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August 30, 2021

Mr. Erik Ekdahl  
State Water Resources Control Board  
1001 I Street  
Sacramento, California 95814

Dear Mr. Ekdahl

Subject: Los Angeles Department of Water and Power Amended Water Rights  
Licenses 10191 and 10192

On July 12, 2021, Los Angeles Department of Water and Power (LADWP) received a draft Order from the State Water Resources Control Board (SWRCB) pursuant to LADWP's water rights licenses in the Mono Basin that causes significant concern. **To rectify these concerns, LADWP is requesting the SWRCB complete a full public trust balancing analysis and amend the Order to reflect those findings.**

In 2013, LADWP, Cal Trout, Mono Lake Committee and the SWRCB entered a landmark Settlement Agreement that we thought would mark a new era of collaboration in the Mono Basin. The Agreement was clear: LADWP would complete its ecological restoration projects in the region, finance ongoing environmental monitoring, build a multi-million-dollar structure that would deliver state-requested flows into the streams that run into Mono Lake, and in return, LADWP would receive an amended water rights license allowing exports of up to 16,000 acre-feet (AF) of water a year to meet water needs from families, workplaces, schools, other public facilities and disadvantaged communities in Los Angeles.

Over the years, the vision for cooperation often strayed from reality, but LADWP has remained committed to implementing this Agreement. This year, LADWP finalized the environmental impact documents for the construction of the structure – the final step in the Agreement – and submitted to the SWRCB our petition for an amended water rights license with the vocal support of the settling parties.

**We believe the document we received in return is legally deficient, failing to consider the full public trust balancing implications of LADWP's exports in the**

**Mono Basin, that are analyzed within our environmental impact documents on which the SWRCB will rely in deciding whether to adopt the draft Order, instead deferring a full analysis of the Department's exports to a future, undetermined hearing date. This deferment, in addition to our legal concerns, could have significant impacts on the water supply for millions of Angelenos, but most importantly, it is not in the spirit of the deal we've been working on for more than a decade.** Further reasoning for the deficiency and impacts of this Order is detailed below and simple redlines have been included in the attached which would rectify LADWP's concerns.

**1. The Public Trust Must be Considered Before Issuing a Water Rights License**

As determined by previous cases, the SWRCB has an "affirmative duty" to complete a comprehensive public trust analysis for a water rights order affecting "the planning and allocation of water resources." (*National Audubon Society v. Superior Court* (1983); *State Water Resources Control Board Cases* (2006); see also, Settlement Agreement and Release of Claims, *California Sportfishing Protection Alliance, et al. v. California State Water Resources Control Board and Thomas Howard*.) In the California Sportfishing Protection Alliance Settlement, the SWRCB committed to completing a "Transparent Public Trust Analysis" prior to approving temporary change petitions and memorialized its duty to consider and protect all beneficial uses to be made of water as well as public trust resources, and to balance competing interests. **This means, the "affirmative duty" must be done before the license is issued and water is used. But in the case of the proposed draft Order, the SWRCB seeks to implement LADWP's revised water rights license without analyzing whether the proposed exports would impact Mono Lake levels, writing:**

*"The lake level matter would take additional time and resources for all of the parties involved and it is in the best interest of the Mono Basin to begin the next phase of stream restoration and monitoring rather than defer progress by holding a hearing on both matters [Mono Lake elevation & water rights license] jointly."*

LADWP's Mitigated Negative Declaration (MND), or environmental documents, for the project provides more than sufficient information and analysis to support a complete public trust analysis, as well as a determination that LADWP's water deliveries and the current and projected rate of rise of the Mono Lake level are consistent with public trust obligations.

**Neglecting the analysis of whether LADWP's exports under the new licenses impact Mono Lake means that the public trust has not fully been considered and the license cannot legally be issued.**

## **2. SWRCB Cannot Consider the Public Trust of the Mono Basin Without Analyzing the Lake Levels**

The draft Order makes clear that the SWRCB now believes the streams and lake can be separated in its analysis of the public trust – deferring the analysis of the Lake to a later, undetermined date and thereby extending the water supply uncertainty that undermines LADWP’s duty to provide a safe and reliable water supply that is affordable for all its customers, including those in disadvantaged communities. **However, Mono Lake and its tributary streams have been treated holistically by the SWRCB for decades for good, scientific reason.**

The Lake’s health and increase in elevation can be directly tied to the water flowing through the streams into the basin – they are all part of one system. Over the last 40 years, in partnership with the SWRCB, LADWP has decreased its exports, managed the increased flows through the tributary streams to support the restorative health of the fisheries and other wildlife. The result: a vibrant ecosystem in the Mono Basin *and* higher lake elevation.

## **3. LADWP’s Environmental Impact Documents Provides Everything the SWRCB Needs to Consider the Full Public Trust Now**

Per California law, LADWP submitted with its petition to amend its water rights a full CEQA document that analyzes the public trust impacts of the new licenses, of course including a detailed analysis on the impacts on the Lake. The SWRCB dismisses this analysis, writing: “This Order does not directly address the lake level issue [Mono Lake elevation] since the proposed changes appear to have little-to-no direct bearing on the lake level...” **However, our environmental documents tell a different story.**

LADWP’s environmental review found a discrepancy between forecasted and actual elevations in Mono Lake. In 1994, SWRCB estimated that the longest period to reach 6,392 feet was 38 years or 2032. This model, however, did not take into account potential uncertainty in hydrology - for example, the severe drought of 2012-2015 which resulted in a decline of Mono Lake of nearly 6 feet. The new modeling included in the environmental documents suggests that Mono Lake will reach the 6,392 feet elevation on average in 22 years from now (or by 2042) and is not expected to stay above that elevation for 75 percent of the time.

SWRCB cannot ignore this information presented in the environmental documents and must take it into consideration in the evaluation of the public trust. **Through LADWP’s CEQA documents, the SWRCB has everything it needs to consider the full public trust balancing now, and it is legally obligated to do so, regardless of the “time and resources” it would expend.**

## **4. Mono Basin Provides Drinking Water for up to 192,000 Angelenos a Year**

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As written, the draft Order could have significant adverse impacts on LADWP's operations in the Mono Basin and the delivery of drinking water to millions of Angelenos. The Mono Basin currently provides up to 16,000 AF each year, enough water to serve 192,000 residents.

