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DEPARTMENT OF FISH AND WILDLIFE  
Inland Deserts Region  
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GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

December 14, 2020  
*Sent via email*

Dec 14 2020

## STATE CLEARINGHOUSE

Jane Hauptman  
Los Angeles Department of Water and Power  
111 N Hope Street, Room 1044  
Los Angeles, CA 90012  
Jane.Hauptman@ladwp.com

Mono Basin Water Rights Licenses Project (PROJECT)  
MITIGATED NEGATIVE DECLARATION (MND)  
SCH# 2020110004

Dear Ms. Hauptman:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the Los Angeles Department of Water and Power (LADWP, Lead Agency) for the Mono Basin Water Rights Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

CDFW submits these comments in support of the proposed amendments to LADWP's Mono Basin water and power licenses, which are the subject of the "Initial Study and Mitigated Negative Declaration for Mono Basin Water Rights Licenses Project" circulated for public comment on October 30, 2020. These proposed amendments are designed to restore four Mono Lake tributaries and are the result of decades of study and analysis, as well as a 2013 Settlement Agreement entered into by LADWP, CDFW, the Mono Lake Committee (Committee), and California Trout (CalTrout).

In short, CDFW agrees with the MND's conclusion that the proposed license amendments will have no significant, adverse and unmitigable environmental impacts. We submit these comments to voice support for the project and to propose corrections for specified incorrect factual statements.

### CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources, and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7,

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.).

## **PROJECT BACKGROUND**

The proposed license amendments analyzed in the MND are the direct result of the 2013 Settlement Agreement referenced above. Decision D-1631, adopted by the State Water Resources Control Board (SWRCB) in 1994 required that LADWP develop plans to “to restore, preserve, and protect the streams and fisheries in Rush Creek, Lee Vining Creek, Walker Creek, and Parker Creek . . . The restoration plans shall include elements for improving instream habitat for maintaining fish in good condition.”

In 1998, the SWRCB provided further direction to LADWP about the contents of these stream restoration plans. For example, Order 98-05 ordered LADWP to include in any stream restoration plan specific “Stream Restoration Flows” or “SRFs.” It also ordered LADWP to fund and implement a stream monitoring program, to be carried out by independent scientists approved by the Chief of the Division of Water Rights. The objective of this stream monitoring program was to “evaluate and make recommendations . . . regarding the magnitude, duration and frequency of the SRFs necessary for the restoration of Rush Creek; and the need for a Grant Lake bypass to reliably achieve the flows needed for restoration of Rush Creek below its confluence with the Rush Creek Return Ditch.”

In April 2010, after twelve years of monitoring and analysis, the independent scientists approved by the Chief of the Division of Water Rights presented their recommendations on stream flows and the necessity of a Grant Lake outlet in *Mono Basin Stream Restoration and Monitoring Program: Synthesis of Instream Flow Recommendation to the State Water Resources Control Board and the Los Angeles Department of Water and Power, Final Report* (April 30, 2010) (“Synthesis Report”). Consistent with the Board's orders, the Synthesis Report described the studies that had been conducted, recommended changes to flows to better restore Mono Lake's tributaries, and

concluded that a Grant Lake outlet was necessary to reliably provide the recommended peak flows in Rush Creek.

LADWP objected to many of the recommendations in the Synthesis Report, claiming that certain recommendations were infeasible. To resolve these objections LADWP, CDFW, the Committee, and CalTrout engaged in a facilitator-led process that eventually led to the 2013 Settlement Agreement. In short, the 2013 Settlement Agreement required LADWP to request certain, specified amendments to its Mono Basin water and power licenses.

## **COMMENTS AND RECOMMENDATIONS**

### **Section 1.2**

The text of Section 1.2 includes the sentence, “It is a finding of the Settlement Agreement that Mono Lake will continue, on average, to rise towards the transition level of 6,391 feet above mean sea level (amsl) as previously forecast by the SWRCB.” While the Settlement Agreement contained proposed findings of fact, the Settlement Agreement did not itself contain findings of fact. Also, the Settlement Agreement did not address the existing, continuing export of water from the Mono Basin. Instead, the Settlement Agreement proposed a one-time Additional Export of 12,000 acre feet to help offset the cost of building the Grant Lake outlet. A more correct statement for this section would be, “It is a proposed finding of the Settlement Agreement that the 12,000 acre feet of additional export will not materially delay the date when Mono Lake reaches 6,391 feet MSL.”

