



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

MAY 26 2015

In Reply Refer to:
GSB: A028609

June Lake Public Utility District
c/o Mr. Vince Maples
Wagner & Bonsignore, CCE
2151 River Plaza Drive, Suite 100
Sacramento, CA 95833

Dear Mr. Maples:

ORDER APPROVING PETITION FOR TEMPORARY URGENCY CHANGE OF PERMIT 21185
(APPLICATION 28609) OF JUNE LAKE PUBLIC UTILITY DISTRICT

The enclosed Order approves the petition for temporary urgency change in Permit 21185 effective June 1, 2015. Please review the conditions of the Order and retain the Order with your permit.

If you have any questions or require further assistance please contact Greg Brown at (916) 323-1847 or Greg.Brown@waterboards.ca.gov. Written correspondence should be addressed as follows: State Water Resources Control Board, Division of Water Rights, Attn: Greg Brown, P.O. Box 2000, Sacramento, CA 95812-2000.

Sincerely,

Amanda Montgomery, Manager
Permitting and Licensing Section
Division of Water Rights

Enclosure: (1) Order

cc (w/enclosure): June Lake Public Utility District
c/o Richard Ciauri
P.O. Box 99
June Lake, CA 93529-0099

ec (w/enclosure): Vince Maples, vmaples@wbecorp.com
Richard Ciauri, pudgm@qnet.com;
Steve Parmenter, Steve.Parmenter@wildlife.ca.gov

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

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

DIVISION OF WATER RIGHTS

In the Matter of Permit 21185 (Application 28609)

June Lake Public Utility District

ORDER RENEWING TEMPORARY URGENCY CHANGE

SOURCE: Fern Creek tributary to Reversed Creek thence Rush Creek thence Mono Lake

COUNTY: Mono

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On January 12, 2015, June Lake Public Utility District (JLPUD or right holder) filed a Temporary Urgency Change Petition (TUCP) for renewal of a Temporary Urgency Change Order with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) requesting approval of a change pursuant to Water Code section 1435. On March 26, 2015, JLPUD requested that the renewal take effect on June 1, 2015.

The previous TUCP was filed by JLPUD on May 20, 2014 and was approved by the Division on August 25, 2014 (2014 Order). The petition for renewal is identical to JLPUD's previous TUCP, which requested temporary reduction of the Fern Creek minimum bypass flow requirement in Permit 21185 (Application 28609) from 200 gallons per minute (gpm) to 25 gpm. The water supply made available by the proposed change would be used to help meet projected potable water demand in JLPUD's Down-Canyon service area for a maximum of 180 days beginning on June 1, 2015.

2.0 CALIFORNIA'S ONGOING DROUGHT CONDITIONS

2.1 Governor's Proclamations of a Drought State of Emergency

On January 17, 2014, the Governor of the State of California proclaimed a State of Emergency and directed State officials to take all necessary actions to make water immediately available. On April 25, 2014, the Governor proclaimed a Continued State of Emergency and issued an executive order to speed up actions necessary to reduce harmful effect of the drought, and he called on all Californians to redouble their efforts to conserve water. On December 22, 2014, the Governor issued an executive order citing the previous order and extending the operation of provisions through May 31, 2016. Most recently, on April 1, 2015, the Governor issued Executive Order B-29-15, which included key provisions such as: (1) ordering the State Water Board to impose restrictions to achieve a 25 percent reduction in potable urban water usage through February 28, 2016; (2) directing Department of Water Resources (DWR) to lead a statewide initiative, in partnership with local agencies, to collectively replace 50 million square feet of lawns and ornamental turf with drought tolerant landscapes; and (3) directing the California Energy Commission to implement a statewide appliance rebate program to provide monetary incentives for the replacement of inefficient household devices.

Pursuant to the Governor's April 1, 2015 executive order, the orders and provisions in the January 17, 2014 and April 25, 2014 Proclamations and Executive Orders B-26-14 and B-28-14 remain in full force and effect except as modified in the April 2015 Executive Order.

2.2 State Water Board's Emergency Regulation for Statewide Urban Water Conservation

The Governor's April 1, 2015 executive order directs the State Water Board to impose restrictions resulting in a 25 percent savings in potable urban water usage through February 2016. On May 5, 2015, the State Water Board adopted emergency regulations pursuant to sections 11346.1 and 11349.6 of the Government Code and section 1058.5 of the Water Code (hereafter, conservation emergency regulations). On May 18, 2015 the Office of Administrative Law approved the conservation emergency regulations and they are currently in effect. The emergency conservation regulations for smaller urban water suppliers (defined as any distributor of a public water supply, whether publicly or privately owned and including a mutual water company, but not meeting the definition of urban water suppliers in Water Code section 10617), is to either limit the number of days of outdoor watering of turf and ornamental landscapes to no more than two days per week or to reduce total potable water production by 25 percent as compared to potable water production in 2013. Parties that do not elect to conform to the 2-day limitation on watering shall submit a report by December 15, 2015, on a form provided by the Board, which includes the total potable water production, by month, from June through November, 2015, and total potable water production, by month, for June through November 2013.

In an effort to not require duplicative requirements, this Order allows JLPUD to report on its compliance with the conservation emergency regulations. The frequency of reporting requirement for the regulations is not sufficient to allow oversight of meaningful conservation during the period of this urgency change. Thus, reporting is required on a monthly basis for the urgency change as approved by this Order.

