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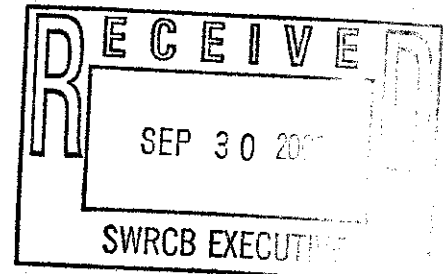
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September 30, 2009

Via Electronic Mail to [Commentletters@waterboards.ca.gov](mailto:Commentletters@waterboards.ca.gov)

Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814



Re. **Comment Letter: Draft Muni/Western Decision Workshop**

Ms. Townsend:

The San Bernardino County Flood Control District, Riverside County Flood Control and Water Conservation District, and Orange County Flood Control District, collectively the Santa Ana River Mainstem Project Local Sponsors ("Local Sponsors"), appreciate the opportunity to comment on the August 27, 2009 Draft Decision Partially Approving Applications 31165 and 31370. The Local Sponsors participated as a party in the May 2007 Hearing on the Santa Ana River applications and presented testimony regarding Applications 31165 and 31370 of San Bernardino Valley Municipal Water District and Western Municipal Water District (Muni/Western) only. The Local Sponsors offer the following comments.

Section 6.1 Surface Storage Facilities, page 7, first paragraph, second sentence: The Local Sponsors suggest the following clarification: "The Dam is owned and operated by the ~~San Bernardino Flood Control District~~ Santa Ana River Mainstem Local Sponsors."

Section 7.0 Water Quality at Seven Oaks Dam, page 14, last paragraph: The second paragraph of this section states that anaerobic conditions were observed at Seven Oaks Dam in 2004 and that none of the water was suitable for treatment and was not diverted. This statement is not entirely accurate. Heavy rains in late December 2004 and early 2005 caused the first major inflow since completion of Seven Oaks Dam in 1999. The highly turbid storm runoff resulted in turbidity and anoxic conditions behind the dam in 2005. These conditions coincided with the shutdown of the Southern California Edison (SCE) pipeline above Seven Oaks Dam due to flood damage to the SCE Powerhouse Number 1. The upper watershed prior right holders that

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would normally receive water from the SCE pipeline were required to divert from the Santa Ana River below Seven Oaks Dam during the pipeline shutdown. The level of turbidity in the Santa Ana River during periods of 2005 exceeded the maximum limits of some, but not all, of the upper watershed prior right holders. The water that was not utilized in the upper watershed was likely used beneficially in the lower watershed. The United States Army Corps of Engineers is conducting a Seven Oaks Dam water quality study to investigate the causes of the conditions observed in 2005 and appropriate actions to prevent the conditions from recurring. Accordingly, the Local Sponsors propose the following clarifications to the last paragraph on page 14 of the Draft Decision:

However, anaerobic conditions and resultant changes in other water quality parameters were observed in ~~the summer of 2004 and 2005~~ following the ~~formation of the first debris pool behind~~ major storm events since completion of Seven Oaks Dam. The turbidity of water discharged from Seven Oaks Dam during periods of 2005 exceeded the maximum limits of some of the upper watershed prior right holders. This water was found to be unsuitable for treatment and distribution to water users downstream and was not diverted and put to beneficial use by prior water right holders.

Term 18, page 50: The Local Sponsors resolved their protest to Applications 31165 and 31370 in a May 8, 2007 Stipulation with Muni/Western. (Local Sponsors' Exhibit LS-1-18.) The Stipulation requests that the State Water Board incorporate a term in any permits issued to Muni/Western pursuant to Applications 31165 and 31370 that requires Muni/Western to enter into a written access agreement with the Local Sponsor before construction and operation of water diversion facilities at Seven Oaks Dam. The Local Sponsors appreciate that the Draft Decision includes the proposed term verbatim as term 18 on page 50. As discussed below, there are two other access-related terms (Terms 11 and 17) that should be clarified to avoid confusion with Term 18.

