

I. FACILITY AND PROJECT INFORMATION

The following Discharger is authorized to discharge in accordance with the conditions set forth in this Order:

Discharger	Los Angeles Department of Water and Power
Name of Facility	Lower Owens River Project (LORP)
Mailing Address	300 Mandich Street
	Bishop, CA 93514
	Inyo County
Facility Contact, Title, and Phone	Brian Tillemans, Water Resources Manager, (760) 873-0214
Facility Location	Lower Owens River Watershed in Inyo County
Type of Facility	Habitat Restoration Project and Water Supply Pump Station
Facility Design Flow	Not Applicable

II. FINDINGS

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

A. Background; permits and applications.

The City of Los Angeles Department of Water and Power (hereinafter Discharger) submitted an application for Clean Water Act Section 401 Water Quality Certification (WQC), dated July 30, 2004, and provided additional requested project information on November 29, 2004, and January 14, 2005. The WQC application was deemed complete on February 13, 2005. The U.S. Army Corps of Engineers has granted an extension of the date for Section 401 certification or denial by the Regional Water Board to July 30, 2005.

The Discharger submitted a Notice of Intent (NOI) application, dated January 19, 2005, for *Statewide General Waste Discharge Requirements (WDRs) for Discharges to Land with a Low Threat to Water Quality* (Water Quality Order No. 2003-0003-DWQ) for disposal of waste earthen materials and dredged spoils.

The Discharger submitted a Notice of Intent application, dated January 31, 2005, for coverage under the *Regionwide General National Pollutant Discharge Elimination System (NPDES) Permit for Low Threat Discharges to Surface Water* (Order No. R6T-2003-0034) for several specific discharges associated with dewatering excavated areas of construction sites, and for stream diversion activities associated with construction of a gauging station weir.

On February 4, 2005, the State Water Resources Control Board (hereinafter State Board) received from the Discharger, a Notice of Intent application for permit coverage under the *National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated With Construction Activity* (Water Quality Order 99-08-DWQ). The Discharger obtained coverage under this General Permit pursuant to State Board action on February 9, 2005.

WQC application and above-cited NOIs are, in part, the basis for issuing this Order. Additional details on the NPDES/WDR permitting process are provided in the Fact Sheet (Attachment F).

B. Facility and Discharge Description.

The LORP is a large-scale habitat restoration and water supply project. The Discharger will operate the LORP and owns the vast majority of property where project activities will take place. Additional project description details may be found in the Fact Sheet (Attachment F). Basically, the project involves building a Pump Station to recapture water released to the lower 62 miles of the Lower Owens River from reduced diversions to the Los Angeles Aqueduct (initial construction completed in 1913). To construct and operate the LORP, wastewater will be discharged from various Discharge Points (see table on cover page) to the Lower Owens River, a water of the United States and tributary to the Owens Lake, an internally-drained, terminal lake. In addition, river water will be discharged from the Lower Owens River Pump Station to the bed of Owens Lake (for dust control purposes) or to Haiwee Reservoir by means of the Los Angeles Aqueduct. Construction of the project also involves discharges of dredged and/or fill materials in the Lower Owens River. The Lower Owens River, Owens Lake, the Los Angeles Aqueduct, and Haiwee Reservoir are all waters of the State. The receiving waters for the discharges are surface and ground waters within the Lower Owens Hydrologic Area of the Owens Hydrologic Unit. Attachment B provides a map of the area affected by the LORP. Attachment C provides a flow schematic and diagram of monitoring and discharge points for the LORP.

The purpose of the LORP is to reestablish perennial flows within the Lower Owens River and restore habitats in the Lower Owens River riparian and off-river areas as mitigation for previous groundwater pumping practices by the Discharger from 1970 to 1990. The LORP consists of five major components. These components and existing conditions in the LORP area are described in the Fact Sheet (Attachment F).

The LORP includes construction and modification of facilities for releasing, regulating or monitoring the flows in the Lower Owens River channel, and using the Pump Station to recapture flows for dust control uses or beneficial uses associated with the Los Angeles Aqueduct and its downstream receiving water, Haiwee Reservoir. Storm water and authorized non-stormwater discharges from the construction areas to waters of the United States are subject to regulation under the NPDES provisions of this Order. In addition, prior to the proposed flow releases, removal of in-channel sediments and other obstructions will be necessary to ensure a continuous flow throughout the Lower Owens River. These and other construction activities will result in discharges of dredged and/or fill material into waters, excavation of sediments and vegetation from the Lower Owens

River channel and adjacent wetlands. Flow releases will mobilize disturbed earthen materials and concentrate pollutants in the river.

The various discharges associated with the LORP, and the applicable regulations, are described in detail in Attachment F.

C. **Legal Authorities.** This Order is issued pursuant to section 402 of the Federal Clean Water Act (CWA) and implementing regulations adopted by the U.S. Environmental Protection Agency (USEPA) and Chapter 5.5, Division 7 of the California Water Code (CWC). It shall serve as a NPDES permit for point source discharges from the LORP to surface waters of the United States for which the Discharger has submitted an NPDES permit application, including any Notice of Intent application for general NPDES permit coverage. This Order also serves as Waste Discharge Requirements (WDRs), pursuant to Article 4, Chapter 4 of the CWC, for discharges to surface and ground waters of the State that are not subject to regulation under CWA section 402. California Code of regulations (CCR) Title 23, Section 3831(e) grants the Regional Water Board the authority to grant or deny water quality certification for projects in accordance with Section 401 of the CWA. Compliance monitoring is required pursuant to CWC Section 13383 and/or CWC Section 13267.

