

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)

Los Angeles Department of Water and Power

ORDER APPROVING TEMPORARY URGENCY CHANGES

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

COUNTY: Mono

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF THE TEMPORARY URGENCY CHANGE PETITIONS

On January 24, 2019, the State Water Resources Control Board (State Water Board) received Temporary Urgency Change Petitions (TUCPs) pursuant to California Water Code section 1435 from the Los Angeles Department of Water and Power (LADWP) requesting approval of temporary changes to its water right Licenses 10191 and 10192 (Applications 8042 and 8043).

On March 22, 2019, the State Water Board received proposed amendments to the TUCPs from LADWP. With the amended TUCPs, LADWP requests authorization to temporarily deviate from Stream Restoration Flow requirements as outlined in the State Water Board's Decision 1631 (D-1631) and Order 98-05 for Rush, Lee Vining, Parker, and Walker Creeks and instead follow the Stream Ecosystem Flows (SEFs) in the Draft Amended Licenses 10191 and 10192. The purpose of the temporary changes to the flow requirements is to collect data, and to test and evaluate the effects on resources from the implementation of the SEFs. The proposed amendments to the TUCPs will cover the appropriate water-year type starting from the approval date of this Order until September 30, 2019.

The temporary flow changes and the amended TUCPs are supported by the California Trout, Inc. (CalTrout), the Mono Lake Committee (MLC), and the State Water Board-approved stream monitoring team (Stream Scientists).

The temporary flow modifications proposed by LADWP will not increase LADWP's annual export of 16,000 acre-feet¹ as specified in D-1631.

2.0 BACKGROUND

2.1 State Water Board Decision 1631, Orders WR 98-05 and WR 98-07, 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

¹ 16,000 acre-feet may be exported annually when Mono Lake elevation is at or above 6,380 feet and below 6,391 feet.

Mono Lake. State Water Board Orders WR 98-05 and WR 98-07 (Orders) amended D-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 over 20 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 the Temporary Urgency Changes

The basis of temporary changes to the flow requirements is to allow LADWP to collect data, and to test and evaluate the effects on resources from the implementation of the SEFs, as identified in the *Mono Basin Operations Plan Under The Amended TUCP*, dated March 22, 2019. The TUCPs request the following temporary changes:

1. Rush Creek - The Mono Basin's April 1st forecast for Runoff Year (RY) 2019-2020 is projected to be either an Extreme-Wet, Wet, or Wet/Normal water-year type. Rush Creek's SEFs will be set to the appropriate water-year type and follow either Table 1A for an Extreme-Wet, Table 1B for a Wet, or Table 1C for a Wet/Normal water-year type (see Tables on pages 6-8).
2. Lee Vining Creek – The SEFs for Lee Vining Creek will follow Table 2A for an Extreme-Wet, Wet, or Wet/Normal water-year type (see Table on page 9).
3. Parker Creek – All flow will be continuously bypassed.
4. Walker Creek - All flow will be continuously bypassed.

It has been noted that the current infrastructure may not allow LADWP to deliver the magnitude of flows and duration for Rush Creek's SEFs listed in Tables 1A, 1B, and 1C when flows exceed 380 cubic feet per second (cfs). LADWP also acknowledged that Lee Vining Creek's flows listed in Table 2A will be implemented to the extent that the current infrastructure and upstream operations allows and operate to ensure flows in Lee Vining Creek do not drop below the minimum specified flows as outlined in Table 2A. An exception to the flows in Table 2A will be made in September 2019 during fish monitoring activities where Lee Vining Creek flows will be set to 28 cfs for up to two weeks in order to ensure the safety of the Stream Scientists and LADWP biologists performing the fish monitoring activities.

LADWP will communicate with Mono Basin parties (MLC, CalTrout, California Department of Fish and Wildlife), the Stream Scientists, and the State Water Board during the TUCP's authorized period to coordinate and gain input as SEFs proceed. Specifically, a conference call will be scheduled within a reasonable time of the April runoff forecast to discuss final water year type, operations plan, address questions, and Stream Scientist input that may result from the operations plan. LADWP will also provide reasonable communication to update parties, answer questions, and address unforeseen challenges as SEFs are delivered according to the April 1 forecast for RY 2019-20.

3.0 COMPLIANCE WITH 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 State Water Resources Control Board* on January 3, 2019. 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 State Water Board has reviewed the information submitted by LADWP and has determined that the petitions qualify for an exemption under CEQA. The State Water Board will issue a Notice of Exemption for the temporary urgency change petitions.

4.0 PUBLIC NOTICE OF TEMPORARY URGENCY CHANGE PETITIONS

On April 5, 2019, the State Water Board issued a public notice of the temporary urgency changes pursuant to Water Code section 1438, subdivision (a). The comment period expires on May 6, 2019. Pursuant to Water Code section 1438, subdivision (b)(1), LADWP is required to publish the notice in a newspaper having a general circulation and published within the counties where the points of diversion are located. LADWP published the notice on April 4, 2019 in the Mammoth Times. The State Water Board posted the notice of the temporary urgency changes and the TUCPs (and accompanying materials) on its website and distributed the notice through its electronic notification system. Pursuant to Water Code section 1438(a), the State Water Board may issue a temporary urgency change order in advance of the required notice period.

