

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF WATER RIGHTS
MAY 20, 2008**

ITEM 6

SUBJECT

CONSIDERATION OF A PROPOSED ORDER APPROVING THE CITY OF RIVERSIDE'S WASTEWATER CHANGE PETITION FOLLOWING A HEARING CONCERNING WATER RIGHTS ON THE SANTA ANA RIVER.

DISCUSSION

On May 2-8, 2007, the State Water Board conducted an adjudicative hearing on Wastewater Change Petition WW-0045.¹ The City of Riverside (City) filed Petition WW-0045 to change the purpose of use and place of use, and reduce the discharge of treated wastewater from the City of Riverside Regional Water Quality Control Plant into the Santa Ana River (River).

The relevant issues of the hearing were:

- 1) Will the approval of Petition WW-0045 result in any significant adverse impacts to water quality, the environment or public trust resources?
- 2) Is approval of Petition WW-0045 in the public interest? and
- 3) Will the proposed change in the wastewater discharged by the petitioner cause injury to the prior rights of other legal users of water?

Witnesses for the City presented evidence and testified that the reduction in wastewater discharged to the River will not adversely affect biological resources and habitat for the federally listed Santa Ana sucker (*Catostomus santaanae*), or the least Bells vireo (*Vireo bellii pusillus*), which are state and federally listed. Also, approval of the petition is in the public interest because it maximizes use of reclaimed water. Further, a substantial portion of the City's treated wastewater is derived from foreign surface and groundwater supplies to which downstream water users do not have a right. Therefore, Petition WW-0045 will not injure the prior rights of other legal users of water.

Based on the evidence in the hearing record, this order approves Petition WW-0045 subject to terms and conditions that require the City to discharge a minimum of 25,000 acre-feet per annum to the River, and conduct monthly monitoring and report the results. The order also adopts and incorporates by reference the water quality mitigation, monitoring and reporting requirements previously adopted by the City.

¹ The State Water Board also held the hearing to receive evidence relevant to determining whether the State Water Board should approve, subject to terms and conditions, water right Application Nos. 31165 and 31370 of San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County; No. 31174 of Orange County Water District; No. 31369 of Chino Basin Watermaster; and No. 31371 of the San Bernardino Valley Water Conservation District. These applications were not considered in this order.

POLICY ISSUES:

Should the State Water Board adopt the proposed order?

FISCAL IMPACT:

This activity is budgeted within existing resources and no additional fiscal demands will occur as a result of approving this item.

REGIONAL BOARD IMPACT:

None

STAFF RECOMMENDATION:

Staff recommends that the State Water Board adopt the proposed order.

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2008 – XXX

In the Matter of Wastewater Change Petition WW-0045
City of Riverside

SOURCE: Effluent from the City of Riverside's Regional Water Quality Control Plant,
Santa Ana River

COUNTY: Riverside

ORDER CONDITIONALLY APPROVING WASTEWATER CHANGE PETITION WW-0045

BY THE BOARD:

1.0 INTRODUCTION

Pursuant to Water Code section 1211, the City of Riverside (City) filed Wastewater Change Petition WW-0045 with the State Water Resources Control Board (State Water Board or Board) on December 1, 2006. In its petition, the City seeks to change the place of use and purpose of use of a portion of the treated wastewater discharged from the City of Riverside Regional Water Quality Control Plant (RWQCP).² The amount of treated wastewater currently discharged to the Santa Ana River (River) ultimately will be reduced by approximately 11,000 acre-feet per annum (afa). The State Water Board has considered all of the evidence in the hearing record and conditionally approves the City's Petition WW-0045.

2.0 APPLICABLE LAW

Water Code section 1211 requires the owner of a wastewater treatment plant to obtain the State Water Board's approval of any change in the point of discharge, place of use, or purpose of use of treated wastewater that will result in the decreased flow in any portion of a watercourse. The State Water Board must review the proposed change pursuant to the provisions of chapter 10

² The City also petitions for a change in the amount of discharge. When considering a petition for change in the point of discharge, place of use, or purpose of use under Water Code section 1211, the State Water Board will consider the impacts of a reduction in discharge under the California Environmental Quality Act and the Board's public interest and public trust authorities.

