

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 98-07

In the Matter of
Stream and Waterfowl Habitat Restoration Plans and
Grant Lake Operations and Management Plan
Submitted by the
Los Angeles Department of Water and Power
Pursuant to the Requirements of Water Right Decision 1631
(Water Right Licenses 10191 and 10192, Applications 8042 and 8043)

SOURCES: Rush Creek, Lee Vining Creek, Walker Creek, and Parker Creek

COUNTY: Mono

LICENSEE: City of Los Angeles

**ORDER AMENDING PROVISIONS OF ORDER WR 98-05
APPLICABLE TO STREAM RESTORATION MEASURES AND
DISMISSING PETITIONS FOR RECONSIDERATION**

BY THE BOARD:

This order addresses three petitions requesting reconsideration of State Water Resources Control Board (SWRCB) Water Right Order WR 98-05, which was adopted on September 2, 1998.

Order WR 98-05 requires the City of Los Angeles Department of Water and Power (Los Angeles) to implement specified stream restoration and waterfowl habitat restoration measures in the Mono Lake Basin.¹ The petitions for reconsideration were filed by the National Audubon Society and Mono Lake Committee (NAS/MLC), the California Department of Fish and Game (DFG), and California Trout, Inc. (CalTrout). The petitions for reconsideration

¹ Order WR 98-05 contains a detailed discussion of the development of the stream and waterfowl habitat restoration plans which were prepared by Los Angeles pursuant to the requirements of SWRCB Water Right Decision 1631. Order WR 98-05 also provides detailed findings and explanation in support of the stream and waterfowl habitat restoration measures required by that order.

address the subject of when the stream restoration program and stream restoration monitoring required by Order WR 98-05 may eventually be terminated.²

Subsequent to receiving the petitions for reconsideration, the SWRCB was advised by counsel for Los Angeles that Los Angeles and the petitioners have reached agreement on proposed modifications to provisions of Order WR 98-05 which address the subject of stream monitoring. The SWRCB received letters dated November 9, 1998, and November 13, 1998, regarding changes to Order WR 98-05. The letters describe proposed changes to Order WR 98-05 which are stated to be mutually agreeable to Los Angeles and the petitioners.³ Enclosed with the November 13, 1998, letter are proposed revisions to Order WR 98-05. The suggested revisions propose: (1) use of previously identified "termination criteria" for stream monitoring on Rush Creek and Lee Vining Creek (Exhibit R-LADWP-68B); (2) a process for possible establishment of similar quantified "termination criteria" for stream monitoring on Parker Creek and Walker Creek; and (3) various other minor changes regarding the stream monitoring requirements of Order WR 98-05.

The petitioners have advised the SWRCB that, if the proposed modifications to Order WR 98-05 are adopted, then the petitioners withdraw all remaining issues raised by the petitions for reconsideration of Order WR 98-05. In addition, the petitioners have committed to dismissing the SWRCB as a party in the Mono Lake Water Rights Cases (El Dorado County, Superior Court Coordinated Proceeding Nos. 2284 and 2288).

This order concludes that, in view of the the petitioners' and Los Angeles' agreement to the proposed revisions and the public interest in avoiding further litigation, it is appropriate to revise the provisions of paragraph 1.b. ("Stream Monitoring") beginning on page 61 of Order WR 98-05 in accordance with the language at the end of this order. Due to the petitioners' withdrawal of

² No petitions for reconsideration were received regarding the waterfowl habitat restoration provisions of Order WR 98-05.

³ The changes shown in the enclosure to the November 13, 1998, letter supersede similar proposed revisions in the letter dated November 9, 1998.

all other issues raised in their petitions for reconsideration, this order does not address those other issues.

Petitioners represent that the "termination criteria" adopted in paragraph 1.b.(5) of this order describe specified pre-1941 stream conditions for Rush Creek and Lee Vining Creek as set forth in Exhibit R-LADWP-68B.⁴ This order provides for revising the quantified "termination criteria" when existing conditions make it infeasible to restore a pre-project condition or when new information provides a better understanding of how to evaluate stream restoration progress. The SWRCB intends that the "termination criteria" be used in determining when the stream monitoring program may be terminated.

The record in this matter establishes that it is not likely that all of the conditions described by the "termination criteria" will be met. As a result, Los Angeles will be required to continue the stream monitoring program for many years into the future until such time as revised requirements are established and met. During the course of the stream restoration program, stream restoration measures and the stream monitoring program may be revised to focus on outstanding restoration issues. The SWRCB would not ordinarily adopt "termination criteria" of the type established in this order for the reasons discussed in Order WR 98-05. However, it is reasonable to expect Los Angeles to monitor the restoration and recovery of the four affected streams for a long period of time. Furthermore, Los Angeles has expressed its willingness to be subject to the "termination criteria" set forth in this order for purposes of determining when required stream monitoring may be terminated.

