

January 11, 2023

Mr. Erik Ekdahl  
Deputy Director, Division of Water Rights  
State Water Resources Control Board  
Post Office Box 100  
1001 I Street  
Sacramento, California 95814  
[Erik.Ekdahl@waterboards.ca.gov](mailto:Erik.Ekdahl@waterboards.ca.gov)

Dear Mr. Ekdahl:

Subject: Mono Lake Committee Request for Drought Emergency Regulation or Other  
Emergency Action at Mono Lake

Pursuant to your request, the Los Angeles Department of Water and Power (LADWP) hereby responds to the letter that Mono Lake Committee (MLC) submitted to the State Water Resources Control Board (State Water Board) on December 16, 2022, regarding Mono Lake. In its letter, MLC asks the State Water Board to prohibit the City of Los Angeles (City) from exercising its water rights on Rush and Lee Vining Creeks through an emergency regulation or other unspecified emergency action. MLC contends that such drastic action is necessary to avoid the *possibility* of coyotes being able to access California gull nests if the lake level lowers and the landbridge is exposed. Such actions, however, are unnecessary and would be inappropriate.

First and foremost, no “emergency conditions” exist that would warrant an emergency regulation or other emergency action. The landbridge is not exposed, and the State Water Board has already adopted safeguards to prevent it from becoming so in Decision 1631 (D-1631) and Amended Licenses 10191 and 10192 (Amended Licenses). LADWP is in full compliance with D-1631 and the Amended Licenses.

Second, MLC’s focus on the landbridge over-simplifies not only a complex local habitat issue, but also a statewide water supply issue. If potential coyote predation of gulls is the primary concern, there are more effective means for deterring potential coyote predation than prohibiting the City from utilizing its water rights. Fencing has proven effective in the past and would be more prudent in light of the drought conditions that exist statewide. LADWP understands that MLC already intends to install fencing, and LADWP has expressed it is willing and able to assist in these efforts.

Third, MLC’s proposed actions raise serious due process concerns and would likely violate LADWP’s procedural and substantive rights.

Finally, LADWP has invested, and continues to invest, in conservation programs and the development of local water supplies. Despite the success of these efforts, water from the Mono Basin is still necessary to provide a reliable water supply for the nearly four million Angelenos and

for environmental and other purposes in the Mono Basin and Owens Valley. Eliminating this supply would result in LADWP having to obtain water from other more strained water systems.

These points are discussed in greater detail below.

**No Emergency Conditions Exist: LADWP is Meeting the Safeguards in D-1631 and its Amended Licenses to Protect the Gulls and their Habitat**

The last two years have marked historic milestones in the State's battle against climate change, hailing the hottest year in recent history, followed by the second driest water year in the State's recorded history. The impacts have been significant and wide-reaching, but not surprising.

These extreme, cyclical, and prolonged droughts are not new, nor are fluctuations in Mono Lake. In its 1994 decision D-1631, the State Water Board found that Mono Lake not only fluctuates annually, it fluctuates in response to drought. Specifically, the State Water Board determined, "Mono Lake fluctuates naturally on an annual basis, typically reaching the yearly maximum level in late spring or early summer and falling into the minimum level in late fall."<sup>1</sup> Further, it determined, "The water level of Mono Lake fluctuates in response to hydrologic conditions. During prolonged droughts, this fluctuation may be several feet or more."<sup>2</sup> The State Water Board considered these fluctuations when balancing the public need for domestic water and public trust resources.

Specifically related to MLC's request, the State Water Board considered extensive expert testimony on the impact of water levels on gull habitat and adopted appropriate safeguards to protect the gulls and their nests. It found that "Java and Twain islets are likely to be accessible to coyotes ('functionally landbridged') at lake elevations between 6374 and 6375 feet," and that Negit Island is "physically landbridged at a lake elevation of 6,375 feet."<sup>3</sup> Based on these findings, it determined that 6,377 is the minimum level necessary to protect gull habitat.<sup>4</sup> It incorporated this determination in Condition 9(a) of LADWP's Amended Licenses, which restricts LADWP's diversions if the lake level reaches 6,377 feet within the runoff year of April 1 through March 31. LADWP is complying with D-1631 and its Amended Licenses, and today's lake level is nearly two feet above this minimum level.

When the State Water Board issued the Amended Licenses to LADWP just over a year ago on October 1, 2021, it elected not to consider lake level elevation targets at that time. Instead, it deferred consideration of the issue, indicating that there was no "emergency" condition that warranted action.

On October 21, 2022, LADWP took an aerial photograph of Mono Lake, at which time the lake level was approximately 6378.61 feet. The photograph (below) shows the landbridge is not exposed. And the lake level has risen since, even with LADWP exporting the 4,500 acre-feet allotted under the Amended Licenses. As of January 4, 2023, the lake level was approximately 6378.70 feet. Due to significant precipitation from recent storms in the Mono Basin, the lake level is likely to rise further.