3.0 BACKGROUND

3.1 JLPUD Water Rights

JLPUD's Down-Canyon water rights include Permits 7350, 7352, 18199, 21185 and Licenses 2039, 4358, 10837, 10838 (Applications 11892, 12060, 26192, 28609 and 5425, 9432, 17120, 20349), which authorize year-round direct diversion of water from Fern Creek, an unnamed stream, and three unnamed springs. The permits and licenses allow direct diversion of water at a combined rate of up to 0.63 cubic foot per second (cfs) (approximately 280 gpm) for a cumulative total diversion of 297.1 acre-feet per annum (afa) for the Down-Canyon service area. All five sources of water are tributary to Reversed Creek, thence Rush Creek. Rush Creek flows through Silver Lake and Grant Lake before terminating at Mono Lake on the eastern side of the Sierra Nevada Mountain Range.

Water diverted under the Down-Canyon water rights is routed to one of two water treatment plants before being distributed to JLPUD's customers. Fern Creek is typically the sole source of water for the Clark Water Treatment Plant, while water diverted from one of the unnamed spring sources is the sole source of water for the Peterson Water Treatment Plant.

The Down-Canyon water rights share a common point of diversion (POD) on Fern Creek, and include a term requiring the right holder to bypass 200 gpm around the Fern Creek diversion at all times. The bypass term was first added to Permit 18199 in 1998 to resolve a fisheries-based protest filed by the California Sportfishing Protection Alliance (CSPA). The bypass term was subsequently added to all eight of the Down-Canyon permits and licenses. The minimum bypass flow requirement (Term 9) in Permit 21185 is stated below:

"The Permittee shall maintain a permanent piped bypass around the Fern Creek source sized such that a minimum of 200 gallons per minute will always flow by the diversion regardless of water use by the Permittee, and configured such that it cannot be restricted or plugged."

JLPUD stipulated in its previous May 20, 2014 TUCP, that if approval was granted, JLPUD would make all of its Fern Creek diversions under Permit 21185 and would not exercise the other seven Down-Canyon water rights for diversion from Fern Creek during the period of the temporary change.

Permit 21185 authorizes direct diversion of 0.30 cfs of water, for a cumulative total volume of 150 afa, from the POD located on Fern Creek. The water is used year-round for municipal purposes.

3.2 JLPUD's Long-term Petition for Change

On January 30, 2014, JLPUD filed a separate, but related long-term Petition for Change with the Division pursuant to California Code of Regulations section 791(e). The long-term petition requests permanent reduction of the Fern Creek minimum bypass requirement from 200 gpm to 25 gpm in all eight Down-Canyon water rights. JLPUD believes that the current bypass requirement is not based on specific instream resource needs, and that this requirement precludes adequate diversion in many dry years. On February 28, 2014, the Division provided public notice of the long-term petition. Protests were timely filed by the California Department of Fish and Wildlife (CDFW), Inyo National Forest, CSPA, June Lake Advocates, East Shore Silver Lake Improvement Association, and three local residents. All eight protests were based on environmental concerns.

JLPUD's long-term Petition for Change is currently pending before the State Water Board and is not further addressed in this Order.

3.3 Petition for Temporary Urgency Change

On May 20, 2014, JLPUD filed a TUCP requesting that the State Water Board temporarily reduce the bypass amount required by Permit 21185 from 200 gpm to 25 gpm. On August 25, 2014, the State Water Board issued an order approving the change subject to specific terms and conditions for a period of 180 days. On January 12, 2015, JLPUD filed a TUCP requesting renewal of the 2014 Order for an additional 180 days following expiration of the previous order. On March 26, 2015, JLPUD requested that the renewal take effect on June 1, 2015.

3.4 JLPUD Compliance Reporting

The following is a summary based on JLPUD's reporting of its compliance with the 2014 Order, which was in effect from August 25, 2014 until February 21, 2015.

Fern Creek Bypass Monitoring

JLPUD submitted monthly compliance reports for its Fern Creek bypass monitoring to comply with Term 2 of the 2014 Order. The reports for the months of December 2014, January 2015, and February 2015 have missing daily average bypass flow readings. For these three months, there were 67 days when no bypass reading was provided. JLPUD noted in the December 2014 through February 2015 reports that some daily bypass flows were missing due to hazardous weather conditions preventing access to measuring equipment.

Based on the Fern Creek bypass monitoring data provided to the Division (113 days of streamflow measurements), Division staff estimated that JLPUD diverted approximately 10.1 percent of the total Fern Creek streamflow during the period from August 26, 2014 through February 21, 2015.

This Order requires additional action by the right holder, prior to operating under the requested change, to ensure monitoring of bypass at all times required by this Order. This Order also includes a termination provision if the Deputy Director for Water Rights determines the right holder is not conducting sufficient bypass compliance monitoring.

Fern Creek Aquatic Monitoring

The 2014 Order included requirements for monitoring on Fern Creek to ensure that the project does not have an unreasonable effect on fish, wildlife, or instream resources. Term 3 of the 2014 Order required JLPUD to prepare and submit an instream monitoring plan (Plan) by September 2, 2014. The purpose of the Plan was to monitor any effects of the reduced bypass regime on fish, fish habitat, and other instream beneficial uses downstream of JLPUD's POD on Fern Creek. The 2014 Order required that the Plan be first approved by the Deputy Director for Water Rights before the authorized change could take effect. On September 9, 2014, JLPUD submitted a final draft of its Plan, with modifications to the monitoring requirements in the 2014 Order, to the Division. The Plan was subsequently approved on September 14, 2014. The approved Plan is summarized below.

