

III. APPLICABLE PLANS, POLICIES, AND REGULATIONS

The requirements contained in the proposed Order are based on the requirements and authorities described in this section.

A. Legal Authorities

This Order is issued pursuant to section 402 of the Federal Clean Water Act (CWA) and implementing regulations adopted by the U.S. Environmental Protection Agency (USEPA) and Chapter 5.5, Division 7 of the California Water Code (CWC). It shall serve as a NPDES permit for point source discharges from this facility to surface waters that are waters of the U.S. This Order also serves as Waste Discharge Requirements (WDRs) pursuant to Article 4, Chapter 4 of the CWC for discharges that are not subject to regulation under CWA section 402. Compliance monitoring is required pursuant to CWC Section 13383 and/or CWC Section 13267.

Section 401 of the CWA (33 U.S.C., paragraph 1341) requires that any applicant for a CWA Section 404 permit, who plans to conduct any activity that may result in discharge of dredged or fill materials to waters of the United States, shall provide to the permitting agency a certification that the discharge will be in compliance with applicable water quality standards of the state in which the discharge will originate. No Section 404 permit may be granted (or valid) until such certification is obtained. The Discharger has submitted a complete application and full fee deposit required for Water Quality Certification under Section 401 for the LORP. The U.S. Army Corps of Engineers (ACOE) will regulate the project with an Individual Permit under the provisions of Section 404.

California Code of Regulations (CCR) Title 23, Section 3831(e) grants the Regional Water Board and the Regional Water Board Executive Officer the authority to grant or deny water quality certification for projects in accordance with Section 401 of the CWA.

B. California Environmental Quality Act (CEQA)

Detailed analysis of Regional Water Board CEQA compliance is provided in Attachment H.

C. State and Federal Regulations, Policies, and Plans

1. **Water Quality Control Plans.** The Regional Water Board adopted a *Water Quality Control Plan for the Lahontan Region* (Basin Plan) that designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters addressed through the plan. In addition, State Water Resources Control Board (State Water Board) Resolution No. 88-63 requires that, with certain exceptions, the Regional Water Board assign the municipal and domestic supply use to water bodies that do not have beneficial uses listed in the Basin Plan. Beneficial uses applicable to the receiving waters are as follows:

Discharge Points	Receiving Water Name	Beneficial Use(s)
Discharge 001R Discharge 002 Discharge 003 Discharge 004	Lower Owens River (Below Intake Structure)	Municipal and domestic water supply (MUN), Agricultural Supply (AGR), Ground water recharge (GWR), Freshwater replenishment (FRSH), Water contact recreation (REC-1), Non-contact water recreation (REC-2), Commercial and sport fishing (COMM), Warm freshwater habitat (WARM), Cold freshwater habitat (COLD), Wildlife habitat (WILD), Preservation of biological habitats of special significance (BIOL), Rare, threatened or endangered species (RARE), Spawning, reproduction, and Development (SPWN)
Discharge 003 Discharge 004	Owens Lake	MUN*, REC-1, REC-2, COMM, WARM, COLD, Inland Saline Water Habitat (SAL), WILD
Discharge 001A Discharge 005	Los Angeles Aqueduct and Haiwee Reservoir	MUN, AGR, Industrial Supply (IND), GWR, REC-1, REC-2, COMM, COLD, WILD, RARE, and SPWN

* Proposed for removal in July, 2005. Effective date pending state and federal approvals

2. **Thermal Plan.** Not applicable to intrastate waters.
3. **National Toxics Rule (NTR) and California Toxics Rule (CTR).** USEPA adopted the NTR on December 22, 1992, which was amended on May 4, 1995 and November 9, 1999, and the CTR on May 18, 2000, which was amended on February 13, 2001. These rules include water quality criteria for priority pollutants and are applicable to this discharge. Monitoring data to complete a reasonable potential analysis for toxic "priority pollutants" is a required part of this Order.
4. **State Implementation Policy.** On March 2, 2000, State Water Board adopted the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (State Implementation Policy or SIP). The SIP became effective on April 28, 2000, with respect to the priority pollutant criteria promulgated for California by the USEPA through the NTR and to the priority pollutant objectives established by the Regional Water Boards in their basin plans, with the exception of the provision on alternate test procedures for individual discharges that have been approved by USEPA Regional Administrator. The alternate test procedures provision was effective on May 22, 2000. The SIP became effective on May 18, 2000. The SIP includes procedures for determining the need for and calculating water quality-based effluent limitations (WQBELs), and requires Dischargers to submit data sufficient to do so.
5. **Antidegradation Policy.** Section 131.12 of 40 CFR requires that State water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Water Board Resolution 68-16, which incorporates the requirements of the federal antidegradation policy. Resolution 68-16 requires that existing water quality is maintained unless degradation is justified based on specific findings. The permitted

discharge is consistent with the antidegradation provision of 40 CFR §131.12 and State Water Board Resolution 68-16, as follows:

- a. Whenever the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies.

The Discharger has demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies. The potential temporary changes to water quality are consistent with maximum benefit to the people of the State because the restoration of the waters for beneficial uses will outweigh potential adverse effects on water quality.

- c. Any activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.

The Lower Owens River cannot be considered existing high quality waters because of severe degradation and losses of beneficial uses associated with historic water diversions by the Discharger. Under the terms of this Order, restoration activities conducted by the Discharger must use Best Management Practices to achieve the best practicable treatment or control of the discharge necessary to assure that (a) pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.

- c. In implementing this policy, the Secretary of the Interior [USEPA] will be kept advised and will be provided with such information as he/she will need to discharge his/her responsibilities under the Federal Water Pollution Control Act.

The draft Order will be provided to the USEPA for review and comment. This Order will not become final if USEPA formally objects. Information concerning the LORP and compliance with this Order is required to be made available to the USEPA upon request.

6. **Anti-Backsliding Requirements.** Sections 402(o)(2) and 303(d)(4) of the CWA and federal regulations at 40 CFR § 122.44(l) prohibit backsliding in NPDES permits. These anti-backsliding provisions require effluent limitations in a reissued permit to be as stringent as those in the previous permit, with some exceptions where limitations may be relaxed. Anti-Backsliding provisions do not apply to this permit because it is a new Order for proposed discharges.

7. **Monitoring and Reporting Requirements.** Section 122.48 of 40 CFR requires that all NPDES permits specify requirements for recording and reporting monitoring results. Sections 13267 and 13383 of the CWC authorize the Regional Water Boards to require technical and monitoring reports. The Monitoring and Reporting Program (MRP) establishes monitoring and reporting requirements to implement federal and State requirements. This MRP is provided in Attachment E.

D. Impaired Water Bodies on CWA 303(d) List

Under Section 303(d) of the Clean Water Act, states are required to develop a list of water quality limited segments. These waters on the list do not meet water quality standards, even after point sources of pollution have installed the minimum required levels of pollution control technology. The law requires that these jurisdictions establish priority rankings for water on the lists and develop action plans, called as Total Maximum Daily Loads (TMDL), to improve water quality. On July 25, 2003 USEPA gave final approval to California's 2002 Section 303(d) List of Water Quality Limited Segments.

The Lower Owens River is listed as impaired on the Clean Water Act Section 303(d) list approved for California in 2003. The listing is for impairments due to the pollutant/stressor "Habitat Alterations" on a 53-mile water body segment. The potential sources of impairment are listed as "Agriculture," and "Hydromodification." The Lower Owens River may be removed from the list of impaired waters because it is not impaired by a pollutant, pursuant to new 303(d) listing policy of the State Water Resources Control Board, and is rated "low" on the list of priorities for TMDL development. Additionally, the LORP is a large-scale habitat restoration project designed, in part, to address the impairments to beneficial uses within this segment by changing the current hydrologic flow regime, and includes improved rangeland management as a project element to reduce agriculture-related contributions to impairments. The LORP effectiveness in reducing and/or eliminating beneficial use impairments will be evaluated in future (biennial) updates to the 303(d) list.

The Haiwee Reservoir and its upstream tributary, Tinemaha Reservoir, are listed as impaired on the Clean Water Act Section 303(d) list approved for California in 2003. The Haiwee Reservoir listing is for impairments due to the pollutant/stressor "Copper." The Tinemaha Reservoir, located approximately five miles upstream of the River Intake (point of diversion) to the Los Angeles Aqueduct is listed as impaired due the pollutant/stressor "Metals." The potential sources of impairment in these reservoirs are listed as "Other" and are related to use of copper algaecides applied by the Discharger to prevent taste/odor problems in drinking water supplied from the reservoirs. Copper is a potent toxin with regard to aquatic life forms, and is a CTR "priority pollutant"; hardness-dependent fresh water aquatic life criteria for dissolved copper are specified in Table (b)(1) of the CTR. Recent sampling has indicated that Tinemaha Reservoir meets water quality standards, and the Regional Water Board has recommended that the State Water Resources Control Board remove this water body from the 303(d) list. Recent sampling at Haiwee Reservoir indicates that it may meet water quality standards, but additional sampling is needed to confirm the status of Haiwee Reservoir.

The discharge of algaecide containing copper is not authorized or regulated under the provisions of this Order. However, waters released from Tinemaha Reservoir to the Lower Owens River may carry a residual copper load from the Discharger's algaecide applications. There is also potential for residual copper from the upstream copper applications to be present at elevated levels in the sediments of the Lower Owens River, particularly organic sediments in the lower "wetter reach," that could be mobilized and entrained in the water column by the increased flow rates associated with the LORP. The Discharger, in implementing the LORP, will not add additional copper to the flow other than copper that may be naturally or otherwise present in the riverbed sediments. The recreated wetlands

associated with the LORP may sequester residual copper and other metals from Tinemaha Reservoir, as wetlands generally function in this way with regard to metals of various types. The Discharger has not proposed the use of copper-based algaecides associated with the LORP, but such use is not precluded (subject to applicable NPDES requirements as implemented in California). This Order includes water quality monitoring requirements for copper. Results of copper testing will be compared against receiving water objectives to determine whether beneficial uses may be adversely affected.

Waters diverted from the Lower Owens River to the Los Angeles Aqueduct via the LORP Pump Station will eventually reach Haiwee Reservoir. If this diverted water contains significant nutrients, it could also potentially affect water quality by increasing the concentrations of plant nutrients such as nitrogen and phosphorus in Haiwee Reservoir. These nutrients could further stimulate algae growth in Haiwee Reservoir that could affect the taste and odor of the water (with potential implications for increased applications of algaecide by the Discharger).

E. Other Plans, Policies and Regulations

Not Applicable

IV. RATIONALE FOR EFFLUENT LIMITATIONS AND DISCHARGE SPECIFICATIONS

The CWA requires point source dischargers to control the amount of conventional, non-conventional, and toxic pollutants that are discharged into the waters of the United States. The control of pollutants discharged is established through effluent limitations; and other requirements in NPDES permits. There are two principal bases for effluent limitations: 40 CFR §122.44(a) requires that permits include applicable technology-based limitations and standards; and 40 CFR §122.44(d) requires that permits include water quality-based effluent limitations to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. Where numeric water quality objectives have not been established, three options exist to protect water quality: 1) 40 CFR §122.44(d) specifies that WQBELs may be established using USEPA criteria guidance under CWA section 304(a); 2) proposed State criteria or a State policy interpreting narrative criteria supplemented with other relevant information may be used; or 3) an indicator parameter may be established.

A. Discharge Prohibitions

Basin Plan Prohibitions

The Basin Plan contains the following waste discharge prohibitions that apply to all surface and ground waters in the Lahontan Region:

1. The discharge of waste that causes violation of any narrative water quality objective contained in the Basin Plan, including the Nondegradation Objective, is prohibited.
2. The discharge of waste that causes violation of any numeric water quality objective contained in the Basin Plan is prohibited.
3. Where any numeric or narrative water quality objective contained in the Basin Plan is already being violated, the discharge of waste that causes further degradation or pollution (as defined in CWC Section 13050) is prohibited.

Exemption Criteria for Restoration Projects

The Regional Water Board encourages restoration projects that are intended to reduce or mitigate existing sources of soil erosion, water pollution, or impairment of beneficial uses. For waste earthen materials discharged as a result of restoration projects, exemptions to the above prohibitions, and all other prohibitions contained in this Basin Plan, may be granted by the Regional Water Board whenever it finds that a specific project meets all of the following criteria:

1. The project will eliminate, reduce or mitigate existing sources of soil erosion, water pollution, and/or impairment of beneficial uses of water, and
2. There is no feasible alternative to the project that would comply with provisions of this Basin Plan, precluding the need for an exemption, and
3. Land disturbance will be limited to the absolute minimum necessary to correct or mitigate existing sources of soil erosion, water pollution, and/or impairment of beneficial uses of water, and
4. All applicable Best Management Practices (BMPs) and mitigation measures have been incorporated into the project to minimize soil erosion, surface runoff, and other potential adverse environmental impacts, and
5. The project complies with all applicable laws, regulations, plans, and policies.

The following paragraphs explain how the above criteria are met.

Criteria 1: The Discharger has demonstrated the LORP meets the criteria for a restoration project because beneficial uses will be enhanced and restored by reintroducing flow into 62 miles of the Lower Owens River. By restoring flow in the Lower Owens River below the River Intake, the project will restore the beneficial uses of the River which have been impaired due to the absence of flows in the dry reach and the minimal amount of flows in the wet reach. Under the LORP, a portion of the flow currently being diverted to the Los Angeles Aqueduct will be restored to the River by allowing flow through the River Intake structure. The project will establish a continuous baseflow of 40 cfs from the River Intake to upstream of the Delta. In addition, higher flows of up to 200 cfs will be released annually to facilitate the establishment of riparian trees. The project overall is expected to result in the conversion of over 900 acres of upland habitat to riparian/ wetland habitat. In addition, the LORP includes rangeland management actions that will complement and facilitate the habitat restoration by modifying grazing practices, especially in the riparian areas. Therefore, over time, the project will result in the restoration of designated beneficial uses.

Criteria 2: There are no feasible alternatives to the LORP identified that would not have the possibility of potentially significant water quality impacts. Therefore, no feasible alternative would comply with all provisions of the Basin Plan in the absence of an exemption. There is no reasonable alternative to the project that would achieve the restoration goals of the LORP that would preclude the need for an exemption.

Criteria 3: The proposed facilities would cover an area of up to approximately three acres. Land disturbance associated with the project will be limited to the absolute minimum necessary to correct the existing impairment of beneficial uses, i.e., riverine-riparian and wetland habitat restoration through water releases. Project-related land disturbances are associated with construction and modification of facilities for releasing, regulating or monitoring the flows necessary for habitat restoration. These facilities include: the River Intake; flow measuring stations; and spillgates, culverts, berms and ditches in the Blackrock area. Other project-related land disturbances include removal of in-channel sediments and

other obstructions to flow prior to flow releases, which is necessary to ensure a continuous baseflow in the River. The Pump Station and associated facilities are integral to the project. According to the Discharger, it would not be cost-effective to enter into the water commitments necessary to implement the project without the ability to recover some of the water. The proposed facilities are designed to have the smallest footprint possible while meeting operational and maintenance needs, and their locations have been selected to maximize the use of existing access roads and minimize the need for construction of new access roads to the extent feasible.

Criteria 4: The Discharger has provided an information package dated November 2004 that includes a conceptual BMP plan to avoid potential adverse impacts to water quality associated with the LORP. Under the terms of this Order, the Discharger must provide the project-specific BMP details in a Storm Water Pollution Prevention Plan at least 180 days prior to construction. (See Permit Section VI.C.2.) The information provided, together with compliance with this Order, demonstrates that all applicable BMPs and mitigation measures (see CEQA Attachment H) have been incorporated into the project to minimize soil erosion, surface runoff, and other potential adverse environmental impacts.

Criteria 5: The Discharger has committed to comply with all applicable laws, regulations plans and policies, and is in the process of obtaining additional permits and approvals required to implement the LORP.

The Regional Water Board finds that it is not against the public interest to grant a short-term exemption to waste discharge prohibitions applicable to the Lower Owens River due to implementation of the LORP, as described below.

1. The exemption shall not apply during the construction period prior to reintroducing water to establish base flow as described for the LORP. To do so would be inconsistent with statewide requirements for dischargers of construction storm water. There is no basis to lower water quality requirements during construction, as BMPs are required to maintain compliance with standards.
2. The exemption to the prohibitions is not granted for several specific constituents whose discharge is not authorized as a part of the LORP project. These constituents are: chlorine; oil and grease; and pesticides. Receiving water objectives must be met for these constituents.
3. The exemption is for a limited time. It is not appropriate to grant an exemption for an indefinite period because the Regional Water Board expects water quality standards to be met when the river system adapts to the changed flow regime. If necessary, the Discharger may request the Regional Water Board to renew the exemption based on monitoring information obtained during the LORP implementation. The exemption to Waste Discharge Prohibitions shall expire on July 14, 2015 unless the Discharger requests an extension and the Regional Water Board renews the exemption.
4. The exemption is not applicable to the Los Angeles Aqueduct or Haiwee Reservoir, receiving waters for discharges from the Pump Station. Receiving water limitations in Haiwee Reservoir and its tributary, the Los Angeles Aqueduct, shall not be violated as a result of the granting of the exemption to waste discharge prohibitions for the LORP.

B. Technology-Based Effluent Limitations

It is not feasible to establish numerical effluent limitations for the LORP at this time. This project is not within a listed industry for which technology-based effluent limitations have been developed and promulgated. Instead, the provisions of this Order require

implementation of Best Management Practices (BMPs) and a Pollution Prevention Plan to control and abate the discharge of pollutants to surface waters and to achieve compliance with Best Available Technology Economically Achievable (BAT)/Best Conventional Pollutant Control Technology (BCT) requirements and with applicable water quality standards.

C. Water Quality-Based Effluent Limitations (WQBELs)

1. Scope and Authority

As specified in 40 CFR §122.44(d)(1)(i), permits are required to include WQBELs for pollutants (including toxicity) that are or may be discharged at levels that cause, have reasonable potential to cause, or contribute to an excursion above any state water quality standard. The process for determining reasonable potential and calculating WQBELs when necessary is intended to protect the designated uses for the receiving water as specified in the Basin Plan, and achieve applicable water quality objectives and criteria that are contained in other state plans and policies, or water quality criteria contained in the CTR and NTR.

It is not feasible to develop WQBELs at this time because there is not pre-project water quality data available for the discharges. There are not similar projects to draw upon for similar data. Water quality is expected to change and improve over time.

Additional information and water quality monitoring data will be obtained during the term of this Order, and used to assess whether water quality-based effluent limitations (WQBELs) may be needed. If necessary this permit may be re-opened and modified to include effluent limitations. The procedure for conducting a reasonable potential analysis and calculating WQBELs, if needed, is provided in the following section.

2. Applicable Beneficial Uses and Water Quality Criteria and Objectives

Section III.C. of this Fact Sheet identifies the beneficial uses contained in the Basin Plan that are applicable to surface waters that may be affected by the project. Narrative and numerical water quality objectives for the applicable surface waters are listed in Section V.

The LORP is a habitat restoration project that qualifies for an exemption from waste discharge prohibitions for the discharges authorized by this Order. It is expected that water quality standards may not be met in the early phases of the project due to rewatering channel reaches that have experienced little or no flow for a long period of time. The impacts to water quality are expected to be the worst-case in the initial phases of the project and attenuate over time as the new higher flow regime becomes established.

3. Determining the Need for WQBELs

In accordance with Section 1.3 of the SIP, the Regional Water Board will conduct a reasonable potential analysis (RPA) for each priority pollutant with an applicable criterion or objective to determine if a WQBEL is required in the Order. The Regional Water Board will analyze effluent and receiving water data to determine if a pollutant in a discharge has the reasonable potential to cause or contribute to an excursion above a state water quality standard. For all parameters that have the reasonable potential to cause or contribute to an excursion above a water quality standard, numeric WQBELs are required. The RPA considers water quality objectives outlined in the CTR, NTR, and Basin Plan. To conduct the RPA, the Regional Water Board will identify the maximum

observed effluent concentration (MEC) and maximum background concentration (B) in the receiving water for each constituent, based on data provided by the Discharger.

Section 1.3 of the SIP provides the procedures for determining reasonable potential to exceed applicable water quality criteria and objectives. The SIP specifies three triggers to complete a RPA:

1. Trigger 1 – If the MEC is greater than or equal to the CTR water quality criteria or applicable objective (C), a limit is needed.
2. Trigger 2 – If $MEC < C$ and background water quality $(B) > C$, a limit is needed.
3. Trigger 3 – If other related information such as CWA 303(d) listing for a pollutant, discharge type, compliance history, etc. indicates that a WQBEL is required.

Sufficient effluent and ambient data are needed to conduct a complete RPA. The Discharger will be required to gather the appropriate data for the Regional Water Board to conduct the RPA. Upon review of the data, and if the Regional Water Board determines that WQBELs are needed to protect the beneficial uses, the permit will be reopened for appropriate modification.

4. WQBEL Calculations

Should the concentrations of non-priority pollutants in base flows and seasonal habitat flows not attenuate or stabilize at levels meeting all applicable water quality standards within the term of this Order (i.e., five years), this Order may need to be revised to include WQBELs for non-priority pollutants following similar calculations as described for priority pollutants. The five-year term of this Order should provide ample time for trends in water quality to become established or evident.

5. Whole Effluent Toxicity (WET)

Whole effluent toxicity (WET) monitoring may be required for any NPDES discharge, and for other discharges, as necessary. All test species, procedures, and quality assurance criteria used shall be in accordance with the methods prescribed for definitive testing in Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, Fourth Edition, USEPA, October 2002. (Reference: EPA-821-R-02-013.) Whole effluent toxicity (WET) testing shall be performed with an effluent sample obtained from the Pump Station outfall to the Los Angeles Aqueduct (R-004D). Dilution and control waters shall be obtained from an area in the receiving waters that is unaffected by the discharge (R-005U). WET monitoring shall be performed within 6 months of initiating the 40 cfs base flow in the Lower Owens River. If toxicity is identified in the sample, the WET test shall be repeated within 120 days. Data obtained from the WET monitoring will be used in conjunction with CTR testing data to determine whether toxicity is violating conditions of this Order, or indicates an effluent limitation should be developed for chronic toxicity. As required by this Order, if toxicity as a result of a waste discharge is identified as a problem with repeated testing, a toxicity reduction evaluation is required from the Discharger in accordance with toxicity control provisions of the SIP, Section 4.

D. Final Effluent Limitations

Not Applicable

E. Interim Effluent Limitations

Not Applicable

F. Land Discharge Specifications

Land discharge specifications are established to prevent dredge and excavation spoils from being discharged to surface waters.

G. Reclamation Specifications

Not Applicable

V. RATIONALE FOR RECEIVING WATER LIMITATIONS

A. Surface Water

The receiving water limitations specified in this Order are the water quality objectives applicable to all surface waters in the Lahontan Region (Basin Plan Page 3-3) and water quality objectives for Haiwee Reservoir (Basin Plan Page 3-47).

B. Groundwater

Receiving water limitations for ground water are those that are applicable to all ground waters in the Lahontan Region.

VI. RATIONALE FOR MONITORING AND REPORTING REQUIREMENTS

Section 122.48 of 40 CFR requires all NPDES permits to specify recording and reporting of monitoring results. Sections 13267 and 13383 of the California Water Code authorize the Water Boards to require technical and monitoring reports. The Monitoring and Reporting Program, Attachment E of this Order, establishes monitoring and reporting requirements to implement federal and state requirements. The following provides the rationale for the monitoring and reporting requirements contained in the Monitoring and Reporting Program for this facility.

A. Influent Monitoring

Influent is considered the background or ambient water quality for monitoring the effects of a particular action or waste discharge on water quality, and is required upstream of construction and stream diversion activities to establish ambient water quality conditions prior to the discharges.

B. Effluent Monitoring

Effluent monitoring is required for all specified discharges to determine the level of pollutants in the discharges. Because no numerical effluent limits are prescribed, this Order requires monitoring in the receiving waters to determine the effects of effluents on receiving water quality. This monitoring is necessary to conduct reasonable potential analyses for the presence of conventional, non-conventional, and toxic pollutants.

C. Whole Effluent Toxicity Testing Requirements

WET testing is required to determine whether discharges to surface waters comply with Basin Plan requirements for toxicity control and substantive requirements of the SIP, should toxicity be identified. If toxicity is identified in the sample, the WET test shall be repeated within 120 days to determine whether toxic conditions are persisting.

D. Receiving Water Monitoring

1. Surface Water

Monitoring of surface receiving waters is required to determine whether or not the discharges are in compliance with this Order and to determine whether or not the discharges pose a threat to water quality.

2. Groundwater

Groundwater monitoring is not required for this project because the discharges are not expected to pose a threat to ground water quality.

VII. RATIONALE FOR PROVISIONS

A. Standard Provisions

The Discharger shall comply with all Standard Provisions included in Attachment D of this Order. The Standard Provisions shall apply to all discharges and activities regulated under this Order, regardless of the basis for regulation, and shall not expire with expiration of the NPDES provisions of this Order. The Standard Provisions cover a number of codified administrative requirements applicable to all NPDES discharges as required by 40 CFR Section 122. The Regional Water Board is carrying forward these requirements, as applicable to all other non-NPDES discharges authorized under this Order, pursuant to state waste discharge requirements authorized by CWC Section 13263 and CWA Section 401.

B. Special Provisions

1. Reopener Provisions

NPDES Permit modification or revocation will be conducted according to 40 CFR §122.62, §122.63, §122.64 and §124.5. The State Water Resources Control Board is currently updating the statewide NPDES Permit for Discharges of Storm Water Associated with Construction Activity. The Regional Water Board may revise or modify this NPDES Permit for reasons including, but not limited to, ensuring consistency with changes made to the statewide permit or incorporation of the Discharger's SWPPP or amendments to the SWPPP. This provision is necessary to ensure that stormwater discharges associated with construction activity are at least as stringent as for other dischargers throughout the state. In addition, permit revisions may arise due to a variety of circumstances such as completion of a TMDL or water quality/beneficial use study. The permit, if reopened, may be revised in whole or part after compliance with applicable public review requirements. The Regional Water Board may review and revise waste discharge requirements in accordance with California Water Code §13263, (e) and (f).

2. Special Studies and Additional Monitoring Requirements

The Discharger shall conduct whole effluent toxicity monitoring as described in Attachment E, Section V. If toxicity is identified in the sample, the WET test shall be repeated within 120 days. In accordance with the SIP, Section 4:

- a. If toxicity as a result of a waste discharge is identified with repeated WET tests, the Discharger shall conduct a toxicity reduction evaluation as directed by the Regional Water Board Executive Officer. The toxicity determined by WET tests does not identify specific sources of toxicity. Additional testing for specific toxicants, or other methods of assessing toxicity, may be employed by the Discharger to determine the specific source(s) of toxicity in conducting toxicity reduction evaluation.
- b. The Discharger shall take all reasonable steps to control toxicity once a source of toxicity is identified.
- c. Failure to conduct a toxicity reduction evaluation within a designated period as directed by the Regional Water Board Executive Officer shall result in the establishment of effluent limitations for chronic toxicity in a permit or appropriate enforcement action.

These special provisions are necessary to comply with the SIP and to determine the toxic effects, if any, from reintroducing flow into the Lower Owens River and diverting that water to the Los Angeles Aqueduct. The WET test specifically identifies toxicity effects on aquatic organisms. This information may be used in conjunction with CTR reasonable potential analysis to determine the sources of toxicity, if toxicity is present. The WET and CTR test results will provide information on the toxicity effects on waters as a result of LORP implementation.

3. Best Management Practices and Pollution Prevention

- a. The Discharger is required to develop an acceptable Storm Water Pollution Prevention Plan (SWPPP) that identifies all project-specific BMPs necessary to meet the requirements of BAT/BCT. The SWPPP is needed to control pollutant discharges. Project schedules of activities, prohibitions of practices, maintenance procedures, and other management practices are needed to prevent or reduce the pollution of the waters of the U.S. and the State. BMPs are required to control site runoff, spillage or leaks, waste disposal, or drainage from raw material storage. SWPPP requirements in this Order are consistent with statewide requirements for dischargers of storm water, and other authorized non-storm water waste discharge requirements.
- b. The Discharger shall submit the SWPPP to the Regional Water Board at least 180 days prior to construction activity so that the Regional Board may consider incorporating the SWPPP into this Order at a public meeting. This requirement is necessary because details of the SWPPP must undergo public and agency review because the conceptual plan provided by the Discharger is not adequate to ensure that all applicable requirements to meet BAT/BCT through the implementation of BMPs will be met.
- c. The Discharger shall retain a copy of the SWPPP at the construction site. If the site is inspected by a Regional Water Board, SWRCB, U.S. EPA, or municipal storm water management agency inspector, the Discharger shall provide the SWPPP immediately for review if requested. Upon written request by a representative of the Regional Water Board, SWRCB, U.S. EPA, or municipal storm water management agency, the Discharger shall provide a copy of the SWPPP within five working days

from the date a request is received. This fulfills requirements to ensure the SWPPP is a public document, as required by federal regulations, and ensures the SWPPP will be available to guide construction site personnel.

- d. The Regional Water Board Executive Officer may provide information to the Discharger on the development and implementation of SWPPPs and monitoring programs and may require revisions to SWPPPs and monitoring programs. This requirement is consistent with statewide provisions for NPDES construction storm water discharges.
- e. The Discharger shall comply with construction site inspection and other monitoring program and reporting requirements in Attachment M. These requirements are consistent with statewide provisions for NPDES construction storm water discharges.

4. Compliance Schedules

Not Applicable

5. Construction, Operation, and Maintenance Specifications

- a. Active construction sites and maintenance dredging sites shall be isolated from flowing waters by physical barriers such as sand bag dikes, silt fences, or other effective controls to prevent uncontrolled discharge to surface waters. This provision is needed to ensure that discharges of pollutants from dredging and excavation in waters are prevented and/or minimized.
- b. The Discharger shall notify Regional Water Board staff in writing **15 days prior to initiating base flow and any subsequent habitat flow**, including the initial winter habitat flow and Alabama Release. This provision is needed so that Regional Water Board staff will have the opportunity to inspect the LORP implementation and determine the status of compliance with the terms of this Order.

6. Special Provisions for Construction Activity

Federal regulations for controlling pollutants in storm water runoff discharges were promulgated by the U.S. Environmental Protection Agency on November 16, 1990 (40 CFR Parts 122, 123, 124). The regulations require dischargers of storm water to surface waters associated with construction activity, including clearing, grading, and excavation activities, to obtain an NPDES permit and to implement Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) to reduce or eliminate storm water pollution. This Order includes NPDES requirements for storm water that are consistent with statewide requirements. The special provisions for construction activity contained in this Order are based on similar conditions included in the statewide construction storm water permit (SWRCB Order No. 99-08-DWQ).

7. Water Quality Certification Conditions and Enforcement Provisions

The water quality certification is predicated on compliance with all applicable water quality standards, compliance with the CWA and other state requirements, such that the waters will be protected for beneficial uses (i.e., pollution or nuisance will not occur). The provisions for compliance with WQC are required pursuant to federal CWA Section 401 and state regulatory requirements.

The standard conditions required for the LORP are identical to those required for all CWA Section 401 WQCs granted on a statewide basis. The rationale for additional conditions for the LORP WQC are justified below:

- a. Heavy equipment shall be steam cleaned before starting work in waters of the U.S and routinely monitored for equipment leaks. If leaks from equipment can not be readily controlled, that equipment must be removed from service until repaired to prevent threatened or actual discharges of wastes that could adversely affect water quality. This condition is required to prevent and minimize potential water quality impacts due to equipment leaks.
- b. An emergency spill kit shall be maintained at the project site at all times. This condition is required to prevent and minimize potential water quality impacts due to equipment leaks and other unanticipated releases of solid or liquid pollutants.
- c. Regional Water Board staff shall be notified 48 hours prior to commencement of ground disturbance. This condition is necessary to inform Regional Water Board staff that project construction is imminent and provide an opportunity for inspections to assess compliance with this Order.
- d. The Discharger shall implement a partial flushing flow from the Alabama spillgates to augment the first winter habitat flow. The Alabama spillgate flow release shall provide and maintain a flow of 200 cfs in the Lower Owens River for at least four days to increase the flushing effects of the winter habitat release by increasing the mass of water released. This condition is necessary to partially flush the organic sediments that have built up for decades in the lower reaches and the sediments that will likely be mobilized and/or deposited in the lower reaches as a result of the channel clearing in the upper reaches and the first winter habitat flow. The Alabama Release will partially flush the river channel and harden the channel for future habitat flows that will be less than or equal to 200 cfs.
- e. The Discharger shall demonstrate that “no net loss” of wetland functions and values has occurred following LORP implementation. The Discharger is required as a condition of this WQC to delineate wetlands and provide a delineation and assessment of functions and values in year seven following re-watering discharge 004, and shall repeat this delineation/assessment at five-year intervals thereafter if “no net loss” requirements of this Order are not demonstrably met. If any assessment shows the “no net loss” requirements are met, subsequent assessments are not required. If losses occur to functions and values, the Discharger shall provide a corrective action plan and/or compensatory mitigation plan for acceptance by the Executive Officer, and implement the plan(s) under the terms of this WQC Order. This condition is necessary to ensure that the Regional Water Board policy for “no net loss” has been achieved.
- f. The prohibition exemption granted in Permit Section III.B. for the Lower Owens River shall remain valid on the condition that the Discharger at all times strictly adheres to Basin Plan criteria necessary to grant an exemption (as discussed in the Fact Sheet, Section IV.A.), as determined by the Regional Water Board. The rationale for the exemption is explained above in Fact Sheet Section IV.A.
- g. The LORP qualifies as a restoration project for purposes of water quality certification fees, in accordance with regulations in CCR 23 §2200, which requires a nominal fee of \$500. The Discharger submitted this amount with the application for certification.