D. **Background and Rationale for Requirements.** The Regional Water Board developed the requirements in this Order based on information submitted as part of the applications for general permits and WQC, through monitoring and reporting programs, through considering requirements for similar discharges, and through special studies and environmental impact reporting. Attachments A, B, C, F, H, and P contain background information and rationale for Order requirements and thus constitute part of the Findings for this Order. All Attachments to this Order are hereby incorporated into this Order.

Section 401 of the CWA (33 U.S.C., paragraph 1341) requires that any applicant for a CWA Section 404 permit, who plans to conduct any activity that may result in discharge of dredged or fill materials to waters of the United States, shall provide to the permitting agency a certification that the discharge will be in compliance with applicable water quality standards of the state in which the discharge or other related project activities will originate. No Section 404 permit may be granted (or valid) until such certification is obtained. The Discharger has submitted a complete application and \$500 fee deposit required for Water Quality Certification under Section 401 for the LORP. The U.S. Army Corps of Engineers (ACOE) will regulate the project with an Individual Permit under the provisions of Section 404, and has extended the time allowed to grant or deny WQC to July 30, 2005.

E. **California Environmental Quality Act (CEQA).** This action to adopt an NPDES permit is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) in accordance with Section 13389 of the CWC. However, adopting WDRs, issuing WQC, and granting an exemption to waste discharge prohibitions, are discretionary actions of the Regional Water Board and thus subject to CEQA compliance.

The Discharger, acting as California Environmental Quality Act (CEQA, Public Resources Code Section 21000, et seq.) Lead Agency, prepared a Draft Environmental Impact Report (EIR) for the LORP and circulated the Draft EIR for a public review and comment period from November 1, 2002 to January 14, 2003. The Final EIR for the LORP was completed and certified by the Discharger on June 22, 2004. In the record of the EIR approval, the Discharger made a statement of overriding considerations, including the potential occurrence of significant effects on water quality which are identified in the final EIR but are not avoided or substantially lessened.

When an EIR has been prepared for a project, a Responsible Agency shall not approve the project as proposed, pursuant to CEQA Guidelines, Section 15096(g)(2), if the agency finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment. The Regional Water Board, acting as a CEQA Responsible Agency, has evaluated the LORP Final EIR for potentially significant impacts to water quality.

As a result of this evaluation, the Regional Water Board is requiring a feasible mitigation measure for impacts identified in the Discharger's Final EIR that would substantially lessen or avoid significant effects of the project on water quality and the environment, as described in detail in Attachment H, and referred to herein as the Alabama Release. Changes or alterations have been required in the project that avoid or substantially lessen the significant environmental effect as identified in the final EIR. Potentially significant water quality impacts due to the LORP cannot be completely avoided after including requirements to implement feasible impact minimization and mitigation measures. Therefore, the Regional Water Board has determined that any remaining significant effects on the environment found to be unavoidable are acceptable due to overriding considerations.

CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

In approving the LORP, the Regional Water Board finds the benefits of the LORP outweigh the unavoidable adverse environmental effects, and the adverse environmental effects are deemed "acceptable." Attachment H provides the specific reasons to support the Regional Water Board's action based on the final EIR and/or other information in the record. This responsible agency statement of overriding considerations is supported by substantial evidence in the record.

- F. **Technology-based Effluent Limitations.** The Code of Federal Regulations (CFR) at 40 CFR §122.44(a) requires that NPDES permits include applicable technology-based limitations and standards.

This Order authorizes the discharge of storm water associated with construction activities and other specific non-storm water discharges to surface waters of the U.S. associated with LORP construction activities. These discharges must meet all applicable provisions of Sections 301 and 402 of the CWA. These provisions require controls for pollutant discharges that utilize best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT) to reduce pollutants, and any more stringent controls necessary to meet water quality standards.

It is not feasible or practical to establish numeric, technology-based, effluent limitations for pollutants in discharges authorized under this Order, as discussed in Attachment F. Therefore, the effluent limitations contained in this Order are narrative and include the requirement to implement appropriate Best Management Practices (hereinafter BMPs). The BMPs must primarily emphasize source control such as erosion control and pollution prevention methods. The Discharger must implement management controls and also install structural controls, as described in the discharge reports and/or application information provided by the Discharger, that will constitute BAT and BCT and that will achieve compliance with water quality standards. The narrative effluent limitations constitute compliance with the requirements of the CWA.

- G. **Water Quality-based Effluent Limitations.** Section 122.44(d) of 40 CFR requires that NPDES permits include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving waters. CWC Sections 13267 and 13383 also authorize the Regional Water Board to require technical and monitoring reports that may be necessary to implement the federal and California regulations. Where numeric water quality objectives have not been established, 40 CFR §122.44(d) specifies that WQBELs may be established using USEPA criteria guidance under CWA section 304(a), proposed State criteria or a State policy interpreting narrative criteria supplemented with other relevant information, or an indicator parameter.