By deciding to consider the full public trust impacts at a later date, LADWP's water rights remain in limbo for an undetermined amount of time creating tremendous uncertainty and risk, leaving a door open for future challenges. All of this happening after LADWP begins construction of a \$30 million rate payer-funded structure at Grant Lake reservoir. **LADWP needs more clarity and protection in its water rights license to uphold its fiduciary responsibility to the City of Los Angeles.**

LADWP has made significant investments both outside and inside the City to balance supply needs with the environmental protection of the areas where we operate. We have decreased our exports from the Mono Basin by 80 percent and are actively expanding local supply projects to reduce reliance on imported, purchased water. LADWP is a leader in protecting long-term water supply reliability through water recycling, stormwater capture, groundwater replenishment and conservation. The results of that work are clear: Over the past 30 years, Angelenos have cut their water usage 40 percent, even as the City's population has increased by a million people, are moving towards a goal of a 100 percent wastewater recycled by 2035, and plan to double the stormwater capture capacity over the next 15 years.

We are optimistic that together we can employ the same forward-looking approach to implement our Agreement in a way that protects the public trust.

Attached please find LADWP's proposed edits to the draft order.

Sincerely,



Martin L. Adams  
General Manager and Chief Engineer

AC:vs

c: Ms. Nury Martinez, President, Los Angeles City Council  
Mr. Joe Buscaino, President Pro Tem, Los Angeles City Council  
Mr. Mitch O'Farrell, Chair, Los Angeles City Council Energy, Climate Change, Environmental Justice and River Committee  
Mr. Mark Ridley-Thomas, Vice Chair, Los Angeles City Council Energy, Climate Change, Environmental Justice and River Committee  
Mr. Joaquin Esquivel, Chair, State Water Resources Control Board  
Ms. Dorene D'Adamo, Vice Chair, State Water Resources Control Board

Mr. Sean Maguire, Board Member, State Water Resources Control Board  
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Ms. Nichole Morgan, Board Member, State Water Resources Control Board  
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Mr. Wade Crowfoot, Secretary, California Natural Resources Agency  
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Mr. Henry Stern, Chair, California State Senate Natural Resources and Water Committee  
Mr. Bob Hertzberg, Member, California State Senate Natural Resources and Water Committee  
Mr. Dennis O'Conner, Chief Consultant, California State Senate Natural Resources and Water Committee  
Mr. Eduardo Garcia, Chair, California State Assembly Water, Parks and Wildlife Committee  
Mr. Pablo Garza, Chief Consultant, California State Assembly Water, Parks and Wildlife Committee  
Ms. Angela Pontes, Senior Policy Advisor for Water, Governor's Office

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

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In the Matter of Licenses 10191 and 10192 (Applications 8042 and 8043)  
held by the

**City of Los Angeles, Department of Water and Power**

**DRAFT ORDER APPROVING PETITIONS FOR CHANGE  
AND ISSUING AMENDED LICENSES**

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SOURCES: Rush Creek, Lee Vining Creek, Parker Creek, and Walker Creek

COUNTY: Mono

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BY THE DEPUTY DIRECTOR:

**1.0 INTRODUCTION**

On November 13, 2014, the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) received petitions for change pursuant to California Water Code section 791, subdivision (e) from the City of Los Angeles, Department of Water and Power (LADWP or Petitioner) requesting changes to the terms and conditions of water rights Licenses 10191 and 10192 (Applications 8042 and 8043, respectively). The petitions include a request to modify flow regimes in four creeks tributary to Mono Lake as recommended in the 2010 *Mono Basin Stream Restoration and Monitoring Program: Final Report on Synthesis of Instream Flow Recommendations to the State Water Resources Control Board and the Los Angeles Department of Water and Power* (2010 Synthesis Report). The change in flow regimes would trigger the need for an outlet at Grant Lake Reservoir (GLR) to achieve such flows. Other changes include implementation of conditions consistent with the 2013 *Settlement Agreement Regarding Continuing Implementation of Water Rights Orders 98-05 and 98-07* (2013 Agreement) between LADWP and interested parties for the continuance of stream and habitat restoration of tributary creeks to Mono Lake.

This Order approves the change petitions, and issues amended Licenses 10191 and 10192 with updated terms and conditions to reflect the changes in flow regime and the 2013 Agreement.

## 2.0 BACKGROUND

### 2.1 LICENSES 10191 AND 10192

The petitions for change involve Licenses 10191 and 10192 (See Table 1), which were issued to the City of Los Angeles on January 25, 1974, by the State Water Board pursuant to Applications 8042 and 8043. The licenses authorize diversion and use of water from Rush Creek, Lee Vining Creek, Walker Creek, and Parker Creek for municipal use and power generation. LADWP imports water from the Mono Lake Basin and conveys these flows through the Los Angeles Aqueduct to the City of Los Angeles.

<b>Table 1: Summary of Water Right Licenses 10191 and 10192</b>
<b>Sources and Points of Diversion:</b>
(1) Lee Vining Creek - NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 20, T1N, R26E; (2) Walker Creek - NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 4, T1S, R26E; (3) Parker Creek - SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 9, T1S, R26E; (4) Rush Creek - NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 15, T1S, R26E, all within MDB&M
<b>Points of Rediversion:</b>
Grant Lake Reservoir - NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 15, T1S, R26E; Long Valley Reservoir - SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 19, T4S, R30E; Tinemaha Reservoir - NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 26, T10S, R34E; Los Angeles Aqueduct Intake – NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 24, T11S, R34E; Haiwee Reservoir - SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 2, T21S, R37E, all within MDB&M
<b>Amount:</b> 16,000 acre-feet per year in combination of both licenses
<b>Purposes of Use:</b> Municipal under License 10191 and Power Generation under License 10192

