



California Regional Water Quality Control Board

Lahontan Region



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TRANSMITTAL OF PROPOSED ORDER AND RESPONSE TO COMMENTS ON TENTATIVE REQUIREMENTS – WATER QUALITY CERTIFICATION, WASTE DISCHARGE REQUIREMENTS, AND NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT FOR CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER, LOWER OWENS RIVER PROJECT, INYO COUNTY

The Regional Water Board received comments from the City of Los Angeles Department of Water and Power (LADWP) on June 3, 2005 concerning the above-cited tentative Order. Unless otherwise noted, comments and responses are with regard to the tentative Order released for public review on May 6, 2005. Our response headers are as outlined in LADWP's comment letter (attached), and numbered for easy reference. Please review the changes to the proposed Order (attached), as outlined below.

1. Order Page 2 – Table of Permit Provisions Expirations

The specification of “005” in the table on page 2, a reference to Discharge 005, is clearly inconsistent with other provisions of the Order and has been removed from the table as an inadvertent error. Water quality at 005 is now considered under State authorities in the proposed Order (see below).

2. Order Page 2 – Section 401 Water Quality Certification

The comments request to exclude Discharge 005 from Clean Water Act Section 401 certification provisions, and suggests that waste discharge requirements be prescribed for Discharge 005. The tentative Permit applied CWA Section 401 provisions and conditions as certification requirements for Discharge 005, which could imply the Section 402 requirements in the passage are also “applicable provisions.” We have considered the comments and now propose that Discharge 005 (diverted stream flow with wastes pumped to the Aqueduct and/or dust control) be regulated under state authorities rather than CWA Section 401, as in the tentative Order. As suggested by LADWP (S. Damron) in discussions clarifying the comments, the Regional Water Board will require monitoring of the effects of Discharge 005 on water quality pursuant to its CWC Section 13267 Order authority to determine whether wastes have been discharged, and to ensure that the actions associated with diverting water to the Los Angeles Aqueduct do not cause or contribute to violations of applicable water quality standards for Haiwee Reservoir. The Regional Water Board reserves the right to later prescribe waste discharge requirements for Discharge 005, if necessary, or pursue other remedies for violations as authorized by law. This approach had been considered prior to the tentative decision to certify these discharges under CWA Section 401, and is considered an equally effective method to verify compliance with

standards without resolving the legal questions raised concerning CWA jurisdictional authorities. This change is reflected throughout the Order. (See our comments also in No. 23, below.)

3. Order Page 17 – Section VI(C)(2) – SWPPP Submittal Date, and SWPPP Review and Approval

The comments are concerning requirements to submit a Storm Water Pollution Prevention Plan (SWPPP) to the Regional Water Board by September 15, 2005 when construction is not expected until March 2006, and to submit the SWPPP for review and approval by the Regional Water Board at a public meeting. These requirements were developed based on a February 28, 2005 decision of the United States Court of Appeals for the Second Circuit in a case¹ concerning NPDES permitting. The petitioners challenge an administrative rule promulgated by the USEPA in order to regulate the emission of water pollutants by concentrated animal feeding operations. In part, the Court held that where site-specific pollutant management plans (such as a SWPPP) serve as technology-based effluent limitations in an NPDES permit, site-specific pollution controls developed by the Discharger should be subject to agency and public review as part of the NPDES permitting process. The same thinking would apply to plan amendments related to substantive changes to pollution prevention and control practices.

Based on the Court decision, we propose to keep these requirements in the Order. However, we will not specify a submittal date, and have changed the SWPPP submittal requirement to provide the Regional Water Board 180 days to review the submittal, prepare for and hold a Board meeting to consider incorporating the SWPPP into the Order. Based on the March 2006 construction date, September 15, 2005, would be an appropriate submittal date for a hearing as early as January 2006 but no later than March 2006. We do not view the preparation of a site-specific SWPPP by September as overly burdensome. The SWPPP development requirements are explicitly described in Attachments L and M. We suggest that a SWPPP utilizing a tiered approach for implementing BMPs from a suite of identified BMPs can serve to allow flexibility in BMP selection (i.e., by contractors), while providing adequate detail on the BMPs to be used to achieve BAT/BCT.