8. Prohibition Exemption and California Environmental Quality Act Requirements

- a. Regional Water Board CEQA compliance and the basis for requiring the Alabama Release are discussed in detail in Attachment H.
- b. The Regional Board has determined that if the Discharger fails to comply with the CEQA mitigation measure identified as the Alabama Release, then the conditions necessary for granting a prohibition exemption will not have been met, and the exemption is therefore rescinded (revoked).
- c. Similar to 8.b., above, all conditions necessary to grant an exemption must be met on an ongoing basis, or the Regional Water Board may take discretionary action to rescind the prohibition exemption. Otherwise, the prohibition exemption will expire on June 14, 2015, for the reasons stated in Fact Sheet Section IV.A.3.

VIII. PUBLIC PARTICIPATION

The California Regional Water Quality Control Board, Lahontan Region (Regional Water Board) is considering the issuance of waste discharge requirements (WDRs) that will serve, in part, as a National Pollutant Discharge Elimination System (NPDES) permit for the LORP. As a step in the WDR adoption process, the Regional Water Board staff has developed tentative WDRs. The Regional Water Board encourages public participation in the WDR adoption process.

A. Notification of Interested Parties

The Regional Water Board has notified the Discharger and interested agencies and persons of its intent to prescribe waste discharge requirements for the discharge and has provided them with an opportunity to submit their written comments and recommendations. Notification of the public hearing and intent to adopt the proposed Order will be provided to the public through the following:

- Newspaper announcements
- Regional Water Board website announcement
- Direct mail to interested parties

B. Written Comments

Written comments were received from the Discharger, the USEPA, and other interested persons. A written response to written comments received was provided in advance of the public hearing.

C. Public Hearing

The Regional Water Board will hold a public hearing on the proposed WDRs during its regular Board meeting on the following date and time and at the following location:

Date: **July 14, 2005**
Time: **8:30 a.m.**
Location: **City Council Chambers**
377 West Line Street
Bishop, California

Interested persons are invited to attend. At the public hearing, the Regional Water Board will hear testimony, if any, pertinent to the discharge, WDRs, and the proposed Order. Oral testimony will be heard; however, for accuracy of the record, important testimony should be in writing.

The Discharger must submit a SWPPP 180 days prior to initiating construction activity, for the Regional Water Board to consideration incorporating the SWPPP into the Order at a public meeting. Adequate public notice for the meeting at which the SWPPP will be considered will be provided at a later date.

Please be aware that dates and venues may change. Our web address is <http://www.waterboards.ca.gov> where you can access the current agenda for changes in dates and locations.

D. Waste Discharge Requirements Petitions

Any aggrieved person may petition the State Water Resources Control Board to review the decision of the Regional Water Board regarding the final WDRs. The petition must be submitted within 30 days of the Regional Water Board's action to the following address:

State Water Resources Control Board
Office of Chief Counsel
P.O. Box 100, 1001 I Street
Sacramento, CA 95812-0100

E. Information and Copying

The Report of Waste Discharge (RWD), related documents, comments received, and other information are on file and may be inspected at the address above at any time between 8:30 a.m. and 4:45 p.m., Monday through Friday. Copying of documents may be arranged through the Regional Water Board by calling (530) 542-5400.

F. Register of Interested Persons

Any person interested in being placed on the mailing list for information regarding the WDRs and NPDES permit should contact the Regional Water Board, reference this facility, and provide a name, address, and phone number.

G. Additional Information

Requests for additional information or questions regarding this Order should be directed to Alan Miller, Senior Water Resource Control Engineer, at (530) 542-5430, or the Regional Water Board office at (530) 542-5400.

STATE WATER RESOURCES CONTROL BOARD

WATER QUALITY ORDER NO. 2003 - 0017 - DWQ

**STATEWIDE GENERAL WASTE DISCHARGE REQUIREMENTS FOR
DREDGED OR FILL DISCHARGES THAT HAVE RECEIVED
STATE WATER QUALITY CERTIFICATION (GENERAL WDRs)**

The State Water Resources Control Board (SWRCB) finds that:

1. Discharges eligible for coverage under these General WDRs are discharges of dredged or fill material that have received State Water Quality Certification (Certification) pursuant to federal Clean Water Act (CWA) section 401.
2. Discharges of dredged or fill material are commonly associated with port development, stream channelization, utility crossing land development, transportation water resource, and flood control projects. Other activities, such as land clearing, may also involve discharges of dredged or fill materials (e.g., soil) into waters of the United States.
3. CWA section 404 establishes a permit program under which the U.S. Army Corps of Engineers (ACOE) regulates the discharge of dredged or fill material into waters of the United States.
4. CWA section 401 requires every applicant for a federal permit or license for an activity that may result in a discharge of pollutants to a water of the United States (including permits under section 404) to obtain Certification that the proposed activity will comply with State water quality standards. In California, Certifications are issued by the Regional Water Quality Control Boards (RWQCB) or for multi-Region discharges, the SWRCB, in accordance with the requirements of California Code of Regulations (CCR) section 3830 et seq. The SWRCB's water quality regulations do not authorize the SWRCB or RWQCBs to waive certification, and therefore, these General WDRs do not apply to any discharge authorized by federal license or permit that was issued based on a determination by the issuing agency that certification has been waived. Certifications are issued by the RWQCB or SWRCB before the ACOE may issue CWA section 404 permits. Any conditions set forth in a Certification become conditions of the federal permit or license if and when it is ultimately issued.
5. Article 4, of Chapter 4 of Division 7 of the California Water Code (CWC), commencing with section 13260(a), requires that any person discharging or proposing to discharge waste, other than to a community sewer system, that could affect the quality of the waters of the State,¹ file a report of waste discharge (ROWD). Pursuant to Article 4, the RWQCBs are required to prescribe waste discharge requirements (WDRs) for any proposed or existing discharge unless WDRs are waived pursuant to CWC section 13269. These General WDRs fulfill the requirements of Article 4 for proposed dredge or fill discharges to waters of the United States that are regulated under the State's CWA section 401 authority.

¹ "Waters of the State" as defined in CWC Section 13050(e)

6. These General WDRs require compliance with all conditions of Certification orders to ensure that water quality standards are met.
7. The U.S. Supreme Court decision of *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (the *SWANCC* decision) called into question the extent to which certain "isolated" waters are subject to federal jurisdiction. The SWRCB believes that a Certification is a valid and enforceable order of the SWRCB or RWQCBs irrespective of whether the water body in question is subsequently determined not to be federally jurisdictional. Nonetheless, it is the intent of the SWRCB that all Certification conditions be incorporated into these General WDRs and enforceable hereunder even if the federal permit is subsequently deemed invalid because the water is not deemed subject to federal jurisdiction.
8. The beneficial uses for the waters of the State include, but are not limited to, domestic and municipal supply, agricultural and industrial supply, power generation, recreation, aesthetic enjoyment, navigation, and preservation and enhancement of fish, wildlife, and other aquatic resources.
9. Projects covered by these General WDRs shall be assessed a fee pursuant to Title 23, CCR section 3833.
10. These General WDRs are exempt from the California Environmental Quality Act (CEQA) because (a) they are not a "project" within the meaning of CEQA, since a "project" results in a direct or indirect physical change in the environment (Title 14, CCR section 15378); and (b) the term "project" does not mean each separate governmental approval (Title 14, CCR section 15378(c)). These WDRs do not authorize any specific project. They recognize that dredge and fill discharges that need a federal license or permit must be regulated under CWA section 401 Certification, pursuant to CWA section 401 and Title 23, CCR section 3855, et seq. Certification and issuance of waste discharge requirements are overlapping regulatory processes, which are both administered by the SWRCB and RWQCBs. Each project subject to Certification requires independent compliance with CEQA and is regulated through the Certification process in the context of its specific characteristics. Any effects on the environment will therefore be as a result of the certification process, not from these General WDRs. (Title 14, CCR section 15061(b)(3)).
11. Potential dischargers and other known interested parties have been notified of the intent to adopt these General WDRs by public hearing notice.
12. All comments pertaining to the proposed discharges have been heard and considered at the November 4, 2003 SWRCB Workshop Session.
13. The RWQCBs retain discretion to impose individual or general WDRs or waivers of WDRs in lieu of these General WDRs whenever they deem it appropriate. Furthermore, these General WDRs are not intended to supersede any existing WDRs or waivers of WDRs issued by a RWQCB.

IT IS HEREBY ORDERED that WDRs are issued to all persons proposing to discharge dredged or fill material to waters of the United States where such discharge is also subject to the water quality certification requirements of CWA section 401 of the federal Clean Water Act (Title 33 United States Code section 1341), and such certification has been issued by the applicable RWQCB or the SWRCB, unless the applicable RWQCB notifies the applicant that its discharge will be regulated through WDRs or waivers of WDRs issued by the RWQCB. In order to meet the provisions contained in Division 7 of CWC and regulations adopted thereunder, dischargers shall comply with the following:

1. Dischargers shall implement all the terms and conditions of the applicable CWA section 401 Certification issued for the discharge. This provision shall apply irrespective of whether the federal license or permit for which the Certification was obtained is subsequently deemed invalid because the water body subject to the discharge has been deemed outside of federal jurisdiction.
2. Dischargers are prohibited from discharging dredged or fill material to waters of the United States without first obtaining Certification from the applicable RWQCB or SWRCB.

CERTIFICATION

The undersigned, Clerk 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 November 19, 2003.

AYE: Arthur G. Baggett, Jr.
Peter S. Silva
Richard Katz
Gary M. Carlton
Nancy H. Sutley

NO: None.

ABSENT: None.

ABSTAIN: None.


Debbie Irvin
Clerk to the Board

ATTACHMENT H – REGIONAL WATER BOARD CEQA FINDINGS

The Discharger, acting as California Environmental Quality Act (CEQA, Public Resources Code Section 21000, et seq.) Lead Agency prepared a Draft Environmental Impact Report (EIR) for the LORP and circulated the Draft EIR for a public review and comment period from November 1, 2002 to January 14, 2003. The Final EIR for the LORP was completed and certified by the Discharger on June 22, 2004. In the record of the EIR approval, the Discharger made a statement of overriding considerations, including the potential occurrence of significant effects on water quality that are identified in the Final EIR but are not avoided or substantially lessened.

The Final EIR provides a detailed record concerning project effects. The Final EIR includes alternatives analyzed, legal, economic and technical considerations, operational descriptions, and other information crucial to understanding the LORP proposal, and sets forth the basis for including or excluding mitigation measures for various identified impacts.

When an EIR has been prepared for a project, a Responsible Agency shall not approve the project as proposed, pursuant to CEQA Guidelines, Section 15096(g)(2), if the agency finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment. The Regional Water Board, acting as a CEQA Responsible Agency, has evaluated the significant and potentially significant impacts to water quality identified in the LORP Final EIR in order to comply with Section 15096(g)(2). A detailed summary of findings concerning these impacts is reproduced below from the Final EIR (Table S-1), which classifies the impacts into Class I, Significant and Unavoidable; and Class II, Significant but Mitigable. References to “Sections” indicate the location in the Final EIR where additional details can be found concerning the impact.

The Final EIR comments on whether feasible mitigation measures were identified and required, and the residual level of impact considering any feasible mitigation measures required. In each case, the Discharger’s text is quoted, followed by Findings of the Regional Water Board concerning the adequacy of mitigation measures, and the level of residual impact.

I. Class I Impacts: Significant and Unavoidable

1. Description of Impact, by Impact Area; Water Quality

“The proposed 40-cfs base flow and seasonal habitat flows could degrade water quality due to the depletion of oxygen, and the possible increase in hydrogen sulfide and ammonia levels. These impacts are only expected to occur along the wetted reach of the river, from Mazourka Canyon Road to the pump station site, where the [largest] organic sediment deposits are present, affecting about 37 channel miles of the 62-mile length of the river. It is anticipated that water quality conditions will improve under the 40 cfs base flows over time, but may be subject to periodic disturbance by the seasonal habitat flows of up to 200 cfs. The time required to stabilize water quality under the base flows and seasonal habitat flow is unknown. (Section 4.4.3.1)”

The Discharger has submitted the following additional information concerning the flow-release regime.

“The proposed flow regime is designed to meet the project goals for establishing and sustaining a warm water fishery and native riparian

vegetation. The flows are not designed to recreate pre-1913 riverine conditions [i.e., proposed volumetric flows are less than 10% of historic annual flows]. The proposed flow release regime is described below:

- **Base flow:** A continuous release to establish a flow of 40 cfs year-round from the River Intake to the proposed Pump Station. (See Final EIR Section 2.3.5.2, pages 2-16 and 2-17.) The purpose of the baseflow is to provide optimum habitat for a variety of game, native, and forage fish. [Initial] Phase 1 releases will establish a continuous flow from the Intake to the Delta (with no or minimal increase in flows in the wetted reach), and [subsequent] Phase 2 releases will establish the 40-cfs baseflow from the Intake to the Pump Station.
- **200-cfs Peak Flow in the First Winter following Pump Station Completion:** In the winter immediately following the completion of the Pump Station construction, a flow with a peak magnitude of 200 cfs will be released at the River Intake (to be ramped up from 40 cfs to 200 cfs in 7 days then ramped back down to 40 cfs over an additional 7 days). (See Final EIR Section 2.3.5.3, page 2-18.)
- **Seasonal habitat flows:** In subsequent years, seasonal habitat flows will be released in May or early June to coincide with seed production by willows and cottonwoods in the floodplain. (See Final EIR Section 2.3.5.3, pages 2-18 to 2-22.) The purpose of the seasonal habitat flows is to deposit sediments and seeds of riparian woody species onto the floodplain and to facilitate recharge of groundwater in the floodplain.

The seasonal habitat flow will be ramped up and down from the 40 cfs baseflow to the peak flow, the magnitude of which will vary (up to 200 cfs) each year based on forecasted runoff conditions. The magnitude of the seasonal habitat flow is in general proportion to the forecasted runoff so that it is in line with the natural weather patterns and emulates the runoff pattern experienced by the River above the River Intake. The ramping of the seasonal habitat flow is generally designed to emulate the characteristics of natural flood events, which include a gradual rise and decline in flow. The gradual rise and fall is also designed to prevent entrapment of fish and to allow water to spread outside of the channel then gradually recede to allow time for sediments and seeds of riparian woody species to be deposited onto the floodplain and groundwater to be recharged.

Measures to Reduce Impacts that were incorporated into the Project.

The following describes measures that were incorporated into the project to reduce potential water quality impacts associated with the proposed flow releases.

Release of First 200-cfs Flow in the Winter. During preparation of the Final EIR, the proposed flow release regime was modified to reduce the potential for water quality impacts by releasing the first 200-cfs flow in the winter, when lower temperatures will reduce the potential for substantial decreases in dissolved oxygen and adverse effects on fish health.

Water Quality Monitoring and Spillgate Releases to Create Fish Refuge. As described in Final EIR Section 2.3.5.2 (pages 2-17 to 2-18 and 2-22 to 2-23),

the proposed project includes water quality monitoring in the River during baseflow and seasonal habitat flow releases. (See Final EIR Table 2-7, page 2-17, for monitoring locations and Table 2-8, page 2-18, for monitoring frequencies.) If it is determined that a water quality or fish condition threshold identified in Table 2-9 (Final EIR page 2-18) has been exceeded at one or more of the three monitoring stations, water will be released to the river from the Aqueduct through the spillgate linked to the monitoring station to create a refuge for fish in the spillgate channel and at the confluence with the river below the spillgate channel. [Note, the spillgate releases are not intended or expected to improve water quality in the river channel except in localized areas around the confluence with the spillgate channel.]

Fish Restocking. Under Mitigation Measure F-1 (Final EIR Section 4.6.3, page 4-42), the LADWP has committed to implementing a fish stocking program if substantial fish kills occur and natural re-colonization does not occur, or appears to be occurring at a very slow rate (within 5 years after water quality conditions have improved). (Related information is provided below under the heading “Anticipated Recovery of Game Fish Population.”)”

