

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

**DIVISION OF WATER RIGHTS**

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**In the Matter of Licenses 10191 and 10192 (Applications 8042 and 8043)**

**City of Los Angeles, Department of Water and Power**

**ORDER APPROVING TEMPORARY URGENCY CHANGES**

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

COUNTY: Mono

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BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

**1.0 SUBSTANCE OF THE TEMPORARY URGENCY CHANGE PETITIONS**

On September 18, 2020, the State Water Resources Control Board (State Water Board) received Temporary Urgency Change Petitions (TUCPs) pursuant to California Water Code section 1435 from the City of Los Angeles, Department of Water and Power, (LADWP or Petitioner) requesting renewal of the TUCPs issued to LADWP on May 13, 2020 and approval of temporary changes to water right Licenses 10191 and 10192.

With the 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 proposed TUCPs are a continuation of the Runoff Year 2020-2021 studies and previously approved TUCP Orders, dated April 16, 2019, October 22, 2019, and May 13, 2020. The purpose of the renewal of the temporary changes to the flow requirements is to collect another 180 days of flow data, and in conjunction with the previously approved TUCP Orders, test and evaluate almost two full years of flow data of the effects on resources from the implementation of the Rush Creek and Lee Vining SEFs. The proposed renewal TUCPs will cover the flow requirements for a Dry – Normal I water-year type starting from the approval date of this Order and ending on March 31, 2021.

The temporary flow changes and the amended TUCPs are supported by the California Trout, Inc. (CalTrout), the Mono Lake Committee (MLC), the California Department of Fish and Wildlife (CDFW), 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-feet<sup>1</sup> 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 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 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 additional 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 October 2020 TUCP*, dated September 14, 2020. The TUCPs request the following temporary changes:

1. Rush Creek - The Mono Basin's April 1st forecast for Runoff Year (RY) 2020-2021 is classified as a Dry-Normal I water-year type. The Rush Creek SEFs will follow a Dry-Normal I water-year type as follows:

Hydrograph Component:	Fall and Winter Baseflow
Timing:	October 1 – March 31
Flow Requirement:	27 cfs target, 25 cfs minimum, 29 cfs maximum
Ramping Rate:	Maximum: 10% or 10 cfs (whichever is greater)

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

2. Lee Vining Creek – The Lee Vining SEFs will follow a Dry-Normal I water-year type as follows:
  - Timing: October 1 – March 31
  - Flow Requirement: 16 cfs
  - Ramping Rate: Maximum ramping at the beginning and end of this period and at all times is 20%.
3. Parker Creek – All flow will be continuously bypassed.
4. Walker Creek - All flow will be continuously bypassed.

LADWP will communicate with the Mono Basin parties (MLC, CalTrout, CDFW), the Stream Scientists, and the State Water Board during the TUCPs' authorized period to coordinate and gain input as SEFs are implemented. Specifically, a conference call will be scheduled within a reasonable time before the end of the proposed TUCPs to discuss the operations plan for the coming runoff year, address questions, and seek the Stream Scientists 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 2020-21.

### **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 September 14, 2020. 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 October 1, 2020, 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 November 2, 2020. 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 October 1, 2020 in the Mammoth Times. The State Water Board posted the notice of the temporary urgency changes on its website and distributed the notice through its electronic notification system.

## **5.0 COMMENTS REGARDING THE TEMPORARY URGENCY CHANGE PETITIONS**

On September 9, 2020, LADWP held a conference call to discuss the proposed TUCPs and the *Mono Basin Operations Plan Under The October 2020 TUCP* (Operation Plan) with MLC, CalTrout, CDFW, State Water Board, and Stream Scientist, Dr. Bill Trush. At the conclusion of the conference call, a consensus was reached amongst the Mono Basin parties to support the TUCPs and Operation Plan.

## **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, are 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 changes in the license conditions regarding fish flows for the purpose of furthering the protection of public trust resources. Furthermore, the TUCPs will provide LADWP another 180 days of flow data, and in conjunction with the TUCP Orders approved on April 16, 2019, October 22, 2019, and May 13, 2020, test and evaluate almost two years of continuous flow data and further providing valuable information on effects on fisheries and riparian conditions from implementation of the Rush and Lee Vining Creeks SEFs.

## **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 renewal 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**

The renewal of the temporary urgency changes will benefit the restoration activities of Rush, Lee Vining, Walker, and Parker Creeks and help with Grant Lake Reservoir management. No other fish, wildlife, or other instream beneficial use resources are implicated by the proposed changes; accordingly, the proposed changes will not have unreasonable effects upon fish and wildlife resources.

## **6.4 The Proposed Change is in the Public Interest**

The proposed changes 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 changes are in the public interest, including, findings to support change order conditions imposed to ensure that the changes are in the public interest.

## **7.0 CONSIDERATION OF PUBLIC TRUST RESOURCES**

Prior to approval of a TUCP, the State Water Board must find that the proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses. In addition, the State Water Board has an independent obligation to consider the effect of approval of LADWP's petitions on public trust resources and to protect those resources where feasible. (National Audubon Society v. Superior Court (1983) 33 Cal. 3d 419 [189 Cal. Rptr. 346].) Public trust resources may include, but are not limited to, wildlife, fish, aquatic dependent species, streambeds, riparian areas, tidelands, and recreation in navigable waterways, as well as fisheries located in non-navigable waterways. As stated above, no other fish or wildlife resources, or other instream beneficial uses are implicated by the proposed changes; accordingly, the

proposed changes will not have unreasonable effects upon fish and wildlife resources, and public trust resources will be protected.

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.

## **8.0 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.

## **9.0 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 Los Angeles Department of Water and Power (LADWP) for renewal of the temporary urgency changes in Licenses 10191 and 10192 are approved, and this approval is effective from the date of this Order to March 31, 2021. 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 Section 2.2 of this Order. The Stream Ecosystem Flows 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 May 1, 2021.
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 water right holder shall obtain authorization for an incidental take permit prior to construction or operation. The water right holder shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary urgency changes 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 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, 2021, unless earlier revoked.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

*Erik Ekdahl, Deputy Director*  
*Division of Water Rights*

Dated: OCT 15 2020