4. Order Page 18, Section VI(C)(2)(e)(1-3) – Whole Effluent Toxicity Testing

The comments request revisions to State Implementation Plan (SIP) requirements that we are not at liberty to change. The concern seems to be with making sure that efforts are directed at identifying the source of toxicity prior to conducting a toxicity reduction evaluation (TRE) in the event that discharges are tested and considered toxic under the procedures. The need to identify the toxicity source(s) is implicit in the TRE requirement, as the generally practicable means to proceed with a TRE unless the source is obvious. TRE requirements, if imposed, are to be conducted as directed by the Regional Water Board Executive Officer. Clarifying language on these points has been added to (e)(1), as follows: “The toxicity reduction evaluation may include evaluation(s) to identify specific sources of toxicity.”

¹WATERKEEPER ALLIANCE, INC., AMERICAN FARM BUREAU FEDERATION, NATIONAL CHICKEN COUNCIL, NATIONAL PORK PRODUCERS COUNCIL, AMERICAN LITTORAL SOCIETY, SIERRA CLUB, INC., NATURAL RESOURCES DEFENSE COUNCIL, INC., *Petitioners/Intervenors*, —v.— UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, MICHAEL O. LEAVITT, Administrator, United States Environmental Protection Agency, *Respondents*.

5. Order Page 18, Section VI(C)(2)(e)(1-3) – BMP Implementation

The comments request revisions to requirements incorporated from the Statewide Construction Activity Storm Water Permit. The comment seems to point out a distinction without a difference. To clarify here, the requirement is for the Discharger to notify the Regional Water Board by telephone within 48 hours after discovery of a discharge that exceeds (violates) water quality standards. The discovery time of the violation is the notification trigger, not the time when the discharge occurred (unless they happen to be the same). No additional clarification is needed.

6. Page 20, Section b(4) – Additional Conditions

The comments conclude with a request to move the receiving water monitoring compliance point for Pump Station discharges to the Los Angeles Aqueduct to immediately upstream of Haiwee Reservoir. That location is too far away to obtain samples that would be representative of the effects of the Pump Station discharge on water quality. The Los Angeles Aqueduct intercepts several surface streams enroute to Haiwee Reservoir. Without extensive water quality and flow monitoring of these inputs, it will be impossible to separate and discern the effects of the Pump Station discharge. After discussing the comments with LADWP staff, the receiving water monitoring location for Pump Station discharges to the Los Angeles Aqueduct (R-005) has been changed from 100 feet downstream of the Pump Station outfall, to the Los Angeles Aqueduct 100 feet upstream of Cottonwood Creek, approximately 6.5 miles downstream of the outfall. LADWP's Cottonwood Power Plant and a Los Angeles Aqueduct flow measuring station are located in this area. Monitoring at this location was suggested because existing flow monitoring capabilities and staffing at that location would decrease costs to conduct monitoring. This is acceptable because there are no additional surface water inputs to the concrete-lined Los Angeles Aqueduct between the Pump Station outfall and the water quality monitoring location. Flow will be monitored at the Los Angeles Aqueduct measuring station just downstream from Cottonwood Creek, and the flow contribution from Cottonwood Creek will be subtracted to obtain the Los Angeles Aqueduct flow rate below the Pump Station discharges (assuming negligible evaporative losses). For the purposes of this Order, the Los Angeles Aqueduct water quality at the monitoring location upstream of Cottonwood Creek will be considered representative of the water quality conditions in the Los Angeles Aqueduct at the Pump Station outfall, only displaced in time (estimated at 15-19 hours depending on Los Angeles Aqueduct flow). We have added a requirement for LADWP to prepare and provide a table of estimated average flow times for the discharge to reach Cottonwood Creek under various Los Angeles Aqueduct flow rates to coordinate upstream and downstream monitoring.

