



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Via Email

September 8, 2021

Erik Ekdahl
Deputy Director, Division of Water Rights
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95814

**Subject: Draft Order Approving Petitions for Change and Issuing Amended
Licenses in the Matter of Licenses 10191 and 10192 held by the City of Los
Angeles, Department of Water and Power**

Dear Mr. Ekdahl:

The California Department of Fish and Wildlife (CDFW) has received a copy of a letter sent to you dated August 30, 2021, in which the Los Angeles Department of Water and Power (LADWP) objected to the Division's July 12, 2021, draft order approving the Change Petitions based on the 2013 Settlement Agreement among LADWP, CDFW, Mono Lake Committee and California Trout (collectively the Parties). LADWP took the position that the State Water Board must "complete a full public trust balancing analysis" of lake level and exports, before acting on the terms of the Settlement Agreement related to the streams. LADWP's position is inconsistent with the terms of the Settlement Agreement.

The 2013 Settlement Agreement, which is the basis for the petitions filed by LADWP in 2013 and the resulting Draft Order, was the result of three years of negotiation following disputes regarding the *Mono Basin Stream Restoration and Monitoring Program: Synthesis of Instream Flow Recommendations to the State Water Resources Control Board and Los Angeles Department of Water and Power, Final Report* (April 30, 2010) (2010 Synthesis Report). Section 3 of the 2013 Settlement Agreement states the purposes of the Agreement as (1) resolution of disputes regarding the 2010 Synthesis Report, (2) provision and adaptive management of flows to complete stream restoration, including modification of Grant Lake Reservoir, (3) refocusing the stream monitoring program, and (4) reduction in LADWP's costs associated with modification of Grant Lake Reservoir and ongoing monitoring. In sum, the 2013 Settlement Agreement is an agreement regarding *stream restoration*, not lake level or LADWP exports.

Appendix 1, Condition 8 of the 2013 Settlement Agreement does acknowledge the lake level of Mono Lake. In 2013, when the Agreement was signed, that provision would have granted LADWP a six-year delay of the previously ordered trigger date for a State Water Board hearing on the condition of Mono Lake. The Parties acknowledged that while the 2013 Settlement Agreement was focused solely on stream restoration,

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eventually, after the Grant Lake Reservoir outlet had been constructed (presuming that the Draft Order would have been approved by the Water Board some time in 2014) and potentially after LADWP had taken advantage of the 12,000 acre feet of additional export that had been provided to LADWP to help offset the cost of constructing the Grant Lake Reservoir outlet, the Parties and LADWP would need to turn their attention to the lake level of Mono Lake.

LADWP's current position that a full public trust balancing analysis, that includes a long-term analysis of Mono Lake level and LADWP exports, is inconsistent with the terms of the 2013 Settlement Agreement. As stated in Section 3, the 2013 Settlement Agreement was focused on resolving disputes regarding stream restoration and as put forward in Condition 8, the Parties acknowledged that a larger lake level hearing would be required separate and apart from the stream restoration provisions of these licenses.

CDFW urges the State Water Board to adopt the Draft Order for Water Right Licenses 10191 and 10192. Attached to the August 30, 2021 letter from LADWP to the State Water Board was a redline of the Draft Order. CDFW does not object to the change suggested by LADWP to delete the second sentence of Ordering Paragraph 2 of the Draft Order.

Thank you for your consideration of these comments. If you have any questions, please contact Trisha Moyer, Senior Environmental Scientist, at 760-835-4304 or Patricia.moyer@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Alisa Ellsworth For
84FBB8273E4C480...

Leslie MacNair
Regional Manager

Cc: California Department of Fish and Wildlife
Alisa Ellsworth, Environmental Program Manager
Alisa.Ellsworth@wildlife.ca.gov

Trisha Moyer, Senior Environmental Scientist, Supervisory
Patricia.Moyer@wildlife.ca.gov

Nancee Murray, Senior Staff Counsel
Nancee.Murray@wildlife.ca.gov

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Deputy Director, Division of Water Rights
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Robert Hughes, Senior Hydraulic Engineer
Robert.Hughes@wildlife.ca.gov

Mono Lake Committee
Geoffrey McQuilken, Executive Director
Geoff@monolake.org

Winter King, Attorney
king@smwlaw.com

CalTrout
Sandra Jacobson
SJacobson@caltrout.org

LADWP
Martin Adams
Martin.Adams@ladwp.com

David Edwards
David.Edwards@ladwp.com

Dave Martin
Dave.Martin@ladwp.com

Water Board
Scott McFarland
Scott.McFarland@waterboards.ca.gov

Samuel Boland-Brien
Samuel.Boland-Brien@waterboards.ca.gov