

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

DIVISION OF WATER RIGHTS

ORDER WR 2009-0024-DWR

IN THE MATTER OF LICENSES 10191 AND 10192 (APPLICATIONS 8042 AND 8043

City of Los Angeles

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

COUNTY: Mono

ORDER APPROVING TEMPORARY URGENCY CHANGE IN LICENSE CONDITIONS

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On March 16, 2009, City of Los Angeles (Los Angeles) filed a petition with the State Water Resources Control Board (State Water Board) requesting approval of Temporary Urgency Changes to Licenses 10191 and 10192 pursuant to Water Code section 1435. The petition requests authorization to:

- (1) lower the required baseflow releases to Rush Creek by 14 cubic feet per second (cfs) – from 36 cfs to 22 cfs during the period March 16 through May 15, 2009; and
- (2) change the Lee Vining Creek baseflows as follows for the following dates in April and May 2009: April 30 – 12 cfs; May 1 – 20 cfs; May 2 – 28 cfs; May 3 and 4 – 37 cfs; and May 5 – 54 cfs.

The above schedule shall be referred to as Schedule A. In addition to the above schedule, Los Angeles has included in the petition an alternative Lee Vining Creek baseflow schedule (Schedule B) to have flexibility in operation of the flow study. If Los Angeles defers to alternative Schedule B, the Lee Vining Creek baseflows are as follows for the following dates in April and May 2009: April 30 – 54 cfs; May 1 and 2 – 37 cfs; May 3 28 cfs; May 4 – 20 cfs; and May 5 – 12 cfs. Required baseflow releases down Lee Vining Creek will resume on May 6.

2.0 BACKGROUND

In Decision 1631, the State Water Board modified Licenses 10191 and 10192 for the purpose of establishing instream flow requirements below Los Angeles' points of diversion on the four affected streams, which are tributaries of Mono Lake. The decision also established conditions to protect public trust resources at Mono Lake. Order WR 98-05 amended Decision 1631. Pursuant to the State Water Board determinations, Los Angeles is required to conduct fisheries studies and stream monitoring. Stream and fisheries scientists whose qualifications have been approved by the State Water Board perform these tasks.

In order to protect the fishery, both appropriate streamflows and water temperatures are required. Los Angeles requested change (1), the lowering of the Rush Creek baseflow, for the purpose of increasing storage by 2,000 acre-feet of water in Grant Lake Reservoir for subsequent instream releases. This should provide colder water for the Rush Creek fishery in August and September 2009. Beginning May 16, 2009, Los Angeles will resume its required baseflow release down Rush Creek.

Change (2) was requested in order to allow the fishery scientists to conduct instream flow habitat mapping studies in the Mono Basin. To accomplish change (2), Los Angeles will ramp the flow so that 12 cfs (or 54 cfs as alternative) passes below the diversion facility on April 30. The ramping schedule listed above (Schedule A or B) will be followed and Los Angeles will allow the required flow to pass through the Lee Vining diversion facility and divert excess water into the conduit to go into Grant Lake Reservoir. Starting May 6, 2009, Los Angeles will resume its required baseflow release down Lee Vining Creek according to Order 98-05. The flow change ramping rates may be higher than the prescribed 20 percent daily change during ascending and 15 percent during descending limbs depending on the available flow coming down above the diversion structure. The main objective of the instream flow study is to make flow recommendations that should improve habitat conditions to increase the number of larger trout, i.e., fish large enough to meet specific termination criteria. These habitat-flow relationships will be used to evaluate the present baseflow requirements in Decision 1631 and Order 98-05, and to recommend modifications (if needed) in prescribed baseflow releases.

3.0 PUBLIC NOTICE OF THE PETITION

The State Water Board will issue and deliver to Los Angeles as soon as practicable, a notice of the temporary urgency change notice pursuant to Water Code section 1438(a).

3.1 Temporary Urgency Need

Following two critically dry years, on February 27, 2009, the Governor of California issued a Proclamation declaring a statewide drought emergency. On January 30, 2009, State Water Board-designated stream scientists indicated that Grant Lake has reached extremely low levels. Runoff conditions for the two previous years and the lower Grant Lake pool have resulted in flow releases from Grant Lake with warmer temperatures than occurred when the surface water elevation of Grant Lake is higher. Analysis of fish monitoring data has shown that this has resulted in poor condition of trout compared to monitoring data from previous years. There was also concern that extremely low Grant Lake surface water elevation increases the likelihood of turbidity in lower Rush Creek. The stream scientists made a recommendation that Rush Creek flow be reduced to 22 cfs to conserve Grant Lake water and maintain water temperature during Rush Creek summer flows to minimize impacts to trout populations.