#### **Section 1.2.1.2**

The text of Section 1.2.1.2 includes the sentences, “This review determined that overall, the metrics of the termination criteria have reached restoration success standards. However, based on direction from the SWRCB and consistent with the recommendations documented in the Synthesis Report, LADWP has elected to move forward with the spillway modification to reliably implement SEFs.” These sentences are not correct and should be deleted in the final MND. Chapter 7 of the Synthesis Report states that the termination criteria had not been met. Instead, the Settlement Agreement and the proposed License Amendments delete the termination criteria and focus on implementing the Stream Ecosystem Flows with the Grant Lake outlet modification and providing for additional monitoring.

#### **Section 1.2.2**

This section contains the below sentence which is technically not correct.

“The Licenses accommodate SWRCB’s management of public trust resources given documented findings in the Settlement Agreement.”

This sentence should be deleted from the final MND. The Settlement Agreement contained proposed findings. The SWRCB will evaluate the final MND and make actual findings in its eventual decision on the proposed License Amendments.

This section also contains the below sentence:

The proposed Licenses would not alter the existing Mono Lake elevation criteria or the existing routine annual water export terms, consistent with the Settlement Agreement finding that Mono Lake will continue, on average, to rise towards the transition level of 6,391 feet amsl as previously forecast by the SWRCB.

The *Synthesis Report* and the Settlement Agreement that resulted from a dispute regarding the recommendations for stream flows in the *Synthesis Report* did not address Mono Lake elevation criteria or existing routine annual water exports. The Settlement Agreement did address the proposed Additional Export of 12,000 AF on a one-time basis to help LADWP offset the cost of construction of the Grant lake outlet. As stated above, a correct statement here would be, “It is a proposed finding of the Settlement Agreement that the 12,000 acre feet of additional export will not materially delay the date when Mono Lake reaches 6,391 feet MSL.”

#### **Section 1.4**

The “project description” section of the MND (Section 1.4) states that the project also includes “[c]ontinued export of water to Los Angeles of 16,000 af per year pre-transition (the period until Mono Lake reaches the 6,391-ft amsl management level)” and “[c]ontinuation of SWRCB’s protection of public trust resources prior to and following the attainment of the management level of Mono Lake, including municipal needs.” The continuation of existing license conditions is not part of the project but rather part of the baseline. Likewise, in considering approving the proposed License Amendments, the SWRCB need not determine whether other, unchanged license conditions are consistent with the protection of public trust resources and beneficial uses of water. The language in the MND referring to the continued export as a part of the project description is incorrect and should be deleted.

#### **Section 1.4.8**

This section contains the sentence, “The Settlement Agreement set the hearing date at September 28, 2020.”

This sentence is incorrect and should be corrected in the final MND. D-1631 states, "In the event that the water level of Mono Lake has not reached an elevation of 6,391 feet by September 28, 2014, the Board will hold a hearing to consider the condition of the lake and surrounding area, and will determine if any further revisions to this license are appropriate." The Settlement Agreement, and resulting proposed License Amendments, would change the date referenced in D-1631 from September 28, 2014 to September 28, 2020. The Settlement Agreement and resulting proposed License Amendments did not set a hearing date, D-1631 did not set a hearing date, and the final MND should correct that factual mistake.

Also in this section is the below language:

Mono Lake has risen 8 feet since D1631, and per the SWRCB, rising lake levels continue to protect public trust resources balanced in D1631. The Settlement Agreement noted that Mono Lake will continue, on average, to rise towards 6,391 feet amsl, and the trend in lake level remains within the ranges previously forecast by the SWRCB for this transition period.

The first sentence should be deleted because it incorrectly implies that the SWRCB has already made a determination regarding the proposed License Amendments. The SWRCB is a responsible agency for this project and will make its determination regarding the project after it receives the final MND.

As noted above, the second sentence should be corrected to more accurately reflect the language in the Settlement Agreement which states, "It is a proposed finding of the Settlement Agreement that the 12,000 acre feet of additional export will not materially delay the date when Mono Lake reaches 6,391 feet MSL."

## **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: [http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB\\_FieldSurveyForm.pdf](http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf). The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: [http://www.dfg.ca.gov/biogeodata/cnddb/plants\\_and\\_animals.asp](http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp).

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## **FILING FEES**

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

## **CONCLUSION**

CDFW strongly supports the proposed amendments to LADWP's Mono Basin licenses and the MND's conclusion that those amendments will have no significant, adverse impacts to the environment. To the extent the MND contains several factual errors, as noted above, CDFW respectfully requests those errors be corrected in the final MND.

Questions regarding this letter or further coordination should be directed to Rose Banks, Environmental Scientist, at [Rose.Banks@wildlife.ca.gov](mailto:Rose.Banks@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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