7. Order Page 20, Section VI(C)(7)(b)(6) – Flushing Flows

In response to the comments, Regional Water Board staff has developed an alternative flushing flow release regime from the Alabama Spillgate that will result in a very significant reduction in the amount of water used while achieving similar water quality effects. Briefly, the Order has been revised to require augmenting the first Winter Habitat Flow with releases from the Alabama spillgate to achieve a 200 cfs flow rate at the Alabama Gate for a minimum period of 96 hours. The details of the revised release regime and technical rationale are explained in revised Attachment H. The net volume of water that would be released as a result of this requirement (and associated impact to the City's water supply) is within the scope of the project approved by the LADWP Board of Water and Power Commissioners. Using the release estimates for the 200 cfs Seasonal/Winter Habitat Flows, we estimated approximately 1400 acre-feet of water would be delivered to the River below the Pump Station. We have conservatively estimated that with channel losses to the Alabama Gate of up to 25% of River Intake releases during the 200-cfs Seasonal/Winter Habitat Flow, the additional water needed to maintain a 96-hour, 200 cfs flow

amounts to roughly 700 acre-feet, or half the water losses approved for the scheduled 2006-2007 Seasonal/Winter Habitat Flow that was to occur, but will not occur due to project delays. Actual water losses due to the Alabama Release are expected to be less than estimated above.

The comments also suggest that the desired flushing effects of the Alabama Release would not occur due to river hydraulics, and the effects of obstructions such as beaver dams and dense muck and vegetation (tules) in the lower river reaches. We disagree, and find contradictory evidence and considerable uncertainty in the CEQA record concerning these matters.

For example, the FEIR, p. 2-26, states, "Ecosystem Sciences (Technical Memorandum No. 9) has postulated that muck will be suspended during seasonal habitat flows in the river." At Section 4.3.2, the FEIR discusses hydraulic modeling efforts, and develops estimates of various hydraulic factors such as stream velocities and water depths. Information is presented (p. 4-11) to indicate that at a depth of three feet, flow velocities on the order of one foot per second (fps) may dislodge tule plants, and that computer models

"... indicate that average velocities for both the 40-cfs base flow and the 200-cfs seasonal habitat flows in a channel with dense vegetation would not exceed this value. However, observations of flow velocities at the Mazourka Canyon Road station during the 1993 field experiment were greater than 1 fps [e.g., 1.62 fps @ 91 cfs] under both baseflow conditions, and when the discharge from the River Intake was 155 cfs (Jackson, 1994a). Hence, there is potential for some localized scouring of tules with the proposed flow regime, based on available data."

The FEIR summary (p. 4-11) states, in part, "Predicted velocities under the seasonal habitat flows appear to be sufficient to remove some beaver dams, or breach the dams, but not high enough to remove all dams."

Many beaver dams and other flow impediments will be mechanically removed in connection with the LORP. Localized tule scour and beaver dam breaches may tend to increase the average stream velocity and peak stream velocities during the flow event, as channel roughness from obstructions is further reduced. As FEIR Table 4-3 shows, models predicted that *average* stream velocities as high as 2.66 fps may occur in certain portions of the river in the absence of dense vegetation, but the model does not accurately account for transport and velocity characteristics of a sediment-water mixture. Use of averaging techniques when evaluating depth and velocity values for scour potential does not account well for conditions that initiate erosion and sediment transport processes (i.e., flow exceeding critical bed shear stress values). Rather, the models serve to indicate that velocities may exceed 1 fps, and that erosion of muck and sediment entrainment should be anticipated (and may be substantial).

Other examples could be cited, but given the uncertainties and inherent assumptions and limitations associated with modeling and predicting the flow and sediment transport behavior of a complex river system such as the Lower Owens River, the conceptual basis for requiring additional flushing flows in the river below the Alabama Gate is justified and prudent. Other commentators have concurred that the additional flushing flows associated with the Alabama Release are necessary and desirable to hasten restoration. Reducing the total amount of water needed to flush the lower river in the manner now proposed should reduce or eliminate LADWP's principal objection to including this mitigation measure in the LORP.

