

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

SOURCE: Rush Creek

COUNTY: Mono

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF THE TEMPORARY URGENCY CHANGE PETITIONS

On May 7, 2024, the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), received temporary urgency change petitions (TUCPs) pursuant to Water Code section 1435 from the Los Angeles Department of Water and Power (LADWP) requesting approval of temporary changes to its amended water right Licenses 10191 and 10192 (Applications 8042 and 8043), referred to hereinafter as the amended Licenses. Among other things, these amended Licenses specify operational requirements at Grant Lake Reservoir, located on Rush Creek.

With the TUCPs, LADWP requests authorization to temporarily change existing water right terms and conditions pertaining to Stream Ecosystem Flow (SEF) requirements in Rush Creek from June 17, 2024 to July 23, 2024. Flow requirements in the amended Licenses are based on runoff year type. Currently, the 2024-25 Runoff Year is forecasted to be a Normal year, with the required flows specified in Table 1D: *Rush Creek Stream Ecosystem Flows for Normal Years* (Table 1D) of the amended Licenses. In a Normal year, a Snowmelt Peak flow of 380 cubic feet per second (cfs) is required for three days between June 23 and July 3 downstream of Grant Lake Reservoir, with ramp-up releases starting on June 17. However, the reservoir currently has a malfunctioning outlet valve, referred to as the rotovalve, that can no longer be safely operated to release flows higher than 175 cfs. Peak flow releases required by the amended Licenses cannot be met by the existing outlet valve and summertime releases must therefore be adjusted in order to operate the rotovalve safely. The runoff year may develop into a Wet/Normal year (see Table 1C: *Rush Creek Stream Ecosystem Flows for Wet/Normal Years* (Table 1C) of the

amended Licenses) which would require a Snowmelt Peak flow of 550 cfs between June 26 and July 10, with ramp-up releases starting on June 19. Should this occur, operational adjustments will be required according to the Table 1C flow schedule.

2.0 BACKGROUND

2.1 State Water Board Decision 1631, Orders WR 98-05 and WR 98-07, and Amended Licenses 10191 and 10192

In September 1994, the State Water Board adopted Water Right Decision 1631 (D1631) modifying Licenses 10191 and 10192 for diversions from streams tributary to Mono Lake in order to protect public trust resources in and around Mono Lake. Subsequent Orders WR 98-05 and WR 98-07 amended the decision to establish minimum base flow and Stream Restoration Flow (SRF) requirements on four tributary streams to Mono Lake, specific lake level requirements, and associated monitoring and study requirements. In 2010, the Board approved a Stream Monitoring Team (SMT)¹ to develop SRF recommendations, which were compiled in a Synthesis Report. However, LADWP claimed that some of the changes proposed by the SMT were not feasible. In 2013, the Settlement Parties, which include LADWP, Mono Lake Committee (MLC), California Trout (Cal Trout), and the California Department of Fish and Wildlife (CDFW), entered into a settlement agreement (Agreement) regarding the recommended SRFs (now known as Stream Ecosystem Flows or SEFs) and related changes. On November 13, 2014, LADWP submitted change petitions to the Division to incorporate the Agreement into LADWP's Licenses. The State Water Board issued Order WR 2021-0086-EXEC in October 2021, approving LADWP's change petitions and issuing amended Licenses 10191 and 10192 which required that LADWP's diversions and system management were in compliance with the new SEFs.

The amended Licenses also require LADWP to develop and submit to the State Water Board an Annual Operations Plan (AOP), which specifies Mono Basin facilities operations consistent with the Mono Basin Operations Plan (MBOP).² The AOP is developed with input from the SMT and the Settlement Parties, and incorporates adaptive management recommendations of the SMT.

The SMT can recommend adaptive management of flow requirements in one of two ways: (1) in the Annual Monitoring Report and in comments on the AOP, for implementation in the following year; or (2) on a real-time basis in response to unforeseen circumstances.

¹ As described in the amended Licenses, the SMT consists of appropriate and qualified independent scientists designated by the Deputy Director for Water Rights to work with LADWP to implement the Stream Monitoring Program.

² The MBOP specifies the rules, guidelines, and criteria for operation of Mono Basin facilities to meet all applicable requirements across all year-types in the amended Licenses. The MBOP, and any subsequent modifications of the plan, is subject to review, modification, and approval of the Deputy Director for Water Rights.

