

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

IN THE MATTER OF LICENSES 10191 AND 10192 (APPLICATIONS 8042 AND 8043)

City of Los Angeles

SOURCE: Rush Creek

COUNTY: Mono

ORDER APPROVING TEMPORARY URGENCY CHANGE IN LICENSE CONDITIONS

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On January 13, 2016, City of Los Angeles, Department of Water and Power (LADWP or Petitioner) filed Temporary Urgency Change Petitions (TUCPs) with the State Water Resources Control Board (State Water Board) requesting approval of temporary changes to its Licenses 10191 and 10192 pursuant to Water Code section 1435. With the TUCPs, LADWP requests authorization to lower the winter base flow in Rush Creek from the currently required 36 cubic feet per second (cfs) to 20 cfs, regardless of Grant Lake storage and in-flow levels, from the date of approval of the TUCPs until March 31, 2016. Temporary urgency changes pursuant to Water Code section 1435 may be effective for up to 180 days from the date of the Order approving the changes, or for a lesser period of time requested by the Petitioner.

The interim flow scheme is being proposed, with support from the California Department of Fish and Wildlife (CDFW), California Trout, Inc. (CalTrout), Mono Lake Committee (MLC) and State Water Board-approved stream monitoring team (Stream Scientists), to maintain healthy brown trout fisheries in Rush Creek during the Winter/Spring season.

2.0 BACKGROUND

2.1 State Water Board Decision 1631 and Licenses 10191 and 10192

In Decision 1631 (D-1631), the State Water Board modified Licenses 10191 and 10192 for the purpose of establishing instream flow requirements below LADWP's points of diversion on four affected streams tributary to Mono Lake. The decision also established conditions to protect public trust resources at Mono Lake. State Water Board Orders WR 98-05 and WR 98-07 (Orders) amended Decision 1631. Pursuant to D-1631 and the subsequent Orders, LADWP is required to conduct fisheries studies and stream monitoring activities until the program (or elements thereof) is terminated by the State Water Board. LADWP has been conducting fisheries studies and stream monitoring for the past 13 years. These activities are conducted by the Stream Scientists who: (a) oversee implementation of the stream monitoring and restoration program and (b) evaluate the results of the monitoring program and recommend modifications as necessary. In the Stream Scientists' April 30, 2010 Synthesis of Instream Flow Recommendations Report (Synthesis Report), they recommended modification of the flow regime and other aspects of the Mono Basin stream monitoring and restoration program.

2.2 Description of Requested Temporary Urgency Change

Pursuant to Licenses 10191 and 10192, from October 1 through March 31 in a dry year, LADWP is required to maintain Rush Creek flows out of Grant Lake to match inflow or 36 cfs, whichever is less, when Grant Lake storage falls below 11,500 acre-feet (af), and a constant outflow of 36 cfs when Grant Lake storage is above 11,500 af.

LADWP anticipated that Grant Lake storage would fall below 11,500 af during early 2016 because Grant Lake storage in late November 2015 was 11,870 af and the dry year inflows were very low. Storage levels continued to decrease throughout December 2015, and as of January 21, 2016, the surface elevation of Grant Lake was 7088.6 feet which corresponds to a capacity just below 11,500 af.

The proposed 20 cfs constant base flow, which is higher than the current dry year inflow to Grant Lake, will help to ensure healthy brown trout fisheries in Rush Creek during dry year releases since flows are expected to remain very low through the end of the runoff year. LADWP has made similar change requests to the State Water Board during past dry runoff years.

3.0 PUBLIC NOTICE OF THE TUCPs

The State Water Board will issue, as soon as practicable, public notice of the TUCPs pursuant to Water Code section 1438, subdivision (a). Pursuant to Water Code section 1438, subdivision (b)(1), LADWP is required to publish the notice in a newspaper having a general circulation, and that is published within the counties where the points of diversion are located. The State Water Board will post the notice of the temporary urgency changes and the TUCPs (and accompanying materials) on its website. The State Water Board will also distribute the notice through an electronic notification system. Pursuant to Water Code section 1438, the State Water Board may issue a temporary urgency change order in advance of the required notice.

4.0 LETTERS OF SUPPORT REGARDING THE TUCPs

The MLC and CDFW provided letters of support regarding the changes proposed by LADWP with the TUCPs. Their comments are provided below.

