MINUTE ITEM
This Calendar Item No. 93 was approved as Minute Item No. 93 by the California State Lands Commission by a vote of 3 to 0 at its 5/12/97 meeting.

CALENDAR ITEM
93

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05/12/97
W503.1026
M. Valentine

CONSIDER AN AGREEMENT TO SETTLE A DISPUTE INVOLVING THE CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER AT MONO LAKE, CALIFORNIA

APPLICANTS:

Los Angeles Department of
Water and Power
%Thomas W. Birmingham
Kronick, Moskovitz, Tiedemann
and Girard
400 Capitol Mall, 27th Floor
Sacramento, California 95814

Mono Lake Committee and
National Audubon Society
%F. Bruce Dodge
Morrison and Foerster
425 Market Street
San Francisco, California 94105

California Department of Fish
and Game
%Virginia Cahill
McDonough, Holland and Allen
555 Capitol Mall. Suite 950
Sacramento, California 95814

California Department of Parks and Recreation
%Mary Scoonover, DAG
Office of the Attorney General
1300 I Street, Suite 1101
Sacramento, California 95814

California Trout, Inc.
Richard Roos-Collins
Natural Heritage Institute
114 Sansome Street, Suite 1200
San Francisco, California 94104

United States Forest Service
c/o Jack Gipsman
Office of General Counsel
U.S. Department of Agriculture
33 New Montgomery Street, 17th Floor
San Francisco, California 94105-9411

United States Bureau of Land Management
Attn: Terry Russi
Bishop Resource Area
785 N. Main Street, Suite E
Bishop, California 93514

BACKGROUND

Mono Lake, situated in Mono County east of the Sierra Nevada, lies at the bottom of a watershed which has no outlet. The lake is highly saline. Since 1941 the Los Angeles Department of Water and Power (LADWP) has diverted the flows of four tributary streams from Mono Lake resulting in a drop in surface elevation from 6417 feet above sea level in 1941 from a historic low stand of 6372 feet above sea level in 1982. In 1979 the Mono Lake Committee, the National Audubon Society and certain other

parties filed litigation against LADWP seeking to require Los Angeles to allow more water to flow into Mono Lake. In parallel litigation filed in 1985, California Trout, National Audubon Society and Mono Lake Committee sought to have LADWP's Mono Basin water rights licenses rescinded because they failed to include conditions requiring sufficient flows through the diversion facilities for protection of fish in the four affected streams. In 1989 the El Dorado Superior Court, before which the litigation had been consolidated, entered interim relief and stayed further proceedings pending a review of LADWP's Mono Basin water rights by the State Water Resources Control Board (State Board).

In 1994 the State Board issued a decision on LADWP's Mono Basin water rights licenses. Among other things, the decision set minimum flows in the tributary streams for fisheries purposes and adopted minimum (6377 feet above sea level) and "transition" elevations (6392 feet above sea level) for the lake itself. In addition, the State Board required that LADWP prepare and submit to the State Board, for its consideration and approval, a stream restoration plan and a waterfowl habitat restoration plan. The waterfowl habitat restoration plan was ordered in recognition of the fact that waterfowl habitats and waterfowl uses which existed in the pre-diversion period would not be restored even at the target elevation of 6392 feet. LADWP has prepared and presented to the State Board its proposed waterfowl and stream restoration plans and the State Board has convened proceedings to consider objections to these plans.

During the course of these proceedings before the State Board, most of the parties have engaged in discussions with a view toward settlement of all outstanding issues. These discussions have borne fruit in the form of a proposed settlement agreement which has been submitted to the State Board on behalf of LADWP, the Mono Lake Committee, the National Audubon Society, California Trout, California State Lands Commission, California Department of Fish and Game, California Department of Parks and Recreation, United States Forest Service, and United States Bureau of Land Management. The agreement has not been endorsed by certain parties to the proceedings before the State Board including the People for Mono Basin Preservation.

THE AGREEMENT

The proposed settlement contains two principal components. These involve issues related to the: 1) tributary streams, such as channel maintenance flows, monitoring of impacts on the fisheries resulting from restoration activities and flow regimes, criteria for determining when monitoring can be terminated, and bypass of sediments below

LADWP's point of diversion; and 2) waterfowl habitat restoration. In summary, the agreement contains the following principal components.