Monitoring Protocol

A monitoring protocol was developed as part of the final Plan for monitoring Fern Creek. Manual measurements of habitat size, water quantity, and water quality include the following monitoring activities for aquatic habitat size: (1) measurement of maximum wetted pool width and length; (2) measurement of the average-maximum pool depth; (3) photographs of each pool; and (4) recordation of flow rate for water quantity. For water quality, the following parameters would be measured: (1) water temperature; (2) pH; and (3) specific conductivity. Lastly, the monitoring protocol included monitoring of the following biological parameters (absence/presence): (1) fish; (2) aquatic invertebrates; (3) algae cover; (4) leaf litter; (5) riparian cover; exposed or dried streambed within pools; and (6) fish stranding or mortality in disconnecting pools. The Plan did not include provisions for measuring bankfull channel, thalweg, and wetted perimeter dimensions as originally required by Term 3 of the 2014 Order.

Monitoring Frequency

The Plan required one baseline monitoring event prior to implementation of the new bypass regime, and one monitoring event every other week thereafter for six designated pools for the full term of the authorized change. Monitoring events were to be timed to capture the full range of flow/bypass conditions.

Reporting

Term 3 of the 2014 Order required JLPUD to submit monthly reports describing the results of their instream monitoring efforts. The reporting interval coincides with the reporting interval for JLPUD's related water demand reduction plan. JLPUD has submitted the required reports to the Division.

Water Conservation Reporting

Term 4 of the 2014 Order required JLPUD to provide a water conservation plan with monthly reporting to the Division to ensure that JLPUD is achieving a minimum of 20 percent water conservation. JLPUD submitted its water conservation plan on September 4, 2014. The plan was subsequently approved by the Deputy Director for Water Rights on September 10, 2014.

According to data submitted to the Division by JLPUD, monthly water use was reduced by an average of approximately 24 percent for the months of August 2014 through February 2015 as compared to baseline water demand. Baseline water demand was estimated using water production from the Clark and Peterson water treatment plants for the months of July 2012 through June 2013. Although the cumulative average monthly water demand reduction was above 20 percent over the period of the 2014 Order, reporting for January 2015 and February 2015 was under the 20 percent (19 percent and 17 percent, respectively) water conservation requirement. On February 11, 2015, Division staff notified JLPUD that it was out of compliance with the terms of the 2014 Order since the January report showed water conservation was less than 20 percent. JLPUD responded that although January was below the target, the cumulative water conservation was over 20 percent and therefore the cumulative target had been met. This Order contains an

updated term requiring water conservation based on the May 2015 conservation emergency regulations. This Order also includes a termination provision if the Deputy Director determines sufficient progress is not made in maintaining sufficient water conservation.

3.5 Objections Received on the 2014 Order

The Division provided public notice of the 2014 TUCP on August 27, 2014 and received timely objections from the following parties: (1) CSPA; (2) East Shore Silver Lake Improvement Association (ESSLIA); (3) June Lake Advocates (JLA); (4) Los Angeles Department of Water and Power (LADWP); and Larry Hughes (Hughes). This Order addresses the objections submitted on the previous TUCP. Below is a brief summary of each objection followed by the Division's response.

- 1) **CSPA Objection** – CSPA identified the following concerns in its objection letter: (a) a study plan to determine the scientific basis for the proposed flow should be prepared since findings have not been made that the proposed minimum flow is protective of fishery resources in Fern Creek; (b) the Order does not provide an evidentiary basis for the temporary reduction in bypass flow; (c) the 2014 Order should require a more stringent water conservation measure of 40 percent since JLPUD allowed development without a reliable water supply; (d) JLPUD should cease serving new water meters while the 2014 Order is in effect; (e) copies of compliance plans and monitoring results should be provided; (f) JLPUD should report every three months on the state of the negotiations and investigations for supplemental supplies from United States Forest Service (USFS) land so long as the 2014 Order is in effect; and (g) the project fails to meet the requirements of the California Environmental Quality Act (CEQA), will not best serve the public interest, is contrary to law, and will have an adverse environmental impact.

Response to CSPA Objection

- (a) The Division made findings that with the terms and conditions of the 2014 Order, there would be no unreasonable effects on fish, wildlife, or other instream beneficial uses. The findings pertaining to fish, wildlife, and other instream beneficial uses are presented in Sections 5.3 and 7.0 of the 2014 Order. Section 5.3 includes an explanation of requirements incorporated into the Order (Condition 3) to ensure there were no unreasonable impacts on instream resources. These requirements included monitoring the effects of reduced bypass flows on fish and fish habitat. The monitoring conducted documented limited fish stranding, but no mortality was documented. Given the nature of these findings, the associated monitoring requirements, the temporary and urgent nature of the subject change, and the results of monitoring to date, the reduced bypass condition is not expected to have an unreasonable effect on fish as compared to typical dry stream conditions in the absence of the change in Fern Creek bypass flows. As CDFW expressed concern with fish standings reported in the monitoring conducted under the August 2014 Order, this renewal Order requires JLPUD to provide its Fern Creek Monitoring Plan to CDFW for review and comment and will require monthly reports to include information regarding the consultation with CDFW.
- (b) JLPUD has demonstrated that it has an urgent need for the temporary change to ensure that it has an adequate supply of water during the continuing drought in 2015. Section 5.1 of the 2014 Order provides the basis (i.e. water supply and demand projections) for temporary reduction in bypass flows. Additional supporting information is part of the public record, and is available from the Division upon request.
- (c) The 20 percent reduction required by the 2014 Order was consistent with the Governor's April 25, 2014 Drought Proclamation. Compliance reports filed by JLPUD indicate a cumulative to date reduction of 24.6 percent below baseline water demand. This Order requires JLPUD to comply with the State Water Board's May 2015 conservation emergency regulations.