### 2.2 STATE WATER BOARD DECISION 1631

On September 28, 1994, the State Water Board adopted Water Right Decision 1631 (D1631), which revised the conditions of Licenses 10191 and 10192 to protect public trust resources in and around Mono Lake. The decision established minimum base flow and flushing flow requirements known as channel maintenance flows on four of the tributary streams to Mono Lake and set export criteria that are based on specific lake levels. The decision also set a Mono Lake level target of 6,391 feet above mean sea level (amsl) that, if not reached by September 28, 2014, triggers the need for a State Water Board hearing for reconsideration of diversion criteria based on the conditions of

Mono Lake and the surrounding area to determine whether further revisions to the licenses are appropriate. In D1631, the State Water Board also directed LADWP to evaluate potential restoration measures and to submit proposed plans for restoration of Rush, Lee Vining, Parker, and Walker Creeks, restoration of waterfowl habitat in the Mono Basin, and a plan for the operation of GLR.

The overall goals of the decision were (1) to achieve “fish in good condition” for Rush and Lee Vining creeks and (2) to restore the average water elevation of Mono Lake to approximately 6,392 feet amsl in order to protect public trust resources at Mono Lake.

### **2.3 WATER RIGHT ORDER 98-05**

Order 98-05 contemplated LADWP’s restoration, monitoring, and GLR operation plans and required LADWP to implement the plans, subject to the provisions of the order, as part of a Stream Restoration and Monitoring Program (Stream Program). The order established higher flushing flows known as Stream Restoration Flows (SRFs) for Rush, Lee Vining, Parker, and Walker creeks. The order approved a Stream Monitoring Team (SMT) to carry out stream restoration and monitoring in accordance with the program and established a process for the SMT to evaluate and make recommendations, based on the results of the monitoring program regarding the magnitude, duration, and frequency of the flows necessary for the restoration of Rush Creek and the need for a GLR bypass to reliably achieve the flows needed for restoration of Rush Creek below its confluence with the Mono Gate One Return Ditch (MGORD). The Order also provides for the SMT to make recommendations to the State Water Board regarding any recommended actions to preserve and protect the streams.

As part of this process, LADWP was directed to implement the recommendations unless they were determined to be infeasible. In the 2010 Synthesis Report, the SMT provided their recommendations regarding changes to the flow regimes (Stream Ecosystem Flows or SEFs to replace SRFs), modification of GLR facilities, and other measures to achieve the Stream Program goals of “functional and self-sustaining stream systems with healthy riparian ecosystem components” and “trout in good condition” for Rush and Lee Vining creeks. The State Water Board allowed LADWP 120 days to review the SMT’s recommendations and determine whether to implement them; LADWP determined that some of the changes, including implementation of the full range of SEFs and construction of a GLR outlet structure, were not feasible.

### **2.4 WATER RIGHT ORDER 98-07**

In Order 98-07, the State Water Board addressed three petitions for reconsideration filed by the National Audubon Society, Mono Lake Committee, and California Trout regarding when the Stream Program requirements of Order 98-05 may be terminated.

The petitioners and LADWP came to an agreement on language to modify the “Stream Monitoring” provisions of Order 98-05 and the State Water Board adopted revised language and dismissed the petitions for reconsideration.

The “termination criteria” approved in Order 98-07<sup>1</sup> include the following general parameters:

- acreage of riparian vegetation, including mature trees of sufficient diameter, height, and location to provide woody debris in the streams;
- length of main channel;
- channel gradient;
- channel sinuosity;
- channel confinement;
- variation of longitudinal thalweg elevation; and
- size and structure of fish populations

The termination criteria, as modified in Order 98-07, were developed as targets to guide stream restoration. In Order 98-07, the State Water Board acknowledged that not all termination criteria will be met and that certain conditions are not likely to be achieved; however, the termination criteria established a framework for monitoring the progress of the Stream Program and for re-focusing on outstanding restoration issues as new data and information inform the eventual determination that restoration has been achieved and monitoring is complete.

In 2007, the SMT submitted memoranda<sup>2</sup> to the State Water Board, which included reports on the status of fisheries, riparian vegetation, and geomorphic termination criteria and provided recommendations for modifying the termination criteria listed in Order 98-07 and for revising certain monitoring criteria and/or metrics. Although the SMT’s recommendations were not formally approved by the State Water Board, the recommendations were carried forward ancillary to the Stream Program.

In the 2010 Synthesis Report, the SMT indicated that the current termination criteria specified in Order 98-07 had served their purpose in guiding a quantitative assessment of stream ecosystem recovery over the past 12 years (at the time of the report), but had limited utility in the next phase of instream flow implementation and monitoring. The 2010 Synthesis Report identified specific areas of continued trend monitoring, which include:

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<sup>1</sup> Refer to page 4 of Order 98-07 for additional conditions/criteria listed together with the “Termination Criteria” as part of the revised Stream Monitoring term.

<sup>2</sup> A memo regarding fisheries criteria was submitted by Chris Hunter on May 18, 2007 and a memo regarding riparian vegetation and geomorphic criteria was submitted by McBain & Trush on December 21, 2006.

- GLR elevation, storage volume, and water temperature
- Stream and groundwater hydrology and stream temperature monitoring
- Geomorphic monitoring (aerial and ground photography, riffle crest elevations, deep pool and run frequency, sediment bypass operations)
- Riparian vegetation acreage
- Trout population metrics

These five components are included in the new stream restoration and monitoring requirements represented as Attachment 3 of the amended licenses.

## **2.5 2013 MONO LAKE SETTLEMENT AGREEMENT**

At the request of LADWP, Mono Lake Committee, California Trout, and California Department of Fish and Wildlife (Settlement Parties), the State Water Board granted additional time for resolution of differences regarding LADWP's infeasibility determination, and on September 24, 2013, the Settlement Parties entered an agreement regarding the recommended SEFs and related changes to the Stream Program required pursuant to Orders 98-05 and 98-07. The 2013 Agreement includes proposed changes that implement all recommendations of the 2010 Synthesis Report. The Settlement Parties have agreed that implementation of these recommendations is feasible, under the conditions established in the 2013 Agreement.