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<sup>1</sup> D-1631, p. 104; *see also* p. 5 ("The historic water level and salinity of the lake have fluctuated considerably *in response to natural conditions*" [emphasis added]).

<sup>2</sup> D-1631, p. 106.

<sup>3</sup> D-1631, pp. 105-106.

<sup>4</sup> D-1631, p. 156 n. 14.

Under these circumstances, there is no reasonable basis for “emergency” action of any kind. An emergency simply does not exist.



*LADWP aerial photograph of Mono Lake on October 21, 2022; lake level approximately 6378.61 feet*

**Emergency Action to Address Potential Coyote Predation is Not Necessary and Will Likely Have Negative Impacts**

MLC suggests that emergency action is necessary to raise the lake level to avoid the exposure of the landbridge and potential coyote predation on gulls and their nests. Prohibiting the City from exercising its water rights to raise the lake level for this narrow purpose is problematic for several reasons.

As discussed above, the State Water Board has already considered extensive expert testimony on the lake level necessary to protect gull habitat, and adopted appropriate safeguards. MLC has not presented any new scientific evidence to suggest that the minimum lake level is not sufficiently protective of the gull population as a whole. Notably, California gulls are an abundant species and are not threatened or endangered.

There is a more immediate and prudent solution to prevent potential coyote predation: fencing. Fencing was installed when the lake level was 6377.5 feet in 2017, and was successful in preventing coyote predation. MLC has indicated that it is working with the California Department of Fish and Wildlife, California State Parks, and other agencies to install fencing this year. LADWP has informed MLC that it is willing to contribute funding and resources for these efforts and remains willing to do so.

Fencing is a superior option to protect not only the gulls, but also crucial water supplies. LADWP has reduced its exports from the region by an average of 80 percent since 1989, with a current reduction of 95 percent based on lake level conditions on April 1, 2022. The 4,500 acre-feet that LADWP currently exports from the Mono Basin is enough to serve 54,000 residents annually, which is approximately the size of disadvantaged communities such as Historic South Central or Koreatown.<sup>5</sup> If LADWP ceases its exports from the Mono Basin, it will be required to import additional water from the State Water Project or Colorado River Basin to meet these needs. Those water systems are severely stressed and are likely to become more so as a result of climate change. The State Water Project also encompasses habitat for numerous threatened and endangered species that may be impacted if additional demand is shifted onto that system.

In addition, the environmental benefits of LADWP's cost effective Aqueduct supply are a minimally energy-intensive supply that also generates hydropower for the needs of the almost 6,000 electric customers in Owens Valley that are served by LADWP. As part of its Urban Water Management Plan, LADWP has been studying the nexus between water and energy and the associated greenhouse gas emissions of imported and local water supplies. The Los Angeles Aqueduct is a gravity-fed water conveyance system, making it the most desirable supply source in terms of energy intensity and carbon footprint.

Lastly, focusing on the gull population may be detrimental to other more sensitive and threatened species. In some locations throughout their range, nesting California Gulls cause significant impacts to other nesting waterbird species, including threatened populations of Snowy Plover (*Charadrius nivosus*). Mono Lake supports a breeding population of Snowy Plovers, which appears to have been increasing in size with decreasing lake levels and the expansion of barren playa habitat for nesting.<sup>6</sup> California Gulls have been found to be the primary nest predator of Snowy Plovers at Mono Lake, and that predation is the main limiting factor on the plover population.<sup>7</sup>

### **MLC's Proposed Emergency Actions Raise Serious Procedural and Substantive Concerns**

MLC requests that the State Water Board adopt an emergency regulation under Water Code section 1058.5 that prohibits the City from exercising its water rights until the lake level reaches 6,384 feet. As a threshold matter, no emergency exists that would warrant action under section 1058.5, as discussed above. More importantly, section 1058.5 specifically states that emergency

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<sup>5</sup> If LADWP were able to export 16,000 acre-feet annually—the maximum allowed under the Amended Licenses—that would be sufficient to serve approximately 200,000 residents.

<sup>6</sup> Doster, R. H., and Shuford, W. D. 2018. Recent trends in population size and distribution of Ring-billed and California gulls in the western United States, *in* Trends and traditions: Avifaunal change in western North America (W. D. Shuford, R. E. Gill Jr., and C. M. Handel, eds.), pp. 161–179. Studies of Western Birds 3. Western Field Ornithologists, Camarillo, CA; doi 10.21199/SWB3.8.

