

## Lahontan Regional Water Quality Control Board

July 30, 2013

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Manager Wastewater Quality and Compliance  
Los Angeles Department of Water and Power  
111 North Hope Street, Rm. 1213  
Los Angeles, CA 90012

### **INVESTIGATIVE ORDER NO. R6V-2013-0062 REQUIRING THE CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER TO MONITOR AND REPORT ON WETLAND FUNCTIONS AND VALUES ASSOCIATED WITH THE LOWER OWENS RIVER PROJECT, INYO COUNTY (WDID 6B140407009)**

The California Regional Water Quality Control Board, Lahontan Region (Water Board) is ordering the City of Los Angeles, Department of Water and Power (Discharger) to provide the investigative report described below.

#### **BACKGROUND**

On June 19, 2013, the Water Board rescinded Board Order No. R6V-2005-0020 and amendments Nos. R6V-2005-0020-A1 and R6V-2005-0020-A2 (former Board Order). This Order No. R6V-2013-0062 is to satisfy monitoring and reporting requirements in the former Board Order that have yet to be completed.

The former Board Order was a master permit/order for Lower Owens River Project (Project) and the Board Order was used to regulate the following activities, 1) water quality certification (WQC) under the Clean Water Act to authorize the discharge of dredged or fill material in the waters of the United States, 2) discharges of stormwater from construction activities, and 3) monitoring the water transfer activities of pumping water back to the Los Angeles Aqueduct from the Lower Owens River under a National Pollutant Discharge Elimination System (NPDES) permit.

The Discharger has finished all of the construction activities. The NPDES rules/regulations were changed during the term of the NPDES permit such that pumping water is no longer an activity that may be regulated by an NPDES permit. The remaining requirements are for reports associated with WQC monitoring results not yet provided. The Water Board decided to rescind the former Board Order and require the monitoring reports to be submitted under a Water Code Section 13267 Order.

## **JUSTIFICATION**

Water Code section 13267, subdivision (b) states in part:

“... the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region ... or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring reports which the regional board requires. ... In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports and shall identify the evidence that supports requiring that person to provide the reports.”

The investigative report required by this Order is justified because the Discharger discharged wastes that could affect the quality of the waters, including wetlands, in the region, and it is necessary to assess the extent to which the activities and discharges impacted wetland areas at the Project site. The Water Board seeks to verify “no net loss” requirements for wetlands are met, and to identify and quantify gains in wetlands and wetland locations, with regard to the Order for WQC within the former Board Order.

## **ORDER FOR INVESTIGATION**

Pursuant to Water Code section 13267, I am ordering the Discharger to submit the following investigative reports.

1. By **October 1, 2013**, submit a jurisdictional wetland delineation of 500-acre portions of the Black Rock Waterfowl Area (using the U.S. Army Corp of Engineers 1987 wetland delineation manual and appropriate supplements).
2. By **April 14, 2014**, submit an updated hydrogeomorphic analysis of wetland functions and values suitable for comparison with the pre-Project hydrogeomorphic analysis of the Project, and a determination of whether “no net loss” requirements of the Section 401 certification order portion of former Board Order No. R6T-2005-0020, have been achieved with regard to wetland functions and values. An updated analysis shall be provided by April 1, 2019 and April 1, 2024, unless the Executive Officer determines that “no net loss” requirements have been fulfilled based on information provided by the Discharger in the 2014 report or subsequent reports.

The referenced pre-Project hydrogeomorphic analysis is as provided in the Discharger’s application for WQC under former Board Order No. R6V-2005-0020.

**ENFORCEMENT**

The Water Board may take enforcement actions as authorized by law to compel compliance with this Order. Enforcement actions may include, but not limited to, assessing administrative civil liabilities pursuant to Water Code section 13268 in the amount up to \$1000 per day per day of violation (see the enclosed section 13267 fact sheet).

If you have questions regarding this matter please contact Rob Tucker at (530) 542-5467, or Alan Miller, Chief, North Basin Regulatory Unit, at (530) 542-5430.



LAURI KEMPER, P.E.  
ACTING EXECUTIVE OFFICER

Enclosed: Section 13267 Fact Sheet

cc: Clayton Yoshida, City of Los Angeles Department of Water and Power,  
Wastewater Quality and Compliance Group

**Fact Sheet – Requirements for Submitting Technical Reports  
Under Section 13267 of the California Water Code**

October 8, 2008

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**What does it mean when the regional water board requires a technical report?**

Section 13267<sup>1</sup> of the California Water Code provides that "...the regional board may require that any person who has discharged, discharges, or who is suspected of having discharged...waste that could affect the quality of waters...shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires".

**This requirement for a technical report seems to mean that I am guilty of something, or at least responsible for cleaning something up. What if that is not so?**

Providing the required information in a technical report is not an admission of guilt or responsibility. However, the information provided can be used by the regional water board to clarify whether a given party has responsibility.

**Are there limits to what the regional water board can ask for?**

Yes. The information required must relate to an actual or suspected discharge of waste, and the burden of compliance must bear a reasonable relationship to the need for the report and the benefits obtained. The regional water board is required to explain the reasons for its request.

**What if I can provide the information, but not by the date specified?**

A time extension can be given for good cause. Your request should be submitted in writing, giving reasons. A request for a time extension should be made as soon as it is apparent that additional time will be needed and preferably before the due date for the information.

**Are there penalties if I don't comply?**

Depending on the situation, the regional water board can impose a fine of up to \$1,000 per day, and a court can impose fines of up to \$25,000 per day as well as criminal penalties. A person who submits false information is guilty of a misdemeanor and may be fined as well.

**What if I disagree with the 13267 requirement and the regional water board staff will not change the requirement and/or date to comply?**

Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must *receive* the petition by 5:00 p.m., 30 days after the date of the Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

[http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

**Claim of Copyright or other Protection**

Any and all reports and other documents submitted to the Regional Board pursuant to this request will need to be copied for some or all of the following reasons: 1) normal internal use of the document, including staff copies, record copies, copies for Board members and agenda packets, 2) any further proceedings of the Regional Board and the State Water Resources Control Board, 3) any court proceeding that may involve the document, and 4) any copies requested by members of the public pursuant to the Public Records Act or other legal proceeding.

If the discharger or its contractor claims any copyright or other protection, the submittal must include a notice, and the notice will accompany all documents copied for the reasons stated above. If copyright protection for a submitted document is claimed, failure to expressly grant permission for the copying stated above will render the document unusable for the Regional Board's purposes, and will result in the document being returned to the discharger as if the task had not been completed.

**If I have more questions, who do I ask?**

Requirements for technical reports normally indicate the name, telephone number, and email address of the regional water board staff person involved at the end of the letter.

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<sup>1</sup> All code sections referenced herein can be found by going to [www.leginfo.ca.gov](http://www.leginfo.ca.gov). Copies of the regulations cited are available from the Regional Board upon request.