- (d) CSPA recommends that JLPUD be forbidden from serving any new water meters while the 2014 Order is in effect. The 20 percent reduction required by the 2014 Order provided sufficient requirements for conservation while the 2014 urgency change was in effect.
- (e) The compliance plans and monitoring reports are part of the public record and will be provided to CSPA in a separate correspondence.
- (f) CSPA requests that the petitioner report every three months on the state of negotiations and investigations for supplemental supplies from USFS land so long as the 2014 Order is in effect. Such negotiations are outside the scope of the TUCP.
- (g) As described in Section 3.0 of the 2014 Order, the project is consistent with a CEQA Class 1 categorical exemption for existing facilities (Cal. Code Regs., tit. 14, § 15301) and Class 4 categorical exemption for minor modifications to land (Cal. Code Regs., tit. 14 § 15304).

CSPA stated that approval of the TUCP is not in the public interest. Section 5.4 of the 2014 Order addresses the public interest concern. CSPA stated that approval of the TUCP is contrary to Law. However, the objection does not indicate which law the TUCP is contrary to. Sections 3.0, 4.0, and 5.0 of the 2014 Order discuss the various requirements and criteria for approving the TUCP. CSPA indicates that approval of the TUCP will have adverse environmental impacts. As stated above, the findings pertaining to fish, wildlife, and other instream beneficial uses are presented in Sections 5.3 and 7.0 of the 2014 Order. Section 5.3 includes an explanation of requirements incorporated into the 2014 Order (Condition 3) to minimize potential impacts to ensure no unreasonable effects on instream resources. The 2014 Order included a requirement for monitoring the effects of reduced bypass flows on fish and fish habitat.

- 2) ESSLIA Objection** – The ESSLIA objection letter identifies the following concerns regarding the 2014 Order: (a) the flow in Fern Creek has dropped below the required 200 gpm on numerous occasions over a 10 year period; therefore, JLPUD is out of compliance with Permit 21185; (b) studies to identify potential environmental impacts have not been conducted pursuant to the CEQA; (c) the potential damage to wildlife and the aquatic ecosystem caused by the reduction of flows in Fern Creek, Reversed Creek, and Rush Creek have not been evaluated and should be done prior to any reduction; and (d) a long-term water use plan for the June Lake Loop has not been prepared.

Response to ESSLIA Objection

- (a) While the Division appreciates the efforts of ESSLIA to bring this matter to our attention, this issue is broader than what is being considered in regards to the proposed urgency change. Compliance with bypass monitoring required by the 2014 Order is discussed in Section 3.4.
- (b) ESSLIA indicates that a CEQA study to identify significant environmental impacts has not been completed. As described in Section 3.0 of the 2014 Order, the urgency change project is consistent with the CEQA Class 1 categorical exemption for existing facilities (Cal. Code Regs., tit. 14, § 15301) and Class 4 categorical exemption for minor modifications to land (Cal. Code Regs., tit. 14 § 15304).
- (c) ESSLIA indicates that prior to reducing flows, the potential damage to wildlife and aquatic ecosystems caused by a reduction in flows must be evaluated. See response to CSPA Objection.
- (d) This item is outside the purview of this temporary urgency change.

- 3) **JLA Objection** – The JLA objection letter identifies the following concerns regarding the 2014 Order: (a) a comprehensive analysis determining the negative environmental ramifications of reduced flows in Fern Creek has not been completed; and (b) the project does not comply with California Fish and Game Code section 5937.

Response to JLA Objection

- (a) Please refer to the Division's response to the CSPA Objection.
- (b) JLA indicates that JLPUD must comply with California Fish and Game Code section 5937. The analysis presented in Section 5.3 of the 2014 Order addressed impacts to fishery resources downstream of the diversion and concluded there would be no unreasonable effect on fish. As CDFW expressed concern with fish strandings reported in the monitoring conducted under the 2014 Order, this renewal Order requires JLPUD to provide the Fern Creek Monitoring Plan to CDFW for review and comment and will require monthly reports to include information regarding the consultation with CDFW.
- 4) **LADWP Objection** – LADWP timely filed an objection to the 2014 Order, alleging that temporary relaxation of the minimum bypass flow requirement of Permit 21185 (a) interferes with LADWP's prior vested water rights on Rush Creek; (b) adversely impacts the environment; and (c) is a violation of Water Code section 1203.

Response to LADWP Objection

- (a) LADWP holds two senior water right licenses (Licenses 10191 and 10192) with points of diversion located on Rush Creek between Mono Lake and JLPUD's subject diversion on Fern Creek. License 10191 is for municipal use and has a priority date of July 27, 1934. License 10192 is for power generation, and also has a priority of July 27, 1934.

