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DIVISION OF WATER RIGHTS
SACRAMENTO

November 7, 2008

VIA HAND DELIVERY AND ELECTRONIC MAIL

Vicky Whitney, Deputy Director
Division of Water Rights
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: Renewal of Temporary Urgency Permit No. 21212 to Divert Unappropriated Water
from the Santa Ana River (San Bernardino County)

Dear Ms. Whitney:

On February 21, 2008, the State Water Resources Control Board ("State Board") issued Temporary Urgency Permit No. 21212 ("Permit No. 21212") to San Bernardino Valley Municipal Water District ("Valley District") and Western Municipal Water District of Riverside County ("Western"). Permit No. 21212 allowed Valley District and Western to divert up to 45,000 af of unappropriated water from the Santa Ana River pursuant to Water Code sections 1425 *et seq.* Acting pursuant to the authority granted by Permit No. 21212, Valley District and Western diverted approximately 7,210 af during 2008. Because of the urgent need for water in Southern California during 2008-09, Valley District and Western respectfully request that the State Board renew Permit No. 21212 as described below.

1. *Southern California Has an Urgent Need for Water*

As you know, the drought in Southern California and the reductions in water deliveries by the State Water Project both continue. Southern California is the midst of an extended drought that began in 2006-07. During the past two years, precipitation in Southern California has been less than 60% of normal. <http://meteora.ucsd.edu/cap/>, visited October 21, 2008. Precipitation at the USGS gage at Gilbert Street in San Bernardino during water year 2008 was approximately 76% of the average from water years 1935 to 1960. Statewide precipitation during 2007-08 was only 77% of normal and statewide precipitation during the past two years has only been 70% of normal. http://meteora.ucsd.edu/cap/wx_climate_newsletter.html, visited October 21, 2008. In terms of the State Water Project, Lake Oroville is presently at 31% of capacity, which is the lowest carryover storage since the drought of 1977. The Department of Water Resources

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estimates that, by the end of this calendar year, Lake Oroville may fall to a new record low. *Id.* Moreover, San Luis Reservoir presently contains about 11% of its capacity.

<http://www.woco.water.ca.gov/monthly/storage/storsanl.html>, visited October 21, 2008.

Diamond Valley Lake is currently at 59% of capacity. Finally, even if the State Water Project is able to capture water at Lake Oroville, the recent rulings by Judge Wanger to protect the delta smelt and salmonids have further reduced the State Water Project's ability to deliver water to Southern California. Governor Schwarzenegger recognized California's critical water supply situation earlier this year in declaring a statewide drought emergency. All of these factors create an urgent need for Valley District and Western to be able to divert any unappropriated water that may be available from the Santa Ana River this winter and spring.

2. *Proposed Changes from Original Permit 21212*

Original Permit 21212 allowed Valley District and Western to divert up to 45,000 af during the six months commencing on February 21, 2008. Based on that experience, Valley District propose the following modifications to their proposed spreading operations during 2008/09 and respectfully request that the State Board issue a renewed Permit 21212 that incorporates these proposed changes.

- a. **Season of Diversion/Rediversion:** Original Permit 21212 authorized the diversion/rediversion of water by Valley District during the six months after February 21, 2008 and would automatically have terminated upon the issuance of one or more permits for Water Right Application Nos. 31165 and 31370. Valley District and Western request that revised Permit 21212 authorize the diversion/rediversion of water between January 1 and June 30, 2009 with the provision that renewed Permit 21212 would automatically terminate upon the issuance of one or more permits for Water Right Application Nos. 31165 and 31370.
- b. **Points of Rediversion:** Original Permit 21212 authorized the rediversion of water at the Cuttle Weir and in the Santa Ana River channel. Valley District and Western request that renewed Permit 21212 reauthorize these points of rediversion and also authorize the rediversion of water at the Auxiliary River Pickup and at the Greenspot Forebay for delivery to the Sweetwater, Waterman/East Twin, Airport, Judson and Mill Creek spreading basins.
- c. **Quantity/Rate:** Original Permit 21212 authorized the diversion/rediversion of up to 45,000 af at a maximum rate of 350 cfs. Valley District and Western request that renewed Permit 21212 authorize the diversion/rediversion of up to 25,000 af at a maximum rate of 500 cfs. The reduced quantity is appropriate because of the hydrologic uncertainty inherent at the start of a water year, while the increased diversion rate is appropriate because of the additional points of rediversion at the

the Sweetwater, Waterman/East Twin, Airport, Judson, and Mill Creek spreading grounds.

3. *Valley District and Western Request Renewal of Permit No. 21212*

Permit No. 21212 allowed Valley District and Western to divert water from the Santa Ana River at Seven Oaks Dam, where the water would be stored as a consequence of the U.S. Army Corps of Engineers' requirements for flood control operations. After water was released from Seven Oaks, Valley District and Western then rediverted that water for spreading at the Cuttle Weir or would allow the water to percolate into the groundwater basin by means of in-channel percolation in the Santa Ana River channel.