(commencing with section 1700) of part 2 of division 2 of the Water Code, which govern changes to appropriative water rights. Before the State Water Board can approve a proposed change, it must find that the change will not operate to the injury of any legal user of water. (Wat. Code, § 1702; see also *id.*, § 1210 [while owner of a wastewater treatment plant has the exclusive right to treated wastewater as against anyone who has supplied the water discharged, the owner's obligations to any legal user of the discharged treated wastewater are not affected].)

In addition, the State Water Board has an obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Ct.* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346]; see also State Water Board Orders WR 95-9, p. 29, fn. 10 and WR 98-01, p. 5, fn 2 [suggesting that fish, wildlife and other instream beneficial uses may constitute legal users of within the meaning of Water Code section 1702, consistent with the public trust doctrine].) Thus, the State Water Board must consider the impacts to public trust uses of the River in considering whether to approve the City's petition.

3.0 PROJECT DESCRIPTION

The City owns and operates the RWQCP, which is permitted by the California Regional Water Quality Control Board, Santa Ana Region, to treat 40 million gallons per day, approximately 44,800 afa of wastewater. (Riverside 2-0, ¶ 9.)³ The RWQCP currently produces about 36,000 afa of treated effluent and discharges almost the entire amount into the River via a constructed channel that intersects the flow of the Santa Ana River. A portion of the effluent is directed through constructed wetlands (known as the Hidden Valley Wetlands Enhancement Project) before reentering a constructed channel. (Riverside 1-0, ¶ 13.) The City is required to discharge 15,250 afa to the River under a 1968 settlement agreement incorporated into the judgment in *Orange County Water District v. City of Chino, et al.* (Orange County Super. Ct. No. 117628 (Apr. 17, 1969).) (*Id.*, ¶ 22.) Accordingly, approximately 20,750 afa is presently available for recycled water uses. (Riverside 2-0, ¶ 9.)

³ The City's exhibits are designated with the prefix "Riverside" and the State Water Board's exhibits are designated with the prefix "SWRCB." The prefix "App. Joint" refers to the exhibits jointly submitted by all the applicants in the hearing. "Muni/Western" refers to exhibits submitted by the San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County (Muni/Western).

The City plans to increase the permitted capacity of the RWQCP to approximately 67,400 afa by the year 2030. (Riverside 1-0, ¶ 14.) It also plans a phased expansion of its existing recycled water distribution system from the current 290 afa to 41,400 afa by 2025. (*Id.*, ¶ 15.) The City will effectively reduce its discharge of treated effluent to the River to approximately 26,000 afa by the year 2030, with a minimum discharge of about 25,000 afa in the year 2025. Thus, the City will discharge approximately 11,000 afa less than it currently discharges to the River. (Riverside 2-0, ¶ 5.)

A portion of the treated effluent is currently used for the irrigation of approximately 41 acres at the Van Buren Golf Center and of about 10 acres at the Van Buren median and frontage, and for industrial use at the Toro Manufacturing Company. (Riverside 2-3.) Under Petition WW-0045, the City requests the place of use be changed to include areas within the City's Limits, the City's Water Service Area Boundary, and within the boundary of the Jurupa Area Plan. The purpose of use will include municipal, industrial and agricultural purposes.

According to the City's Petition WW-0045, the point of discharge to the River will remain the same. (SWRCB-1, Water Right Files for Petition WW-0045 [Attachment to Petition for Change].) The proposed project, however, involves a change in the discharge of treated wastewater from the River to an expanded place of use on land. Accordingly, the State Water Board will construe the petition as requesting a change in the point of discharge to an area coincident with the proposed place of use.⁴

4.0 PROCEDURAL BACKGROUND

In 2002 the City filed water right Application 031372. The City, however, did not propose to divert water from the Santa Ana River under the application; instead, the City proposed to increase the use of recycled water taken directly from the RWQCP. Because the City's project involved changes in the purpose of use and place of use, and a reduction in the discharge of treated wastewater from the RWQCP into the Santa Ana River, it subsequently filed Petition WW-0045 on December 1, 2006. Petition WW-0045 describes the same activities previously described in Application 031372.