2.2 Description of the Temporary Urgency Changes

LADWP states there is an urgent need for the proposed temporary changes in the SEF requirements in amended Licenses 10191 and 10192 due to operational issues with the rotovalve at the Grant Lake Reservoir outlet. On September 15, 2023, LADWP was notified of significant cavitation issues with the rotovalve at the Grant Lake Reservoir outlet, necessitating its urgent replacement to maintain safe dam operations. The Mechanical Engineering Group at LADWP emphasized the need to expedite this process, particularly as the outlet must function reliably ahead of the upcoming Grant Lake Dam Spillway Replacement Project. The rotovalve outlet is critical for managing inflows when the spillway is non-operational. To avoid catastrophic failure, the outlet valve's flow is limited to 175 cfs while replacement work is underway. It is anticipated that it will take several years to complete replacement of the rotovalve.

In September 2023, LADWP notified the Division of Safety of Dams (DSOD) of the malfunctioning rotovalve at the Grant Reservoir Outlet. DSOD staff subsequently inspected the Grant Lake Dam in October 2023. As of December 2023, DSOD's condition assessment for Grant Lake Dam changed from "Satisfactory" to "Poor" because of the outlet deficiency. DSOD also stated that the outlet repairs must be completed before starting the Grant Lake Dam Spillway Replacement Project, and required that by April 1, 2024, LADWP submit a restoration plan and schedule to repair the Grant Lake reservoir outlet.

In a March 18, 2024 letter, LADWP provided an update to the State Water Board on the Grant Lake Dam Spillway Replacement Project. LADWP stated that the rotovalve replacement could be completed by fall 2027 at the earliest.

LADWP indicated in the AOP for Runoff Year 2024-25 that additional releases will be made during the Spring Baseflow and Slow Recession hydrograph components "to match the volume of water released in normal Table 1D operations." Further, while the amended Licenses allow for export of 16,000 acre-feet (AF) due to the Mono Lake's April 1 elevation being above 6,380 feet mean sea level, the AOP states that LADWP is planning to only export 4,500 AF this runoff year. However, this export volume will be revisited in November this year based on aqueduct system storage and hydrologic conditions.

In summary, with the TUCPs, LADWP requests to reduce the existing Rush Creek Snowmelt Peak SEFs requirements from June 17 through July 3 under the amended Licenses to no more than 175 cfs. To make up the volume of water that would have been released in the absence of the proposed change, LADWP also proposes to extend the period of peak flow of 175 cfs beyond July 3 to July 23. The extended peak flow period will not only ensure an adequate total volume of release to Rush Creek, but also ensure that LADWP will comply with the SEFs requirements if the runoff year develops into a Wet/Normal year. These changes will be made in consultation with the SMT and in accordance with the adaptive management provisions of the amended Licenses.

3.0 COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT

LADWP, as Lead Agency pursuant to the California Environmental Quality Act (CEQA), filed a Notice of Exemption (NOE) for the *Mono Basin Temporary Urgency Change Petition June-July 2024* on March 28, 2024. LADWP found that the change is categorically exempt from CEQA pursuant to section 15301 (Existing Facilities), as the project is for the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of the existing or former use. (Cal. Code Regs., tit. 14, § 15301, subd. (i).).

The State Water Board has reviewed the information submitted by LADWP and has determined that the petitions qualify for a Class 1 Existing Facilities categorical exemption under CEQA. The State Water Board will issue an NOE for the temporary urgency change petitions within 5 days of issuance of this Order.

4.0 PUBLIC NOTICE OF TEMPORARY URGENCY CHANGE PETITIONS

On May 9, 2024, the State Water Board issued a public notice of the temporary urgency changes pursuant to Water Code section 1438, subdivision (a). The comment period expired on May 24, 2024. 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 May 23, 2024 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. The State Water Board received comments from CDFW, MLC, and Christopher Wernicke during the comment period.

5.0 COMMENTS REGARDING THE TEMPORARY URGENCY CHANGE PETITIONS

CDFW Comments

On May 23, 2024, CDFW commented on the proposed TUCPs. CDFW stated that peak flows serve as a primary driver for the ecosystem processes that maintain habitat diversity over the long term, and the inability to deliver peak flows to Rush Creek impairs these important geomorphic and ecological processes. CDFW expressed concerns that LADWP's use of adaptive management in their TUCPs is not consistent with the amended Licenses and stated that adaptive management should be guided by the SMT. CDFW also indicated that it was not consulted regarding potential unreasonable effects on fish and wildlife from changes proposed with the TUCPs. If the TUCPs are approved, CDFW supports including provisions in the order requiring LADWP to provide updates on the Grant Lake Reservoir outlet valve replacement and spillway modification project allowing

for CDFW to comment on potential impacts to fish and wildlife resources. Additionally, LADWP must obtain necessary endangered species permitting for any authorized acts that could result in a "take" under California or federal Endangered Species Acts (ESAs).