Water quality-based effluent limits are not feasible or practical to establish at this time, as discussed in Attachment F. Until the flow regime has been established and a reasonable potential analysis has been completed, it is not known whether WQBELs will be necessary. Additional information and water quality monitoring data will be obtained during the term of this Order, and used to assess whether WQBELs may be needed. When sufficient receiving water and effluent data have been generated and the Regional Water Board has had an opportunity to determine if WQBELs are necessary to protect receiving waters, if necessary, this Order may be re-opened and modified to include WQBELs.

- H. **Water Quality Control Plans.** The Regional Water Board adopted a *Water Quality Control Plan for the Lahontan Region* (hereinafter Basin Plan) that designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters addressed through the Basin Plan. Requirements of this Order specifically implement the Basin Plan.

The Basin Plan (p. 2-3) states that “. . . specific surface waters which are not listed in the Basin Plan have the same beneficial uses as the streams, lakes, wetland or reservoirs to which they are tributary . . .” and “. . . provides that water quality standards for specific waterbodies apply upstream to tributaries for which no site-specific standards have been adopted.” (definition of “Tributary Rule,” p. 2-6) The Basin Plan does not specifically identify beneficial uses for the Los Angeles Aqueduct, but does identify present and potential uses for Haiwee Reservoir, to which the Los Angeles Aqueduct is tributary. Beneficial uses applicable to the receiving waters are as follows:

Discharge Points	Receiving Water Name	Beneficial Use(s)
Discharge 001R Discharge 002 Discharge 003 Discharge 004	Lower Owens River (Below Intake Structure)	Municipal and domestic water supply (MUN), Agricultural Supply (AGR), Ground water recharge (GWR), Freshwater replenishment (FRSH), Water contact recreation (REC-1), Non-contact water recreation (REC-2), Commercial and sport fishing (COMM), Warm freshwater habitat (WARM), Cold freshwater habitat (COLD), Wildlife habitat (WILD), Preservation of biological habitats of special significance (BIOL), Rare, threatened or endangered species (RARE), Spawning, reproduction, and Development (SPWN)
Discharge 003 Discharge 004	Owens Lake	MUN ¹ , REC-1, REC-2, COMM, WARM, COLD, Inland Saline Water Habitat (SAL), WILD
Discharge 001A Discharge 005	Los Angeles Aqueduct and Haiwee Reservoir	MUN, AGR, Industrial Supply (IND), GWR, REC-1, REC-2, COMM, COLD, WILD, RARE, and SPWN

1. The MUN use for Owens Lake may be eliminated pending state and federal approval. The MUN use and other beneficial uses established in the Basin Plan for tributaries to Owens Lake will be retained.

- I. **National Toxics Rule (NTR) and California Toxics Rule (CTR).** USEPA adopted the NTR on December 22, 1992, which was amended on May 4, 1995 and November 9, 1999, and the CTR on May 18, 2000, which was amended on February 13, 2001. These rules include water quality criteria for priority pollutants that are applicable to surface waters of the United States, including receiving waters for LORP discharges.
- J. **State Implementation Policy.** On March 2, 2000, State Water Board adopted the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (State Implementation Policy or SIP). The SIP became effective on April 28, 2000, with respect to the priority pollutant criteria promulgated for California by the USEPA through the NTR and to the priority pollutant objectives established by the Regional Water Board in its basin plans, with the exception of the provision on alternate test procedures for individual discharges that have been approved by USEPA Regional Administrator. The alternate test procedures provision was effective

on May 22, 2000. The SIP includes procedures for determining the need for and calculating WQBELs and requires dischargers to submit data sufficient to do so.

- K. **Compliance Schedules and Interim Requirements.** Section 2.1 of the SIP provides that, based on an existing discharger's request and demonstration that it is to achieve immediate compliance with an effluent limitation derived from a CTR criterion, compliance schedules may be allowed in an NPDES permit. Compliance schedules are not allowed in NPDES Permits for any "new discharger," as defined in the SIP. As defined in the SIP, the Discharger is a new discharger for purposes of the LORP and therefore this Order does not include compliance schedules and interim effluent limitations for CTR constituents.
- L. **Antidegradation Policy.** Section 131.12 of 40 CFR requires that State water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Water Board Resolution 68-16, which incorporates the requirements of the federal antidegradation policy. The State antidegradation policy is incorporated in the Basin Plan, where it is sometimes referred to as the (equivalent) "Nondegradation Objective." Resolution 68-16 requires that existing quality of waters be maintained unless degradation is justified based on specific findings. As discussed in detail in the Fact Sheet (Attachment F) the permitted discharge is consistent with the antidegradation provisions of 40 CFR §131.12 and State Water Board Resolution 68-16.
- M. **Anti-Backsliding Requirements.** Sections 402(o)(2) and 303(d)(4) of the CWA and federal regulations at 40 CFR § 122.44(l) prohibit backsliding in NPDES permits. These anti-backsliding provisions require effluent limitations in a reissued permit to be as stringent as those in the previous permit, with some exceptions where limitations may be relaxed. Anti-Backsliding provisions do not apply to this permit because it is a new Order for proposed discharges.
- N. **Monitoring and Reporting.** Section 122.48 of 40 CFR requires that all NPDES permits specify requirements for recording and reporting monitoring results. Sections 13267 and 13383 of the CWC authorize the Regional Water Boards to require technical and monitoring reports. The Monitoring and Reporting Program establishes monitoring and reporting requirements to implement federal and State requirements. This Monitoring and Reporting Program is provided in Attachment E.
- O. **Standard and Special Provisions.** Standard Provisions in accordance with 40 CFR §§122.41 and 122.42, which apply to all NPDES discharges and must be included in every NPDES permit, are provided in Attachment D. The Regional Water Board has also included in this Order special provisions applicable to the Discharger. A rationale for the special provisions contained in this Order is provided in the attached Fact Sheet (Attachment F).
- P. **Notification of Interested Parties.** The Regional Water Board has notified the Discharger and interested agencies and persons of its intent to adopt an Order regulating the project discharges and has provided them with an opportunity to submit their written comments and recommendations. Details of notification are provided in the Fact Sheet (Attachment F).