Regional Water Board Analysis and Findings

The Lead Agency considered three alternative flow-release regimes to reduce or minimize adverse water quality effects (Final EIR Table S-2). “Release Regime 1 – Gradual Baseflows and Deferred Seasonal Habitat Flows; Release Regime 2 – Begin with Seasonal Habitat Flows to Flush the System (in July [2007] following the completion of the Pump Station); Release Regime 3 – Delay Releases for Base Flow Until Winter.” All of these alternatives were rejected for various reasons as infeasible by the Lead Agency, which instead adopted the proposed release regime with the modification described above under “Release of First 200-cfs Flow in the Winter.”

The Regional Water Board has considered the proposed flow-release regime and the alternatives evaluated and concurs that the regime selected is environmentally superior to the other evaluated alternatives, however, an additional mitigation measure is required to further lessen significant water quality impacts (see below). The initial 200 cfs flow from the River Intake is expected to act as a partial flushing flow, clear out the disturbed and/or mobilized earthen materials from the upper reaches of the channel to some degree, and scour and harden the streambed against erosion for subsequent seasonal habitat flows. However, the proposed 24-hour, 200 cfs release at the River Intake will be attenuated by water losses within the channel and floodplain from percolation, evaporation and evapotranspiration within the 62-mile reach, such that the volumetric rate of water flow through the downstream portions of the river during the flow event will be generally decreasing and will be significantly less than 200 cfs, especially during the initial high-flow event when the alluvial aquifer will refill. At the Pump Station, the remaining fraction of the initial 200-cfs flow will be reduced by up to 50 cfs, which will reduce stream energy and sediment transport capacity. The initial winter 200 cfs flow release is also expected to deposit additional sediment and organic materials from the upper reaches to the lower reaches of the river, above the Pump Station, where these materials may continue to exert water quality effects as described in the Final EIR. Reducing flows at the Pump Station will result in loss of stream energy and sediment transport capacity, and induce deposition of sediment and organic materials within the Delta. The initial and subsequent peak flows associated with water releases for habitat are of insufficient magnitude and duration to fully flush the lower reaches of the River (in

particular, in the lowest 17.5-mile reach, where the heaviest deposits of organic sediments currently exist). Significant water quality impacts as described in the Final EIR are expected during a protracted period following the initial habitat releases under this scenario. As discussed in the EIR, water quality is expected to improve with time under the proposed flow regime, but the duration of expected impacts is not known.

The Regional Water Board has considered other feasible alternatives or feasible mitigation measures within its powers, including alternative flow-release regimes, which would substantially lessen or avoid any significant effect the project would have on the environment. Based on that evaluation, a mitigation measure was identified that would shorten the duration of significant adverse effects on water quality due to flow releases. The mitigation measure is described below.

During the first 200 cfs winter flow release, a supplemental partial flushing flow release shall occur from the Alabama Spillgate (hereinafter "Alabama Release"). The Alabama Spillgate is located approximately 17.5 river miles upstream from the Pump Station site and is used to discharge water directly from the Los Angeles Aqueduct to the Lower Owens River. The Alabama Release shall increase flow rates during and following the time when the peak flow from upriver releases passes the Alabama Spillgate, to provide and maintain a 200 cfs flow rate in the Lower Owens River immediately below the Alabama Spillgate for a minimum period of 96 hours (four days). This period of time is sufficient to ensure that the lower portions of the River (below the Alabama Spillgate) will be flushed by flows of a mass magnitude not likely to be otherwise exceeded due to operation of the LORP. High-flow releases bypassing the Pump Station will flow to the Delta and/or Owens Lake.

During the Alabama Release (and other releases proposed under the LORP), Pump Station discharges to the Los Angeles Aqueduct may be limited by water quality conditions and the need to prevent pollution or nuisance. However, Pump Station discharges to the Discharger's Dust Control Project will not unreasonably reduce the flow to the Delta for flushing purposes, and will reduce or prevent discharges of diverted river water that could impair water quality or beneficial uses of water associated with the Los Angeles Aqueduct and Haiwee Reservoir (waters that support other beneficial uses).

The Alabama Release is needed to hasten restoration in the Lower Owens River areas above and below the Pump Station and minimize the duration of adverse water quality effects from ceasing to divert a portion of the existing flow to the Los Angeles Aqueduct and reintroducing flow to the Lower Owens River channel. To a much greater degree than under the flow regime approved by the Discharger in the Final EIR, water contaminants and organic deposits delivered to the lower portions of the River by the initial 200-cfs release at the River Intake will be flushed to the Delta and/or Owens Lake where water quality conditions are such that the discharges are not anticipated to adversely affect the waters for beneficial uses. The Alabama Release will not adversely affect the restoration and enhancement of the Delta (wetlands and uplands). The Alabama Release will benefit the Delta by distributing water and organic sediments that will enrich the shallow flooding zones in the Delta.

The Alabama release is described conceptually as follows. The Discharger will initiate and conduct the first winter habitat release from the River Intake as described in the Final EIR. The 200-cfs peak release rate will be maintained for 24 hours, and this flow will travel downriver as a pulse. It will take several days for the peak flows to reach the Alabama Spillgate, depending on average flow velocities in the Lower Owens River. At any time after the peak flow is detected at an existing flow monitoring location established just upriver from the Alabama Spillgate, the Discharger shall begin supplementing the river flow by releasing

water from the Alabama Spillgate. During the first 24 hours, the releases will be relatively small, as needed to make up for losses due to infiltration and evaporation below the River Intake. Flows from the Alabama Spillgate will need to be increased in subsequent days to make up for losses, as above, and because the release at the River Intake will be decreasing at a pre-established rate each 24 hours. The Discharger will need to monitor the flows above the Alabama Spillgate to determine the necessary release rates from the Alabama Spillgate to fulfill requirements to cause a combined flow of at least 200 cfs to occur for four consecutive days in the Lower Owens River immediately below the Alabama Spillgate.

A four-day period of peak flow was chosen, in part, because the river below the Alabama Spillgate enters an area known as "the islands." In the "islands" area, the river channel is broader and less defined and water velocities will tend to slow, reducing sediment transport capacity to some degree. It may take four days or more for the water from the Alabama Release to transport the suspended sediment load from upriver areas through the "islands" to where the channel is better defined, past the Pump Station, and through the Delta. Water losses due to infiltration below the Alabama Spillgate are expected to be minimal, as the lower river is generally gaining water (due to ground water effluent conditions) in the winter. Sediment transport capacities are greater at higher flows. Therefore, the Alabama Release will aid in maintaining high flow conditions long enough to move suspended sediment and poor-quality water through the "islands" and downriver past the Pump Station and Delta. Regional Water Board staff has conservatively estimated the amount of water that will not be recoverable by the Discharger as a result of the four-day requirement at approximately 700 acre-feet, based on channel losses of up to 50 cfs upriver from the Alabama Spillgate. Though actual losses may be much less, 700 acre-feet is approximately half of the 1400 acre-feet not recoverable by the Discharger during a 200-cfs seasonal habitat flow as described in the Final EIR, estimated by similar methods. The Alabama Release is therefore feasible and reasonable to require for the purposes of water quality improvement.

This Order requires that a partial flushing flow of 200 cfs from the Alabama Spillgate be initiated during the first 200 cfs winter habitat flow. Augmenting the initial winter 200 cfs release with a partial flushing flow of the lower river reaches from the Alabama Spillgate will minimize the expected duration of adverse impacts to water quality. Releasing the flow at the Alabama Spillgate will focus the flow energy and mass on the lower reaches of the river channel where most of the organic sediment and muck has accumulated and will be concentrated. The Alabama Release will ensure that, to a much greater degree, contaminants and poor-quality water are mobilized and flushed to the Delta and Owens Lake, where they can be absorbed and attenuated without causing significant adverse effects on water quality for beneficial uses. Use of high flows to redistribute water and sediment in these areas is considered a beneficial effect and goal of the LORP.

The Regional Water Board has required the Discharger to implement the Alabama Release as a condition for granting an exception to waste discharge prohibitions (see Order Section VI.C.8.), and to report to the Regional Water Board on it when it has been completed (see Monitoring and Reporting Program, Section IX.D.2.). The Regional Water Board will monitor the implementation of this mitigation measure, including water quality monitoring in the Lower Owens River. For river flows diverted by the Pump Station, pre-discharge and ongoing water quality monitoring will be required in the Los Angeles Aqueduct to determine whether Pump Station discharges may unreasonably affect the water quality in the Los Angeles Aqueduct and Haiwee Reservoir for beneficial uses. Since water may be diverted at the Pump Station to the Los Angeles Aqueduct only if water quality standards will be maintained, discharges of river water during both the initial partial flushing flow and the Alabama Release to the Dust Control Project and/or Owens Lake (by way of the Delta and transition zone to the brine pool) will minimize impacts to water quality. Mobilized organic

sediments and muck in the diverted waters will be discharged to the Delta or the Dust Control Project, instead of the Los Angeles Aqueduct and Haiwee Reservoir, a municipal drinking water supply. Diversions for dust control will reduce pollutant loading within the river by more than 25 percent (50 cfs of a maximum 200 cfs), and will also reduce the amount of water that will reach the brine pool of Owens Lake such that significant adverse effects on the existing mining operation on the bed of Owens Lake will not occur.

The Alabama Release flow regime was selected to ensure the lower portions of the River and Delta receive a thorough flushing. The Alabama Release is similar to the winter habitat flow regime as described and charted in the LORP Final EIR for the River Intake releases (p. 2-21, Chart 2-2), which includes a one-day 200 cfs release. The principal difference is adding supplemental water to maintain this flow below the Alabama Spillgate for four days rather than one day. Supplemental spillgate releases during the habitat flows were considered in the Final EIR. The Alabama Release is expected to produce mitigable effects very similar to those identified and analyzed in the Final EIR for the winter habitat flow, but on a much shorter reach of the Lower Owens River (17.5 miles rather than 62 miles).

The Alabama Release is technically feasible (see Final EIR, Table 4-1) and will result in conditions lessening the significance and duration of the adverse water quality effects of the LORP identified in the Final EIR. A Statement of Overriding Considerations from the Regional Water Board is still necessary to permit the LORP with these potentially significant effects.

B. Game and Native Fish

“The temporary adverse water quality conditions during the initial releases to the river could adversely affect fish due to the depletion of oxygen, and possible increase in hydrogen sulfide and ammonia. The poor water quality could cause fish kills along the river downstream of Mazourka Canyon Road. Both the 40-cfs base flow and the 200 cfs seasonal habitat flow are expected to recover once water quality conditions improve.

F-1. In the event that the natural re-colonization of the game fishery does not occur within 5 years after water quality conditions have improved, or appears to be occurring at a very slow rate, LADWP shall implement and fund a one-time fish-stocking program (depending on availability of fish stock from state fish hatcheries) in coordination with sources within the Owens Valley be used preferentially. Fish stocks from outside the valley will be used if in-valley stocks are not available. The program will be designed to initiate re-colonization and to stimulate population growth to establish game fish populations within 10 years after water quality conditions have improved.”

Regional Water Board Analysis and Findings

The Regional Water Board concurs that these impacts may be an unavoidable consequence of reintroducing water to the Lower Owens River (despite the inclusion of feasible mitigation measures regarding flow releases as discussed in No. A., above). The Regional Water Board concurs that the mitigation measures described are adequate should adverse effects occur to established fish and wildlife populations, and identifies the California Department of Fish and Game as the CEQA Responsible Agency for ensuring compliance with this mitigation requirement.

C. Regional Water Board Statement of Overriding Considerations with Regard to Significant Water Quality and Fisheries Effects

Despite the implementation of all feasible mitigation measures, including additional measures (e.g., the Alabama Release) identified and required by the Regional Water Board, the residual level of impact from reintroducing flow to the Lower Owens River cannot be reduced to a level of insignificance with any certainty. A Statement of Overriding Considerations was prepared and certified by the Lead Agency. The Regional Water Board concurs with the Statement of Overriding Considerations, and finds that the anticipated long-term beneficial effects of the LORP outweigh the short-term, unavoidable impacts to water quality and established aquatic life populations associated with reestablishing flow.

II. Class II Impacts: Significant, but Mitigable

A. Hydrology

“There is a potential for localized overbank flooding that could affect public roads and lease roads that cross the river (e.g. Mazourka Canyon Road, Manzanar-Reward Road, and Keeler Road). This impact could occur if floating debris potential for localized overbank flood clogs the culverts and bridges at these crossings, primarily under the seasonal habitat flows [including the ‘Alabama Release’]. (Section 4.3.2)

H-1. During seasonal habitat flows, Inyo County shall monitor culverts and bridges on County roads along the river and LADWP shall monitor culverts on other roads to determine the potential for debris plugs to form at road crossings. Obstructive debris will be removed as necessary to minimize flooding the roads.”

Regional Water Board Analysis and Findings

The Regional Water Board concurs with the impact assessment above, and finds that additional water quality impacts could occur from erosion of roads and road shoulders, culverts or bridge approaches associated with debris blockages from localized overbank flooding. The Regional Water Board concurs that the mitigation measures described are adequate should adverse effects occur, and identifies the Discharger as the CEQA Lead Agency, and Inyo County as CEQA Responsible Agency, for ensuring compliance with this mitigation requirement. With inclusion of this mitigation measure the potentially significant hydraulic impacts of the LORP will be reduced to insignificant levels.

B. Wetlands, Riparian Habitat, and Upland Habitats

“Prior to the initial releases, LADWP will mechanically remove sediments and marsh vegetation from 10,800 feet of the river downstream of the River Intake. A temporary 20-foot wide haul road will be established on the top of the west bank for the excavator and trucks. It will be created by driving over the existing vegetation in flat areas, and by minor grading where the terrain is uneven. Several temporary roads will be created perpendicular to the main haul road to provide access to an existing dirt road along the Aqueduct. Establishment of these roads would result in the short-term disturbance of about 8 acres of desert sink scrub.

R-1. Temporary access roads used to clear the river channel shall be seeded with native or naturalized grasses and shrubs common to the valley, as available, after completion of the desilting operation to facilitate restoration of vegetative cover and species compatible with the surrounding vegetation. The colonization by non-native aggressive or noxious weeds shall be inhibited by weed control for 3 years after construction.”

Regional Water Board Analysis and Findings

The described impacts are associated with impacts to water quality within the jurisdiction of the Regional Water Board, to the extent that storm water discharges containing erosion products and other construction wastes may be discharged to surface waters. The Regional Water Board will ensure the Discharger implements the SWPPP and restoration plan submitted with the LORP description, such that these impacts will be reduced to insignificant levels.

C. Upland Vegetation

“The construction of the pump station would cause general disturbance to upland vegetation from equipment staging, overland travel between work areas, and construction of the service roads. About 21.5 acres of desert greasewood scrub would be temporarily disturbed. (Section 5.1.2)”

Regional Water Board Analysis and Findings

The described impacts are associated with impacts to water quality within the jurisdiction of the Regional Water Board, to the extent that storm water discharges containing erosion products and other construction wastes may be discharged to surface waters. The Regional Water Board will ensure the Discharger implements the SWPPP and restoration plan submitted with the LORP description and contained in the EIR, such that these impacts will be reduced to insignificant levels.

D. Blackrock Waterfowl Habitat Area

“Construction work in the Blackrock Waterfowl Habitat Area would disturb about 20 acres for berms and 11 acres for ditches, consisting primarily of desert sink scrub. The berms would be allowed to revegetate naturally, although the tops of the berms would be used for vehicular access. Ditches would be used for conveying water, and as such would be converted to open water or wetland habitat. The construction-related disturbance zone around the margins of berms and ditches would be allowed to revegetate naturally. The success of natural revegetation of new berms and construction related disturbances zones are uncertain. There is a potential for invasion of non-native exotics in dry areas, and saltcedar in moist area. (Section 7.1.3)”

“Temporarily disturbed upland habitats in the Blackrock Waterfowl Habitat Area shall be seeded with native or naturalized grasses and shrubs common to the valley, as available, after construction of berms and ditches to facilitate restoration of vegetative cover and species compatible with the surrounding vegetation. The colonization by non-native weeds shall be inhibited by weed control for three years after construction.”

Regional Water Board Analysis and Findings

The described impacts are associated with impacts to water quality within the jurisdiction of the Regional Water Board, to the extent that storm water discharges containing erosion products and other construction wastes may be discharged to surface waters. The Regional Water Board will ensure the Discharger implements the SWPPP and restoration plan submitted with the LORP description and contained in the EIR, such that these impacts will be reduced to insignificant levels.