Term 11, page 49: Term 11 provides that the permit does not confer right of access to U.S. Army Corps of Engineers facilities. As the State Water Board is aware, the Corps of Engineers designed and constructed the Santa Ana River Mainstem Project but many of the facilities in the flood control project including Seven Oaks Dam are owned, operated and maintained by the Local Sponsors. The inclusion of Term 18 requiring Muni/Western to obtain an access agreement before construction and operation of water diversion facilities at Seven Oaks Dam should obviate the need for Term 11. Should the Water Board desire to retain Term 11 rather than delete the term, we request the addition of the following:

11. This permit shall not be construed as conferring upon the Permittees right of access to facilities of the U.S. Army Corps of Engineers and the Santa Ana River Mainstem Project Local Sponsors."

Term 17, page 50: Term 17 requires Muni/Western to obtain an access agreement with the Local Sponsors, which is also required in Term 18, and to acquire access from the United States Forest Service. We assume that the reference to the Local Sponsor access agreement was a transcription error and should be struck, as follows:

17. This permit shall not be construed as conferring upon Permittee the right of access to Seven Oaks Dam, the points of diversion, the lands necessary for related facilities, or the lands necessary for inundation for water storage. ~~Permittee shall enter into an access agreement with, or otherwise secure access rights from, the owners of Seven Oaks Dam, the land at the points of diversion, the land necessary for related facilities, and the lands necessary for inundation for purposes of water storage before commencing construction of works.~~ Access to, construction upon, or inundation of National Forest Systems lands shall not commence prior to authorization by the Forest Service, in accordance with applicable laws and regulations. Such authorization will require compliance with all applicable federal laws and regulations. Muni/Western specifically recognizes that completion of the applicable legal process does not guarantee such authorization will be granted, the issuance of these water right permits notwithstanding.

Term 14, page 50: The Local Sponsors suggest the following addition to Term 14 to recognize that the environmental mitigation to implement the Seven Oaks Dam Biological Opinion has not been finalized:

14. Nothing in this Permit shall be construed as authorizing any diversions contrary to the provisions of the December 19, 2002 Biological Opinion issued by United States Fish and Wildlife Service for operation of Seven Oaks Dam, as may be revised in the future, including flow releases for downstream over-bank inundation to preserve State and federally listed threatened and endangered species and their habitat.

Terms 23 and 24, page 51: Term 23 directs Muni/Western to file a report of waste discharge for storage of water at Seven Oaks Dam before Muni/Western may divert water under the permit. This requirement is not appropriate for a couple of reasons. The Term is concerned with potential discharges resulting from Seven Oaks Dam water storage operations, but the United States Army Corps of Engineers and Local Sponsors have not yet authorized the operation and use of Seven Oaks Dam for water storage (i.e., water conservation) purposes. Waste discharge requirements may be appropriate to consider if and when the Corps of Engineers issues a revised water control manual authorizing water conservation at Seven Oaks Dam. The Local Sponsors also question whether it is appropriate to require Muni/Western to file a report of waste discharge for Seven Oaks Dam when it is neither the owner nor operator of the Dam. Seven Oaks Dam is owned and operated by the Local Sponsors for flood control purposes pursuant to Army Corps of Engineers' directives. Proposed Term 24, which prohibits discharges

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from Seven Oaks Dam from exceeding water quality objectives, is also premature. The Local Sponsors suggest that Terms 23 and 24 be deleted and be replaced with a term that reserves the Board's jurisdiction to address water quality issues associated with Seven Oaks Dam water storage after such use is authorized by the Army Corps of Engineers and the Local Sponsors.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter J. Kiel". The signature is written in a cursive style with a large initial "P".

Peter J. Kiel

cc: Santa Ana River Hearing Service List

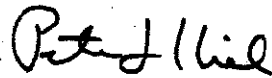
PROOF OF SERVICE

I declare that:

I am employed in the County of Sacramento, State of California. I am over the age of eighteen years and am not a party to the within action. My business address is ELLISON, SCHNEIDER & HARRIS L.L.P.; 2600 Capitol Avenue, Suite 400; Sacramento, California 95816; telephone (916) 447-2166.

On September 30, 2009, I served the attached *Comment Letter: Draft Muni/Western Decision Workshop* by electronic mail to each person shown on the attached service list.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 30, 2009, at Sacramento, California.



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Peter J. Kiel

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