Under the existing circumstances, the SWRCB finds that it is in the public interest to avoid further disputes or prolonged proceedings regarding the stream restoration requirements of Order WR 98-05. If any future disputes arise, they may be resolved with the benefit of the additional information developed during the course of the stream monitoring program. Adoption of the proposed "termination criteria" for use in determining when stream monitoring may be

⁴ The "termination criteria" include estimates that have been or will be developed for acreage of riparian vegetation, length of main stream channel, channel gradient, channel sinuosity, channel confinement, "variation of longitudinal thalweg elevation," and size and structure of fish populations in Rush Creek and Lee Vining Creek.

terminated does not imply that achievement of the conditions described by the those criteria (as specified in Exhibit R-LADWP-68B or as supplemented and modified in the future) is required prior to termination of other aspects of the stream restoration program. The SWRCB's decision regarding the eventual termination of all aspects of the stream restoration program, except monitoring, will be based on the criteria discussed in Order WR 98-05 and set forth in paragraph 1.b.(4), subparagraphs (a) and (b) of this order.

The provisions of Order WR 98-05 affected by this order are modified as set forth below solely for the reasons stated herein. Except as expressly modified by this order, all findings and provisions of Order WR 98-05 remain unchanged.

ORDER

IT IS HEREBY ORDERED THAT paragraph 1.b. (beginning on page 61) of Order WR 98-05 is revised to read as follows:

- "b. Stream Monitoring: Licensee shall implement its January 1997 stream monitoring plan (R-DWP-22 and R-DWP-23) with the following changes, subject to the provisions specified below:
- (1) Licensee shall fund and implement a stream monitoring program to be carried out under the direction of Bill Trush, Chris Hunter, and such other independent scientists as may be approved by the Chief of the Division of Water Rights. Any member of the stream monitoring team may be replaced upon approval of the Chief of the Division of Water Rights:
 - (2) The stream monitoring team shall oversee implementation of the stream monitoring program including the following functions:
 - (a) The stream monitoring team shall evaluate and make recommendations, based on the results of the monitoring program, regarding the magnitude, duration and frequency of the SRFs necessary for the restoration of Rush Creek; and the need for a Grant Lake bypass to reliably achieve the flows needed for restoration of Rush Creek below its confluence with the Rush Creek Return Ditch. This evaluation shall take place after two data gathering cycles (as defined in the stream monitoring plan) but at no less than 8 years nor more than 10 years after the

monitoring program begins. Licensee shall implement the recommendation of the monitoring team unless it determines that the recommendation is not feasible. Licensee shall have 120 days after receiving the recommendation from the monitoring team to determine whether to implement the recommendation of the monitoring team. If any party disagrees with Licensee's determination regarding implementation of the monitoring team's recommendation, the party may request review by the Chief of the Division of Water Rights who shall then decide the matter.

- (b) The stream monitoring team shall evaluate the effect on Lee Vining Creek of augmenting Rush Creek flows with up to 150 cubic feet per second (cfs) of water from Lee Vining Creek in order to provide SRFs. The stream monitoring team shall also evaluate: (1) the reliability of attaining the specified SRFs in Rush Creek through augmentation with water from Lee Vining Creek; and (2) the need for a Grant Lake outlet after consideration of relevant factors including any material adverse impacts on Lee Vining Creek and reliability of providing SRFs in Rush Creek. Licensee shall implement the recommendation of the monitoring team unless it determines that the recommendation is not feasible. Licensee will have 120 days after receiving the monitoring team's recommendation to make this determination. If any party disagrees with the Licensee's determination, the party may request review by the Chief of the Division of Water Rights who shall then decide the matter.
- (c) The stream monitoring team shall prepare a written annual report by December 31 of each year which evaluates the results of the stream monitoring program and recommends any proposed changes in the stream restoration program and monitoring program. Among other things this report shall include a quantitative comparison in chart or comparable form of the criteria specified in paragraph (5) below and the corresponding conditions measured in each stream for that year. The report shall discuss the progress since the start of the monitoring program toward achievement of each of the specified criteria in paragraph (5) below on each stream. ~~To the extent reliable information is available,~~ The Report shall also include a quantitative comparison using the criteria specified in paragraph (5) below with the stream conditions in existence prior to 1941 as set forth in R-LADWP-68B and the stream conditions in existence prior to resumption of flows in Rush Creek in 1983, Lee Vining Creek in 1986, Walker Creek in 1990, and Parker Creek in 1990 and current conditions. The report shall be

provided upon request and without charge to any of the parties to the hearing which preceded this order.