SUMMARY

The Regional Water Board hereby finds the anticipated long-term benefits of the LORP outweigh the short-term unavoidable impacts and will file a Statement of Overriding Considerations for water quality and aquatic life uses identified A., and B., above. The remaining Class II impacts include acceptable mitigation and mitigation monitoring requirements.

The Regional Water Board has reviewed the Final EIR for those project activities which are within the agency’s area of expertise, are required to be carried out or approved by the agency or will be subject to the exercise of powers by the agency. The EIR identifies other potentially significant impacts and significant impacts that are not related to water quality. The Board is not responsible for implementing the mitigation measures identified in the EIR or additional mitigation measures other parties have deemed necessary.

The Regional Water Board, as a Responsible Agency, will file a Notice of Determination and Statement of Overriding Considerations, in the same manner as a Lead Agency under Section 15075 or 15094, indicating that in permitting the LORP the Regional Water Board considered the Final EIR as prepared by the Lead Agency.

ATTACHMENT I – AMMONIA CRITERIA: BASIN PLAN TABLES 3-1, 3-2, 3-3, AND 3-4

**Table 3-1
ONE-HOUR AVERAGE CONCENTRATION FOR AMMONIA^{1,2}**

Waters Designated as COLD, COLD with SPWN, COLD with MIGR (Salmonids or other sensitive coldwater species present)

pH	Temperature, °C						
	0	5	10	15	20	25	30
Un-ionized Ammonia (mg/liter NH ₃)							
6.50	0.0091	0.0129	0.0182	0.026	0.036	0.036	0.036
6.75	0.0149	0.021	0.030	0.042	0.059	0.059	0.059
7.00	0.023	0.033	0.046	0.066	0.093	0.093	0.093
7.25	0.034	0.048	0.068	0.095	0.135	0.135	0.135
7.50	0.045	0.064	0.091	0.128	0.181	0.181	0.181
7.75	0.056	0.080	0.113	0.159	0.22	0.22	0.22
8.00	0.065	0.092	0.130	0.184	0.26	0.26	0.26
8.25	0.065	0.092	0.130	0.184	0.26	0.26	0.26
8.50	0.065	0.092	0.130	0.184	0.26	0.26	0.26
8.75	0.065	0.092	0.130	0.184	0.26	0.26	0.26
9.00	0.065	0.092	0.130	0.184	0.26	0.26	0.26
Total Ammonia (mg/liter NH ₃)							
6.50	35	33	31	30	29	20	14.3
6.75	32	30	28	27	27	18.6	13.2
7.00	28	26	25	24	23	16.4	11.6
7.25	23	22	20	19.7	19.2	13.4	9.5
7.50	17.4	16.3	15.5	14.9	14.6	10.2	7.3
7.75	12.2	11.4	10.9	10.5	10.3	7.2	5.2
8.00	8.0	7.5	7.1	6.9	6.8	4.8	3.5
8.25	4.5	4.2	4.1	4.0	3.9	2.8	2.1
8.50	2.6	2.4	2.3	2.3	2.3	1.71	1.28
8.75	1.47	1.40	1.37	1.38	1.42	1.07	0.83
9.00	0.86	0.83	0.83	0.86	0.91	0.72	0.58

1 To convert these values to mg/liter N, multiply by 0.822

2 Source: U. S. Environmental Protection Agency. 1986. Quality criteria for water, 1986. EPA 440/5-86-001.

Table 3-2
ONE-HOUR AVERAGE CONCENTRATION FOR AMMONIA^{1,2}

Waters designated WARM, WARM with SPWN, WARM with MIGR (Salmonids or other sensitive coldwater species absent)³

pH	Temperature, °C						
	0	5	10	15	20	25	30
Un-ionized Ammonia (mg/liter NH ₃)							
6.50	0.0091	0.0129	0.0182	0.026	0.036	0.051	0.051
6.75	0.0149	0.021	0.030	0.042	0.059	0.084	0.084
7.00	0.023	0.033	0.046	0.066	0.093	0.131	0.093
7.25	0.034	0.048	0.068	0.095	0.135	0.190	0.190
7.50	0.045	0.064	0.091	0.128	0.181	0.26	0.26
7.75	0.056	0.080	0.113	0.159	0.22	0.32	0.32
8.00	0.065	0.092	0.130	0.184	0.26	0.37	0.37
8.25	0.065	0.092	0.130	0.184	0.26	0.37	0.37
8.50	0.065	0.092	0.130	0.184	0.26	0.37	0.37
8.75	0.065	0.092	0.130	0.184	0.26	0.37	0.37
9.00	0.065	0.092	0.130	0.184	0.26	0.37	0.37
Total Ammonia (mg/liter NH ₃)							
6.50	35	33	31	30	29	29	20
6.75	32	30	28	27	27	26	18.6
7.00	28	26	25	24	23	23	16.4
7.25	23	22	20	19.7	19.2	19.0	13.5
7.50	17.4	16.3	15.5	14.9	14.6	14.5	10.3
7.75	12.2	11.4	10.9	10.5	10.3	10.2	7.3
8.00	8.0	7.5	7.1	6.9	6.8	6.8	4.9
8.25	4.5	4.2	4.1	4.0	3.9	4.0	2.9
8.50	2.6	2.4	2.3	2.3	2.3	2.4	1.81
8.75	1.47	1.40	1.37	1.38	1.42	1.52	1.18
9.00	0.86	0.83	0.83	0.86	0.91	1.01	0.82

1 To convert these values to mg/liter, multiply by 0.822

2 Source: U. S. Environmental Protection Agency. 1986. Quality criteria for water, 1986. EPA 440/5-86-001.

3 These values may be conservative, however, if a more refined criterion is desired, USEPA recommends a site-specific criteria modification.

Table 3-3
FOUR DAY AVERAGE CONCENTRATION FOR AMMONIA^{1,2}

Waters Designated as COLD, COLD with SPWN, COLD with MIGR (Salmonids or other sensitive coldwater species present)

pH	Temperature, °C						
	0	5	10	15	20	25	30
Un-ionized Ammonia (mg/liter NH ₃)							
6.50	0.0008	0.0011	0.0016	0.0022	0.0022	0.0022	0.0022
6.75	0.0014	0.0020	0.0028	0.0039	0.0039	0.0039	0.0039
7.00	0.0025	0.0035	0.0049	0.0070	0.0070	0.0070	0.0070
7.25	0.0044	0.0062	0.0088	0.0124	0.0124	0.0124	0.0124
7.50	0.0078	0.0111	0.0156	0.022	0.022	0.022	0.022
7.75	0.0129	0.0182	0.026	0.036	0.036	0.036	0.036
8.00	0.0149	0.021	0.030	0.042	0.042	0.042	0.042
8.25	0.0149	0.021	0.030	0.042	0.042	0.042	0.042
8.50	0.0149	0.021	0.030	0.042	0.042	0.042	0.042
8.75	0.0149	0.021	0.030	0.042	0.042	0.042	0.042
9.00	0.0149	0.021	0.030	0.042	0.042	0.042	0.042
Total Ammonia (mg/liter NH ₃)							
6.50	3.0	2.8	2.7	2.5	1.76	1.23	0.87
6.75	3.0	2.8	2.7	2.6	1.76	1.23	0.87
7.00	3.0	2.8	2.7	2.6	1.76	1.23	0.87
7.25	3.0	2.8	2.7	2.6	1.77	1.24	0.88
7.50	3.0	2.8	2.7	2.6	1.78	1.25	0.89
7.75	2.8	2.6	2.5	2.4	1.66	1.17	0.84
8.00	1.82	1.70	1.62	1.57	1.10	0.78	0.56
8.25	1.03	0.97	0.93	0.90	0.64	0.46	0.33
8.50	0.58	0.55	0.53	0.53	0.38	0.28	0.21
8.75	0.34	0.32	0.31	0.31	0.23	0.173	0.135
9.00	0.195	0.189	0.189	0.195	0.148	0.116	0.094

1 To convert these values to mg/liter N, multiply by 0.822.

2 Source: U. S. Environmental Protection Agency. 1992. Revised tables for determining average freshwater ammonia concentrations. USEPA Office of Water Memorandum, July 30, 1992.

Table 3-4
FOUR DAY AVERAGE CONCENTRATION FOR AMMONIA^{1,2}

Waters designated WARM, WARM with SPWN, WARM with MIGR (Salmonids or other sensitive coldwater species absent)³

pH	Temperature, °C						
	0	5	10	15	20	25	30
Un-ionized Ammonia (mg/liter NH ₃)							
6.50	0.0008	0.0011	0.0016	0.0022	0.0031	0.0031	0.0031
6.75	0.0014	0.0020	0.0028	0.0039	0.0055	0.0055	0.0055
7.00	0.0025	0.0035	0.0049	0.0070	0.0099	0.0099	0.0099
7.25	0.0044	0.0062	0.0088	0.0124	0.0175	0.0175	0.0175
7.00	0.0078	0.0111	0.0156	0.022	0.031	0.031	0.031
7.75	0.0129	0.0182	0.026	0.036	0.051	0.051	0.051
8.00	0.0149	0.021	0.030	0.042	0.059	0.059	0.059
8.25	0.0149	0.021	0.030	0.042	0.059	0.059	0.059
8.50	0.0149	0.021	0.030	0.042	0.059	0.059	0.059
8.75	0.0149	0.021	0.030	0.042	0.059	0.059	0.059
9.00	0.0149	0.021	0.030	0.042	0.059	0.059	0.059
Total Ammonia (mg/liter NH ₃)							
6.50	3.0	2.8	2.7	2.5	2.5	1.73	1.23
6.75	3.0	2.8	2.7	2.6	2.5	1.74	1.23
7.00	3.0	2.8	2.7	2.6	2.5	1.74	1.23
7.25	3.0	2.8	2.7	2.6	2.5	1.75	1.24
7.50	3.0	2.8	2.7	2.6	2.5	1.76	1.25
7.75	2.8	2.6	2.5	2.4	2.3	1.65	1.18
8.00	1.82	1.70	1.62	1.57	1.55	1.10	0.79
8.25	1.03	0.97	0.93	0.90	0.90	0.64	0.47
8.50	0.58	0.55	0.53	0.53	0.53	0.39	0.29
8.75	0.34	0.32	0.31	0.31	0.32	0.24	0.190
9.00	0.195	0.189	0.189	0.195	0.21	0.163	0.133

1 To convert these values to mg/liter N, multiply by 0.822.
 2 Source: U. S. Environmental Protection Agency. 1992. Revised tables for determining average freshwater ammonia concentrations. USEPA Office of Water Memorandum, July 30, 1992.
 3 These values may be conservative, however, if a more refined criterion is desired, USEPA recommends a site-specific criteria modification.

Attachment J - California Toxics Rule Constituents and Minimum Reporting Levels

CTR #	Constituent	CAS Number	Controlling Water Quality Criterion for Surface Waters		Suggested Test Methods
			Basis	Criterion Concentration (ug/L or noted)	
INORGANICS					
1	Antimony	7440360	Primary MCL	6	5 EPA 6020/200.8
2	Arsenic	7440382	Ambient Water Quality	0.018	1 EPA 6020/Hydride
15	Asbestos	1332214	National Toxics Rule/ Primary MCL	7 MFL	0.2 MFL >10um EPA/600/R-93/116(PCM)
3	Beryllium	7440417	Primary MCL	4	1 EPA 6020/200.8
4	Cadmium	7440439	Public Health Goal	0.07	0.25 EPA 1638/200.8
5a	Chromium (total)	7440473	Primary MCL	50	2 EPA 6020/200.8
5b	Chromium (VI)	18540299	Public Health Goal	0.2	5 EPA 7199/1636
6	Copper	7440508	National Toxics Rule	4.1 (6)	0.5 EPA 6020/200.8
14	Cyanide	57125	National Toxics Rule	5.2	5 EPA 9012A
7	Lead	7439921	Calif. Toxics Rule	0.92 (6)	0.5 EPA 1638
8	Mercury	7439976	National Toxics Rule		0.0005 EPA 1669/1631
9	Nickel	7440020	Calif. Toxics Rule	24 (6)	5 EPA 6020/200.8
10	Selenium	7782492	Calif. Toxics Rule	5	5 EPA 6020/200.8
11	Silver	7440224	Calif. Toxics Rule	0.71 (6)	1 EPA 6020/200.8
12	Thallium	7440280	National Toxics Rule	1.7	1 EPA 6020/200.8
13	Zinc	7440666	Calif. Toxics Rule	54/ 16 (6)	10 EPA 6020/200.8

VOLATILE ORGANICS					
28	1,1-Dichloroethane	75343	Primary MCL	5	1 EPA 8260B
30	1,1-Dichloroethene	75354	National Toxics Rule	0.057	0.5 EPA 8260B
41	1,1,1-Trichloroethane	71556	Primary MCL	200	2 EPA 8260B
42	1,1,2-Trichloroethane	79005	National Toxics Rule	0.6	0.5 EPA 8260B
37	1,1,2,2-Tetrachloroethane	79345	National Toxics Rule	0.17	0.5 EPA 8260B
75	1,2-Dichlorobenzene	95501	Taste & Odor	10	2 EPA 8260B
29	1,2-Dichloroethane	107062	National Toxics Rule	0.38	0.5 EPA 8260B
31	1,2-Dichloropropane	78875	Calif. Toxics Rule	0.52	0.5 EPA 8260B
101	1,2,4-Trichlorobenzene	120821	Public Health Goal	5	5 EPA 8260B
76	1,3-Dichlorobenzene	541731	Taste & Odor	10	2 EPA 8260B
32	1,3-Dichloropropene	542756	Primary MCL	0.5	0.5 EPA 8260B
77	1,4-Dichlorobenzene	106467	Primary MCL	5	2 EPA 8260B
17	Acrolein	107028	Aquatic Toxicity	21	5 EPA 8260B
18	Acrylonitrile	107131	National Toxics Rule	0.059	2 EPA 8260B
19	Benzene	71432	Primary MCL	1	0.5 EPA 8260B
20	Bromoform	75252	Calif. Toxics Rule	4.3	2 EPA 8260B
34	Bromomethane	74839	Calif. Toxics Rule	48	2 EPA 8260B
21	Carbon tetrachloride	56235	National Toxics Rule	0.25	0.5 EPA 8260B
22	Chlorobenzene (mono chlorobenzene)	108907	Taste & Odor	50	2 EPA 8260B
24	Chloroethane	75003	Taste & Odor	16	2 EPA 8260B
25	2-Chloroethyl vinyl ether	110758	Aquatic Toxicity	122 (2)	1 EPA 8260B
26	Chloroform	67663	OEHHA Cancer Risk	1.1	0.5 EPA 8260B
35	Chloromethane	74873	USEPA Health Advisory	3	2.0 EPA 8260B
23	Dibromochloromethane	124481	Calif. Toxics Rule	0.41	0.5 EPA 8260B
27	Dichlorobromomethane	75274	Calif. Toxics Rule	0.56	0.5 EPA 8260B
36	Dichloromethane	75092	Calif. Toxics Rule	4.7	2 EPA 8260B
33	Ethylbenzene	100414	Taste & Odor	29	2 EPA 8260B
88	Hexachlorobenzene	118741	Calif. Toxics Rule	0.00075	1 EPA 8260B
89	Hexachlorobutadiene	87683	National Toxics Rule	0.44	1 EPA 8260B
91	Hexachloroethane	67721	National Toxics Rule	1.9	1 EPA 8260B

			Controlling Water Quality Criterion for Surface Waters			
CTR #	Constituent	CAS Number	Basis	Criterion Concentration (ug/L or noted)	Minimum Reporting Level (ug/L or noted)	Suggested Test Methods
94	Naphthalene	91203	USEPA IRIS	14	10	EPA 8260B
38	Tetrachloroethene	127184	National Toxics Rule	0.8	0.5	EPA 8260B
39	Toluene	108883	Taste & Odor	42	2	EPA 8260B
40	trans-1,2-Dichloroethylene	156605	Primary MCL	10	1	EPA 8260B
43	Trichloroethene	79016	National Toxics Rule	2.7	2	EPA 8260B
44	Vinyl chloride	75014	Primary MCL	0.5	0.5	EPA 8260B