In granting an exemption to Basin Plan prohibitions for the Lower Owens River the Regional Water Board must find, in part, that "[a]ll applicable . . . mitigation measures have been incorporated into the project to minimize . . . potential adverse environmental impacts . . ." (Fact Sheet, p. F-19). We will therefore recommend revised flushing requirements as described in the proposed Order (see revised Order Attachment H). In addition, we have made other changes to

the Order related to these matters: We have added a new section to the proposed Order. Under Special Provisions, Order Section VI.C., we've added No. 8, Prohibition Exemption and California Environmental Quality Act Requirements. We have moved WQC conditions in tentative Order sections VI.C.7.b.6 and 8 to this new section, and have added a condition that if LADWP does not implement the Alabama Release mitigation measure as required in the proposed Order, the exemption to discharge prohibitions for the Lower Owens River granted in Order Section III.B. is rescinded. The pertinent sections of the Fact Sheet have also been updated accordingly.

8. Order Page 20, Section VI(C)(7)(b)(7) – Wetland Assessment

The comments propose an alternative schedule for the initial wetland reassessments (in year seven following establishment of base flow release to the river), and eliminating additional wetland reassessments if (and only if) the initial wetland reassessment demonstrates no net loss of wetland functions and values relative to pre-project conditions. Fact Sheet Page F-4 (2nd complete paragraph) already includes findings addressing the comments concerning subsequent assessments. However, we have revised the schedule and modified the Order to clarify the matter accordingly.

9. Order Page 20, Section VI(C)(7)(b)(9) – Permit Fee Payment

The determination of applicable water quality certification fees is related to whether the LORP is required under a regulatory mandate. On further reflection and after considering your comments, we agree that the LORP is not so required as we understand the intent of the fee regulations. Therefore the appropriate water quality certification fee is \$500, and the Order has been modified accordingly.

10. Monitoring and Reporting Program (MRP), Page E-2 – Monitoring Location Description

The comments request changes to the way monitoring locations are designated. The abbreviated naming conventions used are part of a statewide effort to standardize NPDES Permits and data management. Within that context we will accommodate the following changes:

Tentative Abbr.	Proposed Abbr.	
M-INFA	M-001U	(Note: U for “upstream” of Discharge 001, etc.)
M-INFB	M-002U	
M-INFC	M-003U	
M-INFD	R-005U	
M-001B	M-001R	(Note: R for River)
R-001	R-004A	(Note: A –D from “upstream” to “downstream”)
R-002	R-004B	
R-003	R-004C	
R-004	R-004D	

Other monitoring location designations will remain unchanged. In addition, M-005 (Pump Station outfall discharge to Los Angeles Aqueduct) has been eliminated, and the monitoring location R-004D (Lower Owens River at Pump Station forebay) will be used to represent the water discharged by the Pump Station. There is a difficulty in sampling at the Pump Station outfall because the pressurized outfall will be submerged within the Los Angeles Aqueduct. Therefore, for purposes of the Order, the water quality at the forebay (inlet) of the Pump Station will be considered representative of the quality of the water discharged from the Pump Station outfall to the Los Angeles Aqueduct.

11. MRP Page E-4, Section III(A) – Influent Monitoring Frequency

The river monitoring upstream of discharges is needed for comparison with corresponding monitoring downstream to determine the effects of the discharges on water quality, and to reduce the interference of water quality factors not related to the discharge in making comparisons. The primary intent is to characterize ambient water quality in the river at that point. Order Section III.A, as written, requires daily monitoring of certain field parameters “during construction activities” rather than when discharges are occurring. The Order has been revised in that regard. The monitoring is needed to provide immediate field data to guide BMP implementation and gauge effectiveness. At certain times, daily (or even more frequent) monitoring may be helpful to maintain and demonstrate compliance, while at other times such data may be of limited value, i.e., after water quality conditions have stabilized during steady-state dewatering discharges. The problem is how to know when such conditions are achieved in the absence of monitoring.