- Q. **Consideration of Public Comment.** The Regional Water Board, in a public meeting, heard and considered all comments pertaining to the discharge. Details of the Public Hearing are provided in the Fact Sheet (Attachment F).
- R. **Exemption to Waste Discharge Prohibitions for Lower Owens River.** The Basin Plan provides that, for waste earthen materials discharged as a result of restoration projects, exemptions to waste discharge prohibitions in the Basin Plan may be granted by the Regional Water Board whenever it finds that a specific restoration project meets certain criteria. As discussed in detail in the Fact Sheet (Attachment F) the Regional Water Board has determined that the LORP is a restoration project that meets the criteria for granting an exemption based on information provided by the Discharger. This Order includes an exemption to waste discharge prohibitions otherwise applicable to the Lower Owens River. (See Order, Section III., A. and B.) Additional details concerning the criteria and rationale for granting an exemption, and interpretations concerning the exemption, are provided in the Fact Sheet (Attachment F). The exemption is not applicable to discharges to the Los Angeles Aqueduct or Haiwee Reservoir. Receiving water limitations in Haiwee Reservoir and its tributary, the Los Angeles Aqueduct, shall not be violated as a result of granting an exemption to waste discharge prohibitions for the LORP. The exemption is conditional and revocable.
- S. **Water Quality Certification.** Pursuant to California Code of Regulations (CCR) Title 23, Section 3831, “Water Quality Certification” is a certification that any discharge or discharges to waters of the U.S., resulting from an activity that requires a federal license or permit, will comply will water quality standards and other appropriate requirements. “Activity” means any action, undertaking, or project—including, but not limited to, construction, operation, maintenance, repair, modification, and restoration—which may result in any discharge to a water of the United States in California. “Water quality standards and other appropriate requirements” means the applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act (33 USC Sections 1311, 1312, 1313, 1316, 1317), and any other appropriate requirements of state law. Based upon the information provided by the Discharger and the requirements of this Order, it is our determination that CWA Section 401 Water Quality Certification for the LORP would not be against the public interest and the project qualifies for such water quality certification.

III. DISCHARGE PROHIBITIONS

A. Discharge Prohibitions

The Basin Plan contains the following waste discharge prohibitions that apply to all surface and ground waters in the Lahontan Region:

1. The discharge of waste that causes violation of any narrative water quality objective contained in the Basin Plan, including the Nondegradation Objective, is prohibited.

B. Land Discharge Specifications

Beginning on the effective date of this Order, the Discharger shall maintain compliance with the following limitations pertaining to the disposal of dredged spoils and excavated earthen materials at Discharge Points 006 and 007.

1. Collected screenings and other solids removed from liquid wastes shall be disposed of in a manner that is consistent with Chapter 15, Division 3, Title 23, of the California Code of Regulations (CCR).
2. Any proposed change in disposal practice or location shall be reported to the Executive Officer at least 90 days in advance of the change.
3. Dredged spoils and solid wastes shall be prevented from re-entering the river or Los Angeles Aqueduct with appropriate BMPs.

C. Reclamation Specifications

Not Applicable

V. RECEIVING WATER LIMITATIONS

Receiving water limitations are narrative and numerical water quality objectives contained in the Basin Plan for all surface waters of the Region, watershed-specific numerical objectives, and objectives based on the CTR. As such, they are a required part of this Order. Receiving water limits in Haiwee Reservoir and the Los Angeles Aqueduct shall not be violated. Pollution and/or nuisance conditions shall not occur in Haiwee Reservoir or the Los Angeles Aqueduct as a result of project discharges. The discharge of waste to surface waters or other controllable water quality factors shall not cause, or contribute to, a violation of the following narrative and/or numerical water quality objectives for waters of the Lower Owens Hydrologic Unit, except as specifically exempted in Section III.B. of this Order. The exemption specifically excludes the following narrative limitations: V.A.6., V.A.10., V.A.12., and V.A.14., as listed below.

A. Narrative Surface Water Limitations

1. Ammonia

Ammonia concentrations shall not exceed the values listed in Tables 3-1 to 3-4 of the Basin Plan for the corresponding conditions in these tables. Tables 3-1 to 3-4 of the Basin Plan are incorporated into this Order as Attachment I.