⁴ The hearing notice dated February 16, 2007, which also provided an opportunity for parties to protest Petition WW-0045, characterized the petition as including a change in point of discharge; thus, the public has had notice of such a proposed change.

On February 16, 2007, the State Water Board provided notice of Petition WW-0045 concurrently with a Notice of Public Hearing to receive evidence relevant to multiple water right applications⁵ in the Santa Ana River watershed, including Application 031372 and Petition WW-0045. The State Water Board issued a revised notice on March 1, 2007. The State Water Board conducted pre-hearing conferences on April 5 and 20, 2007 and a hearing on May 2, 3, 4, and 8, 2007. The hearing was an adjudicative proceeding governed by certain provisions regarding administrative adjudication in the Administrative Procedure Act (commencing with Gov. Code, §§ 11400-11470.50 & 11513) and other statutory provisions, as specified in the State Water Board's regulations at California Code of Regulations, title 23, section 648.

5.0 CANCELLATION OF APPLICATION 031372

The City does not propose to divert water from the Santa Ana River under Application 031372. In the City's closing brief, the City's attorney requested that the State Water Board dismiss Application 031372. State Water Board hereby cancels Application 031372.

6.0 PROTESTS

Four entities protested Application 031372: the California Sportfishing Protection Alliance (CSPA), California Department of Fish and Game (DFG), East Valley Water District (EVWD) and the United States Forest Service (USFS). In their protest dismissal agreements with the City, the USFS, DFG, and EVWD agreed not to protest Petition WW-0045. The Center for Biological Diversity (Center) filed the only protest against Petition WW-0045. Before the hearing, the City resolved all of the protests against the application and petition, except for CSPA's protest.⁶

In the City's agreement with DFG, dated March 29, 2007, and its agreement with the Center, dated May 1, 2007, the City agreed to request the State Water Board to include certain

⁵ The State Water Board also held the hearing to receive evidence relevant to determining whether the State Water Board should approve, subject to terms and conditions, water right Application Nos. 31165 and 31370 of Muni/Western; No. 31174 of the Orange County Water District; No. 31369 of the Chino Basin Watermaster; and No. 31371 of the San Bernardino Valley Water Conservation District. These applications will not be considered in this order.

⁶ CSPA did not appear at the pre-hearing conference or at the hearing. The State Water Board subsequently dismissed CSPA's protest for failure to respond.

conditions in any approval of either Application 031372 or Petition WW-0045.⁷ The State Water Board will include the monitoring and reporting terms in those agreements as a condition of the Board's approval. The State Water Board will not impose terms contained in the agreements that require the parties to meet and work together in the future. The State Water Board's decision not to include such terms, however, does not constitute a decision on the merits, validity, or enforceability of such terms as between the parties to the agreements.

7.0 DISCUSSION

The State Water Board approves the City's Petition WW-0045 to change the point of discharge, place of use and purposes of use of treated wastewater discharged from the RWQCP. As discussed below, approval of the proposed changes will neither injure any legal user of water nor adversely affect public trust resources. Moreover, approval of the petition is in the public interest.

7.1 Impact on Legal Users of Discharged Water

Before granting permission to make a change under Water Code section 1211, the State Water Board must find that the change will not injure any legal user of treated wastewater discharged into the River. (Wat. Code, § 1702.) The statutory "no injury" rule set forth in Water Code section 1702 codifies the common law no injury rule and therefore should be interpreted consistent with case law that interprets and applies the common law rule. (Order WR 98-01, p. 5; Order WR 99-012, p. 12.) In general, the common law no injury rule precludes a change in the exercise of a water right if, among other things, the change would alter the pattern or rate of return flow to the detriment of downstream water right holders.⁸ (*Scott v. Fruit Growers' Supply Co.* (1927) 202 Cal. 47, 52-53, 55 [258 P. 1095].)

