

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Licensed)	
Application 531)	ORDER: WR 91-04
CITY OF LOS ANGELES,)	SOURCE: Owens River
Licensee.)	COUNTY: Mono
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ORDER AMENDING LICENSE

BY THE BOARD:

1.0 INTRODUCTION

The City of Los Angeles (City) having received License 10190 to divert water from the Owens River and License 10190 having been issued without complying with Section 5946 of the Fish and Game Code; the State Water Resources Control Board (State Board) finds as follows:

2.0 DESCRIPTION OF PROJECT

The City filed Application 531 on December 12, 1916 to appropriate water from the Owens River in Mono County. The State Board's predecessor issued Permit 5552 on June 1, 1940, authorizing diversion of water as requested in the application. On January 25, 1974, the State Board issued License 10190 confirming the City's rights for diversion of water from the Owens River at Long Valley Dam for hydroelectric power generation. The point of diversion specified by License 10190 is located within Fish and Game District 4½. This license

does not contain any terms or conditions requiring bypass of water for any purposes.

3.0

COMPLIANCE WITH FISH AND GAME CODE SECTION 5946

Fish and Game Code Section 5946 provides in relevant part as follows:

"No permit or license to appropriate water in District 4½ shall be issued by the State Water Resources Control Board after September 9, 1953, unless conditioned upon full compliance with [Fish and Game Code] Section 5937."

Fish and Game Code Section 5937 requires the owner of any dam to allow sufficient water at all times to pass through a fishway, or over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam. The California Court of Appeal has ruled that, with respect to water right licenses issued after September 9, 1953 in District 4½, the State Board has a ministerial duty to condition the licenses to require compliance with Fish and Game Code Section 5937. (California Trout, Inc. v. State Water Resources Control Board, 218 Cal.App.3d 187, 266 Cal.Rptr. 788 (1990).) State Board Standard Permit Term 66 provides:

"In accordance with the requirements of Fish and Game Code Section 5946, this permit [license] is conditioned upon full compliance with Section 5937 of the Fish and Game Code."

The State Board recently added the above term to Licenses 3987, 6000, and 9407 of the Walker River Irrigation District which also authorize diversion of water within District 4½. (State Board Order WR 90-9.) Amendment of water right licenses in District 4½ to require compliance with Fish and Game Code Section 5937 is a ministerial action exempt from the California Environmental Quality Act. (Public Resources Code Section 21080(b)(1); California Code of Regulations, Title 14, Section 15268.)

4.0

INTERIM FLOWS

The State Board has insufficient evidence at this time to establish numerical instream fishery protection flow requirements as a condition of License 10190. Such requirements can only be established based on an adequate evidentiary record and following notice and opportunity for hearing. Until such time as numerical flow requirements are established by the State Board or a court of competent jurisdiction, it is the State Board's intention that the licensee shall consult with State Board staff, the California Department of Fish and Game (DFG) and staff of the California Regional Water Quality Control Board, Lahontan Region to determine appropriate instream flows. The State Board also expects the licensee to consult with staff of the

three named agencies to determine an appropriate method of restoring flows which will not create unreasonable impacts on instream resources either in the immediate area where flows are being restored or in any downstream reach which may be affected. The licensee should also consult with DFG to ensure that the restoration of instream flows to the affected portion of the Owens River is done in a manner which will not adversely affect any state or federally listed endangered species.

5.0 CONCLUSION

Water Right License 10190 authorizes diversion of water within Fish and Game District 4½. The license was issued after the effective date of Fish and Game Code Section 5946, but does not include a condition requiring compliance with Fish and Game Code Section 5937 as required by law. The license should be amended to include the condition set forth below.

ORDER

IT IS HEREBY ORDERED that water right License 10190 be amended to include the following additional condition:

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"In accordance with the requirements of Fish and Game Code Section 5946, this license is conditioned upon full compliance with Section 5937 of the Fish and Game Code."

CERTIFICATION


The undersigned, Administrative Assistant to the State 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 May 16, 1991.

AYE: W. Don Maughan
Edwin H. Finster
Eliseo M. Samaniego
John Caffrey

NO: None

ABSENT: None

ABSTAIN: None


Maureen Marché
Administrative Assistant
to the Board