- (d) The stream monitoring team shall develop and implement a means for counting or evaluating the number, weights, lengths and ages of the fish present in various reaches of Rush Creek, Lee Vining Creek, Parker Creek and Walker Creek.
 - (e) The stream monitoring team shall make a recommendation to the State Water Resources Control Board regarding any recommended actions to preserve and protect the streams and shall recommend to the State Water Resources Control Board when stream restoration is complete.
- (3) On or about April 1 of each year, Licensee shall submit to the Chief of the Division of Water Rights an annual report on the monitoring program. This report shall set forth the monitoring team's evaluation of results, the monitoring team's recommendations for any changes in the restoration program, and Licensee's position on such evaluation and recommendations.
- (4) The stream restoration program may be terminated upon approval of the State Water Resources Control Board following public notice and opportunity for public comment. The State Water Resources Control Board will base its determination upon consideration of the following factors:
- (a) Whether fish are in good condition. This includes self-sustaining populations of brown trout and other trout similar to those that existed prior to diversion of water by Licensee and which can be harvested in moderate numbers.⁴⁶
 - (b) Whether the stream restoration and recovery process has resulted in a functional and self-sustaining stream system with healthy riparian ecosystem components for which no extensive physical manipulation is required on an ongoing basis.

⁴⁶ Information regarding conditions that existed prior to Los Angeles' diversions is set forth in Decision 1631.

~~(5)~~ The State Water Resources Control Board's evaluation of the recovery and restoration of each of the four affected streams will include consideration of information provided by the Department of Fish and Game and information provided by the monitoring team regarding the following factors in the following paragraph.

(5) Monitoring will be terminated on the State Water Resources Control Board's approval of the licensee's report that all criteria set forth in paragraph 1.b(5)(a), as hereafter amended, have been met for each stream subject to D-1631.

(a) The termination criteria are:

~~(a)~~ (1) Acreage of riparian vegetation, including mature trees of sufficient diameter, height, and location to provide woody debris in the streams;

~~(b)~~ (2) length of main channel;

~~(c)~~ (3) channel gradient;

~~(d)~~ (4) channel sinuosity;

~~(e)~~ (5) channel confinement;

~~(f)~~ (6) variation of longitudinal thalweg elevation; and

~~(g)~~ (7) size and structure of fish populations;

~~(h)~~ other relevant factors.

(b) The quantified criteria for paragraph 1.b(5)(a)(1)-(4) and (7) for Rush and Lee Vining Creeks are as stated in R-DWP-68B. The monitoring team will recommend quantified forms for 1b(5)(a)(5)-(6) within one year of this order for the approval of the Chief of the Division of Water Rights, after notice to the parties and consideration of any timely comments.

(c) Within one year of the date of this order the monitoring team will evaluate quantification of the criteria for Walker and Parker Creeks and, if such quantification is feasible, recommend quantified forms of the criteria for approval of the Chief of the Division of Water Rights.

- (d) The criteria that have been quantified and those to be quantified will describe the qualities which existed in the streams subject to D-1631 before the licensee caused degradation to these streams. For the purpose of this order, those qualities are the 'pre-project conditions.'
- (e) Each of these criteria will be stated separately for each stream.
- (f) The monitoring program will evaluate progress towards achievement of each of these criteria. Where an existing condition precludes the restoration of a pre-project condition, a corresponding criterion which is functionally equivalent will be established.
- (g) The monitoring team may, from time to time, reevaluate and if appropriate, recommend changes in the quantified forms of these criteria, on the basis of improved understanding of how to evaluate progress in restoring these streams.
- (h) Notwithstanding the criteria in R-DWP-68B describing pre-project conditions for Reach 1 of Rush Creek, this order is not intended to compel the restoration or rewatering of Reach 1 of Rush Creek except as provided in paragraph 1.b (2)(a)."

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IT IS FURTHER ORDERED THAT the petitions for reconsideration of Order WR 98-05 are hereby dismissed.

CERTIFICATION

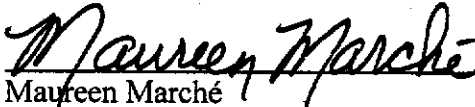
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on November 19, 1998.

AYE: John Caffrey
 James M. Stubchaer
 Marc Del Piero
 Mary Jane Forster
 John W. Brown

NO: None

ABSENT: None

ABSTAIN: None



Maureen Marché
Administrative Assistant to the Board