2. Bacteria, Coliform

Waters shall not contain concentrations of coliform organisms attributable to anthropogenic sources, including human and livestock wastes.

The fecal coliform concentration during any 30-day period shall not exceed a log mean of 20/100 ml, nor shall more than 10 percent of all samples collected during any 30-day period exceed 40/100 ml. *The log mean shall ideally be based on a minimum of not less than five samples collected as evenly spaced as practicable during any 30-day period. However, a log mean concentration exceeding 20/100 ml, or one sample exceeding 40/100ml, for any 30-day period shall indicate violation of this objective even if fewer than five samples were collected.*

3. Biostimulatory Substances

Waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect the water for beneficial uses.

4. California Toxics Rule Constituents

Waters shall not contain concentrations of CTR constituents in excess of the CTR criterion concentrations listed in Attachment J. The Minimum Reporting Levels in Attachment J are specified for use in reporting and compliance determination. These minimum levels shall be used until new values are adopted and become effective.

5. Chemical Constituents

Waters designated as MUN shall not contain concentrations of chemical constituents in excess of the maximum contaminant level (MCL) or secondary maximum contaminant level (SMCL) based upon drinking water standards specified in provisions of the California Code of Regulations, Title 22, Division 4, Chapter 15, hereby incorporated by reference into this General Permit. This incorporation is prospective including future changes to the incorporated provisions as the changes take effect.

Waters shall not contain concentrations of chemical constituents in amounts that adversely affect the water for beneficial uses.

6. Chlorine, Total Residual

For the protection of aquatic life, total chlorine residual shall not exceed either a median value of 0.002 mg/L or a maximum value of 0.003 mg/L. Median values shall be based on daily measurements taken within any six-month period.

7. Color

Waters shall be free of coloration that causes nuisance or adversely affects the water for beneficial uses.

8. Dissolved Oxygen

The dissolved oxygen concentration as percent saturation shall not be depressed by more than 10 percent, nor shall the minimum dissolved oxygen concentration be less than 80 percent of saturation.

For waters with the beneficial uses of COLD, COLD with SPWN, WARM, and WARM with SPWN, the minimum dissolved oxygen concentration shall not be less than that specified in Table 3-6 of the Basin Plan. Table 3-6 of the Basin Plan is incorporated in this Order as Attachment K.

9. Floating Materials

Waters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect the water for beneficial uses.

For natural high quality waters, the concentrations of floating material shall not be altered to the extent that such alterations are discernible at the 10 percent significance level.

10. Oil and Grease

Waters shall not contain oils, greases, waxes or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect the water for beneficial uses.

For natural high quality waters, the concentration of oils, greases, or other film or coat generating substances shall not be altered.

11. Non-degradation of Aquatic Communities and Populations

All wetlands shall be free from substances attributable to wastewater or other discharges that produce adverse physiological responses in humans, animals, or plants; or which lead to the presence of undesirable or nuisance aquatic life.

All wetlands shall be free from activities that would substantially impair the biological community as it naturally occurs due to physical, chemical and hydrologic processes.

12. Pesticides

For the purposes of the Basin Plan, pesticides are defined to include insecticides, herbicides, rodenticides, fungicides, pesticides and all other economic poisons. An economic poison is any substance intended to prevent, repel, destroy, or mitigate the damage from insects, rodents, predatory animals, bacteria, fungi or

weeds capable of infesting or harming vegetation, humans, or animals (CA Agriculture Code § 12753).

Pesticide concentrations, individually or collectively, shall not exceed the lowest detectable levels, using the most recent detection procedures available. There shall not be an increase in pesticide concentrations found in bottom sediments. There shall be no detectable increase in bioaccumulation of pesticides in aquatic life.

Waters designated as MUN shall not contain concentrations of pesticides or herbicides in excess of the limiting concentrations set forth in the CCR, Title 22, Division 4, Chapter 15.

13. pH

In fresh waters with designated beneficial uses of COLD or WARM, changes in normal ambient pH levels shall not exceed 0.5 pH units. For all other waters of the Region, the pH shall not be depressed below 6.5 nor raised above 8.5.

The Regional Water Board recognizes that some waters of the Region may have natural pH levels outside of the 6.5 to 8.5 range. Compliance with the pH objective for these waters will be determined on a case-by-case basis.

14. Radioactivity

Radionuclides shall not be present in concentrations which are deleterious to human, plant, animal, or aquatic life nor which result in the accumulation of radionuclides in the food web to an extent which presents a hazard to human, plant, animal, or aquatic life.

Waters shall not contain concentrations of radionuclides in excess of the limits specified by the more restrictive of the CCR, Title 22, Division 4, Chapter 15, or 40 CFR, Part 141.

15. Sediment

The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect the water for beneficial uses.

16. Settleable Materials

Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or that adversely affects the water for beneficial uses. For natural high quality waters, the concentration of settleable materials shall not be raised by more than 0.1 milliliter per liter.

17. Suspended Materials

Waters shall not contain suspended materials in concentrations that cause nuisance or that adversely affects the water for beneficial uses.