SEMI-VOLATILE ORGANICS

60	1,2-Benzanthracene	56553	Calif. Toxics Rule	0.0044	5	EPA 8270C
85	1,2-Diphenylhydrazine	122667	National Toxics Rule	0.04	1	EPA 8270C
45	2-Chlorophenol	95578	Taste and Odor	0.1	2	EPA 8270C
46	2,4-Dichlorophenol	120832	Taste and Odor	0.3	1	EPA 8270C
47	2,4-Dimethylphenol	105679	Calif. Toxics Rule	540	2	EPA 8270C
49	2,4-Dinitrophenol	51285	National Toxics Rule	70	5	EPA 8270C
82	2,4-Dinitrotoluene	121142	National Toxics Rule	0.11	5	EPA 8270C
55	2,4,6-Trichlorophenol	88062	Taste and Odor	2	10	EPA 8270C
83	2,6-Dinitrotoluene	606202	USEPA IRIS	0.05	5	EPA 8270C
50	2-Nitrophenol	25154557	Aquatic Toxicity	150 (3)	10	EPA 8270C
71	2-Chloronaphthalene	91587	Aquatic Toxicity	1600 (4)	10	EPA 8270C
78	3,3'-Dichlorobenzidine	91941	National Toxics Rule	0.04	5	EPA 8270C
62	3,4-Benzofluoranthene	205992	Calif. Toxics Rule	0.0044	10	EPA 8270C
52	4-Chloro-3-methylphenol	59507	Aquatic Toxicity	30	5	EPA 8270C
48	4,6-Dinitro-2-methylphenol	534521	National Toxics Rule	13.4	10	EPA 8270C
51	4-Nitrophenol	100027	USEPA Health Advisory	60	10	EPA 8270C
69	4-Bromophenyl phenyl ether	101553	Aquatic Toxicity	122	10	EPA 8270C
72	4-Chlorophenyl phenyl ether	7005723	Aquatic Toxicity	122 (2)	5	EPA 8270C
56	Acenaphthene	83329	Taste and Odor	20	1	EPA 8270C
57	Acenaphthylene	208968	No Criteria Available		10	EPA 8270C
58	Anthracene	120127	Calif. Toxics Rule	9,600	10	EPA 8270C
59	Benzidine	92875	National Toxics Rule	0.00012	5	EPA 8270C
61	Benzo(a)pyrene (3,4-Benzopyrene)	50328	Calif. Toxics Rule	0.0044	2	EPA 8270C
63	Benzo(g,h,i)perylene	191242	No Criteria Available		5	EPA 8270C
64	Benzo(k)fluoranthene	207089	Calif. Toxics Rule	0.0044	2	EPA 8270C
65	Bis(2-chloroethoxy) methane	111911	No Criteria Available		5	EPA 8270C
66	Bis(2-chloroethyl) ether	111444	National Toxics Rule	0.031	1	EPA 8270C
67	Bis(2-chloroisopropyl) ether	39638329	Aquatic Toxicity	122 (2)	10	EPA 8270C
68	Bis(2-ethylhexyl) phthalate	117817	National Toxics Rule	1.8	5	EPA 8270C
70	Butyl benzyl phthalate	85687	Aquatic Toxicity	3 (5)	10	EPA 8270C
73	Chrysene	218019	Calif. Toxics Rule	0.0044	5	EPA 8270C
81	Di-n-butylphthalate	84742	Aquatic Toxicity	3 (5)	10	EPA 8270C
84	Di-n-octylphthalate	117840	Aquatic Toxicity	3 (5)	10	EPA 8270C
74	Dibenzo(a,h)-anthracene	53703	Calif. Toxics Rule	0.0044	0.1	EPA 8270C
79	Diethyl phthalate	84662	Aquatic Toxicity	3 (5)	2	EPA 8270C
80	Dimethyl phthalate	131113	Aquatic Toxicity	3 (5)	2	EPA 8270C
86	Fluoranthene	206440	Calif. Toxics Rule	300	10	EPA 8270C
87	Fluorene	86737	Calif. Toxics Rule	1300	10	EPA 8270C
90	Hexachlorocyclopentadiene	77474	Taste and Odor	1	5	EPA 8270C
92	Indeno(1,2,3-c,d)pyrene	193395	Calif. Toxics Rule	0.0044	0.05	EPA 8270C
93	Isophorone	78591	National Toxics Rule	8.4	1	EPA 8270C
98	N-Nitrosodiphenylamine	86306	National Toxics Rule	5	1	EPA 8270C
96	N-Nitrosodimethylamine	62759	National Toxics Rule	0.00069	5	EPA 8270C
97	N-Nitrosodi-n-propylamine	621647	Calif. Toxics Rule	0.005	5	EPA 8270C

			Controlling Water Quality Criterion for Surface Waters			
CTR #	Constituent	CAS Number	Basis	Criterion Concentration (ug/L or noted)	Minimum Reporting Level (ug/L or noted)	Suggested Test Methods
95	Nitrobenzene	98953	National Toxics Rule	17	10	EPA 8270C
53	Pentachlorophenol	87865	Calif. Toxics Rule	0.28	1	EPA 8270C
99	Phenanthrene	85018	No Criteria Available		5	EPA 8270C
54	Phenol	108952	Taste and Odor	5	1	EPA 8270C
100	Pyrene	129000	Calif. Toxics Rule	960	10	EPA 8270C

PESTICIDES - PCBs

110	4,4'-DDD	72548	Calif. Toxics Rule	0.00083	0.05	EPA 8081A
109	4,4'-DDE	72559	Calif. Toxics Rule	0.00059	0.05	EPA 8081A
108	4,4'-DDT	50293	Calif. Toxics Rule	0.00059	0.01	EPA 8081A
112	alpha-Endosulfan	959988	National Toxics Rule	0.056 (7)	0.02	EPA 8081A
103	alpha-Hexachlorocyclohexane (BHC)	319846	Calif. Toxics Rule	0.0039	0.01	EPA 8081A
102	Aldrin	309002	Calif. Toxics Rule	0.00013	0.005	EPA 8081A
113	beta-Endosulfan	33213659	Calif. Toxics Rule	0.056 (7)	0.01	EPA 8081A
104	beta-Hexachlorocyclohexane	319857	Calif. Toxics Rule	0.014	0.005	EPA 8081A
107	Chlordane	57749	Calif. Toxics Rule	0.00057	0.1	EPA 8081A
106	delta-Hexachlorocyclohexane	319868	No Criteria Available		0.005	EPA 8081A
111	Dieldrin	60571	Calif. Toxics Rule	0.00014	0.01	EPA 8081A
114	Endosulfan sulfate	1031078	Ambient Water Quality	0.056	0.05	EPA 8081A
115	Endrin	72208	Calif. Toxics Rule	0.036	0.01	EPA 8081A
116	Endrin Aldehyde	7421934	Calif. Toxics Rule	0.76	0.01	EPA 8081A
117	Heptachlor	76448	Calif. Toxics Rule	0.00021	0.01	EPA 8081A
118	Heptachlor Epoxide	1024573	Calif. Toxics Rule	0.0001	0.01	EPA 8081A
105	Lindane (gamma-Hexachlorocyclohexane)	58899	Calif. Toxics Rule	0.019	0.02	EPA 8081A
119	PCB-1016	12674112	Calif. Toxics Rule	0.00017 (8)	0.5	EPA 8082
120	PCB-1221	11104282	Calif. Toxics Rule	0.00017 (8)	0.5	EPA 8082
121	PCB-1232	11141165	Calif. Toxics Rule	0.00017 (8)	0.5	EPA 8082
122	PCB-1242	53469219	Calif. Toxics Rule	0.00017 (8)	0.5	EPA 8082
123	PCB-1248	12672296	Calif. Toxics Rule	0.00017 (8)	0.5	EPA 8082
124	PCB-1254	11097691	Calif. Toxics Rule	0.00017 (8)	0.5	EPA 8082
125	PCB-1260	11096825	Calif. Toxics Rule	0.00017 (8)	0.5	EPA 8082
126	Toxaphene	8001352	Calif. Toxics Rule	0.0002	0.5	EPA 8081A
16	2,3,7,8-TCDD (Dioxin)	1746016	Calif. Toxics Rule	1.30E-08	5.00E-06	EPA 8290 (HRGC) MS

FOOTNOTES:

- (1) - The Criterion Concentrations serve only as a point of reference for the selection of the appropriate analytical method. They do not indicate a regulatory decision that the cited concentration is either necessary or sufficient for full protection of beneficial uses. Available
- (2) - For haloethers
- (3) - For nitrophenols.
- (4) - For chlorinated naphthalenes.
- (5) - For phthalate esters.
- (6) - Freshwater aquatic life criteria for metals are expressed as function of total hardness in the water body. Values displayed correspond to total hardness of 40 mg/L.
- (7) - Criteria for sum of alpha- and beta- forms.
- (8) - Criteria for sum of all PCBs.

ATTACHMENT K – DISSOLVED OXYGEN CRITERIA: BASIN PLAN TABLE 3-6

**Table 3-6
WATER QUALITY CRITERIA FOR
AMBIENT DISSOLVED OXYGEN CONCENTRATION^{1,2}**

	Beneficial Use Class			
	COLD & SPWN ³	COLD	WARM & SPWN ³	WARM
30 Day Mean	NA ⁴	6.5	NA	5.5
7 Day Mean	9.5 (6.5)	NA	6.0	NA
7 Day Mean Minimum	NA	5.0	NA	4.0
1 Day Minimum ^{5,6}	8.0 (5.0)	4.0	5.0	3.0

- ¹ From: USEPA. 1986. Ambient water quality criteria for dissolved oxygen. Values are in mg/L.
- ² These are water column concentrations recommended to achieve the required intergravel dissolved oxygen concentrations shown in parentheses. For species that have early life stages exposed directly to the water column (SPWN), the figures in parentheses apply.
- ³ Includes all embryonic and larval stages and all juvenile forms to 30-days following hatching (SPWN).
- ⁴ NA (Not Applicable).
- ⁵ For highly manipulatable discharges, further restrictions apply.
- ⁶ All minima should be considered as instantaneous concentrations to be achieved at all times.

ATTACHMENT L: STORM WATER POLLUTION PREVENTION PLAN REQUIREMENTS

1. Objectives

A Storm Water Pollution Prevention Plan (SWPPP) shall be developed and implemented for the construction sites and activities covered by this Permit. The objectives of the SWPPP are to:

- a. Identify all pollutant sources including sources of sediment that may affect the quality of storm water discharges associated with construction activity (storm water discharges) from the construction site, and
- b. Identify non-storm water discharges, and
- c. Identify, construct, implement in accordance with a time schedule, and maintain Best Management Practices (BMPs) to reduce or eliminate pollutants in storm water discharges and authorized non-storm water discharges from the construction site during construction, and
- d. Develop a maintenance schedule for BMPs installed during construction designed to reduce or eliminate pollutants after construction is completed (post-construction BMPs).

2. Implementation Schedule

The SWPPP shall be developed by the Discharger in accordance with this Section and incorporated into the Permit at a Regional Water Board public meeting prior to the start of soil-disturbing activity, and shall be implemented concurrently with commencement of soil-disturbing activities.

3. Availability

The SWPPP shall remain on the construction site while the site is under construction during working hours, commencing with the initial construction activity and ending when construction activities are completed, soils are stabilized, and permanent BMPs have been fully implemented.

4. Required Changes and Public Notice

The Regional Water Board may require the Discharger to amend the SWPPP, or the Discharger may propose to amend the SWPPP. Following submittal of an amended SWPPP by the Discharger, the Regional Board will consider amending the Permit to incorporate the SWPPP amendments after public notice and a public meeting.

5. Source Identification

The SWPPP shall include: (a) project information and (b) pollutant source identification combined with an itemization of those BMPs specifically chosen to control the pollutants listed.

a. Project Information

- (1) The SWPPP shall include a vicinity map locating the project site with respect to easily identifiable major roadways, geographic features, or landmarks. At a minimum, the map must show the construction site perimeter, the geographic features surrounding the site, and the general topography.
- (2) The SWPPP shall include a site map showing the construction project in detail, including the existing and planned paved areas and buildings, and areas subject to land disturbance.
 - (a) At a minimum, the map must show the construction site perimeter; existing and proposed buildings, lots, roadways, storm water collection and discharge points; general topography both before and after construction; and the anticipated discharge location(s) where the storm water from the construction site discharges to a municipal storm sewer system or other water body.
 - (b) The drainage patterns across the project area must clearly be shown on the map, and the map must extend as far outside the site perimeter as necessary to illustrate the relevant drainage areas. Where relevant drainage areas are too large to depict on the map, map notes or inserts illustrating the upstream drainage areas are sufficient.
 - (c) Temporary on-site drainages to carry concentrated flow shall be selected to comply with local ordinances, to control erosion, to return flows to their natural drainage courses, and to prevent damage to downstream properties.
- (3) Information presented in the SWPPP may be represented either by narrative or by graphics. Where possible, narrative descriptions should be plan notes. Narrative descriptions that do not lend themselves to plan notes can be contained in a separate document that must be referenced on the plan.

b. Pollutant Source and BMP Identification

The SWPPP shall include a description of potential sources which are likely to add pollutants to storm water discharges or which may result in non-storm water discharges from the construction site. Discharges originating from off-site that flow across or through areas disturbed by construction that may contain pollutants should be reported to the Regional Water Board.

The SWPPP shall:

- (1) Show drainage patterns and slopes anticipated after major grading activities are completed. Runoff from off-site areas should be prevented from flowing through areas that have been disturbed by construction unless appropriate conveyance systems are in place. The amount of anticipated storm water run-on must be considered to determine the appropriateness of the BMPs chosen. Show all calculations for anticipated storm water run-on, and describe all

BMPs implemented to divert off-site drainage described in No. 5.a.(2)(c), above, around or through the construction project.

- (2) Show the drainage patterns into each on-site storm water inlet point or receiving water. Show or describe the BMPs that will protect operational storm water inlets or receiving waters from contaminated discharges other than sediment discharges, such as, but not limited to: storm water with elevated pH levels from contact with soil amendments such as lime or gypsum; slurry from sawcutting of concrete or asphalt; washing of exposed aggregate concrete; concrete rinse water; building washing operations; equipment washing operations; minor street washing associated with street delineation; and/or sealing and paving activities occurring during rains.
- (3) Show existing site features that, as a result of known past usage, may contribute pollutants to storm water, (e.g., toxic materials that are known to have been treated, stored, disposed, spilled, or leaked onto the construction site). Show or describe the BMPs implemented to minimize the exposure of storm water to contaminated soil or toxic materials.
- (4) Show areas designated for the (a) storage of soil or waste, (b) vehicle storage and service areas, (c) construction material loading, unloading, and access areas, (d) equipment storage, cleaning, and maintenance areas.
- (5) Describe the BMPs for control of discharges from waste handling and disposal areas and methods of on-site storage and disposal of construction materials and construction waste. Describe the BMPs designed to minimize or eliminate the exposure of storm water to construction materials, equipment, vehicles, waste storage areas, or service areas. The BMPs described shall be in compliance with Federal, State, and local laws, regulations, and ordinances.
- (6) Describe all post-construction BMPs for the project, and show the location of each BMP on the map. (Post-construction BMPs consist of permanent features designed to minimize pollutant discharges, including sediment, from the site after construction has been completed.) Also, describe the agency or parties to be the responsible party for long-term maintenance of these BMPs.

c. Additional Information

- (1) The SWPPP shall include a narrative description of pollutant sources and BMPs that cannot be adequately communicated or identified on the site map. In addition, a narrative description of preconstruction control practices (if any) to reduce sediment and other pollutants in storm water discharges shall be included.
- (2) The SWPPP shall include an inventory of all materials used and activities performed during construction that have the potential to contribute to the discharge of pollutants, other than sediment, in storm water. Describe the BMPs selected and the basis for their selection to eliminate or reduce these pollutants in the storm water discharges.

- (3) The SWPPP shall include the following information regarding the construction site surface area: the size (in acres or square feet), the runoff coefficient before and after construction, and the percentage that is impervious (e.g., paved, roofed, etc.) before and after construction.
- (4) The SWPPP shall include a construction activity schedule which describes all major activities such as mass grading, paving, revegetation, completion of post-project storm-water control BMPs, and other improvements at the site(s), and the proposed time frame to conduct those activities.
- (5) The SWPPP shall list the name and telephone number of the qualified person(s) who have been assigned responsibility for pre-storm, post-storm, and storm-event BMP inspections; and the qualified person(s) assigned responsibility to ensure full compliance with the permit and implementation of all elements of the SWPPP, including the preparation of the annual compliance evaluation and the elimination of all unauthorized discharges.

6. Erosion Control

Erosion control, also referred to as “soil stabilization” is the most effective way to retain soil and sediment on the construction site. The most efficient way to address erosion control is to prevent erosion by source controls that preserve existing vegetation where feasible, limit disturbance, and stabilize and revegetate disturbed areas as soon as possible after grading or construction. Particular attention must be paid to large mass-graded sites where the potential for soil exposure to the erosive effects of rainfall and wind is great. Mass graded construction sites may be exposed for several years while the project construction is completed. Thus, there is potential for significant sediment discharge from the site to surface waters.