Streams: LADWP will implement its Stream and Channel Restoration Plan dated February 29, 1996, with certain additions including:

1. Flows to maintain the tributary streams are set by year type (for example, dry/normal, normal, dry, etc.);

2. A program, funded by LADWP, to monitor the impacts of restoration activities on the streams is set out;

3. Criteria for termination of stream monitoring are set forth;

4. LADWP will fund the analysis of sediment bypass and the design of a sediment bypass system for its Walker, Parker and Lee Vining diversions; and

5. A program for operation of Grant Lake is set forth.

Waterfowl: LADWP will, in satisfaction of its waterfowl habitat restoration obligations, under the State Board's orders:

1. Pay $3.6 million for waterfowl habitat restoration and monitoring and environmental review associated therewith, said monies to be disbursed for these purposes by a Mono Basin Waterfowl Habitat Restoration Foundation (see below);

2. Reopen channels of Rush Creek which have been clogged with debris;

3. Use its Mill Creek water rights for waterfowl restoration; and

4. Continue limnological monitoring of the lake from the present until ten years after Mono Lake reaches a surface elevation of 6392 feet.

Certain of the parties to the Mono Lake water rights proceedings propose to enter into an agreement to implement item #1 above under "Waterfowl." Parties to this proposed agreement are California State Lands Commission, California Department of Parks and

Recreation, California Department of Fish and Game, Mono Lake Committee, National Audubon Society and United States Forest Service. If approved, the agreement would create the Mono Basin Waterfowl Habitat Restoration Foundation. The agreement has the following provisions:

1. The Foundation would receive from LADWP $3.6 million for restoration of habitat in the Mono Basin, including monitoring activities and environmental review of proposed restoration activities;

2. The Foundation would review monitoring data, assess habitat restoration projects and make decisions on future expenditures from the restoration fund;

3. $750,000 of the $3.6 million would be allocated for waterfowl monitoring for the next ten years and for creation of open water habitats in the Mono Basin;

4. The parties would recognize that restoration of the Mill Creek system by returning most or all of its natural flow to the stream has been found by a panel of waterfowl scientists to be second only to raising the level of Mono Lake in importance to waterfowl habitat restoration; and

5. The parties would propose, as a project, the waterfowl scientists' recommendations for Mill Creek subject to compliance with analytical, mitigation and other requirements of the California Environmental Quality Act and National Environmental Policy Act.

Authority is requested to enter into the settlement agreement and waterfowl habitat restoration agreement as outlined above in the form of the documents on file in the office of the Commission and to participate in all judicial or other proceedings as may be necessary to effectuate their terms.

PERMIT STREAMLINING ACT DEADLINE:

N/A

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15061), the staff has determined that this

activity is exempt from the requirements of the CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The staff believes there is no possibility that this project may have a significant effect on the environment.

Authority: 14 Cal. Code Regs. 15061(b)(3).

2. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a categorically exempt project. The project is exempt under Class 7, Actions by Regulatory Agencies for Protection of Natural Resources; 14 Cal. Code Regs. 15307.

   Authority: Public Resources Code Section 21084 and 14 Cal. Code Regs. 15300.

3. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a categorically exempt project. The project is exempt under Class 8, Actions by Regulatory Agencies for Protection of the Environment; 14 Cal. Code Regs. 15308.

   Authority: Public Resources Code Section 21084 and 14 Cal. Code Regs. 15300.

4. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code Section 6370, et seq. But will not affect those significant lands.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 BECAUSE THERE IS NO POSSIBILITY THAT THE ACTIVITY MAY HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT; (14 CAL. CODE REGS. 15061(b)(3)).

2. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 7, ACTIONS BY REGULATORY AGENCIES FOR PROTECTION OF NATURAL RESOURCES; 14 CAL. CODE REGS. 15307.

3. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 8, ACTIONS BY REGULATORY AGENCIES FOR PROTECTION OF THE ENVIRONMENT, 14 CAL. CODE REGS. 15308.

4. FIND THAT THIS ACTIVITY WILL INVOLVE LANDS IDENTIFIED AS POSSESSING SIGNIFICANT ENVIRONMENTAL VALUES PURSUANT TO PUBLIC RESOURCES CODE SECTION 6370, ET SEQ., BUT THAT SUCH ACTIVITY WILL HAVE NO DIRECT OR INDIRECT EFFECT OF SUCH LANDS.

5. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEES TO EXECUTE THE DOCUMENTS NECESSARY TO FINALIZE THE SETTLEMENT IN ACCORDANCE WITH THE TERMS OUTLINED ABOVE.

6. AUTHORIZE THE STAFF AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL STEPS NECESSARY, INCLUDING ANY REQUIRED COURT APPEARANCES, TO IMPLEMENT THE SETTLEMENT AND TO SECURE FINAL ADMINISTRATIVE AND JUDICIAL RESOLUTION OF ALL PROCEEDINGS ASSOCIATED WITH THE ABOVE DESCRIBED LITIGATION.