Consequently, the State Water Board's assessment of injury under section 1702 requires an evaluation of the source of the treated wastewater to be reclaimed. Downstream water right holders are protected from injury only to the extent that the source of the return flow to a stream

⁷ The stipulations state that the conditions should be included in "any permit issued pursuant to Application No. 31372 or WW-0045." Because the State Water Board does not issue permits on wastewater change petitions, it will construe the stipulation as applying to the changes approved in this order.

⁸ Return flow is water that flows back into a stream, lake, or other body of water after it has been appropriated and used.

is native water.⁹ When the source of return flow is native water, the return flow is considered part of the natural flow of the stream to which riparian and appropriative water rights may attach. The no injury rule does not protect downstream water right holders when the source of the return flow is “foreign water.” Foreign water is water that would not be present in a given water body under natural conditions. For example, the no injury rule does not protect downstream users if the water has been imported from outside the watershed or it is foreign in time (e.g., stored water).¹⁰ Foreign water also includes groundwater that does not naturally flow in the stream (e.g., it is not tributary to the stream and is present only because it was extracted from the ground).

Consistent with Water Code sections 1211 and 1702 and the no injury rule, treated wastewater discharged from the RWQCP into the River should be treated as return flow from native water if the source of the treated wastewater is surface water or groundwater that would reach the River under natural conditions. While the hearing record does not specifically identify the source of the City’s treated wastewater, the evidence supports a conclusion that the source is either imported water or groundwater. In the Santa Ana watershed, groundwater supplies provide approximately 68 percent of consumptive water needs, with imported water as the second largest water supply source, providing approximately 23 percent of the total water demands. (App. Joint 2-18, pp. 41-42.) Other sources of supply include surface water (5 percent) and recycled water (4 percent). (*Id.*) The City’s existing water rights include approximately 77,000 afa of groundwater from wells in the Bunker Hill, Colton, Riverside North, Riverside South, and Arlington groundwater basins; approximately 365 afa of imported water under contracts with the Western Municipal Water District; and approximately 20,000 afa of imported water from Gage Canal Company. (Riverside 1-3, p. 2-11.) The RWQCP treats wastewater from the following agencies: Jurupa Community Services District, Rubidoux Community Services District, Western Municipal Water District, and Edgemont Community Services District. (Riverside 1-1, p. 3-1.)

The groundwater will be treated as foreign water if the groundwater is not in hydrologic continuity with the River and would not reach the River under natural conditions. It is

⁹ Native water is water that under natural conditions would contribute to a given stream or other body of water. (1 Slater, *California Water Law and Policy* (2002), p. 7-3.)

¹⁰ While an appropriative right to use return flow from foreign water may be perfected, such a right is contingent on the continued importation of the foreign water and abandonment of the return flow. An appropriative water right holder cannot compel the continued importation of foreign water or claim injury if the importer opts to reclaim or recapture the return flow.

reasonable to assume that the RWQCP treats wastewater at least partially supplied from the City's groundwater wells located in the Bunker Hill, Colton, Riverside North, Riverside South, and Arlington groundwater basins. Pumping from the groundwater wells would have an influence on the River only along reaches where the River is gaining (i.e., where groundwater is contributing to the flow of the River). There are several areas where the groundwater contributes to the flow of the River, including the Bunker Hill groundwater basin. (Muni/Western 6-124 and 6-156.) It also appears, however, that much of the River is not hydraulically connected to other groundwater basins from which the City pumps groundwater.¹¹ (*Id.*) Thus, only a very small percentage of the groundwater extracted by the City may reach the River under natural conditions.