In 1994, the State Water Board issued Decision 1631 and subsequently issued Water Right Orders 98-05 and 98-07 (Board Orders), which amended Licenses 10191 and 10192 to include limitations on water export from the Mono Basin that are established annually based on the April 1 surface elevation of Mono Lake. The limitations established on April 1 of each year remain in effect until March 31 of the succeeding year. In general, LADWP's annual export allocation decreases as lake levels drop, with water export from the Mono Basin prohibited if the actual or projected lake level elevation drops below 6,377 feet (the "zero-export-threshold elevation").

LADWP alleges that reductions in stream flow attributable to implementation of the 2014 Order would detrimentally impact its senior water rights, primarily by reducing the surface elevation of Mono Lake, which LADWP claims would prevent it from diverting its full senior allocation under Licenses 10191 and 10192.

2014 Diversion Season (April 1, 2014 through March 31, 2015)

On April 1, 2014, the surface elevation of Mono Lake was 6,380.7 feet above mean sea level, allowing LADWP to export up to 16,000 af of water from the Mono Basin for the 2014 diversion season. LADWP exported a total of 15,938 af during the 2014 diversion season. Accordingly, there is no evidence that the August 2014 change order impeded LADWP's ability to divert its full senior allocation under water right Licenses 10191 and 10192, as conditioned by Decision 1631 and the Board Orders, during the 2014 diversion season, either through direct effects on stream flows at LADWP's POD on Rush Creek or via effects on the surface elevation of Mono Lake.

2015 Diversion Season (April 1, 2015 through March 31, 2016)

On April 1, 2015, the surface elevation of Mono Lake was 6,379.01 feet above sea level (USGS datum). Based on the observed Mono Lake level, LADWP's water right licenses allow up to 4,500 af of water export for the 2015 diversion season.

Diversion records for Permit 21185 indicate that JLPUD diverted approximately 12.62 af of water under the relaxed bypass requirements authorized by the August 2014 change order. It is unlikely that a significant amount of flow seen in the stream at JLPUD's POD successfully travels down the flow path to Mono Lake. The stream may go subsurface in areas, and much of the flow that picks back up in lower Fern Creek may be from other sources.

Given the large surface area of Mono Lake; the relatively small volume of water diverted by JLPUD under the relaxed bypass requirements authorized by the August 2014 change order, it is reasonable to conclude that any incremental reduction in Mono Lake elevation attributable to implementation of the 2014 Order would not materially affect the surface elevation of Mono Lake, either directly or by incremental contribution to a larger cumulative effect. As a result, the 2014 Order authorizing bypass reduction on Fern Creek would not detrimentally affect LADWP's ability to divert and use its full senior allocation as conditioned by Decision 1631 and the Board Orders, during the 2015 diversion season. It is also not reasonable to conclude that a *de minimis* volume of water might injure the exercise of LADWP's senior appropriative rights in any future diversion season, given the above findings and natural attenuation of water held in Mono Lake over time.

- (b) LADWP alleges that JLPUD failed to provide an environmental assessment to support its claim that the petitioned change would not harm fishery resources downstream of the subject diversion on Fern Creek. An analysis of potential impacts to fish and other instream beneficial uses is presented in Section 5.3 of the 2014 Order. The analysis focused on the 0.4-mile reach of Fern Creek located downstream of the subject diversion, where the potential for impacts to fish and other instream uses was thought to be greatest. The analysis concluded that incremental or cumulative effects attributable to the temporary relaxation of bypass flows under Permit 21185 would be minor, limited in extent, and short in duration.
 - (c) Water Code section 1203 protects water rights held by a municipality that are in excess of existing municipal needs. The above analysis assumes that LADWP has a need for the full amount of its senior appropriative rights as conditioned by Decision 1631 and the Board Orders, and concludes that the relaxation of JLPUD's bypass requirements will not injure LADWP's exercise of its water rights. The 2014 Order and its renewal were therefore compliant with Water Code section 1203.
- 5) Hughes Objection** – The Hughes objection letter identifies the following concerns regarding the 2014 Order: (a) there is adequate water available at the Petersen Treatment Plant to provide water to the entire JLPUD service area; therefore, there is no urgency or emergency to justify the TUCP; (b) the 2014 Order should be reconsidered and the decision vacated as there are presently fish in the stream; (c) an illegal dam was constructed without plans, permits, an Environmental Impact Report (EIR), or bypass; (d) several hundred fish were observed in the lower portion of Fern Creek in the fall of 2013; therefore, California Fish and Game Code section 5937 is still applicable to Fern Creek; (e) water in the June Lake Loop is currently being mapped; therefore, it would be in the public interest to not modify the water right until the results are made public and a minimum flow is established to preserve the fishery in Fern Creek; and (f) the Petitioner should be required to install an accurate and professional weir and recording system.