The purposes of the 2013 Agreement generally include: (a) resolution of disputes between the Settlement Parties related to the 2010 Synthesis Report; (b) provision and adaptive management of flows sufficient to complete stream restoration and fish protection required by D1631, Orders 98-05 and 98-07, and relevant case law, including modification of GLR to release such flows; (c) reduction in LADWP's costs associated with modification of GLR and ongoing monitoring programs; (d) re-focusing the Stream Program on adaptive management; and (e) related improvements in the limnology and waterfowl monitoring programs.

The 2013 Agreement also includes a stipulation to extend the target lake level hearing trigger to September 28, 2020. This issue will be addressed in Section 7 of this Order, as the Mono Lake surface elevation level did not reach the target by either the date specified in D1631 or the agreed-upon modified date identified in the 2013 Agreement.

## **3.0 SUBSTANCE OF THE PETITIONS FOR CHANGE**

The changes proposed in the petitions submitted by LADWP are to incorporate the provisions of the 2013 Agreement into Licenses 10191 and 10192 as terms and conditions. As noted above, the 2013 Agreement includes provisions for LADWP to implement all recommendations of the 2010 Synthesis Report. The proposed changes

would not alter the existing Mono Lake elevation criteria or the existing routine annual water export terms required by D1631.

### 3.1 CURRENT FLOW REQUIREMENTS AND PROPOSED CHANGES

#### **Rush, Lee Vining, Parker, and Walker Creeks: Current Operations/Requirements**

Current operations for Rush, Lee Vining, Parker, and Walker creeks are based on the requirements of D1631 and subsequent Orders 98-05 and 98-07. The minimum instream flows for each of these creeks and runoff year-type classifications are specified in D1631. Runoff years begin April 1<sup>st</sup> of each year and end March 31<sup>st</sup> of the following year and are based on LADWP's modeling projections for average runoff.

Operationally, flows are based on the guidelines of the *1996 Grant Lake Operations and Maintenance Plan* (GLOMP), which either meet or exceed all D1631 instream and channel maintenance flow requirements preceding Order 98-05. For ease of reference, State Water Board staff and the Settlement Parties have worked to incorporate all terms and conditions applicable to Licenses 10191 and 10192 into a single document for each Amended License, inclusive of the terms and conditions required by D1631, Orders 98-05 and 98-07, and the changes being approved by this Order.

The minimum instream flow requirements for Rush Creek range from 31 cubic feet per second (cfs) in "Dry" years to 80 cfs in "Wet" years. Until the water elevation in Mono Lake reaches 6,391 feet amsl, the required SRFs in Rush Creek range from 200 cfs in "Dry-Normal" years to 500 cfs in "Extreme-Wet" years. After the water elevation in Mono Lake reaches 6,391 feet amsl, the SRF requirements in Rush Creek would range from 100 cfs in "Dry-Normal" years to 500 cfs in "Extreme-Wet" years. SRFs are not required in "Dry" years and may be reduced in "Dry-Normal" and "Normal" years to maintain water exports as established in D1631. Existing facilities can currently accommodate up to 530 cfs via 380 cfs from GLR Outlet to the MGORD, and about 150 cfs through a facility known as the Five-Siphons Bypass. The GLR spillway can further increase flows beyond the flow limits of the MGORD and Five-Siphons Bypass if the reservoir is in a spill condition.

The minimum instream flow requirements for Lee Vining Creek (during the transitional period until Mono Lake reaches 6,392 feet amsl) range from 25 cfs in "Dry" years to 54 cfs in "Normal" and "Wet" years. There are no SRF requirements for Lee Vining Creek during the transition period, although Order 98-05 contains requirements for allowing the peak flow to pass or for the provision of flow-through conditions in certain year-types. SRF requirements for Lee Vining Creek during the post-transition period range from no requirement in "Dry" years to 350 cfs in "Extreme- Wet" years.

In “Dry” years, the minimum baseflow requirements for Parker and Walker creeks range from 4.5 cfs to 9 cfs. Flow-through conditions are the only SRF requirements for Parker and Walker creeks in all year-types except for “Dry” years when there is no requirement.

### **Rush and Lee Vining Creeks: Proposed Stream Ecosystem Flow Regime**

The 2010 Synthesis Report is based on a multitude of studies conducted over the course of many years of stream habitat and restoration monitoring in the Mono Basin. The recommended SEFs were developed as a shift in approach from “stream restoration” to “ecosystem maintenance” in order to meet specific ecosystem function targets as described in the 2010 Synthesis Report. Hydrologic year-type classifications are listed in Table 3 of the proposed amended licenses. In general, the SEFs differ from the current flow regime (i.e., minimum instream flows, channel maintenance flows, and SRFs) in the following ways:

- In Rush Creek and Lee Vining Creek, winter base flows will be lower; in Rush Creek peak flows will be higher in approximately 40 percent of the years (Wet-Normal, Wet, and Extreme-Wet years).
- In Lee Vining Creek, the pattern and reliability of peak flows will be modified.
- Parker Creek and Walker Creek will not be diverted.
- The pattern of flow throughout the year will match more hydrograph components in order to more closely mimic the pattern of an unimpaired snowmelt stream.

The 2010 Synthesis Report indicates that the fall and winter baseflows prescribed by D1631 for Rush and Lee Vining creeks are artificially high and likely contribute to low overall trout survival during winter periods. The proposed SEFs for these creeks include lower baseflows intended to increase winter holding habitat and increase adult trout condition factor<sup>3</sup> and survivorship. The higher short-duration peak flows proposed for these creeks in certain year types are necessary for transport and deposit of sediment, re-confining channels, and the re-building of floodplains.