4.1 Mono Lake Committee

In a December 18, 2015 letter to LADWP, MLC documented its support for the changes proposed by the TUCPs. MLC indicated it had discussed the proposed changes with LADWP staff as well as Ross Taylor, one of the Stream Scientists, and, based on those discussions, identified impending adverse conditions on Rush Creek as well as potential benefits from the proposed temporary changes as follows:

- Due to extremely low inflows from Rush Creek (recently as low as 10 cfs), Grant Lake appears likely to drop below 11,500 af of storage before the end of December 2015.
- A release of 10 cfs (the recent low inflow) is lower than the 25 cfs minimum winter flow set forth in the 2013 Mono Basin Stream Restoration Agreement and lower than the lowest flow of 15 cfs analyzed during the 2009 flow study, which was deemed undesirable by the Stream Scientists given the current state of the habitat in Lower Rush Creek.
- Following the minimum release requirement when Grant Lake is below 11,500 af would cause the reservoir level to fluctuate around 11,500 af, causing releases to Rush Creek to fluctuate between as low as 10 cfs (when the reservoir is below 11,500 af) and 36 cfs (when the reservoir is above 11,500 af). This large and possibly frequent fluctuation in flows during the winter would be undesirable for the fishery.
- Over the last year and a half, Southern California Edison (SCE), which operates hydropower facilities upstream of Grant Lake, has begun operating its Mono Basin hydropower plants to provide power

during peak demand times. Typical Rush Creek flows at Damsite (inflow to Grant Lake) during these peaking operations have been as high as 80 cfs and as low as 10 cfs. Without a TUCP, the minimum winter flows provided by LADWP in Rush Creek could fluctuate between as low as 10 cfs up to 36 cfs.

- Lowering the minimum flow release to 20 cfs from 36 cfs when Grant Lake Reservoir holds 11,500 acre-feet of storage or more could increase storage and improve water temperatures during summer 2016, when the reservoir is expected to start out very low (near 11,500 af).

MLC indicated that it modeled a 20 cfs constant release from Grant Lake between December 15 and March 31 and the effect on March 31st reservoir storage would be to lower it from approximately 11,500 af under the current minimum flow rules to approximately 11,000 af assuming average inflows remained near 15 cfs. The release to Rush Creek would remain relatively stable at 20 cfs instead of fluctuating between 10 and 36 cfs as would happen without the proposed temporary changes. The modeling also showed that if inflows were to increase to above 20 cfs, the stability in the flow release would continue to be an advantage, providing additional storage that could benefit water temperatures and the fishery during the warm summer months.

4.2 California Department of Fish and Wildlife

On December 21, 2015, CDFW provided a letter of support indicating that Grant Lake storage is likely to fall below the 11,500 af threshold within the next two weeks, and that recent inflows to Grant Lake have been as low as 11 cfs. CDFW indicated that the requested temporary changes will benefit Rush Creek by avoiding daily flow fluctuations, and potentially help to maintain higher reservoir levels in Grant Lake.

5.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

LADWP, as Lead Agency pursuant to the California Environmental Quality Act (CEQA), prepared a Notice of Exemption for the *Mono Basin Temporary Operation Petition to SWRCB* on December 18, 2015. LADWP found that the change is categorically exempt from CEQA, as the project is for the use of existing facilities with negligible or no expansion of existing use, for the purpose of maintaining fish and wildlife habitat areas, maintaining stream flows, and protecting fish and wildlife resources. (14 Cal. Code Regs. § 15301(i)). The proposed flow deviation will maintain healthy brown trout fisheries in Rush Creek during this dry runoff year.

The State Water Board has reviewed the information submitted by LADWP and has determined that the petition qualifies for an exemption under CEQA. The State Water Board will issue a Notice of Exemption for the temporary urgency change petition.

6.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY URGENCY CHANGES

Water Code section 1435 provides that a permittee or licensee who has an urgent need to change the point of diversion, place of use, or purpose of use from that specified in the permit or license may petition for a conditional temporary change order. The State Water Board's regulations set forth the filing and other procedural requirements applicable to TUCPs. (Cal. Code Regs., tit. 23, §§ 805, 806.) The State Water Board's regulations also clarify that requests for changes to permits or licenses other than changes in point of diversion, place of use, or purpose of use may be filed subject to the same filing and procedural requirements that apply to changes in point of diversion, place of use, or purpose of use. (*Id.*, § 791, subd. (e))

Before approving a temporary urgency change, the State Water Board must make the following findings:

- a. The Petitioner has an urgent need to make the proposed change;
- b. The proposed change may be made without injury to any other lawful user of water;

- c. The proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses; and
- d. The proposed change is in the public interest.
(Wat. Code, § 1435, subd. (b)(1-4).)