<sup>7</sup> Page, Gary, et al. 1982. Spacing Out at Mono Lake: Breeding Success, Nest Density, and Predation in the Snowy Plover *in* The Auk 100: 13-14 (published Jan. 1983).

regulations may only remain in effect for up to one year, and may only be renewed under narrow circumstances.<sup>8</sup> MLC states that prohibiting the City from exercising its water rights for the 2023-2024 runoff year could increase the lake level by approximately 0.1 feet.<sup>9</sup> However, it's likely to be even less when evaporation is considered. The negligible increase would not address the issue raised by MLC (coyote predation of gulls), but would have statewide impacts on water supply. Moreover, the State Water Board cannot adopt an emergency regulation that would result in a deprivation of LADWP's vested property rights in the Amended Licenses without adequate opportunity to be heard at a meaningful time and in a meaningful manner. Accordingly, the issuance of an emergency regulation under Water Code section 1058.5 would be inappropriate here.

Alternatively, MLC requests that the State Water Board adopt an emergency regulation or take other emergency action to protect the public trust under Article X, section 2 of the California Constitution. The State Water Board carefully considered the public trust when it issued D-1631 in 1994, and it adopted appropriate safeguards, including the minimum lake level necessary to protect gull habitat. LADWP is complying with all conditions of its Amended Licenses. If the State Water Board determines that it is necessary to reassess the City's water rights, it must follow the proper legal procedures to amend the Amended Licenses, which includes, at a minimum notice to LADWP and an opportunity for a hearing. This is expressly stated in Condition L of the Amended Licenses:

No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution, article X, section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

Attempting to circumvent these procedural and substantive requirements through an emergency regulation or other emergency action without adequate notice and opportunity for a hearing would violate LADWP's due process rights.

#### **LADWP Has Invested, and Continues to Invest, in Conservation Programs and the Development of Local Water Supplies**

Finally, in its letter MLC recognizes that Angelenos have made considerable efforts to conserve precious water supplies and that LADWP has invested significantly in diversifying its water portfolio. These efforts should not be overlooked.

Over the last 40 years, LADWP has invested hundreds of millions of dollars in its water conservation programs. As a result, total water consumption in the City of Los Angeles has decreased by 44 percent, despite an increase in population of over one million people. Today, the average residential use is 74 gallons per person per day compared to the State average of 91. The City's water demands, however, remain high because the City is home to approximately four million people.

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<sup>8</sup> Cal. Water Code § 1058.5(c).

<sup>9</sup> MLC letter to E. Erik Ekdahl, dated December 16, 2022, p. 5.

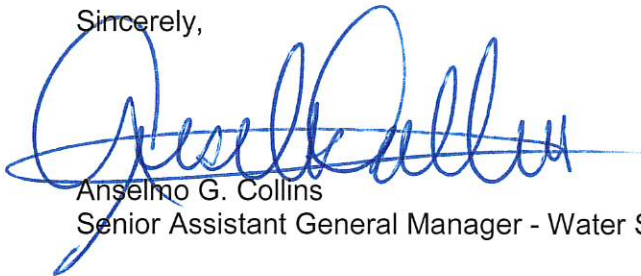
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LADWP also allocates half of the City's historical Los Angeles Aqueduct supplies in the Mono Basin and Owens Valley to support environmental and restoration efforts. LADWP's obligations in the Eastern Sierra are met before exporting water into the City for beneficial use.

LADWP, and the City as a whole, remain committed to continuing to conserve water and to developing local water sources. However, we cannot conserve our way out of the challenges of drought and climate change. Restricting Mono Basin water supplies will have broader impacts on California's water systems than what was projected when D-1631 was issued, making it all the more crucial that current water supplies are protected for Los Angeles residents, of which approximately 50 percent are living in disadvantaged communities. Southern California's imported supplies are a critical part of the State's shared water resources. With the Colorado River, State Water Project, and Los Angeles Aqueduct all strained due to drought and extreme shifts in precipitation, further restrictions on one of these resources only shifts impacts to the others.

We look forward to discussing these issues further with you and your staff. If you have any questions in the interim, please contact me at (213) 367-1022 or by email at [Anselmo.Collins@ladwp.com](mailto:Anselmo.Collins@ladwp.com).

Sincerely,



Anselmo G. Collins  
Senior Assistant General Manager - Water System

AGC:jy

c: Mr. E. Joaquin Esquivel, State Water Resources Control Board  
Ms. Dorene D'Adamo, State Water Resources Control Board  
Mr. Sean Maguire, State Water Resources Control Board  
Ms. Laurel Firestone, State Water Resources Control Board  
Ms. Nichole Morgan, State Water Resources Control Board  
Mr. Charlton H. Bonham, Director, California Department of Fish and Wildlife  
Ms. Heidi Calvert, Regional Manager, California Department of Fish and Wildlife  
Ms. Alisa Ellsworth, Environmental Program Manager, California Department of Fish and Wildlife