Response to Hughes Objection

- (a) As stated in the 2014 Order, up to 90 gpm can be supplied by sources other than Fern Creek (Petersen Treatment Plant). However, the Fern Creek diversion would be relied upon to provide the remaining 60 to 90 gpm necessary to meet projected demand. As described in Section 5.1 of the 2014 Order, water supply and demand projections provided by the petitioner in support of the TUCP adequately demonstrate that temporary relaxation of the bypass requirement is necessary to meet potable water demand in the Down-Canyon Service Area during the 2014 water year drought.
- (b) Please refer to the Division's response to the CSPA Objection. As stated in the 2014 Order, the State Water Board reserves jurisdiction to supervise the temporary urgency change 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. The findings pertaining to fish, wildlife, and other instream beneficial uses are presented in Sections 5.3 and 7.0 of the 2014 Order. Section 5.3 includes an explanation of requirements incorporated into the 2014 Order (Condition 3) to ensure no unreasonable effects on instream resources.
- (c) Mr. Hughes indicated that JLPUD constructed an illegal dam without plans, permits, an EIR, or bypass. Division staff reviewed the application form submitted for Permit 21185. It describes a project consisting of an onstream concrete diversion structure and associated water filtration and treatment facility built in 1988. Although direct diversion works include pooled areas to provide sufficient head for diversion, the facility does not constitute a dam. As the diversion works for Application 28609 were within the scope addressed at the original permitting of the project, this concern was not relevant for the proposed change.
- (d) Mr. Hughes indicated that JLPUD must comply with Fish and Game Code section 5937. See response to JLA Objection.
- (e) The TUCP was filed due to the current drought and the urgent need for the proposed changes (see Section 5.1 of the 2014 Order). As stated in the 2014 Order, the State Water Board reserves jurisdiction to supervise the temporary urgency change 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. Section 5.4 of the 2014 Order addresses the reasons it was in the public interest for the Division to act on the TUCP.
- (f) Condition 2 of the August 2014 Order adequately accounted for limitations in JLPUD's existing infrastructure based on the temporary nature of the change. Compliance with bypass monitoring requirements is discussed in Section 2.3 of the 2014 Order.

3.0 PUBLIC NOTICE OF TEMPORARY URGENCY CHANGE PETITION

The State Water Board will issue and deliver to JLPUD, as soon as practicable, a notice of order renewal pursuant to Water Code section 1438(a). Pursuant to Water Code section 1438(b)(2), JLPUD is required to post the notice in at least two conspicuous places in the locality to be affected by the change within two days of receipt. The State Water Board will send a copy of the notice by registered mail to each person who, in the judgment of the board, could be adversely affected by the temporary change. The State Water Board will also distribute the notice through an electronic notification system and will post the notice of the temporary urgency change and a copy of the petition for temporary urgency change (and accompanying materials) on its website. Pursuant to Water Code section 1438, the State Water Board may issue an order in advance of the required notice.

4.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

JLPUD filed a Notice of Exemption (NOE) on January 9, 2015. JLPUD determined that the renewal for change is exempt from CEQA based on the following: (1) it is an emergency project; (2) it is consistent with the statutory exemption criteria for an emergency project; and (3) it is consistent with a categorical exemption for existing facilities.

The State Water Board has reviewed the information submitted by the right holder and has made an independent finding that the proposed change is consistent with a Class 1 categorical exemption for existing facilities (Cal. Code Regs., tit. 14, § 15301.) and the Class 4 categorical exemption for minor modifications to land (Cal. Code Regs., tit. 14, § 15304.). The State Water Board will issue an NOE for the proposed change within five days of order issuance.

5.0 CRITERIA FOR RENEWAL OF THE CHANGE ORDER

Under Water Code section 1441, a temporary change order issued may be renewed by the board. Pursuant to Water Code section 1435, a right holder who has an urgent need to change the POD, 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 POD, place of use, or purpose of use may be filed, subject to the same filing and procedural requirements that apply to changes in POD, 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 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. (Wat. Code, § 1435, subd. (b)(1-4).)

5.1 Urgent Need for the Proposed Change

Under Water Code section 1435, subdivision (c), an "urgent need" means "the existence of circumstances from which the 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.

In this case, there is an urgent need for the proposed change due to the continuing drought that is facing the State of California in 2015. The National Drought Mitigation Center produces a map of California drought conditions. According to information reported as of May 12, 2015, the June Lake area remains classified as category D4 - Exceptional Drought. It is expected that drought conditions will persist throughout summer/fall 2015 until the next rainy season commences.

JLPUD has provided information to the Division, which indicates that the flow downstream of the POD at Fern Creek has been less than 200 gpm at times during the past 10 years. JLPUD's water rights do not allow diversion of water when flows are less than 200 gpm. JLPUD has also indicated that precipitation has been below normal for three consecutive years and the current snow pack that supplies much of the flow in Fern Creek is well below normal. Based on recent JLPUD summer demand, recent snow pack surveys, and precipitation shortfalls, JLPUD continues to expect shortages in its water supply for 2015. JLPUD has

estimated the average supply needed to meet human health and safety needs based on its July 2013 demand, since July is typically the month of highest water use and because July 2013 was the latest month prior to implementation of Stage 2 Restrictions on water use.

Temporary relaxation of the 200 gpm minimum bypass requirement in Permit 21185 would be necessary for JLPUD to meet its potable water demand during the 2015 drought. In addition, JLPUD has stated that an extended water shortage would depressurize its water distribution system and have additional public health and safety implications to JLPUD water users.