The proposed SEFs include new diversion rules for Lee Vining Creek, which would eliminate the rapid drops in the receding limbs of the hydrograph caused by LADWP's diversions. Lee Vining Creek would be diverted most of the run-off year to increase the magnitude, duration, and frequency of GLR spills and to promote a cooler GLR pool for the tailwater fishery in Rush Creek. Lee Vining daily diversion rates would be based on the prevailing flow above the intake on Lee Vining Creek. The proposed amended licenses condition Lee Vining diversions so that (1) no diversions are allowed when streamflow is less than 30 cfs to protect riparian habitat and (2) no diversions are

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<sup>3</sup> Condition factor is generally calculated as a ratio between the observed weight and that expected from the observed length of individual fish and is used in fisheries management. The condition factor of a fish reflects physical and biological circumstances, and fluctuates by interaction among feeding conditions, parasitic infections and physiological factors (Le Cren 1951).

allowed when streamflow is greater than 250 cfs for protection of high flows, which enable geomorphic work in the stream.

The SMT also recommended that LADWP no longer divert water from Parker and Walker creeks in order to gain their flow accretion and year-round flow variability to Rush Creek below the narrows. Parker and Walker creeks were thus incorporated into SEF recommendations for lower Rush Creek.

A detailed comparison of SRFs and SEFs for Rush and Lee Vining creeks can be found in table format on pages 1-18 to 1-19 of LADWP's Final IS/MND.

### **3.2 CHANGES TO STREAM RESTORATION AND MONITORING PROGRAM**

#### **Current Mono Basin Stream Restoration and Monitoring Program**

Pursuant to D1631 and Orders 98-05 and 98-07, LADWP is to undertake certain activities in the Mono Basin to be in compliance with the terms and conditions of water right Licenses 10191 and 10192. The Orders require LADWP to monitor stream flows, and restore and monitor the fisheries, stream channels, Mono Lake limnology, and waterfowl habitat. Specific restoration and monitoring activities are described in the *1996 Mono Basin Stream & Stream Channel Restoration Plan* and the *1996 Mono Basin Waterfowl Habitat Restoration Plan*, which were approved by Order 98-05.

#### **Changes to the Mono Basin Stream Restoration and Monitoring Program**

As proposed in LADWP's petitions for change, future restoration and monitoring actions for the Stream Program are listed in the Stream Restoration and Stream Monitoring sections of the amended licenses and included in the Mono Basin Stream and Fish Monitoring Plan (Monitoring Plan, Attachment 3 of the amended licenses), which was developed by the SMT. The Monitoring Plan requirements for which LADWP is responsible include: (1) monitoring of sediment bypass facilities for Parker and Walker Creeks; (2) aerial photography surveys of riparian corridors every five years following "Wet" and "Extreme-Wet" years; and (3) a one-time test of the Five-Siphons Bypass facility to determine temperature effects between the Lee Vining conduit and Rush Creek.

Tasks to be performed by the SMT include monitoring of the following: (1) hydrology; (2) geomorphology; (3) channel roughness; (4) riparian vegetation (for Rush and Lee Vining creek corridors); and (5) fish population and habitat. Attachment 3 to the amended licenses includes a detailed description of monitoring to be conducted.

### **3.3 CHANGES TO GRANT LAKE RESERVOIR AND OPERATIONS**

The amended licenses require changes to the operations of GLR dam and other facilities to meet the new SEFs. LADWP will provide SEFs from GLR into Rush Creek as specified in Tables 1A through 1G for the applicable year types. Prior to completion of the modification of GLR Facilities to include an outlet (hereafter Grant Outlet), LADWP will provide such flows to the extent possible using the existing capacity of the Mono Gate One Return Ditch and reservoir spills. In order to meet the SEF requirements, LADWP will release water from storage at GLR if storage exceeds 11,500 acre-feet (AF). LADWP will reduce otherwise allowable export to maintain at least 11,500 AF of storage. If GLR is at or below 11,500 AF of storage, LADWP will bypass inflow or provide the flow requirement, whichever is less.

The proposed SEFs will also change GLR to operate at a higher stage during snow-melt runoff through near year-round diversion of Lee Vining Creek streamflow via the Lee Vining Conduit. The amended licenses also require LADWP to comply with minimum storage rules and criteria in order to provide cold water flow in Rush Creek.

As a result of the SEFs, operational changes are necessary at Grant Dam in order to manage a higher pool elevation and to deliver the peak flows recommended in the 2010 Synthesis Report. GLR will be subjected to more storage early in the season. Frequent (approximately daily) monitoring at the Grant Dam Toe Drain for changes in seepage characteristics from a higher pool elevation will be on-going to ensure that seepage characteristics of Grant Dam do not impact dam stability.

To provide more reliable peak flow operations in "Wet-Normal", "Wet", and "Extreme-Wet" year-types, Grant Dam will be modified at the spillway to allow peak flow delivery at varying pool elevations via the spillway. A new Grant Dam Spillway Gate will be added to allow for enhanced control of Grant Dam outflows especially during peak flow operations in the spring and summer months. The spillway gate structure will also be modified to accommodate two control gates.

The amended licenses include a timeline for deliverables and provisions to ensure appropriate regulatory approvals are in place for construction, operation, and maintenance of the spillway modification and Grant Outlet.

### **3.4 ALLOWANCE OF ONE-TIME ADDITIONAL EXPORT AMOUNT**

To offset the capital cost of constructing the spillway modification, the Settlement Parties agreed to, and the amended licenses include, a provision allowing LADWP a one-time export of an additional 12,000 AF of water from the Mono Basin in addition to the exports allowed in D1631. This additional export amount will be allowed when Mono Lake is at or above 6,380 and below 6,391 feet amsl, when exporting the

additional water would not affect compliance with minimum stream flows and GLR storage requirements. The export shall be in increments specified in the amended licenses associated with achieving spillway modification milestones. The additional export amount was evaluated in LADWP's Initial Study/Mitigated Negative Declaration (MND) with information from LADWP's eSTREAM model and was shown to not significantly increase the transition time to a Mono Lake elevation of 6,391 feet amsl. If the full export volume cannot be reached during a certain year due to operational constraints, LADWP may account for the remaining export quantity during future feasible year(s).

