

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In the Matter of)	ORDER: WR 90-3
LICENSED APPLICATIONS)	SOURCE: Rush Creek, Lee
8042 AND 8043)	Vining Creek,
CITY OF LOS ANGELES,)	Parker Creek, and
Licensee)	Walker Creek
<hr/>		COUNTY: Mono

ORDER AMENDING LICENSES

BY THE BOARD:

1.0 INTRODUCTION

The City of Los Angeles (City) having received Licenses 10191 and 10192 to divert water from Rush Creek, Lee Vining Creek, Parker Creek, and Walker Creek; California Trout, Inc., the National Audubon Society, and the Mono Lake Committee having filed suit to have Licenses 10191 and 10192 amended; the Court of Appeal for the Third Appellate District having ordered that the licenses be amended to include certain specified language; the State Water Resources Control Board (Board) finds as follows:

2.0 DESCRIPTION OF PROJECT

The City of Los Angeles filed Applications 8042 and 8043 on July 27, 1934 to appropriate water from Rush Creek, Lee Vining Creek, Walker Creek, Parker Creek,

and Mill Creek. The Board's predecessor issued Permits 5555 and 5556 on June 1, 1940, authorizing diversion of water from four of the five creeks: Rush, Lee Vining, Walker, and Parker Creeks. On January 25, 1974, the Board issued Licenses 10191 and 10192 confirming Los Angeles' rights for diversion of water from these four creeks for municipal purposes and hydroelectric power generation.

3.0

LITIGATION REGARDING INSTREAM FLOWS FOR PROTECTION OF FISH

In 1985, California Trout, Inc. (Cal Trout), the National Audubon Society, and the Mono Lake Committee filed petitions for a writ of mandate seeking a court order requiring amendment of Licenses 10191 and 10192 to include a condition requiring bypass of sufficient water to maintain fish in good condition below Los Angeles' points of diversion on the four affected streams. On January 26, 1989, the Court of Appeal for the Third Appellate District ruled that the City's licenses must be amended to require fishery bypass flows in accordance with Sections 5937 and 5946 of the California Fish and Game Code. (California Trout Inc. v. State Water Resources Control Board, 207 Cal.App.3d 585 (1989).)

Following the Court of Appeal decision, the Sacramento County Superior Court entered a writ of mandate on July 24, 1989, directing the Board to amend Licenses 10191 and 10192. The Superior Court did not set a date by which the licenses must be amended nor did it make any provision for instream flow requirements on an interim basis pending completion of the Board's proceeding. The Board filed a return to the Superior Court writ which described the Board's comprehensive review of Los Angeles' Mono Basin water rights. The Board's proceeding is intended to result in amendment of Licenses 10191 and 10192 to implement Fish and Game Code Section 5946 and to provide appropriate protection for public trust values.

Cal Trout, the National Audubon Society, and the Mono Lake Committee petitioned for appellate review of the Superior Court decision. They claimed that the court erred by failing to require immediate amendment of Licenses 10191 and 10192 and by failing to provide for interim flows pending completion of the Board's comprehensive review of Los Angeles' water rights. On February 23, 1990, the Court of Appeal entered an order directing that the Superior Court¹ command the Board to exercise its "ministerial duty without further

¹ The Court of Appeal directed its order at the El Dorado County Superior Court which now is assigned to hear the fishery flow litigation described in this order as well as other cases involving Los Angeles' diversion of water from the Mono Lake Basin. (Mono Lake Water Right Cases, El Dorado County Superior Court, Coordinated Proceeding Nos. 2284 and 2288.)

delay" to add the following language as a condition to Licenses 10191 and 10192:

"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. The licensee shall release sufficient water into the streams from its dams to reestablish and maintain the fisheries which existed in them prior to its diversion of water."

Amendment of the licenses as directed by the Court of Appeal 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.)

In addition to directing that the licenses be amended, the Court of Appeal also directed the Superior Court to hear and resolve an application by the plaintiffs for interim injunctive relief to provide instream fishery protection flows pending completion of the Board's proceeding to determine long-term flow requirements.

4.0

CONCLUSION

The Court of Appeal has determined that Licenses 10191 and 10192 must be amended to comply with Fish and Game Code Sections 5937 and 5946. The court has ruled that amendment of such licenses is a ministerial duty and it

has specified the language to be added as a condition of each license. The licenses should be amended in accordance with the court's direction.

ORDER

IT IS HEREBY ORDERED that water right Licenses 10191 and 10192 shall be amended to include the following additional condition:

"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. The licensee shall release sufficient water into the streams from its dams to reestablish and maintain the fisheries which existed in them prior to its diversion of water."

CERTIFICATION

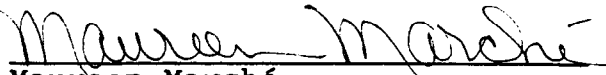
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 4, 1990.

AYE: W. Don Maughan
Eliseo M. Samaniego
John Caffrey

NO: None

ABSENT: Darlene E. Ruiz
Edwin H. Finster

ABSTAIN: None


Maureen Marché
Administrative Assistant to
the Board