For natural high quality waters, the concentration of total suspended materials shall not be altered to the extent that such alterations are discernible at the 10 percent significance level.

18. Taste and Odor

Waters shall not contain taste or odor-producing substances in concentrations that impart undesirable tastes or odors to fish or other edible products of aquatic origin, that cause nuisance, or that adversely affect the water for beneficial uses. For naturally high quality waters, the taste and odor shall not be altered.

19. Temperature

The natural receiving water temperature of all waters shall not be altered unless it can be demonstrated to the satisfaction of the Regional Water Board that such an alteration in temperature does not adversely affect the water for beneficial uses.

For waters designated WARM, water temperature shall not be altered by more than five degrees Fahrenheit (5°F) above or below the natural temperature. For waters designated COLD, the temperature shall not be altered.

20. Toxicity

All waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal, or aquatic life. Waters shall not contain concentrations of CTR constituents in excess of the CTR criterion concentrations listed in Attachment J.

The survival of aquatic life in surface waters subjected to a waste discharge, or other controllable water quality factors, shall not be less than that for the same water body in areas unaffected by the waste discharge, or when necessary, for other control water that is consistent with the requirements for “experimental water” as defined in the most recent edition of *Standard Methods for the Examination of Water and Wastewater* (American Public Health Association, et al.).

21. Turbidity

Waters shall be free of changes in turbidity that cause nuisance or adversely affect the water for beneficial uses. Increases in turbidity shall not exceed natural levels by more than 10 percent.

2. The discharge of waste that causes violation of any numeric water quality objective contained in the Basin Plan is prohibited.
3. Where any numeric or narrative water quality objective contained in the Basin Plan is already being violated, the discharge of waste that causes further degradation or pollution (as defined in CWC Section 13050) is prohibited.

B. Exemption to Discharge Prohibitions for the Lower Owens River

The Regional Water Board hereby grants an exemption to waste discharge prohibitions, as described in detail in Attachment F, for the implementation of the LORP. The exemption applies only in the Lower Owens River, including the Owens Lake delta, during periods when flows may mobilize pollutants and violate water quality objectives. The exemption period begins when the Discharger initiates base flows into the Lower Owens River, as described for the LORP, and expires on **July 14, 2015** unless renewed by the Regional Water Board.

C. Storm Water Discharge Prohibitions

1. Authorization pursuant to this Permit does not constitute an exemption to applicable discharge prohibitions prescribed in the Basin Plan, except as specifically described in III.B., above, and Attachment F.
2. Discharges of material other than storm water, which are not otherwise authorized by an NPDES permit, to a separate storm sewer system or waters of the nation are prohibited, except as allowed in Special Provisions for Construction Activity, C.6.b.
3. Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.
4. Storm water discharges regulated by this Permit shall not contain a hazardous substance equal to or in excess of a reportable quantity listed in 40 CFR Part 117 and/or 40 CFR Part 302.

IV. EFFLUENT LIMITATIONS AND DISCHARGE SPECIFICATIONS

A. Effluent Limitations

1. Final Effluent Limitations

Not Applicable

2. Interim Effluent Limitations

Not Applicable

B. Numerical Surface Water Limitations

Numerical water quality objectives are not established in the Basin Plan for the Lower Owens River below the Tinemaha Reservoir outlet, or for Owens Lake. Numerical water quality objectives established in the Basin Plan (Table 3-17) for the waters of Haiwee Reservoir, and therefore applicable (by the tributary rule) to the Los Angeles Aqueduct below Tinemaha Reservoir, are:

Objective (mg/L) ^{1,2}							
TDS	Cl	SO ₄	F	B	NO ₃	Total N	PO ₄
<u>215</u>	<u>19.5</u>	<u>27.0</u>	<u>0.60</u>	<u>0.56</u>	<u>0.5</u>	<u>0.8</u>	<u>0.23</u>
315	38.0	62.0	0.90	0.91	1.0	1.5	0.36

1. Annual average value/90th percentile value
2. Objectives nomenclature: B (boron), Cl (chloride), F (fluoride), N (nitrogen), NO₃-N (nitrogen as nitrate), SO₄ (sulfate), PO₄ (dissolved orthophosphate), TDS (total dissolved solids, a.k.a. total filterable residue)

C. Groundwater Limitations

1. Discharges shall not cause constituent concentrations in ground water downgradient of disposal areas for Discharges 006 and 007 to exceed water quality objectives for coliform bacteria, or taste and odor, specified in Chapter 3 of the Basin Plan.
2. Discharges shall not cause the concentration of chemicals and radionuclides in ground water to exceed primary and secondary drinking water limits set forth in Title 22 of the California Code of Regulations (CCR).

VI. PROVISIONS

A. Standard Provisions

The Discharger shall comply with all Standard Provisions included in Attachment D of this Order. The Standard Provisions shall apply to all discharges and activities regulated under this Order, regardless of the basis for regulation, and shall not expire with expiration of the NPDES provisions of this Order.

B. Monitoring and Reporting Program Requirements

1. The Discharger shall comply with the Monitoring and Reporting Program, and future revisions thereto, in Attachment E of this Order.
2. Any and all monitoring reports required by this Order are required pursuant to CWC Section 13383 and/or Section 13267.