LADWP has requested that the monitoring frequency be reduced from daily to monthly. From our perspective, monthly monitoring of discharges is inadequate. A preferred approach is to perform routine monitoring at a sufficient frequency to detect water quality problems, and increase the monitoring frequency if a problem arises until the problem is demonstrably resolved. This approach also comes with logistical drawbacks. However, on a project of this magnitude, we would expect that inspections would accompany the construction activity, and that personnel on the project site could be trained in the care and use of field instruments for measuring temperature, pH, specific conductance, dissolved oxygen, and turbidity.

The proposed Order has been revised to require field monitoring of upstream and downstream water quality parameters in the river on a modified-weekly basis (denoted as *weekly*) following initial monitoring when discharges of waste associated with construction and earthmoving are occurring and there is water present at the sampling location(s). If a downstream parameter during such monitoring exceeds the upstream parameter by more than ten percent, where

$$\% = \left| 1 - \frac{\text{upstream sample value}}{\text{downstream sample value}} \right| \times 100$$

(to account for field sampling and computational error), that parameter shall be monitored on a daily basis until the values agree to within 10% or less for three or more consecutive days, or until the discharge ceases. The two vertical lines in the equation ($| \quad |$) denote absolute value. These changes will also be reflected in the tabulated monitoring schedule on page E-10; second entry.

The last paragraph of the comments on this part of the Order states: “LADWP understands that this influent monitoring, by virtue of the fact that it is sampling that occurs before a discharge to the receiving water, is not subject to the receiving water limitations listed in Section V of the Order.” That understanding is incorrect; please refer to Order Section VII (page 21) for an explanation of how receiving water limitations are applied. In a project of this nature, discharges from upstream construction sites may affect ambient receiving water quality above downstream construction sites, as may other water quality factors not subject to control and/or for which the Discharger is not responsible.

12. MRP Page E-5, Section III(B) – Influent Monitoring

The comment questions the need for two influent monitoring points. The first (M-INFA) is needed above the River Intake to characterize the river water quality prior to flowing into the project site and the Los Angeles Aqueduct upstream of discharges 001 and 004, and the second (M-INFD) is needed to characterize the water quality in the Los Angeles Aqueduct above the influence of the Pump Station discharge. Between these monitoring points is approximately 60 miles of open earthen aqueduct that diverts and impounds several additional surface streams, and releases water at various points. Because these influent streams may vary in their water quality, one may not assume a single monitoring location will accurately represent water quality at both locations.

The comment suggests that field monitoring at M-INFA duplicates requirements in Section III.B., as discussed above. This appears to be a mistaken impression, as the monthly monitoring will not occur at these locations until “the first day of initiating flow from the River Intake to the Lower Owens River,” as specified in the third entry of the tabulated monitoring schedule on page E-10. The section will not be deleted as requested, but has been clarified to indicate that this monthly monitoring is to commence with reintroducing flow to the project site. We have also added M-INFA (now M-001U) as a monitoring station for discharge 004, an oversight in the tentative Order. If construction dewatering at the River Intake is still occurring at that time, the field data will also be required as discussed in response No. 12, above.

13. MRP Page E-4, Section III(A) – Effluent Monitoring Frequency

See our response at No. 11, above. The requirements for effluent monitoring have been modified as for influent monitoring. If there is no water present at the sampling location a certification of “no water present; no sample required” will be an acceptable monitoring result for reporting purposes. Lastly, “. . . LADWP’s understanding that the numeric receiving water limitations listed in Section V of the Order do not apply to these [stream diversion, construction dewatering, and dredge spoil dewatering] discharges as effluent limitations at these sample locations . . .” is correct. However, in the upper, dry reaches of the river, the receiving water may be so-called “effluent-dominated” or composed entirely of the waste discharge at times. In such cases, as always, the discharge may not cause violations of applicable receiving water limits.

14. MRP Page E-6, Section VI – Land Discharge Monitoring

The comments are related to water quality field monitoring during dredging, including maintenance dredging. Water quality monitoring is a means to verify the effectiveness of physical barriers required to isolate dredging sites. Water quality monitoring will not be necessary if there is no water present to be sampled, and this has been clarified. Certain dredging sites will also have point source discharges where sampling will be conducted as discussed above. In that case, the monitoring would not be duplicative, but would rather serve both purposes (monitoring the receiving waters upstream and downstream of dredging activity and the point source discharge). We therefore do not agree that this section duplicates the field monitoring requirements of Sections III and IV, as monitoring requirements may be triggered by different activities. In addition, after construction is completed, monitoring is required during maintenance dredging that may occur at the Pump Station forebay and the River Intake, or to remove blockages that may develop as a result of seasonal habitat flows, etc. With regard to the frequency of field monitoring, see our response in No. 11, above, which we will also incorporate in Order Section VI.

15. MRP Page E-7, Section VIII – Receiving Water Monitoring

The comments interpreting the requirements do not appear entirely correct, or perhaps we are misunderstanding the comments. MRP Section VIII is intended to monitor the effects of reintroducing flow to the River on receiving water quality, and monthly monitoring will commence on or after “the first day of initiating flow from the River Intake to the Lower Owens River,” as specified in the third entry of the tabulated monitoring schedule on page E-10. We do not know exactly when that will occur. Based on the FEIR (p. 2-17) Phase I releases (5-17 cfs) will occur no later than 6 months after all permits have been granted and will achieve a continuous flow from the River Intake to the Delta. In addition, the lower half of the river in the LORP area is perennially wetted by Los Angeles Aqueduct releases, and water quality conditions there could be affected by the reintroduced flows. Flow release activities may overlap with specific construction-related discharges. Again, in that case, the monitoring would not be duplicative, but would rather serve both purposes (monitoring the receiving waters upstream and downstream of dredging activity and the point source discharge). We therefore do not agree that this section duplicates the monitoring requirements of Sections III.A. and IV.A., as monitoring requirements may be triggered by different activities.

16. MRP Page E-7, Section IX(A) – Interim Priority Pollutant Monitoring

The comments request an exception from California Toxics Rule monitoring as required pursuant to the SIP. The Regional Water Board is required to follow the SIP unless an exception may be granted. The LORP does not qualify for an exemption as allowed for in SIP Section 5.3, and therefore the monitoring will be required.

17. MRP Page E-8, Section IX(B) – Wetland Functions and Values Monitoring

The comments concern revising the schedule for wetland reassessments, as discussed in response No. 8, above. The suggested changes have been incorporated in the Order.

18. MRP Page E-9, Section IX(C) – Receiving Water Monitoring

It is not clear whether the comments concerning monitoring schedules and frequencies apply only to this Section, which concerns monitoring of Seasonal Habitat Flows (i.e., the first three releases in excess of 40 cfs), or to monitoring all reintroduced flows. Assuming the former, the request is to coordinate monitoring requirements with the monitoring schedule in the FEIR, Table 2-8. The two sampling schedules are closely similar. Sampling 5 days versus 7 days per calendar week during the event is acceptable, but we will also require collection of at least two samples during the first week following cessation of high-flow releases, at a minimum of two-day intervals. Thereafter, additional monitoring is discretionary, but we will require the submittal of all data obtained if additional monitoring is conducted as described in the FEIR. These changes will be reflected in the proposed Order.

19. MRP Page E-10, Section X(B)(3) – Monitoring Periods

The comments request revisions to the table for this section, consistent with LADWP’s earlier comments. The table has been updated and clarified consistent with our responses to those comments, incorporating some of the suggested changes and clarifications. Please see the revised table in the proposed Order. Consistent with the Statewide Construction Activity Storm Water Permit, storm water reporting, other than non-compliance reporting, is not required and therefore requirements to submit an annual storm water report are eliminated from the table.

20. Fact Sheet Page F-2, Section I(B) – Permit Information

We will replace the suggested wording with, “ The Discharger proposes to discharge wastewater to the Lower Owens River, Owens Lake, and Haiwee Reservoir via the Los Angeles Aqueduct.”