At a minimum, the Discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas that could discharge pollutants in storm water in the event of rainstorms. These disturbed areas include rough graded roadways, slopes, and building pads. Until permanent vegetation is established, soil cover is the most cost-effective and expeditious method to protect soil particles from detachment and transport by rainfall. Temporary soil stabilization can be the single-most important factor in reducing erosion at construction sites. The Discharger shall consider measures such as: covering with mulch, temporary seeding, soil stabilizers, binders, fiber rolls or blankets, temporary vegetation, permanent seeding, and a variety of other measures.

The SWPPP shall include a description of the erosion control practices, including a time schedule, to be implemented during construction to minimize erosion on disturbed areas of a construction site. The Discharger must consider the full range of erosion control BMPs. The Discharger must consider any additional site-specific and seasonal conditions when selecting and implementing appropriate BMPs. The above listed erosion control measures are examples of what should be considered and are not exclusive of new or innovative approaches currently available or being developed.

- a. The SWPPP shall include:

- (1) An outline of the areas of vegetative soil cover or native vegetation onsite that will remain undisturbed during the construction project.
 - (2) An outline of all areas of soil disturbance including cut or fill areas which will be stabilized by temporary or permanent erosion control measures, such as seeding, mulch, or blankets, etc.
 - (3) An outline of the areas of soil disturbance, cut, or fill which will be left exposed to rainfall, representing areas of potential soil erosion where sediment control BMPs are required to be used during construction.
 - (4) A proposed schedule for the implementation of erosion control measures.
- b. The SWPPP shall include a description of the BMPs and control practices to be used for both temporary and permanent erosion control measures.
 - c. The SWPPP shall include a description of the BMPs to reduce wind erosion at all times, with particular attention paid to stock-piled materials.

7. Stabilization

- (1) All disturbed areas of the construction site must be stabilized. Final stabilization will be considered adequate when all soil disturbing activities are completed AND THE FOLLOWING PROJECT-SPECIFIC CRITERIA ARE MET:
 - a. at least 50 percent of the native perennial species present at the site prior to construction shall be established by year 3 and persist through year 7;
 - b. plant cover shall achieve 50 percent of pre-construction cover values by year 5 and 65 percent by year 7;
 - c. newly established plants shall exhibit normal growth rates and healthy conditions for at least two years without supplemental watering and weeding; and
 - d. cover by non-native noxious weeds shall not exceed pre-construction conditions.

8. Sediment Control

The SWPPP shall include a description or illustration of BMPs that will be implemented to prevent a net increase of sediment load in storm water discharge relative to preconstruction levels. Sediment-control BMPs are required at appropriate locations along the site perimeter and at all operational internal inlets to the storm drain system. Sediment control practices may include filtration devices and barriers (such as fiber rolls, silt fence, straw bale barriers, and gravel inlet filters) and/or settling devices (such as sediment traps or basins). Effective filtration devices, barriers, and settling devices shall be selected, installed and maintained properly. A proposed schedule for deployment of sediment control BMPs shall be included in the SWPPP. These are the most basic measures to prevent sediment from leaving the project site and moving into receiving waters. There may be times when work on active construction areas precludes the use of sediment control BMPs

temporarily (e.g., a perimeter control must be crossed by heavy equipment); under these conditions, the SWPPP must describe a plan to establish perimeter controls prior to the onset of rain.

The Discharger is responsible for ensuring that adequate sediment control materials are available to control sediment discharges at the downgrade perimeter and operational inlets in the event of a predicted storm. The Discharger shall consider a full range of sediment controls, in addition to the controls listed above, such as straw bale dikes, earth dikes, brush barriers, drainage swales, check dams, subsurface drain, sandbag dikes, fiber rolls, or other controls. At a minimum, the Discharger must implement an effective combination of erosion and sediment control on all disturbed areas.

If the Discharger chooses to rely on sediment basins for treatment purposes, sediment basins shall, at a minimum, be designed and maintained as follows:

Option 1: Pursuant to local ordinance for sediment basin design and maintenance, provided that the design efficiency is as protective or more protective of water quality than Option 3.

OR

Option 2: Sediment basin(s), as measured from the bottom of the basin to the principal outlet, shall have at least a capacity equivalent to 3,600 cubic feet of storage per acre draining into the sediment basin. The length of the basin shall be more than twice the width of the basin. The length is determined by measuring the distance between the inlet and the outlet; and the depth must not be less than three feet nor greater than five feet for safety reasons and for maximum efficiency.

OR

Option 3: Sediment basin(s) shall be designed using the standard equation:

$$As=1.2Q/Vs$$

Where: As is the minimum surface area for trapping soil particles of a certain size; Vs is the settling velocity of the design particle size chosen; and $Q=C \times I \times A$ where Q is the discharge rate measured in cubic feet per second; C is the runoff coefficient; I is the precipitation intensity for the 10-year, 6-hour rain event and A is the area draining into the sediment basin in acres. The design particle size shall be the smallest soil grain size determined by wet sieve analysis, or the fine silt sized (0.01mm) particle, and the Vs used shall be 100 percent of the calculated settling velocity.

The length is determined by measuring the distance between the inlet and the outlet; the length shall be more than twice the dimension as the width; the depth shall not be less than three feet nor greater than five feet for safety reasons and for maximum efficiency (two feet of storage, two feet of capacity). The basin(s) shall be located on

the site where it can be maintained on a year-round basis and shall be maintained on a schedule to retain the two feet of capacity;

OR

Option 4: The use of an equivalent surface area design or equation, provided that the design efficiency is as protective or more protective of water quality than Option 3.

A sediment basin shall have a means for dewatering within seven calendar days following a storm event. Sediment basins may be fenced if safety (worker or public) is a concern.

The outflow from a sediment basin that discharges into a natural drainage shall be provided with outlet protection to prevent erosion and scour of the embankment and channel.

The Discharger must consider any additional site-specific and seasonal conditions when selecting and designing sediment control BMPs. The above listed sediment control measures are examples of what should be considered and are not exclusive of new or innovative approaches currently available or being developed.

The SWPPP shall include a description of the BMPs to reduce the tracking of sediment onto paved public or private roads at all times. These public and private roads shall be inspected and cleaned as necessary. Road cleaning BMPs shall be discussed in the SWPPP and shall not rely on washing accumulated sediment or silt from the roadway into the storm drain system.

9. Non-Storm Water Management

Describe all non-storm water discharges to receiving waters that are proposed for the construction project. Non-storm water discharges should be eliminated or reduced to the extent feasible. Include the locations of such discharges and descriptions of all BMPs designed for the control of pollutants in such discharges. One-time discharges shall be monitored during the time that such discharges are occurring. A qualified person should be assigned the responsibility for ensuring that no materials other than storm water are discharged in quantities which will have an adverse effect on receiving waters or storm drain systems (consistent with best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT)), and the name and contact number of that person should be included in the SWPPP document.

10. Post-Construction Storm Water Management

The SWPPP shall include descriptions of the BMPs to reduce pollutants in storm water discharges after all construction phases have been completed at the site (Post-Construction BMPs). Post-Construction BMPs include the minimization of land disturbance, the minimization of impervious surfaces, treatment of storm water runoff using infiltration, detention/retention, biofilter BMPs, use of efficient irrigation systems, ensuring that interior drains are not connected to a storm sewer system, and appropriately designed and constructed energy dissipation devices. These must be consistent with all local post-construction storm water management requirements, policies, and

guidelines. The Discharger must consider site-specific and seasonal conditions when designing the control practices. Operation and maintenance of control practices after construction is completed shall be addressed, including short-and long-term funding sources and the responsible party.

11. Maintenance, Inspection, and Repair

The SWPPP shall include a discussion of the program to inspect and maintain all BMPs as identified in the site plan or other narrative documents throughout the entire duration of the project. A qualified person will be assigned the responsibility to conduct inspections. The name and telephone number of that person shall be listed in the SWPPP document. Inspections will be performed before and after storm events and once each 24-hour period during extended storm events to identify BMP effectiveness and implement repairs or design changes as soon as feasible depending upon field conditions. Equipment, materials, and workers must be available for rapid response to failures and emergencies. All corrective maintenance to BMPs shall be performed as soon as possible after the conclusion of each storm depending upon worker safety.

For each inspection required above, the Discharger shall complete an inspection checklist. At a minimum, an inspection checklist shall include:

- a. Inspection date.
- b. Weather information: best estimate of beginning of storm event, duration of event, time elapsed since last storm, and approximate amount of rainfall (inches).
- c. A description of any inadequate BMPs.
- d. If it is possible to safely access during inclement weather, list observations of all BMPs: erosion controls, sediment controls, chemical and waste controls, and non-storm water controls. Otherwise, list results of visual inspection at relevant outfall, discharge point, or downstream location and projected required maintenance activities.
- e. Corrective actions required, and implementation dates.
- f. Inspector's name, title, and signature.

12. Training

Individuals responsible for SWPPP preparation, implementation, and permit compliance shall be appropriately trained, and the SWPPP shall document all training. This includes those personnel responsible for installation, inspection, maintenance, and repair of BMPs. Those responsible for overseeing, revising, and amending the SWPPP shall also document their training. Training should be both formal and informal, occur on an ongoing basis when it is appropriate and convenient, and should include training/workshops offered by the SWRCB, Regional Water Board, or other locally recognized agencies or professional organizations.

13. List of Contractors/Subcontractors

The SWPPP shall include a list of names of all contractors, (or subcontractors) and individuals responsible for implementation of the SWPPP. This list should include telephone numbers and addresses. Specific areas of responsibility of each subcontractor and emergency contact numbers should also be included.

14. Other Plans

This SWPPP may incorporate by reference the appropriate elements of other plans required by local, State, or Federal agencies. A copy of any requirements incorporated by reference shall be kept at the construction site.

15. Public Access

The SWPPP shall be provided, upon request, to the Regional Water Board. In accordance with Section 308(b) of the CWA, the SWPPP is considered a report that shall be available to the public. As appropriate, Dischargers may provide national security sensitive information as a separate attachment to the SWPPP. Information that is not subject to disclosure pursuant to the California Public Records Act (e.g., trade secrets) must be segregated in the SWPPP submittal and justification for confidentiality must be included.

16. SWPPP Certification

The SWPPP, and any proposed amendments or revisions thereto, shall be certified in accordance with the signatory requirements of Attachment D, Section V.B.

ATTACHMENT M – MONITORING PROGRAM AND REPORTING REQUIREMENTS

1. Required Changes

The Regional Water Board may require the discharger to conduct additional site inspections, to submit reports and certifications, or perform sampling and analysis.

2. Implementation

The requirements of this Section shall be implemented at the time of commencement of construction activity. The discharger is responsible for implementing these requirements until construction activity is complete and the site is stabilized.

3. Site Inspections

Qualified personnel shall conduct inspections of the construction site prior to anticipated storm events, during extended storm events, and after actual storm events to identify areas contributing to a discharge of storm water associated with construction activity. The name(s) and contact number(s) of the assigned inspection personnel shall be listed in the SWPPP. Pre-storm inspections are to ensure that BMPs are properly installed and maintained; post-storm inspections are to assure that the BMPs have functioned adequately. During extended storm events, inspections shall be required each 24-hour period. Best Management Practices (BMPs) shall be evaluated for adequacy and proper implementation and whether additional BMPs are required in accordance with the terms of the Permit. Implementation of nonstorm water discharge BMPs shall be verified and their effectiveness evaluated. One time discharges of non-storm water shall be inspected when such discharges occur.

4. Compliance Certification

Each discharger or qualified assigned personnel listed by name and contact number in the SWPPP must certify annually that construction activities are in compliance with the requirements of this Permit and the SWPPP. This Certification shall be based upon the site inspections required in Item 3 of this Section. The certification must be completed by July 1 of each year.

5. Noncompliance Reporting

Dischargers who cannot certify compliance, in accordance with Item 4 of this Section and/or who have had other instances of noncompliance excluding exceedances of water quality standards as defined in Permit Section VI.C.3, shall notify the appropriate Regional Water Board within 30 days. Corrective measures should be implemented immediately following discovery that water quality standards were exceeded. The notifications shall identify the noncompliance event, including an initial assessment of any impact caused by the event;

describe the actions necessary to achieve compliance; and include a time schedule subject to the modifications by the Regional Water Board indicating when compliance will be achieved. Noncompliance notifications must be submitted within 30 calendar days of identification of noncompliance.

6. Monitoring Records

Records of all inspections, compliance certifications, and noncompliance reporting must be retained for a period of at least three years from the date generated. With the exception of noncompliance reporting, dischargers are not required to submit these records.

7. Monitoring Methods

For laboratory analysis, all sampling, sample preservation, and analyses must be conducted according to test procedures under 40 CFR Part 136. Field discharge samples shall be collected and analyzed according to the specifications of the manufacturer of the sampling devices employed. Portable meters shall be calibrated according to manufacturer's specification. All field and/or analytical data shall be kept in the SWPPP document, which is to remain at the construction site.

ATTACHMENT N – GENERAL MONITORING AND REPORTING PROVISIONS

1. SAMPLING AND ANALYSIS

- a. All analyses shall be performed in accordance with the current edition(s) of the following documents:
 - i. Standard Methods for the Examination of Water and Wastewater
 - ii. Methods for Chemical Analysis of Water and Wastes, EPA
- b. All analyses shall be performed in a laboratory certified to perform such analyses by the California State Department of Health Services or a laboratory approved by the Regional Board Executive Officer. Specific methods of analysis must be identified on each laboratory report.
- c. Any modifications to the above methods to eliminate known interferences shall be reported with the sample results. The methods used shall also be reported. If methods other than EPA-approved methods or Standard Methods are used, the exact methodology must be submitted for review and must be approved by the Regional Board prior to use.
- d. The Discharger shall establish chain-of-custody procedures to insure that specific individuals are responsible for sample integrity from commencement of sample collection through delivery to an approved laboratory. Sample collection, storage, and analysis shall be conducted in accordance with an approved Sampling and Analysis Plan (SAP). The most recent version of the approved SAP shall be kept at the facility.
- e. The Discharger shall calibrate and perform maintenance procedures on all monitoring instruments and equipment to ensure accuracy of measurements, or shall insure that both activities will be conducted. The calibration of any wastewater flow-measuring device shall be recorded and maintained in the permanent logbook described in 2.b, below.
- f. A grab sample is defined as an individual sample collected in fewer than 15 minutes.
- g. A composite sample is defined as a combination of no fewer than eight individual samples obtained over the specified sampling period at equal intervals. The volume of each individual sample shall be proportional to the discharge flow rate at the time of sampling. The sampling period shall equal the discharge period, or 24 hours, whichever period is shorter.

2. OPERATIONAL REQUIREMENTS

a. Sample Results

Pursuant to California Water Code Section 13267(b), the Discharger shall maintain all sampling and analytical results including: strip charts; date, exact place, and time of sampling; date analyses were performed; sample collector's name; analyst's name; analytical techniques used; and results of all analyses. Such records shall be retained for a minimum of three years. This period of retention shall be extended during the course of any unresolved litigation regarding this discharge, or when requested by the Regional Board.

b. Operational Log

Pursuant to California Water Code Section 13267(b), an operation and maintenance log shall be maintained at the facility. All monitoring and reporting data shall be recorded in a permanent log book.

3. REPORTING

a. For every item where the requirements are not met, the Discharger shall submit a statement of the actions undertaken or proposed which will bring the discharge into full compliance with requirements at the earliest time, and shall submit a timetable for correction.

b. Pursuant to California Water Code Section 13267(b), all sampling and analytical results shall be made available to the Regional Board upon request. Results shall be retained for a minimum of three years. This period of retention shall be extended during the course of any unresolved litigation regarding this discharge, or when requested by the Regional Board.

c. The Discharger shall provide a brief summary of any operational problems and maintenance activities to the Board with each monitoring report. Any modifications or additions to, or any major maintenance conducted on, or any major problems occurring to the wastewater conveyance system, treatment facilities, or disposal facilities shall be included in this summary.

d. Monitoring reports shall be signed by:

i. In the case of a corporation, by a principal executive officer at least of the level of vice-president or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge originates;

ii. In the case of a partnership, by a general partner;

iii. In the case of a sole proprietorship, by the proprietor; or

iv. In the case of a municipal, state or other public facility, by either a principal executive officer, ranking elected official, or other duly authorized employee.

- e. Monitoring reports are to include the following:
 - i. Name and telephone number of individual who can answer questions about the report.
 - ii. The Monitoring and Reporting Program Number.
 - iii. WDID Number.
- f. Modifications

This Monitoring and Reporting Program may be modified at the discretion of the Regional Board Executive Officer.