5.0 COMMENTS REGARDING THE TEMPORARY URGENCY CHANGE PETITIONS

On January 22, 2019, LADWP copied the initial TUCPs to interested parties including the California Department of Fish and Wildlife, CalTrout, MLC, and the Stream Scientists. On February 1, 2019, MLC commented on the proposed TUCPs. MLC recommended that the State Water Board approve implementation of the interim SEFs for 180 days with the option for renewal. MLC also recommended that all elements of draft Licenses 10191 and 10192 terms and conditions 11 (Stream Ecosystem Flows) including tables, 12 (Grant Lake Operations), and 15 (Annual Operations Plan) including the collaborative planning, Stream Scientists input, and monthly reporting elements be implemented. MLC stated that interim implementation of the SEFs in 2019 will benefit the restoration of Rush, Lee Vining, Walker, and Parker Creeks and help with Grant Lake Reservoir management as well.

On February 6, 2019, a Mono Lake stakeholders meeting/conference call was held at the State Water Board's office which initiated the discussion on the TUCPs and action items for the coordination and resubmittal of amended TUCPs. On March 14, 2019, LADWP discussed the proposed amendments to the TUCPs in a conference call with the MLC, CalTrout, and Stream Scientists and there was a consensus to support the amended TUCPs. On March 22, 2019, LADWP submitted the amended TUCPs to the State Water Board.

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:

1. The Petitioner has an urgent need to make the proposed change;
2. The proposed change may be made without injury to any other lawful user of water;
3. The proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses; and
4. 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, there is an urgent need for the proposed change in the license conditions regarding fish flows for the purpose of furthering protection of public trust resources.

6.2 No Injury to Any Other Lawful User of Water

There are no known lawful users of water that will be affected by the proposed changes to instream flows. Accordingly, granting these TUCPs will not result in injury to any other lawful users of water

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

As described above, MLC have indicated that the temporary urgency will benefit the restoration of Rush, Lee Vining, Walker, and Parker Creeks and help with Grant Lake Reservoir management. 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 resources 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.

I conclude 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 this 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 petitions filed by the LADWP for temporary urgency changes in Licenses 10191 and 10192 are approved, and this approval is effective from the date of this Order to September 30, 2019. All existing terms and conditions in Licenses 10191 and 10192 remain in effect, except as temporarily amended by the following terms.

1. For protection of fish in Rush and Lee Vining Creeks, LADWP shall bypass flow below the point of diversion at the flows specified in the tables below for the appropriate water year type. The SEFs provided under this requirement shall remain in the stream channel and not be diverted for any other use.
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 November 1, 2019.
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 changes 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 September 30, 2019, unless earlier revoked.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

Erik Ekdahl, Deputy Director
Division of Water Rights

Dated: APR 16 2019

TABLE 1A: RUSH CREEK STREAM ECOSYSTEM FLOWS FOR EXTREME-WET YEARS

Hydrograph Component	Timing	Flow Requirement	Ramping Rate
Spring Baseflow	April 1 – April 30	40 cfs	Maximum: 10% or 10 cfs*
Spring Ascension	May 1 – May 15	40 cfs ascending to 80 cfs	Target: 5% Maximum: 25%
Spring Bench	May 16 – June 11	80 cfs	Maximum: 20%
Snowmelt Ascension	June 12 – June 22	80 cfs ascending to 220 cfs	Target: 10% Maximum: 20%
Snowmelt Bench	June 23 – August 10	220 cfs	Maximum Ascending: 20% Maximum Descending: 10% or 10 cfs*
Snowmelt Flood and Snowmelt Peak	Starting between June 23 and July 19 with the 5-day peak between June 29 and July 29	220 cfs ascending to 750 cfs, 750 cfs for 5 days, 750 cfs descending to 220 cfs	Target Ascending: 20% Maximum Ascending: 40% Maximum Descending: 10% or 10 cfs*
Medium Recession (Node)	August 11 – August 25	220 cfs descending to 87 cfs	Target: 6% Maximum: 10% or 10 cfs*
Slow Recession	August 26 – September 30	87 cfs descending to 30 cfs	Target: 3% Maximum: 10% or 10 cfs*
Fall and Winter Baseflow	October 1 – March 31	27 cfs target (25 cfs minimum and 29 cfs maximum)	Maximum: 10% or 10 cfs*
			* whichever is greater