In anticipation of water supply issues due to the drought, JLPUD issued a notice to its customers on April 22, 2014 imposing Stage 2 water use restrictions per Water Management Ordinance No. 2008-01 (Ordinance). The Stage 2 water use restrictions remain in effect as of the date of this Order, and include limitations on the frequency of outdoor watering and prohibitions for the construction and irrigation of new landscapes, washing of hard surfaces such as driveways and sidewalks, and irrigation of natural vegetation or undeveloped property. Under the existing conditions of the Ordinance, JLPUD may impose Stage 3 water use restrictions, which would prohibit the use of water for purposes other than domestic or commercial uses. Watering restrictions imposed by the Ordinance are subject to enforcement by JLPUD, with customers liable for fines of up to \$500 per violation.

The Governor's April 1, 2015 executive order directs the State Water Board to impose restrictions resulting in a 25 percent savings in potable urban water usage through February 2016. On May 5, 2015, the State Water Board adopted emergency regulations pursuant to sections 11346.1 and 11349.6 of the Government Code and section 1058.5 of the Water Code (emergency conservation regulations). On May 18, 2015, the Office of Administrative Law approved the emergency conservation regulations and they are currently in effect. The emergency conservation regulations for smaller urban water suppliers (defined as any distributor of a public water supply, whether publicly or privately owned and including a mutual water company, but not meeting the definition of urban water suppliers in Water Code section 10617), is to either limit the number of days that outdoor watering of turf and ornamental landscapes to no more than two days per week or to reduce total potable water production by 25 percent as compared to potable water production in 2013. Parties that do not elect to the 2-day limitation on watering shall submit a report by December 15, 2015, on a form provided by the Board, which includes the total potable water production, by month, from June through November, 2015, and total potable water production, by month, for June through November 2013.

In an effort to not require duplicative requirements, this Order allows JLPUD to report on its compliance with the conservation emergency regulations. The frequency of reporting requirement for the regulations is not sufficient to allow oversight of meaningful conservation during the period of this urgency change. Thus, reporting is required on a monthly basis for the urgency change as approved by this Order.

5.2 No Injury to Any Other Lawful User of Water

The Inyo National Forest and LADWP are the only right holders downstream of JLPUD's POD on Fern Creek. Any water bypassed under the bypass terms in JLPUD's permits and licenses was for environmental purposes was not intended to protect downstream right holders from injury. Based on the information in the record and as discussed in the Division's response to the LADWP objection in Section 3.5, the Division has determined that a temporary reduction in bypass flow may be made without injury to any other lawful user of water since this amount of water would be such a small percentage of water in a stream that is somewhat contributory to Rush Creek.

In light of the above, I find in accordance with Water Code section 1435, subdivision (b)(2) that the proposed change may be made without injury to any other lawful user of water. Pursuant to Water Code section 1439, the State Water Board shall supervise diversion and use of water under this Order for the protection of all other lawful users of water and instream beneficial uses.

5.3 No Unreasonable Effect upon Fish, Wildlife, or Other Instream Beneficial Uses

The 2014 Order findings concluded that there would be no unreasonable effects on fish, wildlife, or other instream beneficial uses due to the temporary change. The findings pertaining to fish, wildlife, and other instream beneficial uses are presented in Sections 5.3 and 7.0 of the 2014 Order. Section 5.3 includes an explanation of requirements incorporated into the Order (Condition 3) to ensure there were no unreasonable impacts on instream resources. These requirements included monitoring the effects of reduced bypass flows on fish and fish habitat. The monitoring conducted documented limited fish stranding, but no mortality was documented. Given the nature of these findings, the associated monitoring requirements, the temporary and urgent nature of the subject change, and the results of monitoring to date, the approval of a reduced bypass condition is not expected to have an unreasonable effect on fish as compared to typical dry stream conditions in the absence of the change in Fern Creek bypass flows.

On February 12, 2015, Division staff contacted CDFW to determine if staff had any concerns with renewal of the 2014 Order and forwarded CDFW a copy of JLPUD's monitoring reports. Monitoring reports provided by JLPUD indicated that fish stranding had previously occurred. CDFW staff indicated that fish strandings were of concern and that staff would review the monitoring plan and reports submitted under the 2014 Order and would work with Division staff regarding this matter. Since CDFW had concerns with respect to fish stranding as identified in the monitoring reports, this Order requires JLPUD to re-submit its Fern Creek Monitoring Plan to CDFW for review and comment prior to any bypass reduction authorized by this Order. The Order also requires monthly reports to include information regarding the consultation with CDFW. This information will be used for the supervision of this Order by the Deputy Director for Water Rights.

In light of the above, and as conditioned in the Order, the State Water Board finds in accordance with Water Code section 1435, subdivision (b)(4) that the proposed changes will not unreasonably affect fish, wildlife, or other instream beneficial uses.

5.4 The Proposed Change is in the Public Interest

Approval of the order renewal would enable JLPUD to meet water demands and associated public health and safety needs for up to six months during the 2015 drought. Implementation of JLPUD's Stage 2/Stage 3 water use restrictions and the water conservation, monitoring, and reporting requirements of this Order will ensure that additional water supply made available to JLPUD is put to full beneficial use without waste, and that the change may be made without injury to any other lawful user of water or unreasonable effects on fish, wildlife, and other instream beneficial uses.

In light of the above, I find in accordance with Water Code section 1435, subdivision (b)(4) that 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.

6.0 STATE WATER BOARD AUTHORITY

Resolution 2012-0029 delegates to the Deputy Director for Water Rights the authority to act on temporary urgency change petitions, and the Deputy Director for Water Rights has redelegated the authority.