As part of the renewal of Permit No. 21212, Valley District and Western request that the State Board add two additional points of rediversion so as to allow the rediversion of water at the Auxiliary River Pickup and at the Greenspot Forebay for delivery to the Sweetwater, Waterman/East Twin, Airport, Judson and Mill Creek spreading basins. Such additional spreading will assist Valley District in meeting its obligations under the *Western* Judgment to replenish the San Bernardino groundwater basin and provide additional water for retail water agencies extracting water from that groundwater basin.

As you know, Valley District and Western have applied for a long-term supply of up to 200,000 af of water from the Santa Ana River under Water Right Application Nos. 31165 and 31370. The State Board held a hearing on those applications during May, 2007, and is currently considering those applications; Valley District and Western do not intend this request to renew Permit 21212 to interfere with the State Board's deliberations.

Evidence presented during the water right hearing indicates that, on average, Valley District and Western would be able to divert up to about 25,000 afy from the Santa Ana River after the satisfaction of the senior water rights of Bear Valley Mutual Water Company *et al.* and the diversion by the San Bernardino Valley Water Conservation District ("Conservation District") of its rights under Water Right License Nos. 2831 and 2832 of up to 10,400 afy. Muni/Western Ex. 5-70 (copy attached as Exhibit A and on file with the State Board). Because we are presently at the beginning of the 2008-09 water year and it is not clear whether this winter will be wet or dry, Valley District and Western believe that it is appropriate to request the renewal of Permit No. 21212 for 25,000 af, subject to the satisfaction of all prior rights.¹

The season of diversion for renewed Permit 21212 would commence on January 1, 2009 and conclude either on June 30, 2009 or on the date on which the SWRCB issues one or more

¹ It should be noted that Southern California Edison also has senior rights to divert water from the Santa Ana River. However, because Edison's rights are non-consumptive rights for hydropower and because water diverted under that right is returned to the Santa Ana River at or upstream of the points of rediversion that Valley District and Western propose to use, the renewal of Permit No. 21212 would not interfere with the Edison rights.

permit(s) pursuant to Water Right Application Nos. 31165 and 31370, whichever is earlier. The redirection of water by Valley District and Western pursuant to renewed Permit 21212 would be junior to the rights of Bear Valley Mutual Water Company *et al.* (up to 88 cfs on a "run of the river" basis) and the rights of the Conservation District pursuant to License No. 2831 (maximum diversion of 8,300 af from January 1 to May 31).² In the event that there is unappropriated water being released from Seven Oaks Reservoir in excess of the instantaneous demands/diversion capacity of Bear Valley Mutual Water Company *et al.* and the Conservation District, Valley District and Western request that renewed Permit 21212 expressly allow Valley District and Western to redirect such quantities of water so as to avoid the waste of water.

Valley District and Western believe that this water may be diverted and used without unreasonable impacts on fish and wildlife or instream beneficial uses. The proposed diversion of water will occur by means of improved coordination of the operations of Seven Oaks Dam, the Cuttle Weir, percolation in the Santa Ana River channel, and the diversion and spreading of water through other existing facilities. No new facilities will be constructed and there will not be any expansion of existing facilities. In particular, because the project anticipates the use of the Santa Ana River channel for recharge to the extent possible without the loss of water, Valley District and Western believe that the project represents an appropriate balancing of the needs of fish and wildlife resources and the urgent need of Southern California for groundwater replenishment.

4. *Conclusion*

To facilitate processing of this application, we are providing the filing fee of \$187,925.00 for this permit to the State Board under separate cover via wire transfer and enclose a check for \$850 payable to the Department of Fish & Game.

Valley District and Western stand ready to meet with you or your staff immediately to address any questions or concerns regarding this application. We know that the State Board understands

² It is important to note that the redirection of water in the Santa Ana River channel between the Cuttle Weir and E Street may be accomplished without any interference with the rights of either Bear Valley Mutual Water Company *et al.* or the Conservation District because the moveable point of diversion described above is located downstream of the points of diversion used by Bear Valley Mutual Water Company *et al.* and the Conservation District. Thus, the redirection of water at the moveable point of diversion will commence immediately upon approval of this application by the SWRCB.

the urgent need for water in Southern California and very much appreciate that you will process this application as quickly as possible.

Respectfully submitted,

DOWNEY BRAND LLP



David R.E. Aladjem
Enclosures

cc: Dorothy Rice, Executive Director
Steve Herrera, Chief, Permitting Section
Kathy Mrowka, Chief, Watershed Unit 3
Randy Van Gelder, San Bernardino Valley Municipal Water District
John Rossi, Western Municipal Water District of Riverside County