



California Regional Water Quality Control Board

Lahontan Region



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Agency Secretary

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Arnold Schwarzenegger
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LOWER OWENS RIVER PROJECT, INYO COUNTY; INFORMATION REQUESTED TO COMPLETE A REPORT OF WASTE DISCHARGE; APPLICATION NEEDED FOR NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

On November 29, 2004, Regional Board staff received your letter dated November 26, 2004, which included supplemental information for the Lower Owens River Project (Project). The information was provided to supplement the application of the City of Los Angeles Department of Water and Power (LADWP) for Clean Water Act Section 401 water quality certification and other applicable permits. We have reviewed the information provided, and we have determined that we need additional information to complete necessary permit applications for the Project. The purpose of this letter is to inform you of the specific information needed, and the status of your application processing. If the information requested herein is provided before **January 14, 2005**, we do not expect any delays in the timing for application processing, as discussed in this letter.

Water Quality Certification

Section 401 of the Clean Water Act (33 U.S.C., § 1341) requires any applicant for a federal permit or license (including Section 404) where the activity involved may result in a discharge to waters of the United States to obtain certification from the affected state that the discharge will meet all applicable water quality standards. No Section 404 permit may be granted (or valid) until certification is obtained from or waived by the affected state. LADWP has submitted an application for certification the Project. The U.S. Army Corps of Engineers will regulate the Project under the provisions of Section 404; we understand applicable federal Section 404 requirements have not yet been determined, and may involve an individual Section 404 permit.

National Pollutant Discharge Elimination System Permit

Based on our review of your November 26, 2004 letter, we have determined that a National Pollutant Discharge Elimination System (NPDES) Permit is required for the Project, because it will include point source discharges of pollutants to surface waters of the U.S. In your November 26, 2004, letter, you indicated that LADWP intended to apply for several General Waste Discharge Requirements, including the following General NPDES Permits: State Water Resources Control Board Order No. 99-08-DWQ (*NPDES General Permit No. CAS000002, Waste Discharge Requirements For Discharges Of Storm Water Runoff Associated With Construction Activity*), and Regional Board Order No. R6T-2003-0034 (*NPDES No. CAG996001, Revised Waste Discharge Requirements and NPDES Permit For Limited Threat Discharges To Surface Waters*).

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Please note that the two General Permits cited above are State Waste Discharge Requirements and NPDES Permits. It is standard State procedure to implement federal NPDES permit requirements along with applicable State requirements for discharges to land and/or waters of the state.

The Regional Board has discretion to exclude applicants from General Permit coverage for proposed pollutant or waste discharges that the Regional Board determines are more appropriately regulated by an individual, project-specific, permit. Based on the information in your letter dated November 26, 2004, we have determined that an individual permit that serves as both State Waste Discharge Requirements and an NPDES Permit is appropriate for the Project, and LADWP should therefore not submit any Notice of Intent application(s) for General Permits. We are considering including water quality certification in the same permit/document.

In order to construct and operate the Project in the manner proposed, LADWP must obtain an NPDES Permit. Before the Regional Board can issue an NPDES Permit, you must submit an NPDES Permit application. To date we have not received a formal NPDES Permit application for the Project. Based on your letter, we understand you were awaiting a determination from the Regional Board as to whether LADWP should file for coverage under several General Permits, or whether LADWP should apply for an individual Permit for the Project. We hereby request that you file an NPDES application for an individual permit.

Waste Discharge Requirements for Discharges to Land and/or State waters

Pursuant to California Water Code Section 13260, any person discharging waste, or proposing to discharge waste that could affect the quality of waters of the State, must file a Report of Waste Discharge with the appropriate Regional Board. The Regional Board may prescribe Waste Discharge Requirements in accordance with Water Code Section 13263, even if no Report of Waste Discharge has been filed (see Section 13263(d)). Water Code Section 13050(e) defines waters of the state: "Waters of the state' means any surface water or groundwater, including saline waters, within the boundaries of the state."

INFORMATION NEEDED

We have determined the following information is needed to complete your application:

A. Application for NPDES Permit for Discharge of Pollutants to Surface Waters of the U.S. and Waste Discharge Requirements for Discharge of Wastes to Land (and/or State Waters)

1. NPDES Permit application: United States Environmental Protection Agency (EPA) NPDES Application Form 1 (enclosed) must be completed in accordance with the instructions provided.

We suggest the applicable response to Form 1, Section II, is letter D (proposed facility which will result in a discharge to waters of the U.S.). EPA has delegated NPDES permits program administration to the State of California and therefore other standard EPA Forms are not required for your application.

2. State Water Resources Control Board Form 200 (enclosed) is titled: *Application/Report of Waste Discharge General Information Form for Waste Discharge Requirements or NPDES Permit*. Application Form 200 (enclosed) must be completed in accordance with the instructions provided. Section II ("Type

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of Discharge”) must indicate the application is for both “Waste Discharge to Land” by checking Box A, and for “Waste Discharge to Surface Water” by checking Box B. (You may indicate that the Regional Board staff has approved submittal of a single Form 200 for the Project.)

3. The application should list and describe all proposed discharges of pollutants and waste to surface waters. Such discharges may include, but are not limited to, “Storm Water” associated with construction activities, and “Other” proposed discharges such as construction dewatering wastes, waste earthen materials discharged to waters as a result of excavation and other soil-disturbing activities in waters such as maintenance dredging, and non-stormwater discharges necessary for completion of the project such as from pipe flushing, vault pumping, etc. In addition, the application should describe all proposed discharges of waste to land, and/or activities in “isolated waters” or man-induced wetlands outside of ACOE jurisdiction, should any exist. Previously provided information need not be resubmitted with Form 200. However, it is important to describe all planned pollutant/waste discharges, and the specific discharge locations, in order for each to be included in the NPDES Permit/Waste Discharge Requirements.
4. Based on our review of the information provided, additional information is needed to determine appropriate requirements for certain proposed discharges. Such discharges include sediment and waste earthen materials discharged during dewatering operations associated with excavation activity at the planned Pump Station, the Keeler weir, and other locations. Please provide information on why land disposal is infeasible, or provide details of Best Management Practices, including treatment if necessary, to reduce pollutant discharges to the LADWP aqueduct and downstream waters to the maximum extent practicable. If excavation and maintenance dredging is to be conducted in flowing waters, we suggest use of suction dredging rather than clam-shell dredging, diversion or isolation of work areas from flowing waters, and other management practices such as flocculation with portable cyclone separators or similar treatment devices to remove suspended materials prior to discharge. These, or similar, Best Management Practices are recommended to maintain compliance with water quality objectives for receiving waters for the discharge(s).
5. Please provide the latitude and longitude coordinates of the point of discharge at the Pump Station outfall to the aqueduct.

B. Application for Section 401 Water Quality Certification

Delta Map 3 was provided with the information received on November 29, 2004. Large project areas within the Delta are not delineated with respect to wetlands, and are shaded pink as “Not Determined.” Please delineate wetlands within the project area, or provide information to justify why wetland delineation is not needed for these areas.

APPLICATION PROCESSING

As a potential discharger, you should be aware that no discharge may commence unless authorized by Waste Discharge Requirements and/or an NPDES Permit, unless otherwise permissible by statute. Until the information requested above is provided, your application is deemed incomplete, and relevant permitting timelines are suspended. In the case of an NPDES Permit, the Regional Board ordinarily has 180 days from receipt of a complete NPDES Permit

application to take action (issue or deny an NPDES Permit). In some cases, permitting can be completed in less time.

Once you provide the information required in this letter, it, along with the project description and technical information that you have already provided, will constitute a complete application. If you submit the above-requested application materials and information in a timely manner, we do not think the application processing timeline will be delayed. We intend to process your application for water quality certification, and an exemption from certain waste discharge prohibitions contained in the *Water Quality Control Plan for the Lahontan Region*, concurrently with the NPDES Permit/Waste Discharge Requirements for the Project. The following is an outline of tentative dates for significant permit actions:

January 21, 2005: We will mail "tentative" waste discharge requirements/NPDES permit in draft form for a 30-day public review and comment period. Comments would be solicited from LADWP and interested agencies and persons obtained from the mailing list from the Project *Final Environmental Impact Report* (June 23, 2003).

March 11, 2005: We will mail "proposed" waste discharge requirements in draft form for a 30-day public review and comment period prior to a public hearing on the proposed waste discharge requirements. The "proposed" requirements may be modified in response to comments received on the "tentative" draft. By the above date, we will publish a notice of the planned public hearing in newspapers of record and on the Internet.

April 13-14, 2005: The Regional Board will hold a public hearing on the "proposed" requirements at the Regional Board's regular meeting. The location has not yet been determined. This is the earliest potential date for adoption of waste discharge requirements/NPDES Permit by the Regional Board.

Please contact me at (530) 542-5436, or Alan Miller, Senior Water Resource Control Engineer, at (530) 542-5430, if you have any questions or concerns about the information requested here. We look forward to working with you in implementing the Project.



Lauri Kemper, P.E.
Division Manager, North Lahontan Watersheds

Enclosures: Form 200
Form 1

cc: EPA/Alexis Strauss
ACOE/Bruce Henderson
DFG/Alan Pickard
Inyo County/Chuck Thislethwaite
State Lands Commission/Dwight Sanders
California Department of Justice/Gordon Burns

AEM/dcc T:\LORP Application Incomplete letter.doc
[Lower Owens River Project, Inyo County]