C. Special Provisions

1. Reopener Provisions

NPDES Permit modification or revocation will be conducted according to 40 CFR §122.62, §122.63, §122.64 and §124.5. The State Water Resources Control Board is currently updating the statewide NPDES Permit for Discharges of Storm Water Associated with Construction Activity. The Regional Water Board may revise or modify this NPDES Permit for reasons including, but not limited to, incorporating the Storm Water Pollution Prevention Plan or amendments thereto, and ensuring consistency with changes made to the statewide construction activity storm water general permit. The Regional Water Board may review and revise waste discharge requirements in accordance with California Water Code §13263, (e) and (f).

2. Special Studies, Technical Reports and Additional Monitoring Requirements

- a. The Discharger shall develop and implement a Storm Water Pollution Prevention Plan (SWPPP) required by Order VI.C.6.a., below. The Discharger shall submit the SWPPP to the Regional Water Board **not less than 180 days prior to initiating construction activity**, for public review and incorporation into the Permit after consideration by the Regional Water Board at a public meeting. (Refer to Attachment L for minimum requirements of the SWPPP.)
- b. The Discharger shall retain a copy of the SWPPP at the construction site. If the site is inspected by a Regional Water Board, SWRCB, U.S. EPA, or municipal storm water management agency inspector, the Discharger shall provide the SWPPP immediately for review if requested. Upon written request by a representative of the Regional Water Board, SWRCB, U.S. EPA, or municipal storm water management agency, Dischargers shall provide a copy of the SWPPP within five working days from the date a request is received.
- c. The Regional Water Board Executive Officer may provide information to the Discharger on the development and implementation of SWPPPs and monitoring programs and may require revisions to SWPPPs and monitoring programs, after public notice and consideration at a public meeting.
- d. The Discharger shall comply with construction site inspection and other monitoring program and reporting requirements in Attachment M.
- e. The Discharger shall conduct whole effluent toxicity monitoring as described in Attachment E, Section V. If toxicity is identified in the sample, the WET test shall be repeated within 120 days. In accordance with the SIP, Section 4:

1. If toxicity as a result of a waste discharge is identified with repeated WET tests, the Discharger shall conduct a toxicity reduction evaluation as directed by the Regional Water Board Executive Officer. The toxicity reduction evaluation may include evaluation(s) to identify specific sources of toxicity.
2. The Discharger shall take all reasonable steps to control toxicity once a source of toxicity is identified.
3. Failure to conduct a toxicity reduction evaluation within a designated period as directed by the Regional Water Board Executive Officer shall result in the establishment of effluent limitations for chronic toxicity in a permit or appropriate enforcement action.

3. Best Management Practices and Pollution Prevention

- a. The Best Management Practices developed for construction activity storm water discharges, and other LORP discharges covered by this Order, shall be designed and

implemented such that storm water discharges and authorized non-storm water discharges shall not cause or contribute to a violation of any applicable water quality standards contained in the Basin Plan.

- b. Should it be determined by the Discharger or Regional Water Board that storm water discharges and/or authorized non-storm water discharges are causing or contributing to a violation of an applicable water quality standard, the Discharger shall:
 1. Implement corrective measures immediately following discovery that water quality standards were exceeded, followed by notification to the Regional Water Board by telephone as soon as possible but no later than 48 hours after the discharge has been discovered. This notification shall be followed by a report within 14 calendar days to the Regional Water Board, unless otherwise directed by the Regional Water Board, describing (1) the nature and cause of the water quality standard exceedance; (2) the BMPs currently being implemented; (3) any corrective actions or additional BMPs identified in the SWPPP which will be implemented to prevent or reduce pollutants that are causing or contributing to the exceedance of water quality standards; and (4) any maintenance or repair of BMPs. This report shall include an implementation schedule for corrective actions and shall describe the actions taken to reduce the pollutants causing or contributing to the exceedance.
 2. Nothing in this section shall prevent the Regional Water Board from enforcing any provisions of this NPDES Permit while the Discharger prepares and implements the above report.

4. **Compliance Schedules**

Not Applicable

5. **Construction, Operation and Maintenance Specifications**

- a. Active construction site and maintenance dredging sites shall be isolated from flowing waters by physical barriers such as sand bag dikes, silt fences, or other effective controls to prevent uncontrolled discharge to surface waters.
- b. The Discharger shall notify Regional Water Board staff in writing **15 days prior to initiating base flow and any subsequent habitat flow**, including the initial winter habitat flow and Alabama Release.

6. **Special Provisions for Construction Activity**

- a. The Discharger shall develop and implement a SWPPP for the LORP in accordance with minimum requirements specified in Attachment L. The Discharger shall implement controls to reduce pollutants in storm water discharges from the construction sites to the BAT/BCT performance standard.
- b. Discharges of non-storm water are authorized only where they do not cause or contribute to a violation of any water quality standard and are controlled through implementation of appropriate BMPs for elimination or reduction of pollutants. Implementation of appropriate BMPs is a condition for authorization of non-storm water discharges. Non-storm water discharges and the BMPs appropriate for their control must be described in the SWPPP. Wherever feasible, alternatives that do not result in discharge of non-storm water shall be implemented in accordance with Section 9. of Attachment L.
- c. A construction project is considered complete only when the following conditions have been met:
 1. There is no potential for construction-related storm water pollution,
 2. All elements of the SWPPP have been completed,
 3. Construction materials and waste have been disposed of properly,
 4. The site is in compliance with all local storm water management requirements, and
 5. A post-construction storm water management plan is in place as described in the SWPPP.

