

Lahontan Regional Water Quality Control Board

May 14, 2013

TO ALL INTERESTED PERSONS AND AGENCIES:

**PROPOSED INVESTIGATIVE ORDER FOR WETLAND MONITORING AND
REVOCATION OF THE NATIONAL POLLUTANT DISCHARGE ELIMINATION
SYSTEM PERMIT CA0103225, BOARD ORDER NO. R6V-2005-0020 AS AMENDED,
FOR THE LOWER OWENS RIVER PROJECT, INYO COUNTY (WDID: 6B140407009)**

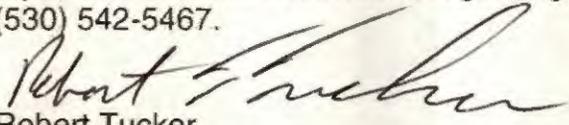
Enclosed is a proposed Board Order for the City Los Angeles, Department of Water and Power, that includes an Investigative Order for Wetland Monitoring and revocation of a National Pollutant Discharge Elimination System (NPDES) permit for the Lower Owens River Project. The California Regional Water Quality Control Board, Lahontan Region (Water Board) is considering revoking the permit because the permit has expired and the NPDES regulations changed in 2008. The regulations have changed such that the transfer of water within and between watersheds is no longer a process or discharge that may be regulated under the NPDES program; therefore, an NPDES permit is not required. The investigative portion of the order is to carry forward existing requirements for post-project wetland delineation.

The proposed order has changed from the tentative order that was mailed out to interested parties: the project finding for California Environmental Quality Act exemption was amended to include section 15321(a)(2); the Water Board posted a public notice in the *The Inyo Register* newspaper; and minor editorial changes were made in the investigative order requirement for the technical report.

The Water Board requests you review the proposed Order and provide your written comments no later than **June 9, 2013**. Comments received after that date may not be considered by the Water Board at the public meeting to be held on June 19, 2013, at the Mono County Community Center located at 296 Mattly Ave, Lee Vining, CA 93541. At the meeting, interested persons may provide testimony on the proposed order.

Approximately 10 to 15 days prior to each meeting, the Water Board publishes its agenda on the Internet at <http://www.waterboards.ca.gov/lahontan>. If you prefer to receive a hard copy of the Water Board meeting agenda, please contact Rob Tucker at (530) 542-5467.

If you need further information regarding this matter, please contact me at (530) 542-5467.



Robert Tucker
Water Resources Control Engineer

Enclosures: Proposed Board Order

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION**

**BOARD ORDER NO. R6V-2013-(PROPOSED)
NPDES NO. CA0103225
WDID NO. 6B140407009**

**INVESTIGATIVE ORDER FOR WETLAND MONITORING AND
REVOCAION OF WASTE DISCHARGE REQUIREMENTS AND
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT FOR
CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER FOR
LOWER OWENS RIVER PROJECT**

(INYO COUNTY)

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

1. Discharger

The Los Angeles Department of Water and Power (LADWP) constructed and operates the Lower Owens River Project (Project), a large-scale habitat restoration project. For the purposes of this Water Board Order (Order), the LADWP is the Discharger.

2. Description and Location

The Lower Owens River has been subject to reduced flows since 1913 when LADWP began diverting flow into the Los Angeles Aqueduct (LAA). The Project is located in the last 62 miles of the Owens River, above Owens Lake, in Inyo County. The purpose of the Project was to reestablish perennial flows to the Lower Owens River as mitigation for ground water pumping into the LAA. The Project includes a pumping station to recover the majority of the river flow before it reaches Owens Lake.

In 2011, approximately 37,779 acre feet flowed through the Project. Of this flow, LADWP recovered approximately 27,862 acre feet back into the LAA and approximately 9917 acre feet either infiltrated into the ground or flowed to Owens Lake and the LADWP's Owens Lake Dust Mitigation Project. The Project consisted of actions to restore and enhance the riparian system and enhance the habitat areas.

3. National Pollutant Discharge Elimination System and Waste Discharge Requirements

On July 14, 2005, the Water Board adopted National Pollutant Discharge Elimination System (NPDES) Permit No. CA0103225 and Waste Discharge Requirements (WDRs), Board Order No. R6V-2005-0020 (Board Order) pursuant to the California Water Code, Division 7 and the Clean Water Act, Section 402.

The Board Order was written as a master permit/order that was used to regulate the following activities: 1) water quality certification (WQC) under Clean Water Act Section 401 to authorize LADWP to discharge dredged or fill materials in waters of the United States (WOUS), 2) discharges of stormwater from construction activities and 3) to monitor the quality of the water in the river following the construction and flow being re-introduced, and prevent pollution of other surface and ground waters by use of the pump-back system.

On November 9, 2005, the Water Board Order adopted an amendment to the Order; Board Order No. R6V-2005-0020A1 acknowledges the Storm Water Pollution Prevention Plan was submitted to comply with the Storm Water Construction requirements and required that specific plan to be implemented.

On January 14, 2009, the Water Board adopted a second amendment to the Board Order (Amended Order No. R6V-2005-0020-A2), to reflect completion of the Project construction activities and terminate the portion of the permit applicable to construction stormwater.

The Board Order has been administratively continued because LADWP submitted an application for renewal of the NPDES permit Form 1 and report of waste discharge prior to the current NPDES permit expiring. The Order is in effect currently for water discharges from the Project pump station and includes WQC requirements.

4. Reason for Action

Since the Board Order was adopted, the NPDES regulations have changed to clarify that federal water transfer permits are only required in certain conditions. NPDES regulations for water transfer were promulgated in 2008. Code of Federal Regulations, title 40, section 122.3, paragraph (i) states the following.

“Discharges from a water transfer. Water transfer means an activity that conveys or connects WOUS without subjecting the transferred water to intervening Industrial, Municipal, or Commercial use. This exclusion does not apply to pollutants introduced by the water transfer activity to the water being transferred.”

LADWP does not subject the pumped water from the Lower Owens River to any intervening municipal, industrial or commercial use, and the water transfer does not introduce pollutants to the water being transferred. Thus, the use of an NPDES permit is currently not applicable. Therefore, the revocation of the NPDES permit is appropriate.

5. Water Quality

The water transfer is potentially subject to regulation under WDRs. However based on the data obtained, the Water Board has no compelling interest at this time in regulating pump-back activities that pose no significant threat to water quality.

Since the Project began, LADWP has monitored water quality in the LAA above and below the point where the Project discharges water from the lower Owens River into the LAA. Water quality below the pump-back discharge has continued to improve and now is essentially the same as above the discharge. The LAA below the discharge met all water quality objectives in 2012.

6. Outstanding Water Quality Certification Requirements

The Board Order, is also a WQC Order, and a report on Wetland Functions and Values (Report) was required in the Order. Pursuant to the Order's Attachment E-Monitoring and Reporting Program, section IX.B.1, the Report is to include an updated hydrogeomorphic analysis of wetland functions and values suitable for comparison with pre-project hydrogeomorphic analysis, to include the evaluation of "no net loss" of wetland functions and values. The Report is due on April 1, 2014, and will continue to be required.

Pursuant to this Order the report is reasonably needed to verify compliance with "no net loss" requirements for wetlands, and to quantify gains in wetlands.

7. Authority

Pursuant to Code of Federal Regulations, title 40, chapter 1, subtitle D and section 13370 of the Water Code, the U.S. Environmental Protection Agency (U.S. EPA) has approved the state's program to issue NPDES permits. The Water Board is the implementing agency and is authorized to revoke the NPDES permit. (40 CFR 122.62(b)(1).)

The revocation of the Board Order will not limit the Water Boards ability to regulate the Project with respect to water quality. If water quality issues are later identified, the Water Board retains the ability to adopt and impose WDRs on the LADWP; however, federal regulation cannot be used. The Water Board finds that the Project operation poses no significant threat to water quality.

8. Public Notification

The Water Board has notified the discharger and interested parties of its intent to rescind Board Order No. R6V-2005-0020, and amendments R6V-2005-0020A1, R6V-2005-0020-A2 and revoke its NPDES permit No. CA0103255. Comments have been solicited from the Discharger, all interested agencies and parties. No adverse comments were received. Public notice was published on the Regional Board's web site on May 14, 2013, and a public notice was placed in *The Inyo Register* newspaper on May 14, 2013.

9. California Environmental Quality Act

The revocation of this permit is categorically exempt from the California Environmental Quality Act pursuant to the California Code of Regulations, title 14, sections 15301 - Existing Facilities, and 15321(a)(2) - Enforcement Actions by Regulatory Agencies.

IT IS HEREBY ORDERED that:

- A) NPDES permit CA0103225 is revoked and Order No. R6V-2005-0020 and amendments R6V-2005-0020A1 and R6V-2005-0020-A2 are rescinded, except for enforcement purposes.
- B) The Discharger must provide, pursuant to Water Code section 13267, the following technical report by **April 1, 2014**;

An updated hydrogeomorphic analysis of wetland functions and values suitable for comparison with the pre-project hydrogeomorphic analysis of the Project, and a determination of whether "no net loss" requirements of the Section 401 certification order have been achieved with regard to wetland function and values. An updated analysis shall be provided by April 1, 2019 and April 1, 2024, unless the Executive Officer determines that "no net loss" requirements have been fulfilled based on information provided by the Discharger in the 2014 or subsequent analyses.

I, PATTY Z. KOUYOUMDJIAN, Executive Officer, do hereby certify the forgoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Lahontan Region, on June 19, 2013.

PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER