



California Regional Water Quality Control Board

Lahontan Region



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Agency Secretary

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Arnold Schwarzenegger
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Douglas E. Eberhardt
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TRANSMITTAL OF PROPOSED ORDER AND RESPONSE TO COMMENTS ON TENTATIVE REQUIREMENTS – WATER QUALITY CERTIFICATION, WASTE DISCHARGE REQUIREMENTS, AND NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT FOR CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER, LOWER OWENS RIVER PROJECT, INYO COUNTY

The Regional Water Board received comments from the USEPA Region IX on June 9, 2005, concerning the above-cited tentative Order. Unless otherwise noted, comments and responses are with regard to the tentative Order released for public review on May 6, 2005. In general, USEPA comments concur with the tentative Order. Responses to issues raised follow.

Discrepancy in Expiration Date for Exemption from Discharge Prohibitions. The tentative Order cited either July 13, 2010, or 2015 as an expiration date. The dates have been corrected throughout the Order to **June 14, 2015**, as the intent was to allow up to ten years following Order adoption for construction completion, phasing in flows, and improvements in water quality before the standards again become applicable to the Lower Owens River.

Additional Partial Flushing Flows. USEPA commented favorably on this requirement for “releasing a 200 cfs flushing flow from the Alabama Spillgate to the Lower Owens River for a minimum period of 72 hours . . .” However, in response to objections from the Discharger we have modified the requirement, as follows.

Regional Water Board staff has developed an alternative flushing flow release regime from the Alabama Spillgate that will result in a very significant reduction in the amount of water used while achieving similar water quality effects. Briefly, the Order has been revised to require augmenting the first Winter Habitat Flow with releases from the Alabama Spillgate to achieve a 200 cfs flow rate at the Alabama Gate for a minimum period of 96 hours. The details of the revised release regime and technical rationale are explained in revised Attachment H. The net volume of water that would be released as a result of this requirement (and associated impact to the City’s water supply) is within the scope of the project approved by the LADWP Board of Water and Power Commissioners. Using the release estimates for the 200 cfs Seasonal/Winter Habitat Flows, we estimated approximately 1400 acre-feet of water would be delivered to the River below the Pump Station. We have conservatively estimated that with channel losses to the Alabama Gate of up to 25% of River Intake releases during the 200-cfs Seasonal/Winter Habitat Flow, the additional water needed to maintain a 96-hour, 200 cfs flow amounts to roughly 700 acre-feet, or half the water losses approved for the scheduled 2006-2007 Seasonal/Winter Habitat Flow that was to occur, but will not occur due to project delays. Actual water losses due to the Alabama Release are expected to be less than estimated above.

In granting an exemption to Basin Plan prohibitions for the Lower Owens River the Regional Water Board must find, in part, that “[a]ll applicable . . . mitigation measures have been incorporated into the project to minimize . . . potential adverse environmental impacts . . .” (Fact Sheet, p. F-19). We will therefore recommend revised flushing requirements as described in the proposed Order (see revised Order Attachment H). In addition, we have made other changes to the Order related to these matters: We have added a new section to the proposed Order. Under Special Provisions, Order Section VI.C., we’ve added No. 8, Prohibition Exemption and California Environmental Quality Act Requirements. We have moved WQC conditions in tentative Order sections VI.C.7.b.6 and 8 to this new section, and have added a condition that if LADWP does not implement the Alabama Release mitigation measure as required in the proposed Order, the exemption to discharge prohibitions for the Lower Owens River granted in Order Section III.B. is rescinded. The pertinent sections of the Fact Sheet have also been updated accordingly.

Protection Needed for Delta and Brine Pool. The comments raise concerns “about potential impacts to the Delta wetlands and Brine Pool areas as a result of reduced water flows” and request the Regional Board to include protections for these areas as additional conditions in the Order. The Delta was delineated and was included in the tentative Order within the LORP area that wetland re-delineations are to occur at specified intervals. These enforceable conditions are retained in the proposed Order (see proposed Order Section VI.C.7.b.4, Monitoring and Reporting Program Section IX.C, and the table titled “HGM Average Functional Unit Summary” on Fact Sheet p. F-12). Activities subject to Clean Water Act Sections 404 and 401 are proposed in the Delta area, and are included in the 401 certification Order. We have made minor changes and clarifications to these requirements in response to comments from the Discharger proposing an alternative schedule for the initial wetland reassessments (in year seven following establishment of base flow release to the river), and eliminating additional wetland reassessments if (and only if) the initial wetland reassessment demonstrates no net loss of wetland functions and values relative to pre-project conditions. Fact Sheet p. F-4 (2nd complete paragraph) of the tentative Order included findings addressing the comments concerning subsequent assessments. However, we have revised the schedule and modified the proposed Order to clarify the matter accordingly.

So far as we know, no discharges subject to Clean Water Section 404 (and hence 401) are proposed in the Brine Pool area. Impacts concerning the Brine Pool are associated with water rights and securing a water supply for this area in perpetuity, rather than with water quality. As such, the requested protections are outside of Regional Board authority to require and are not included in the Order.

Editorial and Typographical Corrections. Thank you for your review. Concerning the reference to the “. . .Secretary of the Interior [USEPA] . . .”; this quote is from a 1968 policy that preceded the formation of the USEPA. In context, we did not change the quote but indicated [USEPA] is the current entity concerned with overseeing the policy implementation.

Other changes and additions in the proposed Order have been incorporated in response to comments from the Discharger and from internal review. The proposed Order improves on the strong protections for water quality in the tentative Order. Thank you for your comments.

You may contact Lauri Kemper, at (530) 542-5436, or me at (530) 542-5430, if you should have any questions concerning the responses or wish to discuss the proposed Order that will be presented to the Regional Board for adoption at the public hearing scheduled for June 14, 2005 in Bishop.

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Attachment: Proposed Order