 and baseline conditions of aquatic habitats and organisms may have changed as a result of climate change since, especially as a result of the decreased snow fall and increased rainfall that has been recorded in the Eastern Sierra Nevada over the last decade. Please explain why Morgan Creek was not included in the baseline evaluation and provide justification for why an updated baseline survey was not prepared for this Project.

Thank you for the opportunity to comment on the Project and on the IS/ND. If you have any questions regarding this letter, please contact me at (760) 241-7376 or at ([jan.zimmerman@waterboards.ca.gov](mailto:jan.zimmerman@waterboards.ca.gov)). Please send all future correspondence regarding this Project to the Water Board's email address at [Lahontan@waterboards.ca.gov](mailto:Lahontan@waterboards.ca.gov) and be sure to include the State Clearinghouse No. and Project name in the subject line.



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cc: State Clearinghouse (SCH 2020069038) ([state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov))  
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