Accordingly, a substantial portion of the City's treated wastewater is derived from foreign surface and groundwater supplies to which downstream water users do not have a right to use. To the extent any portion of the treated wastewater is native water, the amount is insubstantial relative to the proposed change in the amount of discharge. The City is legally required to discharge 15,250 afa under judgment in *Orange County Water District v. City of Chino*. (Riverside 1-0, ¶ 22.) The City has stated that it will not discharge less than 25,000 afa of treated wastewater to the River. (*Id.*) Consequently, the State Water Board conditions its approval by requiring the City to discharge this minimum amount. Approval of the City's proposed changes under Petition WW-0045 will not injure any legal user of water.

Moreover, although not dispositive of the injury question, no legal user has claimed injury as a result of the change. The State Water Board takes official notice pursuant to California Code of Regulations, title 23, section 648.2 of the information in the Division of Water Rights' (Division) records, as of December 10, 2007, showing that there are three appropriative water rights and two pending water right applications located downstream of the City's discharge point to the

¹¹ This conclusion is based on the information in the hearing record and is made solely for the purposes of the legal injury discussion in this order. It should not be construed as a finding regarding groundwater hydrology that can be used in other proceedings.

Santa Ana River.¹² The three appropriative water rights are held by the Orange County Water District (water right Applications A008899 and A008900) and the Chino Basin Watermaster (water right Application A028473), and the pending water right applications are held by the City (water right Application A031372, which is cancelled in this order) and Orange County Water District (water right Application A031174). The Orange County Water District and the Chino Basin Watermaster were also parties to the May 2007 hearing and did not contest the City's wastewater change petition.

7.2 Impacts on Public Trust Resources

The City also presented evidence that the 11,000 cfs reduction in flow will not adversely affect biological resources and habitat in the project area, including habitat for the Santa Ana sucker (*Catostomus santaanae*) (sucker), which is listed as a federally threatened species, and the least Bells vireo (*Vireo bellii pusillus*) (LBV), which is a state and federally listed species.

In examining the project's impacts on the sucker, the City's witnesses focused in part on the reduction of flow in the area below Van Buren Bridge to the Prado Dam (Reach 3), which includes the RWQCP's current discharge point. On average, the proposed reduction would cause a 3.3 percent flow reduction in that area. (Riverside 5-0, ¶ 11.) The witnesses opined that Reach 3 is low quality habitat for sucker as a result of the lack of preferred substrate for the sucker, and not as a result of low overall flow. (Riverside 4-0, ¶ 9; 5-0, ¶ 11.)

Mr. Jeff Beehler testified that the City's recycled water project will not have any significant impacts on the sucker. (Riverside 4-0, ¶ 9.) He concluded that the reduction in flow will not decrease the availability of limited habitat in Reach 3, nor will it affect scour required to improve habitat in that area. (Riverside 4-0, ¶ 12.) Mr. Jonathan Baskin testified that although the proposed change in flow could potentially negatively affect a small patch of good substrate forming habitat in the vicinity of the confluence of the City's discharge channel and the Santa Ana River, the impact is not significant overall and is offset by potential Project-related

¹² There are also two inactive groundwater recordations located below the City's discharge point. With certain exceptions, Water Code section 4999 et seq. requires persons who extract more than 25 acre-feet of groundwater in four Southern California counties to file a notice of groundwater extraction with the Division. If a person is required to file the notice and fails to do so within six months of the close of a calendar year, the failure to file is deemed equivalent to the nonuse of groundwater for the particular year. (Wat. Code, § 5004.) The Division designates groundwater recordation as "inactive" if the Division has received a notice in previous years, but subsequently does not receive a recordation for a particular year.

improvements to sucker habitat in other places in the project area. (Riverside 5-0, ¶¶ 4, 12.) The project's overall impacts on sucker habitat are either neutral or are improvements. (Riverside 5-0, ¶ 13.)