7.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the findings required by Water Code section 1435, subdivision (b).

I conclude that, based on the available evidence:

1. The Petitioner has an urgent need to make the proposed change;
2. The approved change, as conditioned by this Order, will not operate to the injury of any other lawful user of water;
3. The approved change, as conditioned by this Order, will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses; and,
4. The approved change, as conditioned by this Order, is in the public interest.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT: the Petition filed by JLPUD for a temporary urgency change in Permit 21185 is approved and effective from June 1, 2015 through November 28, 2015. All existing terms and conditions of Permit 21185 remain in effect, except as temporarily amended by the following provisions:

1. Term 9 of Permit 21185 is amended as follows:

Right holder shall maintain a piped bypass around Fern Creek source sized such that a minimum of 25 gallons per minute (gpm) or the entire stream flow if less than 25 gpm, will always flow by the diversion regardless of water use by right holder, and configured such that it cannot be restricted or plugged.

2. No water shall be diverted under this water right unless right holder continuously measures and records the instantaneous rate of bypass at the Fern Creek point of diversion (POD) and the rate of potable water production at the Clark Water Treatment Plant. Within 15 days of the end of each month, right holder shall submit a report to the Deputy Director for Water Rights describing the average daily rate of bypass and the daily volume of potable water production, with the latter serving as a best estimate of daily diversion from Fern Creek. Average daily bypass rates shall be determined by calculating the arithmetic mean of hourly rates measured from midnight of one day to midnight of the next. If necessary, right holder shall report hourly water production data to demonstrate that the Fern Creek diversion is inactive when stream flow at the POD is less than 25 gpm. The monthly reports shall also include cumulative monthly diversion volumes (by source) for Permit 21185 and related Down-Canyon Service Area water rights (Permits 7350, 7352, 18199 and Licenses 2039, 4358, 10837, 10838), beginning June 1, 2015.

The temporary change authorized by this Order is not effective until the right holder provides documentation to the Deputy Director of how the right holder will monitor and report bypass at all times required by this Order. Documentation shall include consideration of installation of telemetry or another approach acceptable to the Deputy Director for Water Rights that will provide monitoring and reporting under adverse weather conditions. Alternatively, the right holder may elect to divert only at times when the right holder is able to monitor and report on bypass flows as required by this Order.

3. During the effective period of this Order, right holder shall continue implementation of the 2014 Fern Creek Monitoring Plan (Plan) and any modifications to the Plan as approved by the Deputy Director for Water Rights. The temporary change authorized by this Order is not effective until right holder has re-submitted the Plan and any approved modifications to CDFW for review and consultation on necessary revisions, based on previous monitoring results. Subsequent monthly monitoring reports shall be provided to the Deputy Director for Water Rights and CDFW and shall include a summary of any CDFW-suggested modifications or recommendations regarding the bypass reduction or monitoring parameters. Attachment of CDFW email correspondence in monthly reports will be acceptable in meeting this requirement. This information will be used by the Deputy Director for the supervision of this Order.
4. To document conservation during the term of this Order, JLPUD shall comply with the May 2015 State Water Resources Control Board emergency conservation regulations pursuant to sections 11346.1 and 11349.6 of the Government Code and section 1058.5 of the Water Code, as follows:
 - a) JLPUD shall submit written confirmation to the Deputy Director for Water Rights within 15 days of the date of this Order that JLPUD is subject to the emergency conservation regulations and which of the two compliance options JLPUD has chosen;
 - b) separate, and in addition to, any reporting requirements of the emergency conservation regulations, JLPUD shall provide reporting to the Deputy Director for Water Rights on compliance with the emergency conservation regulations for the purposes of this urgency change on a monthly basis within 15 days of the end of each month. JLPUD shall provide a final report no later than 15 days from the expiration date of this Order;
 - c) when the monthly status update reflects that the right holder is not achieving the minimum water demand reduction of the emergency conservation regulations, JLPUD shall also include additional actions the right holder has adopted and/or implemented to meet the demand reduction and identify the date when such additional actions will be fully implemented as part of the monthly status update;
 - d) failure to achieve demand reduction may result in modification of this Order to limit the extent of the approved action, at the discretion of the Deputy Director for Water Rights;
 - e) this term shall not be construed to suggest that JLPUD is able to disregard or otherwise not comply with any applicable requirements under the emergency conservation regulations.
5. 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, right holder shall obtain authorization for an incidental take permit prior to construction or operation. Right holder shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary urgency change authorized under this Order.
6. Due to concerns with right holder compliance regarding Terms 2 (Bypass Monitoring) and 4 (Conservation) during the period of the August 2014 Order, the Deputy Director for Water Rights may terminate this Order at any time if the right holder fails to meet the requirements of these terms. Assessment of compliance will be based on monthly reporting or any other available information.
7. Should the right holder determine that it will not proceed with the changes identified in this Order at any time during the duration of this approval, the right holder may instead operate in accordance with Permit 21185 (Application A028609), and shall notify the Division within 10 days of any such determination.

8. 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.
9. The temporary urgency change 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 Board. This Order shall automatically expire 180 days after the effective date of June 1, 2015 unless it has been revoked.

STATE WATER RESOURCES CONTROL BOARD



*Barbara Evoy, Deputy Director
Division of Water Rights*

Dated: **MAY 26 2015**