LADWP responded to CDFW's comments indicating that the reference to adaptive management in the TUCPs was used in relation to changes to Table 1D outside of the Snowmelt Peak periods that are necessary to meet the total release volume that would have occurred pursuant to Table 1D. LADWP stated that the changes to the Snowmelt Peak flows are the subject of the TUCPs and therefore subject to approval by the Deputy Director for Water Rights. LADWP indicated that adaptive management is a process available to the SMT, and the SMT was included in developing a plan to release additional flows during the non-peak periods to ensure that the total volume of water required to be released pursuant to Table 1D (or Table 1C) is released to Lower Rush Creek. LADWP stated that it will provide updated planning schedules to CDFW for the Grant Lake Reservoir outlet valve repair and Grant Lake Spillway Modification Project as work on those projects continues. LADWP also acknowledged a take permit will be required to perform any work that will affect an endangered species pursuant to the California and federal ESAs.

LADWP further indicated that it held meetings with the SMT and the Settlement Parties (including CDFW) on February 29, 2024, and March 27, 2024, regarding the changes to the peak flows and adaptive management of other hydrograph components as part of the AOP development. These meetings included discussion of the AOP process, the pending submittal of a TUCP for the Snowmelt Peak component, geomorphic thresholds, peaks and durations of other hydrograph components, and updates regarding plans for the Grant Lake Reservoir outlet work. LADWP has stated that the SMT will continue to be involved in the AOP development moving forward and will be able to consult and provide recommendations regarding multi-year impacts that may be related to outflow limitations.

The State Water Board will include conditions in this Order requiring: 1) LADWP provide CDFW updates of the Grant Lake Reservoir outlet valve repair and Grant Lake Spillway Modification Projects; and 2) LADWP meet all requirements of the California and federal ESAs for the duration of this Order.

MLC Comments

On May 24, 2024, MLC commented on the proposed TUCPs. MLC suggested managing the reservoir to facilitate and maximize spills to achieve SEFs and supported LADWP's proposal to limit Mono Basin water exports in 2024. MLC also requested the State Water Board consider the cumulative impacts of reduced flows from future TUCP requests and avoid using the term "adaptive management" for operational limitations caused by the damaged valve. MLC stated that LADWP's proposed work plan to fix the rotovalve, which was rejected by DSOD due to its ten-year timeline, would delay the stream restoration program agreed upon by the Settlement Parties in 2013 and ordered by the State Water Board in 2021. As a member of the Settlement Parties, MLC stated its intention to work

collaboratively with LADWP, regulatory agencies and potentially consult a private engineering firm in order to achieve timely repairs to the rotovalve and outlet construction so that LADWP can finally provide the required SEFs, making subsequent TUCPs unnecessary.

LADWP responded to MLC's comments indicating that Grant Lake Reservoir was spilling as of June 3, 2024, and depending on conditions of this summer and Southern California Edison operations, total outflow from Grant Lake Reservoir may approach or meet Table 1D Snowmelt Peak values. LADWP stated that the TUCPs were filed due to the uncertainty of meeting those Table 1D values.

Based on concerns raised by both MLC and CDFW regarding potential impacts from LADWP filing future TUCPs of this nature, the State Water Board will include a condition in this Order requiring that LADWP submit a report describing its efforts and plan to expedite repair or replacement of the rotovalve, and that LADWP should attempt to repair the rotovalve within three years, consistent with the timeline LADWP established in its March 18, 2024 letter.

Comments by Christopher Wernicke

On May 9, 2024, Mr. Wernicke provided comments by email, asking whether LADWP would release more water after the Grant Lake Reservoir outlet was repaired. Mr. Wernicke indicated that he was concerned with the filling of Mono Lake and not about timing of the releases. The State Water Board will include a condition in this Order requiring that the total volume of water released from Grant Lake Reservoir into Rush Creek during Runoff Year 2024 will be no less than the total volume required by the SEFs in the amended Licenses.