Mr. Tony Bomkamp testified that the Project's effects on the least Bell's vireo (LBV) would also affect other special status species that are likely common to the Prado Basin, such as yellow warblers and yellow-breasted chats. To the extent LBV is unaffected by the Project, these species with similar habitat requirements also would be unaffected. (Riverside 3-0, ¶ 8.)

Mr. Bomkamp evaluated potential impacts to LBV by examining whether the willow-dominated riparian habitat used by the LBV would be affected by the net loss of up to 11,000 afa of treated wastewater. (Riverside 3-0, ¶ 11.) Using a water budget-based approach, Mr. Bomkamp considered whether LBV habitat potentially would be dewatered by the reduction in flows. (Riverside 3-0, ¶¶ 11-14.) He determined that there would be more than an order of magnitude of surplus water in the system that exceeds existing riparian habitat requirements after implementation of the proposed Project. (Riverside 3-0, ¶¶ 24-28.) Consequently, there are no potential impacts on LBV habitat associated with the project. (Riverside 3-0, ¶ 28)

Accordingly, we conclude that approval of the change petition will not adversely affect public trust resources. In addition to the protest resolution terms, however, the State Water Board will impose a standard term regarding endangered species as a condition of its approval.

7.3 Public Interest

The State Water Board approves the City's Petition WW-0045 to change the point of discharge, place of use and purposes of use of treated wastewater discharged from the RWQCP. Approval of the petition is in the public interest because it maximizes the reuse of reclaimed water. (See, e.g., Wat. Code, §§ 461, 13550 [establishing Legislative policy of maximizing water reuse].)

As explained above, this order imposes monitoring and reporting requirements to which the City agreed as part of its protest resolution agreements. The City agreed to provide annual and quarterly monitoring reports to DFG and the Center, respectively. It is in the public interest to have these monitoring reports available to the public as well; accordingly, the State Water Board will require the City to post and maintain its monitoring reports on the City's website.

8.0 CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City is the lead agency under CEQA (Pub. Resources Code, § 21000 et seq.) for the proposed project. In October 2006 the City circulated for public review a draft Program Environmental Impact Report (PEIR) for its Recycled Water Program. On June 26, 2007 the City Council adopted Resolution No. 21432 certifying the final PEIR.¹³ (Riverside 1-3(a).) In the PEIR, the City evaluated the environmental impacts associated with the City's adoption of a recycled water feasibility study and Master Plan, implementation of a program of near-term and long-term projects to provide recycled water from the RWQCP, and the State Water Board's approval of the City's water right application and wastewater change petition for reducing discharge to the Santa Ana River by 11,000 afa in connection with the City-wide recycled water program.¹⁴

The State Water Board is a responsible agency under CEQA for purposes of considering whether to approve the City's petition.¹⁵ As a responsible agency, the State Water Board has a more limited role than the City. The State Water Board must review and consider the environmental effects of the project identified in the PEIR that are within its purview, and any other relevant evidence in the hearing record, and reach its own conclusions on whether and how to approve the project involved. (Cal. Code Regs., tit. 14, § 15096, subd. (a).) For each significant environmental effect within its responsibility identified in the PEIR for this project, the State Water Board must make one or more of the following findings: (1) changes have been required in the project that mitigate or avoid the significant effect; (2) such changes are within

¹³ On or about April 25, 2007, the City entered into a stipulation with the Center, City of Chino, Chino Basin Watermaster, EVWD, Orange County Water District, Muni/Western, Santa Ana River Local Sponsors, and USFS, agreeing that the hearing record for the City's petition would be held open until August 15, 2007, for the City to substitute a certified final PEIR for the draft PEIR. The parties agreed the hearing would not be reconvened for cross-examination as to the final PEIR. By letter dated August 10, 2007, the State Water Board notified interested persons that it will substitute the final PEIR for the draft PEIR in the hearing record as requested by the City. (See Riverside 1-3).

¹⁴ The City has determined that environmental impacts associated with Petition WW-0045 are identical to the impacts relating to Application 031372, and has used the same environmental document to analyze those impacts.