7. **Water Quality Certification Conditions and Enforcement Provisions**

The following conditions apply to the Water Quality Certification of the LORP.

a. Standard Conditions

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section 13330 of the CWC and Section 3867 of Title 23 of the CCR.
2. This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license unless the pertinent certification application was filed pursuant to 23 CCR subsection 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity of any non-denial certification action shall be conditioned upon total payment of the full fee required under 23 CCR Section 3833, unless otherwise stated in writing by the certifying agency. The Discharger submitted a \$500 fee deposit with the water quality certification application that constitutes payment of the full CWA Section 401 water quality certification fee required for this restoration project.

b. Additional Conditions

1. Heavy equipment shall be steam cleaned before starting work in waters of the U.S and routinely monitored for equipment leaks. Leaking equipment that threatens to discharge in violation of the terms of this Order shall be removed from service until repairs are effected.
2. An emergency spill kit shall be maintained at the project site at all times.
3. Regional Water Board staff shall be notified 48 hours prior to commencement of ground disturbance.
4. The Discharger shall demonstrate that “no net loss” of wetland functions and values has occurred following LORP implementation. The Discharger is required as a condition of this WQC to delineate wetlands and provide an assessment of functions and values at specified intervals after the project begins. If the Discharger can demonstrate after any assessment that there has been “no net loss” of wetland functions and values relative due to implementation of the LORP relative to pre-project conditions, it will no longer be necessary to conduct additional wetland assessments. If losses to functions and values have occurred after any assessment, the Discharger shall provide a corrective action plan and/or compensatory mitigation plan for acceptance by the Executive Officer, and implement the plan(s) under the terms of this WQC Order.

c. Water Quality Certification Enforcement Provisions

1. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of Section 401(d) of the CWA, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.
2. In response to a suspected violation of any condition of this certification, the SWRCB or Regional Water Board may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring report the State Board or Regional Water Board deems appropriate,

provided that the burden, including costs, of the reports shall be a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.

3. In response to any violation of the conditions of this certification, the Regional Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.

8. Prohibition Exemption and California Environmental Quality Act Requirements

- a. Pursuant to Regional Water Board duties as a CEQA Responsible Agency, the Discharger is required to implement a feasible mitigation measure consisting of a 200 cfs partial flushing flow from the Alabama Spillgate in conjunction with the first winter habitat flow, described in detail as the Alabama Release in Attachment H. The Alabama Release shall be sufficient to achieve a combined minimum flow of 200 cfs in the Lower Owens River below the Alabama Spillgate for a minimum period of 96 hours.
- b. The prohibition exemption granted in Order Section III.B. is granted, in part, based on Regional Water Board findings that all applicable mitigation measures are incorporated into the LORP. If the Discharger fails to comply with the requirements specified in Special Provision 8.a., above, the prohibition exemption is hereby rescinded effective on the first day following the conclusion of the first winter habitat flow.

- c. The prohibition exemption granted in Permit Section III.B. for the Lower Owens River shall remain valid on the condition that the Discharger at all times strictly adheres to Basin Plan criteria necessary to grant an exemption (as discussed in the Fact Sheet, Section IV.A.), as determined by the Regional Water Board. The prohibition exemption shall expire on **July 14, 2015**, unless renewed by the Regional Water Board, or rescinded pursuant to Special Provision 8.b., above.

VII. COMPLIANCE DETERMINATION

Compliance with the receiving water limitations contained in Section V of this Order will be determined as specified below:

For each constituent, all applicable numerical objectives along with water quality goals selected to interpret each applicable narrative objectives are collected and the most limiting (most stringent) of these values is selected. Below this most limiting value, compliance with all applicable water quality objectives is assured and the most sensitive beneficial use should be protected. This most limiting value becomes the beneficial use protective water quality limit for the constituent of interest in the water body. If the concentration of the constituent exceeds the beneficial use water quality protective limit, one or more water quality objectives have been violated and pollution has occurred.

The one exception to this is where the site-specific natural background condition in water is a higher concentration than the beneficial use protective water quality limit. The Regional Water Board authority for protection of water quality from waste discharges is limited to regulation of “controllable water quality factors”— those actions, conditions, or circumstances resulting from human activities that may influence the quality of waters of the state and that may be reasonably controlled. Where the natural background level is higher than the beneficial use protective water quality limit, the natural background level is considered to comply with the water quality objective. In such cases, other controllable factors are not allowed to cause any further degradation of water quality.

Monitoring data will be evaluated and compared with narrative and numerical water quality objectives specified in this Order to determine compliance with applicable standards. In particular, the Discharger is expected to make use of indicator parameters including, but not limited to, ammonia, dissolved oxygen, and turbidity for compliance screening, and to obtain real-time feedback for evaluating maintenance of water quality objectives to guide adaptive management and maintain compliance.