TABLE 1B: RUSH CREEK STREAM ECOSYSTEM FLOWS FOR WET YEARS

Hydrograph Component	Timing	Flow Requirement	Ramping Rate
Spring Baseflow	April 1 – April 30	40 cfs	Maximum: 10% or 10 cfs*
Spring Ascension	May 1 – May 15	40 cfs ascending to 80 cfs	Target: 5% Maximum: 25%
Spring Bench	May 16 – June 11	80 cfs	Maximum: 20%
Snowmelt Ascension	June 12 – June 19	80 cfs ascending to 170 cfs	Target: 10% Maximum: 20%
Snowmelt Bench	June 20 – August 1	170 cfs	Maximum Ascending: 20% Maximum Descending: 10% or 10 cfs*
Snowmelt Flood and Snowmelt Peak	Starting between June 20 and July 8 with the 5-day peak between June 27 and July 19	170 cfs ascending to 650 cfs, 650 cfs for 5 days, 650 cfs descending to 170 cfs	Target Ascending: 20% Maximum Ascending: 40% Maximum Descending: 10% or 10 cfs*
Medium Recession (Node)	August 2 – August 15	170 cfs descending to 71 cfs	Target: 6% Maximum: 10% or 10 cfs*
Slow Recession	August 16 – September 13	71 cfs descending to 30 cfs	Target: 3% Maximum: 10% or 10 cfs*
Summer Baseflow	September 14 – September 30	30 cfs target 28 cfs minimum	Maximum: 10% or 10 cfs*
Fall and Winter Baseflow	October 1 – March 31	27 cfs target 25 cfs minimum and 29 cfs maximum	Maximum: 10% or 10 cfs*
			* whichever is greater

TABLE 1C: RUSH CREEK STREAM ECOSYSTEM FLOWS FOR WET/NORMAL YEARS

Hydrograph Component	Timing	Flow Requirement	Ramping Rate
Spring Baseflow	April 1 – April 30	40 cfs	Maximum: 10% or 10 cfs*
Spring Ascension	May 1 – May 15	40 cfs ascending to 80 cfs	Target: 5% Maximum: 25%
Spring Bench	May 16 – June 11	80 cfs	Maximum: 20%
Snowmelt Ascension	June 12 – June 18	80 cfs ascending to 145 cfs	Target: 10% Maximum: 20%
Snowmelt Bench	June 19 – July 23	145 cfs	Maximum Ascending: 20% Maximum Descending: 10% or 10 cfs*
Snowmelt Flood and Snowmelt Peak	Starting between June 19 and July 1 with the 3-day peak between June 26 and July 10	145 cfs ascending to 550 cfs, 550 cfs for 3 days, 550 cfs descending to 145 cfs	Target Ascending: 20% Maximum Ascending: 40% Maximum Descending: 10% or 10 cfs*
Medium Recession (Node)	July 24 – August 4	145 cfs descending to 69 cfs	Target: 6% Maximum: 10% or 10 cfs*
Slow Recession	August 5 – September 1	69 cfs descending to 30 cfs	Target: 3% Maximum: 10% or 10 cfs*
Summer Baseflow	September 2 – September 30	30 cfs target 28 cfs minimum	Maximum: 10% or 10 cfs*
Fall and Winter Baseflow	October 1 – March 31	27 cfs target 25 cfs minimum and 29 cfs maximum	Maximum: 10% or 10 cfs*
			* whichever is greater

TABLE 2A LEE VINING CREEK STREAM ECOSYSTEM FLOWS

Timing: April 1 – September 30							Year-type: Extreme/Wet, Wet, Wet/Normal, Normal, Dry/Normal II			
Maximum ramping at the beginning and end of this period is 20%.										
Inflow	Flow Requirement									
30 cfs or less	Licensee shall bypass inflow.									
31 – 250 cfs	Licensee shall bypass flow in the amount corresponding to inflow which is displayed as blocks of 10 cfs (left-hand vertical column) and 1 cfs increments within such blocks (top horizontal row).									
	0	1	2	3	4	5	6	7	8	9
30		30	30	30	30	30	31	32	33	34
40	30	31	32	33	34	35	36	37	38	39
50	35	36	37	38	39	40	41	42	43	44
60	45	46	47	48	49	50	51	52	53	54
70	55	56	57	58	59	60	61	62	63	64
80	60	61	62	63	64	65	66	67	68	69
90	70	71	72	73	74	75	76	77	78	79
100	75	76	77	78	79	80	81	82	83	84
110	85	86	87	88	89	90	91	92	93	94
120	95	96	97	98	99	100	101	102	103	104
130	100	101	102	103	104	105	106	107	108	109
140	110	111	112	113	114	115	116	117	118	119
150	120	121	122	123	124	125	126	127	128	129
160	130	131	132	133	134	135	136	137	138	139
170	135	136	137	138	139	140	141	142	143	144
180	145	146	147	148	149	150	151	152	153	154
190	155	156	157	158	159	160	161	162	163	164
200	160	161	162	163	164	165	166	167	168	169
210	170	171	172	173	174	175	176	177	178	179
220	180	181	182	183	184	185	186	187	188	189
230	190	191	192	193	194	195	196	197	198	199
240	195	196	197	198	199	200	201	202	203	204
250	200									
251 cfs and greater	Licensee shall bypass inflow.									