¹⁵ Regardless of any obligation the City or the State Water Board may have under CEQA, the Board has an independent obligation to consider the effect of the proposed project 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].)

the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that agency; or (3) specific economic, legal, social, technological, or other considerations make the mitigation measures identified in the PEIR infeasible. (Pub. Resources Code, §§ 21002.1, 21081; Cal. Code Regs., tit. 14, §§ 15091.) The State Water Board is responsible for mitigating or avoiding only the significant environmental effects of those parts of the project that it decides to approve. (Cal. Code Regs., tit. 14, § 15096, subd. (g).) This includes the responsibility to address any significant adverse direct or indirect effects on water resources or public trust resources.

In this order, the State Water Board has considered the environmental impacts identified in the City's PEIR that are associated with approving the wastewater change petition, including the construction and operational impacts on water quality and biological resources that will result from the requested changes. The City determined the project would have potentially significant construction-related impacts on biological, cultural, and water resources. It found that all of the project's impacts on the environment can be mitigated to a less-than-significant level except for impacts to cultural resources. The City also determined that the project's flow-related impacts (i.e., impacts associated with the reduction in discharge of treated water to the River) are not significant and do not require mitigation.

The City identifies mitigation measures to reduce the water quality impacts associated with project construction to less than significant. (Riverside 1-3, table ES-1.) To avoid adverse environmental impacts on water quality, this order will require the City to implement the water quality mitigation measures identified in the Mitigation Monitoring Plan adopted by Resolution No. 21432 on June 26, 2007. (Riverside 1-3(a).)

The City also identified potentially significant impacts on various biological resources associated with the construction or expansion of its facilities. (Riverside 1-3, Table ES-1.) Mitigation for these impacts will occur through implementation of the Western Riverside County Multi-Species Habitat Conservation Plan, the Habitat Conservation Plan for the Stephens' Kangaroo Rat in Western Riverside County, or project-specific requirements. (*Id.*) To the extent these potentially significant impacts are within the State Water Board's purview, such as impacts to aquatic and riparian species, the Board has responsibility for requiring changes that avoid or

mitigate those impacts. Accordingly, this order will require the City to implement the relevant mitigation measures identified in the City's Mitigation Monitoring Plan (Riverside 1-3(a), Ex. B.)

Finally, the City determined that the project may have significant impacts on cultural resources, and identifies mitigation measures for certain impacts. It also found, however, that certain impacts on cultural resources are significant and unavoidable. (Riverside 1-3, table 3C-1, p. 3C-18.) To the extent these potentially significant effects are arguably within the State Water Board's purview as a responsible agency, the State Water Board finds that the proposed mitigation measures are within the responsibility and jurisdiction of the City, and they have been, or can and should be, adopted by the City. (Cal. Code Regs., tit. 14, § 15091, subd. (a).)

9.0 CONCLUSION

The State Water Board finds that approval of Petition WW-0045 will neither injure any legal user of water nor adversely affect public trust resources. Petition WW-0045 is conditionally approved.

ORDER

IT IS HEREBY ORDERED THAT Wastewater Change Petition WW-0045 is approved subject to the following terms and conditions:

1. The source of the treated effluent shall be the City's RWQCP. The City is required to discharge a minimum of 25,000 afa of treated effluent from the RWQCP to the Santa Ana River. The City shall continue such discharges as long as the California Water Quality Control Board, Santa Ana Region, permits the discharges to the River.
2. The purposes of use shall be municipal, industrial, and irrigation uses.
3. The place of use shall be within the City's limits, the City's Water Service Area Boundary, and the boundary of the Jurupa Area Plan, as shown on the Map to Accompany Petition for Change in Amount of Discharge, Place of Use and Purpose of Use by City of Riverside, dated December 11, 2006, filed with the State Water Board.