4. NONCOMPLIANCE

Under Section 13268 of the Water Code, any person failing or refusing to furnish technical or monitoring reports, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in an amount of up to one thousand dollars (\$1,000) for each day of violation under Section 13268 of the Water Code.

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file: general pro mrp

ATTACHMENT O – SELF MONITORING REPORT COVER LETTER

Date _____

California Regional Water Quality Control Board
Lahontan Region
2501 Lake Tahoe Boulevard
South Lake Tahoe, CA 96150

Facility Name:

Address:

Contact Person:

Job Title:

Phone:

Email:

WDR/NPDES Order Number:

WDID Number:

Type of Report (circle one):

Monthly Quarterly Semi-Annual Annual Other

Month(s) (circle applicable month(s)*:

JAN FEB MAR APR MAY JUN
JUL AUG SEP OCT NOV DEC

*annual Reports (circle the first month of the reporting period)

Year:

Violation(s)? (Please check one):

_____ NO _____ YES*

***If YES is marked complete a-g (Attach Additional information as necessary)**

a) Brief Description of Violation: _____

b) Section(s) of WDRs/NPDES Permit Violated: _____

c) Reported Value(s) or Volume: _____

d) WDRs/NPDES Limit/Condition: _____

e) Date(s) and Duration of Violation(s): _____

f) Explanation of Cause(s): _____

g) Corrective Action(s)
(Specify actions taken and a schedule for actions to be taken)

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision following a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my knowledge of the person(s) who manage the system, or those directly responsible for data gathering, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

LADWP
LORP

ORDER NO. R6V-2005-0020
NPDES NO. CA0103225
WDID NO. 6B140407009

If you have any questions or require additional information, please contact _____ at the number provided above.

Sincerely,

Signature: _____

Name: _____

Title: _____



California Regional Water Quality Control Board

Lahontan Region



Alan C. Lloyd, Ph.D.
Agency Secretary

2501 Lake Tahoe Boulevard, South Lake Tahoe, California 96150
(530) 542-5400 • Fax (530) 544-2271
<http://www.waterboards.ca.gov/lahontan>

Arnold Schwarzenegger
Governor

April 22, 2005

Gene L. Coufal, Manager
Aqueduct Business Group
City of Los Angeles
Department of Water and Power
300 Mandich Street
Bishop, CA 93514-3349

**ATTACHMENT P – APRIL 22, 2005
LETTER FROM REGIONAL WATER
BOARD EXECUTIVE OFFICER TO THE
DISCHARGER**

**RESPONSE TO YOUR LETTER DATED JANUARY 14, 2005, CONCERNING
REGIONAL BOARD REGULATION OF THE LOWER OWENS RIVER PROJECT,
INYO COUNTY**

INTRODUCTION

This is in response to your January 14, 2005 letter to Lauri Kemper in which you raise a number of permitting issues regarding the Lower Owens River Project (LORP). Rewatering the Lower Owens River will have far-reaching positive value to the ecosystem of the area. Los Angeles Department of Water and Power (LADWP) has made significant progress in developing this project. However, there are permitting issues that still need resolution. This letter responds to your comments and clarifies the record from our perspective. Additionally, it describes the regulatory approach that I intend to recommend to the Regional Board. This approach will provide clear and appropriate regulation of the discharges associated with the project, and, if accepted by the Regional Board, it will allow project implementation in a timely manner.

Your letter raises two significant issues: first, LADWP's position that the discharges from this project be regulated by various general permits and the water quality certification rather than an individual permit; and, second, that the Los Angeles Aqueduct (LAA) is neither a water of the United States nor a water that is subject to the authority of the Regional Board pursuant to the California Water Code.

GENERAL PERMITS OR INDIVIDUAL PERMIT

LADWP claims that all discharges of waste associated with this project could be covered by three State Water Resources Control Board (State Board) general permits and one Regional Board general permit. In reviewing this position, I considered the project as a whole in determining the applicability of each general permit. I believe this position is appropriate since it is unlikely LADWP would be implementing any individual project components in the absence of others. In further support of this position, this entire project was evaluated under an Environmental Impact Report; therefore, all project impacts should be considered in the context

of the entire project. Additionally, there are two project components that have the potential to adversely affect water quality that are not covered by any general permit.

Two of the general permits under consideration (State Board Order No. WQO 2003-0003 and Regional Board Order No. 2003-034) require compliance with all water quality objectives and are applicable to only low-threat discharges. LADWP's project and CEQA documents clearly indicate that the project will cause violations of receiving water quality objectives, at least temporarily. While the discharges proposed to be covered by these two general permits are not those that will cause violations of water quality objectives, the activities covered by these general permits will facilitate the actions that cause the violations. Discharges that cause or facilitate actions that cause violations of water quality objectives are not considered "low threat discharges." Therefore, in considering the project as a whole, these general permits are not applicable to the discharges generated by this project.

Additionally, Finding No. 12 of State Water Resources Control Board Water Quality Order No. 2003-0003-DWQ states that "Discharges ... that could significantly alter the existing drainage pattern of the discharge site or surrounding area are not eligible for coverage under these General WDRs". The activity that will generate the discharge to be covered by the General WDRs is part of a larger project that is intended to alter drainage patterns, specifically the rewatering of 62 miles of the Lower Owens River and the Delta area of Owens Lake and releases of water to flood 500 acres in the Blackrock Waterfowl Habitat Area. Therefore, this General WDR is not applicable to the project.

While I am prepared to recommend that the Regional Board grant an exemption to Water Quality Control Plan for the Lahontan Region (Basin Plan) prohibitions, thereby allowing violations of water quality objectives, I do not believe that the other two general permits (State Board Orders WQO 2003-0017 and WQO 99-08-DWQ) are valid unless and until such an exemption is granted. Additionally, since the prohibition exemption will likely include conditions, the validity and enforceability of the general permits will be linked to a separate Regional Board action. This situation leads to the possibility of unnecessary confusion.

The rewatering of the Lower Owens River will likely result in violations of water quality objectives, at least during the initial years of the project. Also, the water returned to the LAA from the pump-back facility may cause water quality objectives to be violated in the LAA and downstream tributaries. These two actions are not regulated by any general WDRs or NPDES permits.

Information provided by LADWP in November 2004 indicates that various project components would be covered by more than one of the above-mentioned orders. This fact leads to my concern that there may be inconsistent requirements and duplicative monitoring requirements. This could result in confusion in interpretation by Regional Board staff, LADWP staff, or your

contractors. The intent of a single permit would be to eliminate this possibility and streamline both the permit requirements and the monitoring needed to demonstrate compliance.

In your letter (p. 2, paragraph 2) you state: "While we concede that the Regional Board maintains discretion to require individual permits for certain activities, such discretion must be exercised in a reasonable manner. Requiring an individual NPDES permit where one is not required as a matter of law would constitute an abuse of discretion." I disagree with your premise that the Regional Board may issue an individual permit only where an individual permit is "required by law." To my knowledge, there is no law that requires the Regional Board to use either an individual or a general permit to regulate a specific type of discharge. Rather, a decision to issue an individual permit instead of a general permit (or, as in this case, multiple general permits) is discretionary (see: Finding 9 of WQO No. 2003-0003-DWQ and Finding No. 5 of WQO 99-08-DWQ). Furthermore, as I explained above, there is good reason to combine all of the requirements of the various general permits to provide clarity and avoid duplication and inconsistency.

Given the reasons described above, I believe that one permit is the more appropriate regulatory approach given the complex nature of this project.

LOS ANGELES AQUEDUCT

Much of your January 14, 2005 letter is devoted to convincing us that the LAA is not a water of the United States subject to the requirements of the federal Clean Water Act. We disagree with your position that the recent Supreme Court of the U.S. decision in *South Florida Water Management District v. Miccosukee Tribe of Indians, et al.*, is applicable to this determination. Furthermore, the State Water Resources Control Board has adopted an NPDES permit that regulates the discharge of pesticides to waters of the United States (Water Quality Order No. 2004-0009-DWQ). This order describes waters of the United States on page 7 of the Fact Sheet as: "... Waters of the United States include ... impoundments of and tributaries to waters of the United States ... Waters of the United States include, but are not limited to, irrigation and flood control channels that exchange water with waters of the United States." The LAA moves water from the Owens River, a water of the United States to Haiwee Reservoir, an impoundment of waters of the United States. The LAA is a tributary to Haiwee Reservoir and therefore a water of the United States.

Given prior conversations with LADWP staff and the position taken in your January 14, 2005 letter, I do not believe that LADWP will accept the above as a demonstration that the LAA is a water of the United States. Rather, it is obvious that this disagreement will likely only be resolved through lengthy fact-finding and possible judicial action. Rather than pursue that path, which would delay implementation of a valuable project, I will not pursue regulation of discharges to the LAA under the federal Clean Water Act unless LADWP specifically requests such a permit. I am taking this position without conceding our position that the LAA is a water

of the United States. If you decide not to request an NPDES permit, LADWP assumes whatever risk is involved in discharging to this water body without it.

In the large paragraph on page three of your January 14, 2005 letter you state: "The Regional Board has no jurisdiction to require any state or federal permits for discharges to the Los Angeles Aqueduct." This is the only place in the letter where you dispute the authority of the Regional Board to regulate discharges to the LAA under state law. The only rationale you provided is that the Water Quality Control Plan does not list the LAA as a water body under the Regional Board's jurisdiction. We disagree with LADWP on this position. The Basin Plan lists most water bodies by name in Table 2-1. Additionally, it lists minor surface waters and includes the following statement "Unless otherwise specified, beneficial uses also apply to all tributaries of surface waters identified in Table 2-1." The LAA is specifically listed as the "receiving water" of many of the listed water bodies. Additionally, both Tinemaha Reservoir and Haiwee Reservoir are listed in the Basin Plan as water bodies and waters in the LAA are tributary to both reservoirs. Water in the LAA is periodically released (both controlled and uncontrolled) into the Owens River, a water of the United States. Therefore, the LAA is tributary to the Owens River and is therefore a water of both the state and the United States.

You state in your letter "... the City of Los Angeles does not intend to cede jurisdiction over its municipal drinking water supply for unauthorized regulatory purposes." The Regional Board is not asking LADWP to "cede jurisdiction." Rather, I intend to recommend that the Regional Board, pursuant to its statutory authority, regulate the discharge of a waste to a water of the state. As you know, much of the state's waters are eventually used for municipal water supply, similar to the water in the LAA. Regional boards regulate discharges of waste to these waters in order to protect the quality of the waters for all beneficial uses (e.g. municipal water supply, aquatic habitat). The regional boards currently regulate discharges of waste to waters that are diverted to the LAA. Furthermore, waters that the LAA is tributary to in Los Angeles County (Fairmont, Bouquet Canyon and Drinkwater Reservoirs) are waters listed in the Los Angeles Regional Board's Water Quality Control Plan. While LADWP may have a legal right to use the water for a beneficial purpose, it does not have a right to degrade or pollute that water from the discharge of waste at any point before the last location that the water is permanently diverted from waters of the state and put to use. Such discharges could adversely affect the quality of the waters for any of the listed beneficial uses as the water makes its way to the final diversion location.

I consider the discharge from the pump-back facility to the LAA to be a discharge of water containing waste based on the following facts:

1. The water quality of the Owens River during the initial years following project construction could, according to the project EIR (Water Quality Section 14.7.2), adversely affect many of the beneficial uses. It will be necessary for the Regional Board to allow LADWP to exceed water quality objectives in the Owens River in violation of a Basin Plan prohibition in order to allow the project to proceed.

2. LADWP intends to pump this poor quality water into the LAA. It has not specified any conditions that would preclude this pumping.
3. The water in the LAA just upstream of the pump-back discharge contains water from the Owens River and other tributaries that is likely to be of much better water quality than the pump-back water. While I acknowledge that much of the water in the LAA was diverted from the Owens River, the diversion occurred approximately 60 miles upstream of the point of discharge from the pump-back facility. Due, in part, to project-related construction activities in this 60-mile stretch of river, the pump-back water quality may not be sufficient to support beneficial uses in the Owens River (see 1 above).
4. LADWP's decisions of when it uses the pump-back facility will have a direct effect on whether the beneficial uses in the LAA and in downstream waters will be protected or adversely affected. The potential for adverse effects is dependent on the water quality and volumes of the LAA water immediately upstream of the discharge from the pump-back facility. The discharge of the return water could cause a violation of receiving water objectives, depending upon the volume or concentration of the return water.

REGULATORY APPROACH AND STATUS

As indicated above, I have directed Regional Board staff to develop one individual permit that regulates all discharges associated with the project. We intend to specifically delineate which discharges are regulated solely pursuant to state authority and those discharges regulated under our Clean Water Act delegation. As indicated previously, I do not intend to recommend that the Regional Board regulate any discharges under NPDES permit authority unless LADWP submits a request for coverage under Clean Water Act authority. Additionally, this action will grant water quality certification for the project and will address necessary exemptions to prohibitions in the Regional Board's Water Quality Control Plan. Finally, the certification will address the discharge of pump-back water to the LAA since there is no general permit that covers this type of discharge.

The Regional Board received from LADWP: 1) an Application for *General WDRs for Discharges to Land with a Low Threat to Water Quality* (Water Quality Order No. 2003-003-DWQ), dated January 19, 2005; and 2) a Notice of Intent (application) to comply with *General NPDES Permit For Limited Threat Discharges to Surface Waters* (Order No. R6T-2003-0034) dated January 31, 2005. As I have indicated previously in this letter, I do not believe that these permits are applicable to the project. Therefore, LADWP's Lower Owens River project is hereby excluded from coverage under either of these General Permits (filing fees will be refunded).

Information submitted with the letter stated, "LADWP submitted a Notice of Intent to comply with the terms of the General Permit to Discharge Storm Water Associated with Construction Activities (WQO No. 99-08-DWQ) to the State Water Resources Control Board on January 28, 2005 for construction activities associated with the Lower Owens River Project (LORP)." It is our understanding that LADWP has filed a Notice of Intent and has received a Notice of

Applicability. Pursuant to Finding 5 and Provision D.1.b. of this General Permit, the applicability of this permit to the project is terminated upon adoption of an individual permit by the Regional Board.

Regional Board staff will use applications received from LADWP for NPDES general permits or an individual permit as a basis for developing the individual permit. Additionally, we will use all information received in various report submittals to date, in prescribing requirements pursuant to applicable state law and regulations for the specific discharges described. We intend to use the Notice of Intent for coverage under WQO No. 99-08-DWQ for the construction aspects of the project as the basis for the NPDES portion of the permit to be developed.

Since a Notice of Intent application has been submitted, the WDR/NPDES Permit will also regulate discharges of storm water associated with construction activities (under NPDES requirements). The pump station discharges to the Los Angeles Aqueduct will be regulated under California Water Code requirements unless LADWP submits an NPDES Permit application for the discharge. The proposed Board Order being developed will also include an exemption to waste discharge prohibitions for the Lower Owens River, grant Water Quality Certification under appropriate conditions pursuant to Clean Water Act Section 401, and specify a monitoring and reporting program for the Project.

TIMELINE FOR REGULATORY ACTION (REVISED)

The following is an outline of tentative dates for significant permit actions and supersedes any prior schedule from the Regional Board:

By April 30, 2005: We will mail "tentative" requirements in draft form for a 30-day public review and comment period. We intend to use the mailing list from the Project *Final Environmental Impact Report* (June 23, 2003).

By June 10, 2005: We will mail "proposed" requirements in draft form for a 30-day public review and comment period prior to a public hearing on the proposed requirements. The "proposed" requirements may be modified in response to comments received on the "tentative" draft. By May 10, 2005, we will have published a notice of the planned public hearing in newspapers of record and on the Internet.

July 13-14, 2005: The Regional Board will hold a public hearing on the "proposed" requirements at the Regional Board's regular meeting in Bishop. The specific location of the meeting has not yet been determined. This is the earliest potential date for Regional Board adoption of waste discharge requirements/NPDES Permit, and issuance of Section 401 Water Quality Certification.

We would be glad to meet with you to attempt to resolve any issues or questions such that the Regional Board regulatory actions and the Lower Owens River Project can proceed without additional delay. If you have questions or comments concerning this letter, or desire a meeting with Board staff, please contact Lauri Kemper, North Lahontan Watersheds Division Manager, at (530) 542-5436, or Alan Miller, Senior Water Resource Control Engineer, at (530) 542-5430.

(ORIGINAL SIGNED BY)

HAROLD J. SINGER
EXECUTIVE OFFICER

cc: Attached Mailing List

HS/la