Although the additional export amount will not significantly increase the transition time to a Mono Lake elevation of 6391 feet amsl, LADWP's MND also evaluated the overall time to transition, as compared to the projections found in D-1631. LADWP's modeling work was necessary in order to evaluate the public trust impacts of continued water exports allowed under the proposed water rights licenses. The results of LADWP's examination of Mono Lake's time to transition, under the current lake level and export criteria, revealed material differences from the estimates made in D-1631.

The discrepancy is described in the MND:

Forecasts of the 1990 to 2020 period using the Mono Lake water balance equations in the LAAMP anticipate a lake level that is approximately 4.6 ft higher than actual historic levels. Appendix E of the MND identifies the potential for groundwater storage conditions to play an important role in transition time of the lake from lower to higher elevations. Further, LAAMP did not examine potential uncertainty in precipitation assumptions (e.g., that Cain Ranch precipitation rates are representative of precipitation onto the Mono Lake surface), evaporation assumptions (e.g., that the 48-inch per year average rate of evaporation from Mono Lake is representative of evaporation from the surface of Mono Lake), or other assumptions associated with hydrology information used in the water balance equations. These variables are likely to account for the discrepancy between forecast and historic elevations at Mono Lake according to LAAMP.

The updated eSTREAM model (extended to hydrology through runoff year 2019 and updated regressions) was used to simulate the License conditions to assess the implications of export volumes and Mono Lake elevation in a post-transition environment. These results reflect averages of 40-year simulations and indicate that the long-term export for the City is approximately 15,500 af per year for the Licenses. This value is approximately 50 percent of the long-term export identified in D1631. The notable reduction is due in part to operational constraints (e.g., Grant Lake storage target) and the stream release schedule prescribed in the Synthesis Report, updated Mono Lake forecasting equations, and use of the latest hydrologic data (e.g., 1990-2020) in eSTREAM. As described in Appendix E,

updated eSTREAM modeling under the terms of the proposed Licenses estimates that during the forecasted 40 years following attainment of the transition elevation, the target surface elevation of 6,391 feet amsl on Mono Lake would be met, on average, only one year in four

### **3.5 CHANGES TO WATERFOWL RESTORATION, WATERFOWL MONITORING, AND LIMNOLOGY MONITORING PROGRAMS**

#### **Waterfowl Restoration and Habitat Monitoring**

Per the 2013 Agreement, the Settlement Parties proposed revisions to the *1996 Waterfowl and Waterfowl Habitat Plan* (Waterfowl Plan) currently implemented by LADWP pursuant to Order 98-05. Revisions to the Waterfowl Plan are included in the amended licenses. The amended licenses also include a term which requires that the Waterfowl Program be carried out under the direction of a Waterfowl Director designated by the Deputy Director for Water Rights. The Waterfowl Program will also require aerial photography sufficient to identify changes in vegetation in waterfowl habitat areas in the Mono Basin, at Bridgeport Reservoir, and at Long Valley Reservoir.

#### **Mono Lake Limnological Monitoring**

The Mono Lake Limnology Monitoring Program (Limnology Program) includes monitoring of meteorology, lake limnology, phytoplankton, and brine shrimp. The Limnology Program will remain relatively unchanged except for the designation of a Limnology Director by the Deputy Director for Water Rights.

### **3.6 OTHER CHANGES RELATED TO 2013 SETTLEMENT AGREEMENT**

#### **Mono Basin Monitoring Administration Team**

The amended licenses incorporate provisions of the 2013 Agreement involving a Mono Basin Monitoring Administration Team (MAT) comprised of members of the Settlement Parties. The purpose of the MAT is to facilitate the implementation of the Stream Restoration and Monitoring Programs by expediting administration of contracts with the scientists assigned to conduct monitoring. The amended licenses contain conditions outlining governance, funding, administration, and termination of the MAT.

#### **Planning and Reporting Requirements**

Pursuant to the amended licenses, LADWP will continue to implement the revised *1996 Grant Lake Operations Management Plan* until the Deputy Director for Water Rights approves and LADWP implements the Mono Basin Operations Plan (MBOP), which

LADWP would develop, implement, and periodically revise and which specifies the rules, guidelines, and criteria for operation of Mono Basin facilities to meet all applicable requirements across all year-types. The MBOP, and any subsequent modifications of the plan, will be subject to review, modification and approval of the Deputy Director for Water Rights.

The amended licenses will also require LADWP to develop and submit an Annual Operations Plan (AOP), which specifies Mono Basin facilities operations consistent with the MBOP. The AOP will be developed with input from the SMT, Waterfowl and Limnology Directors, and the Settlement Parties and is to incorporate adaptive management recommendations of the SMT. The report is to be electronically submitted to the Deputy Director for Water Rights for review and approval, if necessary, prior to implementation.

The amended licenses will also require the SMT to prepare an Annual Monitoring Report, which specifies the monitoring to be conducted each year. The SMT may adjust priorities and other details for required monitoring tasks with the results of the monitoring used to: (i) inform adaptive management of the SEFs, restoration program, and operations of LADWP's Mono Basin facilities; (ii) inform the State Water Board and the public of the status of stream and fishery restoration; and (iii) serve as the basis for any further revisions to or termination of the monitoring program.

### **3.7 ADAPTIVE MANAGEMENT**

The requirements under the SEF, Stream Restoration and Monitoring Program sections of the amended licenses would be subject to adaptive (including real-time) management by the SMT in order to achieve the goals specified under Condition 19, item (d) of the amended licenses for termination of the Stream Restoration Program. The SMT will be able to recommend adaptive management of flow requirements in one of two ways: (1) in the Annual Monitoring Report and in comments on the AOP, for implementation in the following year; or (2) on a real-time basis in response to unforeseen circumstances.

### **4.0 PUBLIC NOTICE OF PETITIONS FOR CHANGE**

On February 10, 2021, the State Water Board issued public notice of LADWP's petitions. The State Water Board also issued the notice through its LYRIS email subscription notification system. No protests were received.