4.0 COMMENTS REGARDING THE PETITION

The petition states that change (1) was requested on behalf of the stream scientists, Department of Fish and Game (DFG), California Trout, Inc., and Mono Lake Committee who have collectively recommended this petition in order to retain cold water for later in the year. Change (2) was proposed by the stream scientists.

5.0 COMPLIANCE WITH CEQA

Los Angeles, as Lead Agency as defined in California Environmental Quality Act (CEQA), prepared a Notice of Exemption for the Temporary Urgency Change in License Conditions on March 16, 2009. Los Angeles 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 Los Angeles and has determined that the petition qualifies for an exemption under CEQA. The State Water Board will issue a Notice of Exemption for the temporary urgency change petition.

6.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY URGENCY CHANGE

Any permittee or licensee who has an urgent need to change a point of diversion, place of use, or purpose of use from that specified in the permit or license can petition for a conditional temporary change order provided under Chapter 6.6 of part 2, division 2, of the Water Code, starting at section 1435. The State Water Board's regulation, at California Code of Regulations, title 23, section 791(e), provides that the State Water Board shall follow as nearly as possible the procedures for changes in point of diversion,

place of use, or purpose of use when processing petitions for other types of changes in water right permits and licenses. Accordingly, the procedures under Water Code section 1435 are applicable to changes to terms and conditions of water right permits and licenses.

The State Water Board must make the findings specified in section 1435(b) when issuing a temporary change order pursuant to chapter 6.6. The required findings are:

1. The permittee or licensee 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, including findings to support change order conditions imposed to ensure that the change is in the public interest, and may be made without injury to any other lawful user of the water, and without unreasonable effect upon fish, wildlife, and other instream beneficial uses.

6.1 Urgency of the Proposed Change

Under Water Code section 1435 (c), an urgent need to make a proposed change exists when the State Water Board concludes 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.

In this case, an urgent need exists for the proposed change in the license conditions regarding fish flows for the purpose of furthering protection of public trust resources and conducting studies to further maintenance and enhancement of public trust resources during the drought emergency.

6.2 No Injury to Any Other Lawful User of Water

There are no lawful users of water that will be affected by the proposed changes in instream flows. There are only two known water diverters in the affected stream reaches. The U.S. Inyo National Forest (National Forest) has filed a statement for use and diversion of water on Lee Vining Creek. The National Forest diversion will be met irrespective of the change, because the diversion quantity is minor.

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

DFG indicated that the temporary urgency changes 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 Los Angeles in maintaining the fishery in good condition. Maintenance of the fishery is in the public interest.

STATE WATER BOARD DELEGATION OF AUTHORITY

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary urgency change if no objections have been received. This Order is adopted pursuant to the delegation of authority in section 4.4.1 of Resolution 2007-0057.

7.0 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 licensee has an urgent need to make the proposed change;
2. The petitioned change will not operate to the injury of any other lawful user of water.
3. The petitioned change will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses; and,
4. The petitioned change is in the public interest.


ORDER

NOW, THEREFORE, IT IS ORDERED that the filed petition for temporary change is approved through May 15, 2009.

All existing terms and conditions of Licenses 10191 and 10192 remain in effect, except as temporarily amended by the following provisions:

1. The Rush Creek required base flow is lowered from 36 cfs to 22 cfs from date of Order issuance through May 15, 2009.
2. The Lee Vining Creek flows shall be as follows for the specified days in April and May 2009:
April 30 – 12 cfs; May 1 – 20 cfs; May 2 – 28 cfs; May 3 and 4 – 37 cfs; and May 5 – 54 cfs; or as follows in the alternate schedule: April 30 – 54 cfs; May 1 and 2 – 37 cfs; May 3 – 28 cfs; May 4 – 20 cfs; and May 5 – 12 cfs.
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 reserves jurisdiction to supervise the temporary urgency change 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.

STATE WATER RESOURCES CONTROL BOARD


Victoria A. Whitney
Deputy Director for Water Rights

Dated: **MAR 26 2009**