6.1 Urgency of the Proposed Change

Under Water Code section 1435, subdivision (c), an “urgent need” means “the existence of circumstances from which the State Water Board may in its judgment conclude that the proposed temporary change is necessary to further the constitutional policy that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented . . .” However, the State Water Board shall not find the need urgent if it concludes that the petitioner has failed to exercise due diligence in petitioning for a change pursuant to other appropriate provisions of the Water Code. (*Ibid.*)

In this case, an urgent need exists for the proposed change in the license conditions regarding fish flows for the purpose of furthering protection of public trust resources. Four years of drought has detrimentally impacted the Rush Creek fishery. Stabilization of winter base flows as requested by the TUCPs will prevent additional adverse conditions this winter and spring for the fishery.

6.2 No Injury to Any Other Lawful User of Water

There are no known lawful users of water downstream of Grant Lake; therefore, the proposed temporary changes in instream flows on Rush Creek will not injure any downstream legal user of water.

6.3 No Unreasonable Effects upon Fish, Wildlife, or Other Instream Beneficial Uses

As described above, MLC and CDFW have indicated that the temporary urgency changes will be advantageous for the fishery, as compared to no change. No other fish or wildlife resources are implicated by the proposed change; accordingly, the proposed change will not have unreasonable effects upon fish and wildlife resources.

6.4 The Proposed Change is in the Public Interest

The proposed change would assist LADWP in maintaining the fishery in good condition. Maintenance of the fishery is in the public interest.

In light of the above, I find in accordance with Water Code section 1435, subdivision (b)(4) that the proposed change is in the public interest, including findings to support change order conditions imposed to ensure that the change is in the public interest.

Pursuant to Water Code section 1439, the State Water Board shall supervise diversion and use of water under this temporary change order for the protection of all other lawful users of water and instream beneficial uses.

7.0 STATE WATER BOARD DELEGATION OF AUTHORITY

On June 5, 2012, the State Water Board adopted Resolution 2012-0029, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary urgency change. This Order is adopted pursuant to the delegation of authority in section 4.4.1 of Resolution 2012-0029.

8.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1435. The State Water board concludes that, based on the available evidence:

1. The Petitioner has an urgent need to make the proposed changes;
2. The proposed changes will not operate to the injury of any other lawful user of water;
3. The proposed changes, with conditions set forth in the Order, will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses; and
4. The proposed changes are in the public interest.

ORDER

NOW, THEREFORE, IT IS ORDERED that the temporary urgency change petitions filed by LADWP are approved and this approval Order is effective through March 31, 2016.

All existing terms and conditions of Licenses 10191 and 10192 remain in effect, except as temporarily amended by the following provisions:

1. For protection of fish in Rush Creek, LADWP shall bypass flow below the point of diversion on Rush Creek equal to the flow specified below. If necessary to meet the dry year flow requirements on Rush Creek, LADWP shall release water from storage at Grant Lake under the conditions specified below. The flows provided under this requirement shall remain in the stream channel and not be diverted for any other use.

Rush Creek Dry Year Flow Requirement
October 1 through March 31

20 cfs

The dry year flow requirement in Rush Creek shall be maintained during this period of time regardless of the storage levels in Grant Lake.

2. LADWP shall submit to the Deputy Director for Water Rights on a monthly basis a written report that summarizes all activities conducted to ensure compliance with the requirements of this Order. The first monthly report is due at the end of the first complete month of this Order. LADWP shall submit a final report summarizing overall compliance with this Order no later than May 1, 2016.
3. This Order does not authorize any act that results in the taking of a threatened or endangered species, or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this Order, the licensee shall obtain authorization for an incidental take permit prior to construction or operation. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary urgency change authorized under this Order.
4. The State Water Board shall supervise the diversion and use of water under this Order for the protection of legal users of water and instream beneficial uses and for compliance with the conditions. Petitioner shall allow representatives of the State Water Board reasonable access to the project works to determine compliance with the terms of this Order.

5. The State Water Board reserves jurisdiction to supervise the temporary urgency change under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.
6. The temporary urgency changes authorized under this Order shall not result in creation of a vested right, even of a temporary nature, but shall be subject at all times to modification or revocation in the discretion of the State Water Board. The temporary urgency changes approved in this Order shall automatically expire March 31, 2016, unless earlier revoked.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

Barbara Evoy, Deputy Director
Division of Water Rights

Dated: JAN 26 2016