### **5.0 CALIFORNIA ENVIRONMENTAL QUALITY ACT**

LADWP is the lead agency for the preparation of environmental documents developed pursuant to the California Environmental Quality Act (CEQA) for the proposed project. The State Water Board is a responsible agency under CEQA for the purposes of

considering whether to approve LADWP's petitions for change. The State Water Board, as a responsible agency, must review and consider the environmental effects of the project identified in any CEQA document prepared and reach its own conclusions on whether and how to approve the project involved. (Cal. Code Regs., tit. 14, § 15096, subd. (a).)

LADWP prepared the following environmental documents that evaluated and disclosed the potential impacts of the proposed project on the environment and identified measures to avoid or minimize impacts:

- Final Initial Study and Mitigated Negative Declaration for the Mono Basin Water Rights Licenses Project (March 2, 2021)
- Mono Basin Channel Bed Degradation Estimates Technical Memorandum, Geosyntec Consultants (May 2019)
- Mono Lake Elevation Studies Technical Memorandum, Watercourse Engineering (October 2020)

On April 27, 2021, the Los Angeles Board of Water and Power Commissioners adopted the Final Initial Study and Mitigated Negative Declaration for the Mono Basin Water Rights Licenses Project (Final IS/MND) (SCH No. 2020110004). The Final IS/MND evaluated the potential environmental impacts of the proposed changes to the terms and conditions of Licenses 10191 and 10192 associated with implementation of the 2013 Agreement and the recommendations of the 2010 Synthesis Report. The Final IS/MND identified potential impacts to Biological Resources, Cultural Resources, and Geology/Soils in connection with the Project and identified mitigation measures to reduce these impacts to less than significant. Accordingly, the State Water Board, as a responsible agency under CEQA, finds there are no potentially significant and unavoidable impacts resulting from the project as evaluated by LADWP. All potentially significant impacts will be mitigated to less than significant levels through implementation of the mitigation measures identified in the Final IS/MND as well as the terms and conditions of the amended water right licenses approved by this Order. The Division intends to issue a Notice of Determination within 5 days of the issuance of this Order.

## **6.0 ANALYSIS OF PETITIONS FOR CHANGE**

Water Code sections 1700 through 1705 govern changes in the place of use, purpose of use, and point of diversion of water appropriated under the Water Code. Such changes must be approved by the State Water Board and “[b]efore permission to make such a change is granted the petitioner shall establish, to the satisfaction of the board, and it shall find, that the changes will not operate to the injury of any legal user of the water involved.” (Wat. Code, § 1702.) The petitioner must also establish that the

proposed change will not effectively initiate a new right. (Cal. Code Regs., tit. 23, § 791, subd. (a).)

As described below, the evidence in the record supports a finding that the proposed changes will not result in injury to any legal user of water and will not result in the initiation of a new right.

### **6.1 INJURY TO ANY LEGAL USER OF WATER**

There are no known water diverters below LADWP's points of diversion in the affected stream reaches. Accordingly, granting these changes will not result in injury to any other lawful user of water.

### **6.2 INITIATION OF A NEW WATER RIGHT**

To support a finding that a proposed change to a license will not initiate a new right, the State Water Board must determine that: (1) the right was properly established in accordance with the law; (2) recent beneficial use of the water subject to the right has occurred; and (3) there is evidence that continuous beneficial use of the water has occurred since the right was established.

LADWP is not seeking any change in source or point of diversion of Licenses 10191 and 10192. As amended by D1631 and subsequent Orders, Licenses 10191 and 10192 were properly established in accordance with the law. LADWP has submitted annual reports of water used under the licenses and the reports provide evidence that recent beneficial use of water has occurred, and continuous use of water has occurred since the licenses were granted. Based on these findings, the State Water Board has determined that granting the change petitions and amending Licenses 10191 and 10192 would not cause initiation of a new water right.

### **6.3 CONSIDERATION OF PUBLIC TRUST RESOURCES AND PUBLIC INTEREST**

The State Water Board has an independent obligation to consider the effect of approval of LADWP's petitions on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal. 3d 419 [189 Cal. Rptr. 346].) Public trust resources may include, but are not limited to, wildlife, fish, aquatic dependent species, streambeds, riparian areas, tidelands, and recreation in navigable waterways, as well as fisheries located in non-navigable waterways. In addition, it is the policy of this state that all state agencies, boards, and commissions shall seek to conserve endangered species and threatened species and shall use their authority in furtherance of the purposes of the California Endangered Species Act.

State agencies should not approve projects that would jeopardize the continued existence of any endangered species or threatened species if there are reasonable and prudent alternatives available consistent with conserving the species or its habitat that would prevent jeopardy. (Fish & G. Code, §§ 2053 & 2055.)

Proposed changes to the overall flow regime of the affected streams, Stream Monitoring and Restoration Program, and GLR and operations were based on the recommendations found in the 2010 Synthesis Report, which was the outcome of the SMT's monitoring and analysis in the Mono Basin over the last 23 years. The 2010 Synthesis Report states that the recommendations presented would accelerate the restoration of Rush, Lee Vining, Walker, and Parker Creeks, and improve associated habitats.

Division staff evaluated potential effects on public trust resources that could result from approval of the petitions for change. The proposed changes are predicated on current science and over two decades of studies conducted in the Mono Basin and the changes do not involve any modification to export amounts (other than the additional one-time 12,000 AF diversion amount which will help LADWP defray the costs of GLR outlet construction), or existing Mono Lake surface level elevation targets. The Mono Lake level elevation targets and related export criteria were a major part of the State Water Board's obligations in balancing of public trust in the Mono Basin in its prior decisions.

While the revised licenses do not propose to change either lake level or export criteria, the impacts from those terms differs from the projections made in D-1631. For example, D-1631 predicted that, under normal conditions, Mono Lake would reach transition by 2024 and would remain above the transition level in the majority of subsequent years. Today, however, we understand that under normal conditions, Mono Lake will likely not reach transition until at least 2042, and will only remain above 6392 feet amsl in twenty-five percent (25%) of subsequent years.