4. The point of discharge shall be the existing point at (1) N. 656,200 and E. 1,633,300 California Coordinate System Zone 6, within SW ¼ of SE ¼ Sec. 25, T2S, R6W, SBB&M, and (2) within the City's limits, the City's Water Service Area Boundary, and the boundary of the Jurupa Area Plan, as shown on the Map to Accompany Petition for Change in Amount of Discharge, Place of Use and Purpose of Use by City of Riverside, dated December 11, 2006, filed with the State Water Board.
5. The City shall conduct its existing monthly monitoring and report the results of the monitoring annually to the DFG in a form approved by DFG. At a minimum, reporting shall include average monthly flow data that indicates any changes in the amount of flow in the Santa Ana River caused by changes in the City's discharge of effluent from its wastewater treatment facility. This provision shall bind any transferees and assignees of the approval granted under this order.
6. The City shall conduct its required monthly monitoring and report the results of the monitoring quarterly to the Center for Biological Diversity in a mutually approved form. At a minimum, reporting shall include average monthly flow data as recorded by the City at the RWQCP outfall structure meter, which reflects any changes in the amount of effluent flow discharged to the Santa Ana River by the City from the RWQCP, and water quality data gathered by the City and submitted to the California Regional Water Quality Control Board, Santa Ana Region, in accordance with the City's National Pollutant Elimination Discharge System permit.

The City shall notify the Center 60 days in advance of any plans to decrease its effluent discharge to the Santa Ana River, as measured at the outfall structure meter.

This provision shall bind any transferees and assignees of the approval granted under this order.

7. The City shall post and maintain the annual and quarterly monitoring reports required by paragraphs 5 and 6, above, on its website.

8. The State Water Board adopts and incorporates by reference into this order the water quality mitigation, monitoring, and reporting requirements identified in the Mitigation Monitoring Plan adopted by the City by Resolution No. 21432, dated June 26, 2007, specifically WR-MM-1A-1, WR-MM-1A-2, WR-MM-1A-3, and WR-MM-1B-1. The City must implement the measures to mitigate significant impacts to water quality resources and conduct the required reporting and monitoring of those measures. The State Water Board reserves jurisdiction to require any reasonable amendments to these measures and requirements necessary to ensure that they will accomplish the stated goal.
9. The State Water Board adopts and incorporates by reference into this order the mitigation, monitoring, and reporting requirements applicable to biological resources identified in the Mitigation Monitoring Plan adopted by the City by Resolution No. 21432, dated June 26, 2007, specifically BIO-MM-1 and BIO-MM-2. The City must implement the measures to mitigate significant impacts to biological resources and conduct the required reporting and monitoring of those measures. The State Water Board reserves jurisdiction to require any reasonable amendments to these measures and requirements to ensure that they will accomplish the stated goal.
10. The changes approved herein shall not be implemented until the City obtains all necessary local, state, and federal approvals, including any necessary approvals from the California Regional Water Quality Control Board, Santa Ana Region, to implement the changes approved in this order. The City shall abide by any such approvals.
11. The State Water Board reserves jurisdiction in the public interest and public trust to modify the terms and conditions of this order, including imposition of requirements to alter project facilities or operations and to modify instream flow releases. The Board will take action only after notice to interested persons and an opportunity for hearing.
12. This change does not authorize any act which results in the taking of a threatened, endangered or candidate species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 to 1544). If a "take" will result from any act authorized under this order, the petitioner shall

obtain authorization for an incidental take prior to construction or operation of the project. Petitioner shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this order.

(0000014)

13. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this order are subject to the continuing authority of the State Water Resources Control 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.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this order with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable effects on other users of water or instream beneficial uses. The City may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) measures to increase use of reclaimed water; (2) restricting use so as to eliminate irrigation tailwater or return flow; (3) suppressing evaporation losses from water surfaces; (4) controlling phreatophytic growth; and (5) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to accurately determine water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with

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California Constitution article X, section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on May 20, 2008.

AYE:

NAY:

ABSENT:

ABSTAIN:

Jeanine Townsend
Clerk to the Board