21. Fact Sheet Page F-3, Section I(C), Paragraph 4 – Potential to Impair Water Quality

The comments note that normal runoff events in the watershed can adversely affect water quality in the Lower Owens River and Los Angeles Aqueduct. The Order provisions recognize that water quality may vary. For example, the numerical receiving water objectives for Haiwee Reservoir (Order Section V.B., p. 16) are stated as both annual average values, and 90th-percentile values, to account for variability in water quality conditions. (Note: we have added a requirement to report certain monitored parameters in these terms. See revised MRP Section X.B.5.) If these objectives are not routinely being met (i.e., more than 10% of samples exceed the 90th-percentile value for a specific parameter) pollution may be occurring, and then the source of the pollutants would need to be determined. Water quality impairments due to natural causes (such as the landslide mentioned) are not considered controllable water quality factors. Of course, the intent of monitoring is to ascertain the effects of the LORP on water quality, and this returns us to the need to conduct upstream and downstream monitoring in the near vicinity of discharges to reduce such interferences, as discussed in several of our previous responses.

22. Fact Sheet Pages F-4 and F-5, Section II(A)(1-5), Paragraph 4 – LORP Project Descriptions

The project descriptions came from application information prepared by LADWP consultants. The writing style has been revised in response to the concerns in the comments.

23. Fact Sheet Page F-3, F-5, and F-8, Section II(B) – Discharge Type/Authority to Regulate

We have considered the comments and now propose that Discharge 004 (reintroduction of flow to the Lower Owens River from River Intake Structure) will not be regulated under CWA Section 401. Just as for Discharge 005 (diverted stream flow with wastes pumped to the Aqueduct and/or dust control), the Regional Water Board will require monitoring of the effects of Discharge 004 on water quality pursuant to its CWC Section 13267 Order authority to determine whether wastes have been discharged, and to ensure that the actions associated with reintroducing water to the Lower Owens River are not causing or contributing to violations of applicable water quality standards. The Regional Water Board reserves the right to later prescribe waste discharge requirements for Discharge 004, if necessary, or pursue other remedies for violations as authorized by law. This approach is considered an equally effective method to verify compliance with standards without resolving the legal questions raised concerning CWA jurisdictional authorities. This change is reflected throughout the Order.

24. Fact Sheet Page F-28, Section VII(B)(7)(g) – No Net Loss Demonstration Period

We agree with the comments, as discussed in response No. 8, above, and have revised this section of the Order accordingly.

OTHER CHANGES AND ADDITIONS IN THE PROPOSED ORDER:

A. There is an error in the fifth entry of the Table on page 2; it should read “Clean Water Act Section 401” (state authorities) not “Clean Water Act Section 404” (federal authorities), and has been so changed.

B. Influent and effluent monitoring must be conducted at the same approximate time (i.e., monthly on the same day), and following the estimated travel time for new location for R-005. This is clarified in the Order.

C. The Order now requires that annual averages and 90th-percentile values be computed and reported for numerical receiving water objectives in Order Section V.B.

D. Conflicting expiration dates for prohibition exemptions have been harmonized to 10 years following the Order adoption.

E. Numerous typographical errors have been corrected and clarifying language has been added.

F. The map of monitoring locations in Attachment C has been updated with the revised monitoring location names.

G. Requirements have been added that field measurements shall be made with field equipment sufficiently sensitive to monitor the discharge.

H. We have added a General Requirements section to the MRP to clarify or explain certain monitoring requirements.

You may contact Lauri Kemper, at (530) 542-5436, or me at (530) 542-5430, if you should have any questions concerning the responses or wish to discuss the proposed Order that will be presented to the Regional Board for adoption at the public hearing scheduled for June 14, 2005 in Bishop.

Alan Miller, PE
Senior Water Resources Control Engineer

Attachments: 1. June 3, 2005 comment letter from LADWP
2. Proposed Order