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 the SEFs Snowmelt Peak flow requirements which require Grant Lake Reservoir releases into Rush Creek of up to 380 cfs between June 17 and July 3. Currently, LADWP cannot safely release more than 175 cfs and meeting the existing requirements for peak flows of up to 380 cfs (or 550 cfs if the Runoff Year develops into a Wet/Normal year) would risk the catastrophic failure of the Grant Lake Reservoir outlet valve. DSOD has assessed this risk and directed LADWP to limit flow through the rotovalve to 175 cfs. LADWP is currently in the process of repairing the Grant Lake Reservoir outlet valve, but the repair will not be completed this year. Accordingly, there is an urgent need for the proposed temporary change.

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 because this Order conditions the total volume of releases to Rush Creek be no less than the volume as required by the SEFs in the amended Licenses. 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

LADWP proposes to follow the adaptive management provisions included in the amended Licenses to adjust the SEFs Snowmelt Peak flow requirements (Table 1D and Table 1C) this summer in order to minimize the potential for any negative effects on fish and wildlife

resources. The adaptive management provisions in the amended Licenses are intended to increase ecological benefits, as real-time monitoring and management improves the understanding of how best to manage flows to restore ecological processes and beneficial conditions in the Mono Basin stream system. To offset any potential impacts from the reduction in Snowmelt Peak flows this summer, LADWP proposes additional releases during the Spring Baseflow and Slow Recession hydrograph components as part of its adaptive management provisions. The additional releases will provide downstream Rush Creek an equivalent amount of water to what would have been released if the Grant Lake Reservoir outlet was functioning normally. LADWP is also proposing to minimize potential exports this runoff year to only 4,500 AF unless hydrologic circumstances in the fall of this year safely allow for an increase.

LADWP has and will continue to consult with the SMT when utilizing adaptive management procedures that apply to the amended Snowmelt Peak flows throughout the TUCP approval period. The SMT has not identified concerns with the proposed flow changes, and the temporary changes will not affect the recovery of Mono Lake because the same total volume of water will be released from Grant Lake Reservoir. Further, as described in Section 5.0 above, this Order contains conditions as recommended by CDFW and MLC to address their concerns regarding the temporary changes.

No other fish or wildlife resource impacts are implicated by the proposed temporary changes; accordingly, the proposed temporary changes as conditioned by this Order will not have unreasonable effects upon fish and wildlife resources.

6.4 The Proposed Change is in the Public Interest

Operation of Grant Lake Reservoir to meet the SEFs Snowmelt Peak flows required by the amended Licenses could lead to failure of the Grant Lake Reservoir outlet due to the cavitation in the rotovalve. The changes proposed with the TUCPs reduce the risk of this catastrophic failure.

Therefore, in accordance with Water Code section 1435, subdivision (b)(4), 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 reserves jurisdiction to 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 Los Angeles Department of Water and Power (LADWP) for temporary urgency changes in amended Licenses 10191 and 10192 are approved, and this approval is effective from June 17, 2024 or the date of this Order, whichever is later, to July 23, 2024. All existing terms and conditions in amended Licenses 10191 and 10192 remain in effect, except as temporarily amended by the following terms.

1. The Snowmelt Peak flows required by the SEFs (Tables 1D and 1C) of Amended Licenses 10191 and 10192 are reduced to a maximum flow rate of 175 cubic feet per second.
2. LADWP shall ensure the total volume of water released from Grant Lake Reservoir into Rush Creek during Runoff Year 2024 be no less than the total volume required by the SEFs in the amended Licenses by extending the peak flow period and making additional releases between the Spring Baseflow to Slow Recession hydrograph components.

3. LADWP shall submit to the Deputy Director for Water Rights a written report that summarizes all activities conducted to ensure compliance with the requirements of this Order by November 1, 2024. The written report shall be considered in the Annual Operation Planning preparation activities for runoff year 2025.
4. By December 31, 2024, LADWP shall submit a report describing its plan and actions taken to expedite repair or replacement of the rotovalve and include as attachments to the report any direction or related correspondence from the Division of Safety of Dams. LADWP shall diligently endeavor to repair or replace the rotovalve by September 1, 2027, and provide a detailed description of these efforts in the report.
5. LADWP shall provide CDFW with any updated plans regarding the replacement of the Grant Lake Reservoir outlet valve and the Grant Lake Spillway Modification Project, and CDFW shall have the ability to provide the State Water Board additional comments regarding potential impacts on fish and wildlife resources.
6. 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.
7. 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.
8. 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 at the discretion of the State Water Board. The temporary urgency changes approved in this Order shall automatically expire July 23, 2024, unless earlier revoked.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

*Erik Ekdahl, Deputy Director
Division of Water Rights*

Date: JUN 14 2024