Potential environmental impacts associated with continued exports were evaluated in the lake level modeling, which is outlined in the MND. Mono Lake elevation, and changes in elevation, however, are largely a reflection of basin hydrology and climatology. Drier conditions lead to lake elevation recessions, and wetter conditions typically lead to increases in lake elevation. The link between climate variability and surface-elevation changes on Mono Lake is well-documented in scientific literature, with numerous studies describing the history of lake-elevation fluctuations on Mono Lake in response to long-term climate fluctuations.

Between the years 2009 and 2021, LADWP has filed 10 temporary urgency change petitions to the State Water Board in order to implement the SEF flows to the extent possible with existing facilities. In general, following TUCPs in wetter year-types, fisheries monitoring has shown increased productivity in trout populations following SEF releases and increased condition factor due to lower winter flows.

Potential environmental impacts associated with the proposed project were evaluated in the environmental documents prepared by LADWP. The SEFs specified in Tables 1 and 2 of the amended licenses will provide hydrologic variation which advances geomorphic and other ecological processes necessary for stream restoration. Although these flows may incidentally cause adverse impacts to the channel form, water quality, fisheries, or other resources of a given creek, such impacts were determined to be less-than-significant under CEQA and the State Water Board will not require LADWP to remediate those temporary impacts other than through the adaptive management processes identified in the amended Licenses.

The amended licenses contain SEF tables for Rush Creek, which include target ramping rates. The State Water Board finds that these target SEF rates are useful guidance to maximize biological benefits during flow changes. However, these SEF rates, which are expressly stated as targets, are not license compliance requirements. Since many of these SEF rates are not achievable with current and potential future LADWP facilities because of the hydraulic characteristics and size of the equipment and facilities, location, timing of flows, etc., the amended licenses do not require that LADWP modify facilities to achieve these targets.

The changes proposed for the Waterfowl Restoration, Waterfowl Habitat Monitoring, and Limnology Monitoring programs are enhancements or updates to the current programs and would not have negative effects on public trust resources or the public interest.

The amended licenses are also subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water.

With the conditions identified in LADWP's environmental documents and the conditions identified in this Order below, the State Water Board finds that issuance of the amended licenses with the proposed changes will not have an unreasonable effect on public trust resources and is consistent with the public interest.

## **7.0 CONCLUSION**

The State Water Board recognizes the hard work, dedication, and commitment of the LADWP, Mono Lake Committee, California Trout, California Department of Fish and Wildlife, Dr. William "Bill" Trush and Mr. Ross Taylor, their teams, and others that have played a role in the Mono Basin Stream Restoration and Monitoring Program, which has greatly benefited the Mono Lake Basin. The State Water Board anticipates that the next phase of the Program, which is science-based and enables an even greater level of

involvement and commitment among Stakeholder Parties, Mono Lake and its streams, fisheries, and riparian corridors will be set on a trajectory to reach and perhaps surpass stated Program goals.

The State Water Board finds that the petitions for change will not operate to the injury of any legal user of the water involved and that it is in the public interest to approve the requested changes. (Wat. Code, § 1702.)

The State Water Board finds that implementation of the amended licenses will improve the conditions of the fisheries and creeks as compared to implementation of the existing requirements in D1631 and Orders 98-05 and Order 98-07. While such implementation could have temporary incidental impacts on the channel form, water quality, fisheries, or other resources of a given creek, any such impacts would be de minimis compared to the benefits resulting from flow schedules which are as consistent as possible with restoring the ecological processes and conditions that benefited the pre-1941 fishery as described in the hearing record for D1631. Adaptive management of flows required by the amended licenses will further increase ecological benefits, as monitoring improves our understanding of how best to manage flows to restore ecological processes and beneficial conditions in these creeks.

Adoption of this Order concludes the study process required by Order 98-05 paragraphs 1.b(2)(a) and (b), resolves all disputes about the feasibility of implementing the 2010 Synthesis Report, and avoids the costs and delay otherwise resulting from administrative and other litigation associated with this process and report. This Order constitutes the State Water Board's final determination of the magnitude, duration, and frequency of the stream flows necessary for the restoration of Rush, Lee Vining, Parker, and Walker Creeks pursuant to D1631 and Order 98-05, subject to (i) adaptive management and (ii) the State Water Board's general authority. LADWP's performance of the measures specified in this Order, including funding obligations, along with its performance of any preexisting obligations that are not changed by this Order, constitute all of LADWP's obligations for stream restoration, fish protection, and the related monitoring program under D1631 and Orders 98-05 and 98-07, and LADWP will not be subject to any additional requirements for stream restoration and fish protection under the authorities of that Decision and those Orders.

Consistent with D1631 and Orders 98-05 and 98-07, this Order designates a Stream Monitoring Team to undertake assigned tasks related to stream and fisheries monitoring, and also designates scientists to undertake monitoring of waterfowl and Mono Lake limnology. These scientists will report to the Deputy Director as provided in the appropriate provisions of the amended licenses.

**ORDER**

**NOW, THEREFORE, IT IS ORDERED THAT THE PETITIONS FOR CHANGE FOR WATER RIGHT LICENSES 10191 AND 10192 (APPLICATIONS 8042 AND 8043) ARE APPROVED AND AMENDED WATER RIGHT LICENSES 10191 AND 10192 ARE ISSUED WITH THE FOLLOWING CHANGES:**

1. Dr. William "Bill" Trush and Mr. Ross Taylor are hereby designated as the Stream Monitoring Team and Dr. John Melack is designated as the Limnology Director. Within six months of this Order, the Deputy Director for Water Rights shall designate a Waterfowl Director as provided in the "Waterfowl and Waterfowl Habitat Monitoring Program" condition, item (b)(2) of the amended licenses.
2. This Order and Amended Licenses 10191 and 10192 shall supersede the requirements in State Water Board Order WR 98-07 in regard to the termination criteria as described in that Order. All other requirements in Order 98-07 affecting these amended water right licenses remain in effect until terminated by operation of law or action of the State Water Board.
3. The City of Los Angeles, Department of Water and Power's bypass of the flows to Walker and Parker creeks, as described in the "Stream Ecosystem Flows" section of the amended licenses, is a condition of the amended licenses and is not an abandonment of right.

Dated: