



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Division of Water Rights

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Arnold Schwarzenegger
Governor

NOTICE OF PUBLIC HEARING AND PRE-HEARING CONFERENCE ON WATER RIGHT APPLICATIONS AND WASTEWATER CHANGE PETITION

AND

NOTICE OF PETITION FOR CHANGE IN PLACE OF USE, PURPOSE OF USE, AND DISCHARGE AMOUNT OF TREATED WASTEWATER WASTEWATER CHANGE PETITION WW-0045

The State Water Resources Control Board will hold a Pre-Hearing Conference and Hearing to Consider Water Right Applications 31165 and 31370 of San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County; Application 31174 of Orange County Water District; Application 31369 of Chino Basin Watermaster; Application 31371 of San Bernardino Valley Water Conservation District; and Application 31372 and Wastewater Change Petition WW-0045 of the City of Riverside

Santa Ana River Watershed: Orange, San Bernardino, and Riverside Counties

A Pre-hearing Status Conference will commence on
Friday April 6, 2007, at 10:00 a.m.

The Hearing will commence on
Wednesday, May 2, 2007 at 9:00 a.m., and continue,
as necessary, on **Thursday, May 3, 2007** and **Friday, May 4, 2007** at 9:00 a.m.

The Conference and Hearing will take place at
**Joe Serna Jr./Cal EPA Building, Coastal Hearing Room
1001 I Street, Second Floor, Sacramento, CA**

SUBJECT OF THE HEARING

The State Water Resources Control Board (State Water Board or Board) intends to conduct an evidentiary hearing on the pending water right applications and the wastewater change petition described below beginning on May 2, 2007.

The purpose of this hearing is:

- 1) to receive evidence relevant to determining whether the State Water Board should approve, subject to terms and conditions, all or any of water right Applications 31165 and 31370, for the San Bernardino Valley Municipal Water District and Western

California Environmental Protection Agency

Municipal Water District of Riverside County (Muni/Western); 31174, for Orange County Water District; 31369, for the Chino Basin Watermaster; 31371, for San Bernardino Valley Water Conservation District; and 31372, for the City of Riverside; and

- 2) to receive evidence relevant to determining whether the State Water Board should issue an order approving Wastewater Change Petition No. WW-0045 for the City of Riverside's RWQCP and, if so, whether conditions are needed in the order to protect the environment, the public interest, and downstream water users.

NOTICE OF PETITION

Notice is hereby given that on December 1, 2006, the City of Riverside filed a petition for a change in the amount of discharge, place of use, and purpose of use of treated wastewater effluent from its Regional Water Quality Control Plant (RWQCP). This notice provides a description of the proposed project and also describes the procedure and requirements for submittal of protests against the petition.

PRE-HEARING CONFERENCE

The hearing officer will conduct a pre-hearing status conference to discuss the scope of the hearing, the status of protests, and any other appropriate procedural issues on **Friday, April 6, 2007, at 10:00 a.m.** The goal of the pre-hearing conference is to ensure that the hearing proceeds in an orderly and expeditious manner. The pre-hearing conference will not be used to hear arguments on or determine the merits of any hearing issues, other than procedural matters, unless the parties agree to resolve a hearing issue by stipulation. Following the pre-hearing conference, the State Water Board may at its discretion modify the hearing procedures or issues set forth in this notice in whole or in part. **All parties to the hearing must attend the pre-hearing conference.** Failure to attend the pre-hearing conference may result in exclusion from participation in the hearing.

BACKGROUND

Pending Water Right Applications

The Santa Ana River has been declared by the State Water Board to be a fully appropriated stream. However, following two hearings, the State Water Board revised the Declaration of Fully Appropriated Streams for the Santa Ana River to allow the applications that are the subject of the hearing to be filed.

The subject of surface water allocation on the Santa Ana River was also addressed in two stipulated judgments entered on April 17, 1969. (*Orange County Water Dist. v. City of Chino et al.* (Super. Ct. Orange County, 1969, No. 117628); *Western Mun. Water Dist. of Riverside County v. East San Bernardino County Water Dist.* (Super. Ct. Riverside County, 1969, No. 78426).) The Orange County judgment provided a basis for division of the water resources among the upper and lower portions of the Santa Ana River based upon specified flows at Prado Dam and Riverside Narrows but did not address the subject of whether parties hold water right permits or licenses pursuant to applicable provisions of the Water Code.

The California Environmental Quality Act (CEQA) requires the State Water Board, as a responsible agency with jurisdiction over the water rights and beneficial uses of water in the Santa Ana River, to consider the environmental effects of the projects identified in the

Environmental Impact Report certified by the lead agency prior to reaching a decision on whether or how to approve each project. The State Water Board is responsible for mitigating or avoiding the direct or indirect environmental impacts identified in the resource areas within the State Water Board's jurisdiction, specifically for the water right application and petition components of the projects. (Cal. Code Regs., tit. 14, §15096.)

For the applications and petition that are the subject of this hearing, each of the applicants and petitioner is the lead agency for its project or projects. The State Water Board will consider the extent to which the lead agency has analyzed each project under CEQA and will determine whether the lead agency addressed the water right application or petition component of the project with sufficient specificity for the State Water Board to issue a permit or approve the petition. Prior to issuing any permit or approving the petition, the State Water Board will make independent findings in each case and may require additional or different mitigation measures for impacts identified by the lead agency in resource areas within the State Water Board's jurisdiction.

San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County (Muni/Western); (Applications 031165 and 031370)

Muni/Western filed Application 31165 on March 21, 2001 and Application 31370 on November 4, 2002. Both applications were publicly noticed on January 11, 2002 and January 31, 2003, respectively. Under Applications 31165 and 31370, Muni/Western applied to divert water from the Santa Ana River, and from Bear Creek, Breakneck Creek, Keller Creek and Alder Creek, which are tributary to the Santa Ana River. The applicant proposes to operate the project as a combination of storage and direct diversion not to exceed 100,000 acre-feet per annum (afa) under each application, with a combined total diversion of 200,000 afa under the two applications.

Under Application 31165, Muni/Western proposes to divert up to 50,000 afa to storage at Seven Oaks Dam and up to 100,000 afa to 15 spreading facilities for underground storage and subsequent extraction and use. The applicant also proposes to directly divert up to 800 cubic feet per second (cfs) under Application 31165, not to exceed a total of 100,000 afa.

Under Application 31370, Muni/Western seeks a right to appropriate an additional 50,000 afa to surface storage at Seven Oaks Dam and up to 100,000 afa to existing spreading facilities for underground storage for subsequent extraction and use. The applicant also proposes to directly divert up to 1100 cfs under Application 31370, not to exceed 100,000 afa. The total seventeen points of diversion requested in the two applications are within Section 4, T1S, R2W, SBB&M, Section 19, T1N, R1W, SBB&M, and Section 26, T1N, R2W, SBB&M as shown on the map on file with the State Water Board. The points of diversion and place of use are within the County of San Bernardino.

Muni/Western proposes to divert water year-round for the purpose of municipal, industrial, irrigation, heat control, frost protection and recreational uses. Muni/Western proposes to use: existing and new facilities in the Seven Oaks Dam and reservoir construction area. Muni/Western also proposes construction of facilities immediately downstream of Seven Oaks Dam, and construction adjacent to the Devil Canyon Power Plant and afterbays of the State Water Project, in the area of lower Lytle Creek just north of the City of Rialto, and an area immediately south thereof.

The State Water Board received protests to Applications 31165 and 31370 from: (1) Bear Valley Mutual Water Company, Lugonia Water Company, North Fork Water Company and Redlands Water Company (Bear Valley et. al.); (2) California Sportfishing Protection Alliance (CSPA); (3) City of Redlands (Redlands); (4) California Department of Fish and Game (DFG); (5) East Valley Water District (EVWD); (6) Santa Ana River Local Sponsors comprised of Orange County Flood Control District, Riverside County Flood Control and Water Conservation District, and San Bernardino County Flood Control District (Local Sponsors); (7) San Bernardino Valley Water Conservation District (District); and (8) United States Forest Service (USFS). Table 1, below, lists the status of these protests.

Muni/Western is CEQA lead agency for the proposed project. On January 22, 2007, Muni/Western released the Final Impact Report, Santa Ana River Water Rights Applications for Supplemental Water Supply.

Table 1: Status of Active Protests Against Applications 31165 and 31370**

| Protestant | Basis of Protest | | | |
|--|------------------------------|---------------------------------|------------------------------------|---|
| | Adverse Environmental Impact | Negative Impact on Prior Rights | Does Not Serve the Public Interest | Other |
| Bear Valley et. al.(1) | Conditionally withdrawn | Conditionally withdrawn | Conditionally withdrawn | |
| California Department of Fish and Game | Outstanding | | | |
| Calif. Sportfishing Protection Alliance | Outstanding | | | |
| City of Redlands | Conditionally withdrawn | Conditionally withdrawn | | |
| East Valley Water District | Conditionally withdrawn | Conditionally withdrawn | Conditionally withdrawn | Conditionally withdrawn (Water Quality Degradation) |
| Santa Ana River Local Sponsors(2) | Outstanding | | | |
| San Bernardino Valley Water Conservation District | | Outstanding | | |
| United States Forest Service | Outstanding | | | |

(1) Bear Valley et. al. includes Bear Valley Mutual Water Company, Lugonia Water Company, North Fork Water Company and Redlands Water Company.

(2) The Santa Ana River Local Sponsors includes Orange County Flood Control District, San Bernardino County Flood Control District, Riverside County Flood Control and Water Conservation District.

** In each of the tables in this notice, "conditionally withdrawn" means an applicant and a protestant have resolved their protest based on the inclusion of part of their agreement, and, in some cases, a Superior Court judgment, as a term or terms in the water right permit. At this time the State Water Board has not agreed to include any negotiated protest resolution terms in any water right permit. It will make a decision regarding the applicable permit terms after receiving evidence.

Orange County Water District (OCWD) (Application 031174)

OCWD filed Application 31174 on April 20, 2001. The application was publicly noticed on January 11, 2002. OCWD applied to divert 505,000 afa from the Santa Ana River and would use existing and new facilities to store water in the Orange County groundwater basin for beneficial use within the region. OCWD seeks to appropriate a maximum of 146,800 afa to storage in surface reservoirs (including Prado Dam) and various recharge facilities, and up to 505,000 afa to underground storage for subsequent extraction and use. OCWD also requests the right to appropriate up to 800 cfs by direct diversion. The project will be operated so that the total annual amount of water appropriated as a combination of storage and direct diversion does not exceed 505,000 acre-feet in any one year. In order to accomplish this, OCWD has identified a group of near-term and longer-term projects. The projects include expansion of an OCWD recharge basin known as Anaheim Lake and expansion of a recharge project in Santiago Creek. Near-term projects for diverting additional Santa Ana River flows, using existing diversion structures, include surface recharge basins, creek enhancements, and basin cleaning vehicles. Long-term recharge projects include surface recharge basins, subsurface recharge facilities, and additional basin cleaning vehicles, some of which would require additional diversion structures. Long-term surface storage projects for later release into recharge basins include raising the maximum elevation of the Prado Dam conservation pool and construction of offstream surface water storage reservoirs. The eight points of diversion requested in the application are within Sections 10 and 20, T3S, R7W, SBB&M, Sections 2, 3, 5 and 7, T4S, R9W, SBB&M, as shown on the map on file with the State Water Board. The points of diversion and place of use are within the Counties of Orange and Riverside. The applicant proposes to collect the water to storage and directly divert year-round for the purpose of municipal, irrigation, recreational, and industrial uses.

The State Water Board received protests to Application 31174 from: (1) CSPA; (2) City of Redlands; (3) City of Riverside; (4) City of San Bernardino Municipal Water Department; (5) DFG; (6) EVWD; (7) USFS; and (8) Local Sponsors. Table 2, below, lists the status of these remaining active protests.

OCWD is CEQA lead agency for the proposed project. In March 2006 OCWD released the Recirculated Draft Program Environmental Impact Report for the Orange County Water District Application to Appropriate Santa Ana River Water (PEIR). OCWD received and responded to public comments on the PEIR, and OCWD's Board of Directors certified it in July 2006.

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Table 2: Status of Active Protests Against Application 31174

| Protestant | Basis of Protest | | | |
|---|------------------------------|---------------------------------|------------------------------------|---|
| | Adverse Environmental Impact | Negative Impact on Prior Rights | Does Not Serve the Public Interest | Other |
| Calif. Sportfishing Protection Alliance | Outstanding | | | |
| California Department of Fish and Game | Conditionally withdrawn | | | |
| City of Redlands | Outstanding | Outstanding | | |
| City of Riverside | | | | Conditionally withdrawn (Water right would allow OCWD to divert water contrary to the 1969 Judgment.) |
| City of San Bernardino Municipal Water District | Conditionally withdrawn | | Conditionally withdrawn | Conditionally withdrawn (Water right would allow OCWD to divert water contrary to the 1969 Judgment.) |
| East Valley Water District | | Conditionally withdrawn | Conditionally withdrawn | |
| Local Sponsors (2) | Outstanding | | | |

(1) The Santa Ana River Local Sponsors includes Orange County Flood Control District, San Bernardino County Flood Control District, Riverside County Flood Control and Water Conservation District.

Chino Basin Watermaster (Application 031369)

Chino Basin Watermaster (Watermaster) filed Application 31369 on November 4, 2002. The application was publicly noticed on January 31, 2003. Under Application 31369, the Watermaster seeks to divert 97,000 afa of water from Deer Creek, Day Creek, Etiwanda Creek, San Sevaine Creek, Chino Creek, San Antonio Creek and Cucamonga Creek, all of which are tributaries to the Santa Ana River. The proposed points of diversion are within Sections 11, 15, and 27, T1S, R8W, SBB&M; Sections 17, 22, 23, and 33, T1S, R7W, SBB&M; Sections 21, 23, 27, 31, and 34, T1N, R6W, SBB&M; Sections 10, 21, 28, 31, and 35, T1S, R6W, SBB&M; and Section 3, T2S, R6W, SBB&M as shown on the map on file with the State Water Board. The points of diversion and place of use are within the Counties of San Bernardino and Riverside. The place of use is within the boundaries of the areas administered by the Watermaster. The Watermaster proposes to collect the water to storage year-round for the purpose of municipal, industrial, irrigation, and stockwatering (dairy) uses. Under Application 31369 the Watermaster proposes to utilize an existing system of channels, diversion structures and 31 percolation basins (basins) designed to capture storm flows and recycled water flows in the Chino Basin for the project.

The Watermaster also holds a water right permit for diversion from Day Creek and East Etiwanda Creek (Permit 19895, Application 28473) and a water right permit for diversion from East Etiwanda Creek, San Sevaine Creek, and an unnamed stream tributary to San Sevaine Creek (Permit 20753, Application A028996).

The State Water Board received protests to Application 31369 from (1) USFS, (2) EVWD, (3) Cucamonga Valley Water District (CVWD), and (4) DFG. Table 3, below, lists the status of remaining active protests against Application 31369.

The Watermaster is CEQA lead agency for the proposed project. The project was analyzed under the Optimum Basin Management Plan Programmatic Environmental Impact Report and the project level initial studies that support the negative declarations for the recharge basins.

Table 3: Status of Active Protests Against Application 31369

| Protestant | Basis of Protest | | | |
|--|------------------------------|---------------------------------|------------------------------------|-------|
| | Adverse Environmental Impact | Negative Impact on Prior Rights | Does Not Serve the Public Interest | Other |
| California Department of Fish and Game | Outstanding | | | |
| Cucamonga Valley Water District | | Outstanding | | |

San Bernardino Valley Water Conservation District (SBVWCD) (Application 031371)

SBVWCD filed Application 31371 on November 4, 2002. The application was subsequently publicly noticed on January 31, 2003. Under Application 31371, San Bernardino Valley Water Conservation District seeks to divert a maximum of 41,772 afa from the Santa Ana River and 19,800 afa from Mill Creek, which is tributary to the Santa Ana River. The maximum combined diversion from both sources would be 55,464 afa. The water would be collected to storage year-round for the purposes of maintaining and enhancing groundwater recharge and quality in the Bunker Hill Groundwater Basin, as well as making water available for numerous municipalities, agricultural users and other users. SBVWCD currently holds two water right licenses to divert a combined total of 10,400 afa from the Santa Ana River, License 2831 (Application 2217) and License 2832 (Application 4807). SBVWCD also filed a Statement of Water Diversion and Use (S011471) for the Santa Ana River. Under Application 31371, SBVWCD proposes to use twelve points of diversion and rediversion within Sections 4, 18, and 21, T1S, R2W, SBB&M as shown on the map on file with the State Water Board. The points of diversion, rediversion, and place of use are within the County of San Bernardino.

The State Water Board received protests to Application 31371 from (1) DFG, (2) City of Redlands, (3) Local Sponsors, (4) USFS, (5) Muni/Western, (6) EVWD, and (7) CSPA. Table 4, below, lists the status of these protests.

SBVWCD is the CEQA lead agency for the proposed project. The project is described in the Draft Environmental Impact Report. San Bernardino Valley Water Conservation District. Santa Ana River and Mill Creek Water Rights Application and Groundwater Management Plan, released on June 29, 2004. The District expects to complete a final EIR in early 2007.

Table 4: Status of Active Protests Against Application 31371

| Protestant | Basis of Protest | | | |
|---|------------------------------|---------------------------------|------------------------------------|-------|
| | Adverse Environmental Impact | Negative Impact on Prior Rights | Does Not Serve the Public Interest | Other |
| California Department of Fish and Game | Outstanding | | | |
| Calif. Sportfishing Protection Alliance | Outstanding | | | |
| City of Redlands | Outstanding | | | |
| East Valley Water District | | Outstanding | Outstanding | |
| Muni/Western | Outstanding | | | |
| Santa Ana River Local Sponsors (1) | Outstanding | | | |
| United States Forest Service | Outstanding | | | |

(1) The Santa Ana River Local Sponsors includes Orange County Flood Control District, San Bernardino County Flood Control District, Riverside County Flood Control and Water Conservation District.

City of Riverside (Application 031372)

The City of Riverside (City) filed Application 31372 on November 6, 2002. The application was publicly noticed on January 31, 2003. Under Application 31372, the City seeks to divert water from the Santa Ana River year-round at a maximum rate of 75 cfs, with a maximum diversion of 41,440 afa. The purposes of use are municipal, industrial and irrigation of citrus and nursery crops. The application states that the water will be diverted from the City's Regional Water Quality Control Plant (RWQCP). The point of diversion was listed in the application and notice as being within Section 25, T2S, R6W, SBB&M. The point of diversion and place of use are within the County of San Bernardino. In a meeting with Division staff in November 2006, City representatives stated that the recycled water will not be discharged and then diverted from the Santa Ana River. Rather, the City plans to deliver the water directly from the RWQCP. Staff advised the City that if it did not plan to divert water from the river or another watercourse, it would not need a water right permit, but would need to file a wastewater change petition pursuant to Water Code sections 1210-1212. The City has not yet withdrawn Application 31372.

The State Water Board received protests to Application 31372 from (1) EVWD, (2) USFS, (3) DFG, and (4) CSPA. Table 5, below, lists the status of these protests.

The City of Riverside is the CEQA lead agency for the proposed project. On October 12, 2006, the City circulated the City of Riverside Public Utilities Department Recycled Water Program Draft Program EIR (DPEIR) for a 45-day public review period.

Table 5: Status of Active Protests Against Application 31372

| Protestant | Basis of Protest | | | |
|---|------------------------------|---------------------------------|------------------------------------|-------|
| | Adverse Environmental Impact | Negative Impact on Prior Rights | Does Not Serve the Public Interest | Other |
| Calif. Sportfishing Protection Alliance | Outstanding | | | |
| California Department of Fish and Game | Outstanding | | | |
| East Valley Water District | | Outstanding | Outstanding | |
| United States Forest Service | Outstanding | | | |

City of Riverside (Pending Wastewater Change Petition WW-0045)

Water Code section 1211(a) requires the owner of a wastewater treatment facility to receive approval from the State Water Board of any change in the purpose of use, place of use, or point of discharge of treated wastewater. On December 1, 2006, the City filed Waste Water Change Petition WW-0045 that describes the same project previously described in the City’s water right application. Since the City’s project involves a reduction in the discharge of treated wastewater from the RWQCP, it was required to file a petition for approval of the State Water Board pursuant to Water Code section 1211. The City has petitioned the State Water Board to change the point of discharge, place of use, and purpose of use of its treated wastewater effluent from the Santa Ana River. The petition indicates that the City presently discharges approximately 36,000 afa to the Santa Ana River at the RWQCP. It plans to increase the capacity of the RWQCP to 67,400 afa by the year 2050, but due to the City’s plans to increase the use of recycled water, it will effectively decrease its discharge of treated wastewater to the river to approximately 26,000 afa. The minimum discharge to the Santa Ana River will be 25,000 afa, which is expected to occur in the year 2025. The City’s point of discharge on the Santa Ana River is within Section 25, T2S, R6W, SBB&M, within the County of San Bernardino.

The City of Riverside is the CEQA lead agency for the proposed project. The City intends to use the DPEIR prepared for Application 31371 to comply with CEQA.

KEY ISSUES

The State Water Board’s decision whether to approve Applications 31165, 31370, 31174, 31369, 31371, and 31372, and Wastewater Change Petition WW-0045, must be based upon the record developed at the hearing. Applicants, protestants, and interested parties should submit exhibits and testimony responsive to the following issues that will be considered during the hearing:

1. Is there water available for appropriation by each of the applicants? If so, when is water available and under what circumstances?
2. Will approval of any of the applications or the petition result in any significant adverse impacts to water quality, the environment or public trust resources? If so, what adverse impact or impacts would result from the project or projects? Can these impacts be avoided or mitigated to a level of non-significance? If so, how? What conditions, if any,

should the State Water Board adopt to avoid or mitigate any potential adverse impacts on fish, wildlife, or other public trust resources that would otherwise occur as a result of approval of the applications and petition?

3. Is each of the proposed projects in the public interest? If so, what conditions, if any, should the State Water Board adopt in any permits that may be issued on the pending applications, or in any order that may be issued on the wastewater change petition, to best serve the public interest?
4. Will any of the proposed appropriations by the applicants and/or the proposed change in treated wastewater discharge by the petitioner cause injury to the prior rights of other legal users of water?
5. What should be the relative priority of right assigned to any permits that may be issued on the pending applications?
6. What effect, if any, will the projects have on groundwater and/or movement of any contaminated groundwater plumes? Can the effects be mitigated? If so, how?

PROTEST OF WASTEWATER CHANGE PETITION WW-0045 AND HEARING PARTICIPATION

IF YOU WISH TO PROTEST the City of Riverside's wastewater change petition, you may submit a protest in accordance with the provisions of California Code of Regulations, Title 23, Division 3, Chapter 2, Article 9, commencing with section 745. Standard forms on which to submit protests may be obtained from the State Water Board's Division of Water Rights or downloaded from the Division of Water Rights website at http://www.waterrights.ca.gov/forms/pro_pet.pdf. Protests must be submitted in writing with a duplicate copy to the Petitioner, City of Riverside, and must be **received** by the State Water Board no later than **noon on Wednesday, March 21, 2007**. **Any correspondence directed to the petitioner should be mailed to:**

Kevin Milligan, Assistant Director
City of Riverside
Public Utilities Department
3901 Orange Street
Riverside, CA 92601

Nicholas F. Bonsignore
Wagner & Bonsignore Consulting Engineers
444 North Third Street, Suite 325
Sacramento, CA 95814

A person may file a protest based on any of the following factors: (1) Interference with prior water rights; (2) Adverse environmental impact; (3) Not in the public interest; (4) Contrary to law; and (5) Not within the jurisdiction of the State Water Board. All protests must clearly describe the objections to approval of the petition and the factual basis for those objections. For example, if the objection is based on injury to existing water rights, the protest must describe the specific injury to the existing water right that would result from approval of the changes proposed by the petition. In addition, the party claiming interference with prior rights must

provide specific information describing the basis of the prior right, the date the use began, the quantity of water used, the purpose of use, and the place of use. Protests based on environmental impacts, public interest, legality, or jurisdictional issues must be accompanied by a statement of facts supporting the basis of the protest. If sufficient information is not submitted, the State Water Board may reject the protest or request that the protestant submit additional information. Protests of a general nature (not project specific) or protests that are inconsistent with constitutional or legislated state policy will not be accepted. A request for information or a request that studies be conducted does not constitute a protest.

The State Water Board intends to conduct a hearing on the wastewater change petition beginning on Wednesday, May 2, 2007, to receive evidence related to the petition and any unresolved protests. If you intend to participate in the hearing, you must submit a **Notice of Intent to Appear** indicating your intent to appear to present evidence in support of your protest, and you must comply with the other instructions below for those who wish to take part in the hearing.

HEARING PARTICIPATION

IF YOU WANT TO TAKE PART IN THE HEARING on the pending water right applications and wastewater change petition, you should carefully read the enclosure titled "Information Concerning Appearance at Water Right Hearings." As stated in that enclosure, parties intending to present evidence at the hearing must submit a **Notice of Intent to Appear**, which must be **received** by the State Water Board no later than **noon on Wednesday, March 21, 2007**. All parties to the hearing must attend the **pre-hearing conference on Friday, April 6, 2007, at 10:00 a.m.**

On or about **Monday, March 26, 2007**, the State Water Board will mail out a list of parties who have indicated intent to participate in the hearing in order to facilitate exchange of testimony, exhibits and witness qualifications. Copies of witnesses' proposed testimony, exhibits, list of exhibits, and qualifications must be **received** by the State Water Board and served on each of the parties who have indicated their intent to appear, no later than **noon on Monday, April 16, 2007**.

PARKING, ACCESSIBILITY, AND SECURITY

The enclosed maps show the location of the Joe Serna Jr./Cal-EPA Building and public parking sites in Sacramento. The Joe Serna Jr./Cal-EPA Building Coastal Hearing Room is accessible to persons with disabilities.

Due to enhanced security precautions at the Cal-EPA Headquarters Building, all visitors are required to register with security staff prior to attending any meeting. To sign in and receive a visitor's badge, visitors must go to the Visitor and Environmental Services Center, located just inside and to the left of the building's public entrance. Depending on their destination and the building's security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver's license, military identification card, or state or federal identification card. Depending on the size and number of meetings scheduled on any given day, the security check-in could take from three to fifteen minutes. Please allow adequate time to sign in before being directed to your meeting.

IF YOU HAVE ANY QUESTIONS

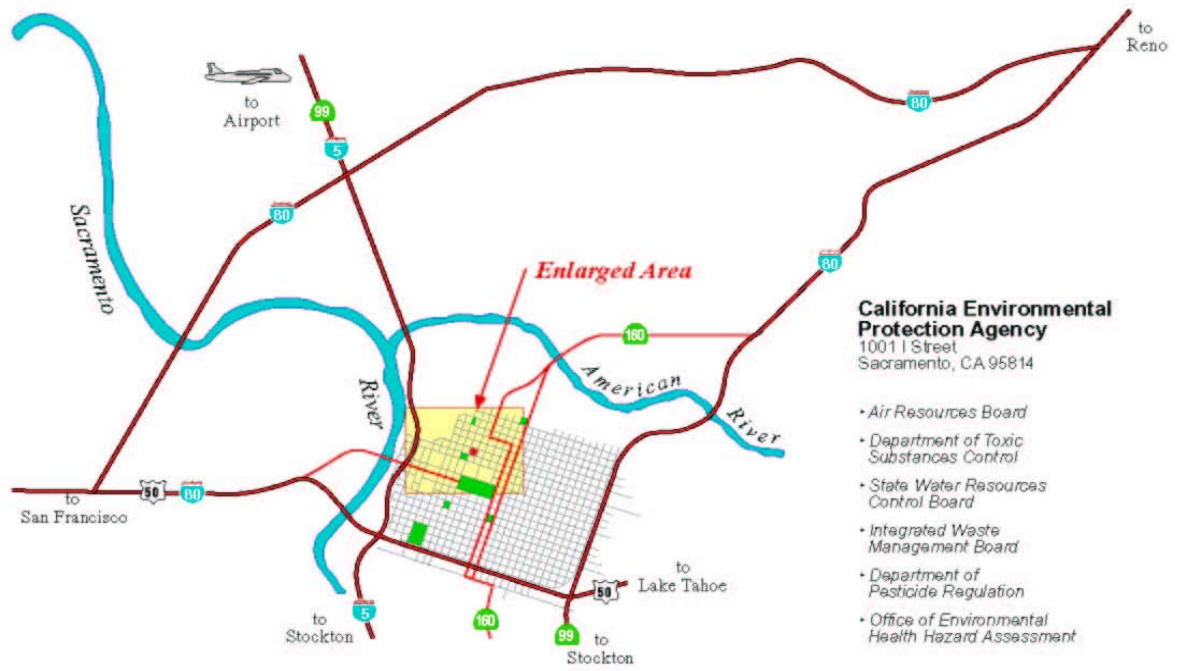
State Water Board Chair Tam Doduc will preside as hearing officer over this proceeding. Other Board members may be present during the hearing. State Water Board staff hearing team members will include Erin Mahaney, Senior Staff Counsel, Jane Farwell, Environmental Scientist, Jean McCue, Water Resource Control Engineer, and Paul Murphey, Engineering Geologist. The hearing staff will assist the hearing officer and the other members of the State Water Board during the hearing. During the pendency of this proceeding and commencing no later than the issuance of this notice, there shall be no *ex parte* communications between State Water Board members or State Water Board hearing team staff and any of the other participants regarding substantive or controversial procedural matters within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Questions regarding non-controversial procedural matters (Gov. Code, § 11430.20, subd. (b)) should be directed to Erin Mahaney, at (916) 341-5187 or Jane Farwell, at (916) 341-5349.



Song Her
Clerk to the Board

Date: February 16, 2007

Enclosures



Parking Lot Locations



Parking Lot Locations

- Lot 1 (7th & G St.)
- Lot 2 (7th & G St.)
- Lot A (7th & Capitol)
- Lot C (14th & H St.)
- Lot G (3rd & L)
- Lot H (10th & L)
- Lot I (10th & I, 11th & I)
- Lot K (6th & J/L, 7th & K)
- Lot P (2nd & I)
- Lot U (5th & J)
- Lot W (2nd & I St.)

INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARINGS

Hearing Regarding Santa Ana River Water Right Applications 31165, 31174, 31369, 31370, 31371, and 31372 and Wastewater Change Petition No. WW-0045

The following procedural requirements will apply and will be strictly enforced for purposes of the above-mentioned hearing.

1. **HEARING PROCEDURES GENERALLY:** The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760, as they currently exist or may be amended. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Board is available upon request or may be viewed at the State Water Board's web site: http://www.waterboards.ca.gov/water_laws/index.html.

Each party has the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. The hearing officer may extend these rights to a non-party participant or may limit the participation of a non-party participant.

Any requests for exceptions to the procedural requirements specified in this notice shall be filed in writing. To provide time for other participants to respond, the hearing officer will rule on procedural requests filed in writing no sooner than fifteen days after receiving the request, unless an earlier ruling is necessary to avoid disrupting the hearing.

2. **PARTIES:** The parties are the applicants, petitioner, protestants, other interested persons or entities who intend to present evidence, and any other persons or entities authorized by the hearing officer to participate in the hearing as parties. Only parties and other participants who are authorized by the hearing officer will be allowed to present evidence. A person or entity that appears and presents only a policy statement will not be allowed to participate in other parts of the hearing. The rules for policy statements are discussed below.
3. **NOTICE OF INTENT TO APPEAR:** Participants in this hearing must file six copies of a Notice of Intent to Appear, which must be **received** by the State Water Board no later than **noon on Wednesday, March 21, 2007**. Failure to submit a Notice of Intent to Appear and exhibits in a timely manner may be interpreted by the State Water Board as intent not to appear.

The Notice of Intent to Appear must state: (1) the name and address of the participant, (2) the name of each witness who will testify on the participant's behalf, (3) a brief description of the proposed testimony, and (4) an estimate of the time (not to exceed 20 minutes) that the witness will need to present a brief oral summary of the witness' testimony. The witness' testimony must be submitted in writing as described in Section 4 below. Participants who do not intend to present a case-in-chief but who may wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear. Participants who decide not to present a case-in-chief after having submitted a Notice of Intent to Appear should notify the State Water Board and the other participants as soon as possible.

In order to expedite the exchange of information and lower the cost of participating in the hearing, the State Water Board encourages participants to submit written policy statements, written opening statements, written testimony, exhibits, and an Exhibit Identification Index to the State Water Board in electronic form. In addition, participants may exchange the foregoing documents in electronic form. Hearing participants are not required to submit these documents in electronic form or accept electronic service; however, those who choose to submit these documents electronically must comply with the requirements described in section 5, below. If you are willing to accept electronic media service in lieu of receiving hard copies of items, please check the appropriate box on the Notice of Intent to Appear.

The State Water Board will mail a service list of parties to exchange information to each hearing party who has submitted a Notice of Intent to Appear. Hearing participants who intend to make only policy statements are not required to exchange information and will not receive copies of written testimony or exhibits from the parties. The service list will indicate which participants agreed to accept electronic service. If there is any change in the hearing schedule, only those persons or entities that have filed a Notice of Intent to Appear will be informed of the change.

4. **WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include written testimony, statements of qualifications of expert witnesses, and other documents to be used as evidence. Each participant proposing to present testimony on factual or other evidentiary matters at the hearing shall submit such testimony in writing.¹ Written testimony shall be designated as an exhibit, and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A participant who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

Each participant shall submit to the State Water Board either: seven paper copies of each of its exhibits or six paper copies and one electronic copy of each of its exhibits. Each participant shall also serve a copy of each exhibit on every participant on the service list. Participants may serve those parties who agree to electronic service with an electronic copy of exhibits. Participants must serve paper copies of exhibits on those participants who do not agree to electronic service.

With its exhibits, each participant must submit to the State Water Board and serve on the other participants a completed Exhibit Identification Index. If possible, each participant should submit to the State Water Board and serve on the other participants an electronic copy, as well as a paper copy of the Exhibit Identification Index. Please see Section 5 for details regarding electronic submissions.

A statement of service with manner of service indicated shall be filed with each participant's exhibits. The exhibits and indexes for this hearing, and a statement of service, must be **received** by the State Water Board by **noon on Monday, April 16, 2007**, and served on the other participants on or before that date.

¹ The hearing officer may make an exception to this rule if the witness is adverse to the participant presenting the testimony and is willing to testify only in response to a subpoena or alternative arrangement. In such a case, the hearing officer may allow presentation of the oral direct testimony without requiring written testimony.

The following requirements apply to exhibits:

- a. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models.
 - b. The hearing officer has discretion to receive in evidence by reference relevant, otherwise admissible, public records of the State Water Board and documents or other evidence that have been prepared and published by a public agency, provided that the original or a copy was in the possession of the State Water Board before the notice of the hearing is issued. (Cal. Code Regs., tit. 23, § 648.3.) A participant offering an exhibit by reference shall advise the other participants and the State Water Board of the titles of the documents, the particular portions, including page and paragraph numbers, on which the participant relies, the nature of the contents, the purpose for which the exhibit will be used when offered in evidence, and the specific file folder or other exact location in the State Water Board's files where the document may be found.
 - c. A participant seeking to enter in evidence as an exhibit a voluminous document or database may so advise the other participants prior to the filing date for exhibits, and may ask them to respond if they wish to have a copy of the exhibit. If a participant waives the opportunity to obtain a copy of the exhibit, the participant sponsoring the exhibit will not be required to provide a copy to the waiving participant. Additionally, such exhibits may be submitted to the State Water Board in electronic form, using a file format readable by Microsoft Office 2000 software.
 - d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
 - e. **Large Format Exhibits:** Participants submitting large format exhibits such as maps, charts, and other graphics shall provide the original for the hearing record in a form that can be folded to 8 ½ x 11 inches. Alternatively, participants may supply, for the hearing record, a reduced copy of a large format original if it is readable.
5. **ELECTRONIC SUBMISSIONS:** Participants are encouraged to submit the following documents to the State Water Board in electronic form: written opening statements, written policy statements, written testimony, exhibits, and Exhibit Identification Indexes. In addition, the foregoing documents may be served electronically on those participants who have agreed to accept electronic service. Paper copies of all other documents must be submitted to the State Water Board and served on the other parties, unless the hearing officer specifies otherwise.

Any documents submitted or served electronically must be in Adobe™ Portable Document Format (PDF), except for Exhibit Identification Indexes, which must be in a version supported by Microsoft Excel or Word. Electronic submittals to the State Water Board of documents less than 15 megabytes (incoming mail server attachment limitation) in total size may be sent via electronic mail to: wrhearing@waterboards.ca.gov with a subject of "Santa Ana River Hearing". Electronic submittals to the State Water Board of documents greater than 15 megabytes in total size should be sent by regular mail in PDF format on compact disk (CD™) media. Electronic service on participants shall be in the same format

as submittals to the State Water Board, and should be submitted to the other participants by mail on CD.

Participants who agree to electronic service may request that specific documents be provided to them in paper copy. Requests should be made to the participant who submitted the document, not to the State Water Board. Participants who receive such a request shall provide a paper copy of the requested document within five days of the date the request is received. The State Water Board will post a list of all exhibits submitted for the hearing on its website at: <http://www.waterrights.ca.gov/Hearings/SantaAnaRiver.html>

6. **ORDER OF PROCEEDING:** The State Water Board members serving as hearing officer will follow the Order of Proceedings specified in California Code of Regulations, title 23, section 648.5. Participants should take note of the following additional information regarding the major hearing events. The time limits specified below may be changed by the hearing officer, at the hearing officer's discretion, as a result of the pre-hearing conference.
 - a. **Policy Statements:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the State Water Board will provide an opportunity for presentation of non-evidentiary policy statements or comments by interested persons who are not participating in the hearing. Policy statements will be heard at the start of the hearing, immediately after a hearing officer identifies the parties and other participants. Policy statements are subject to the following provisions in addition to the regulation:
 - i. Policy statements are not subject to the prehearing requirements noted above for testimony or exhibits, except that persons wishing to make policy statements are requested to file a Notice of Intent to Appear, indicating clearly an intent to make only a policy statement.
 - ii. The State Water Board requests that policy statements be provided in writing before they are presented. Please see Section 5, above, for details regarding electronic submittal of policy statements. Oral summaries of the policy statements will be limited to five minutes or such other time as established by the hearing officer.
 - b. **Presentation of Cases-In-Chief:** Each participant may present a case-in-chief addressing the key issues identified in the hearing notice. The case-in-chief will consist of any opening statement provided by the participant, oral testimony, introduction of exhibits, and cross-examination of the participant's witnesses. The hearing officer may allow redirect examination and recross examination. The hearing officer will decide whether to accept the participant's exhibits in evidence upon a motion of the participant after the case-in-chief has been completed.
 - i. **Opening Statements:** At the beginning of a case-in-chief, the participant or the participant's attorney may make an opening statement briefly and concisely stating the objectives of the case-in-chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. Oral opening statements will be limited to 20 minutes per participant. A participant may submit a written opening statement. Please see section 5, above, for details regarding electronic submittal of written opening

- statements. Any policy-oriented statements by a participant should be included in the participant's opening statement.
- ii. **Oral Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, witnesses shall swear or affirm that the written and oral testimony they will present is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony. Witnesses will be allowed up to 20 minutes to summarize or emphasize their written testimony on direct examination.² Each participant will be allowed up to two hours total to present all of its direct testimony.³
 - iii. **Cross-Examination:** Cross-examination of a witness will be permitted on the party's written submittals, the witness' oral testimony, and other relevant matters. If a participant presents multiple witnesses, a hearing officer will decide whether the participant's witnesses will be cross-examined as a panel. Cross-examiners initially will be limited to one hour per witness or panel of witnesses. The hearing officer has discretion to allow additional time for cross-examination if there is good cause demonstrated in an offer of proof. Any redirect examination and recross examination permitted by a hearing officer will be limited to the scope of the cross-examination and the redirect examination, respectively. Witnesses may be cross-examined on relevant subjects that are not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) Ordinarily, only a participant or the participant's representative will be permitted to examine a witness, but a hearing officer may allow a participant to designate a person technically qualified in the subject being considered to examine a witness. State Water Board members and the State Water Board's counsel may ask questions at any time, and the State Water Board members and staff may cross-examine any witness.
- c. **Rebuttal:** After all participants have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officer will allow participants to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented in another participant's case-in-chief. Rebuttal testimony and exhibits need not be submitted prior to the hearing. Rebuttal evidence is limited to evidence that is responsive to evidence presented in a case-in-chief, and it does not include evidence that should have been presented during the presenter's case-in-chief. It also does not include repetitive evidence. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.
 - d. **Closing Statements and Legal Arguments:** At the close of the hearing or at other times if appropriate, a hearing officer may allow oral arguments or set a schedule for filing briefs or closing statements. If a hearing officer authorizes the participants to file briefs, six copies of each brief shall be submitted to the State Water Board, and one copy shall be served on each of the other participants on the service list. A participant shall not attach a document of an evidentiary nature to a brief unless the document is at the time in the evidentiary hearing record or is the subject of an offer of the document in evidence. Every participant filing a brief shall file a statement of service with the brief, indicating the manner of service.

² The hearing officer may allow additional time for the oral direct testimony of the witness if the witness is adverse to the participant presenting the testimony and the hearing officer is satisfied that the participant could not produce written direct testimony for the witness.

³ The hearing officer may, for good cause, approve a party's request to use more than two hours total to present direct testimony during the party's case-in-chief.

7. **EX PARTE CONTACTS:** During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there shall be no *ex parte* communications between either State Water Board members or State Water Board hearing team staff and any of the other participants regarding substantive issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Communications regarding non-controversial procedural matters are permissible, and should be directed to the State Water Board staff attorney on the hearing team, not State Water Board members. (Gov. Code, § 11430.20, subd. (b).) A document regarding *ex parte* communications entitled, “Ex Parte Questions and Answers” is available upon request or from our website at <http://www.waterboards.ca.gov/docs/exparte.pdf>.
8. **RULES OF EVIDENCE:** Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.
9. **SUBMITTALS TO THE STATE WATER BOARD:** Notices of Intent to Appear, written testimony and other exhibits submitted to the State Water Board should be addressed as follows:

Division of Water Rights
State Water Resources Control Board
P.O. Box 2000, Sacramento, CA 95812-2000
Attn: Jane Farwell
Phone: (916) 341-5349
Fax: (916) 341-5400
Email: wrhearing@waterboards.ca.gov
With Subject of “Santa Ana River Hearing”

STAFF EXHIBITS OFFERED INTO EVIDENCE

The following items will be offered, by reference, as staff exhibits at the Santa Ana River hearing regarding water right Applications 31165, 31370, 31174, 31369, 31371 and 31372 and Wastewater Change Petition WW-0045:

- SWRCB-1: All water right files related to Applications 31165, 31370, 31174, 31369, 31371 and 31372 and Wastewater Change Petition WW-0045
- SWRCB-2: State Water Resources Control Board Order WRO-2000-12 and related hearing record
- SWRCB-3: State Water Resources Control Board Order WRO-2002-0006 and related hearing record
- SWRCB-4: All water right files related to State Water Board Orders WR 89-25, WR 98-08
- SWRCB-5: Settlement Agreement Relating to the Diversion of Water from the Santa Ana River System (Seven Oaks Accord), dated July 21, 2004
- SWRCB-6: Topographic Maps published by the United States Geological Survey covering the proposed places of use, points of diversion, and point of discharge under consideration.
- SWRCB-7: United States Geological Survey Water Data for California, for the period of published record, covering the Santa Ana River Watershed.
<http://waterdata.usgs.gov/ca/nwis>
- SWRCB-8: Climatology Data for the Santa Ana River Watershed for the period of published record. <http://cdec.water.ca.gov/>
- SWRCB-9: California Department of Water Resources' Water Data Library (WDL) hydrologic data. <http://wdl.water.ca.gov/>
- SWRCB-10: "Water Quality Control Plan, Santa Ana River Basin", as originally approved by the State Water Resources Control Board, and any amendments thereto.
- SWRCB-11: "Hydrology, Description of Computer Models, and Evaluation of Selected Water-Management Alternatives in the San Bernardino Area, California." U.S. Geological Survey Open-File Report 2005-1275.
- SWRCB-12: "California's Groundwater - Bulletin No. 118, Update 2003," California Department of Water Resources.
<http://www.groundwater.water.ca.gov/bulletin118/update2003/index.cfm>
- SWRCB-13: Geologic Map of the San Bernardino Sheet – 1969. California Department of Conservation – Division of Mines and Geology.
- SWRCB-14: Geologic Map of the Santa Ana Sheet – 1966. California Department of Conservation – Division of Mines and Geology.

NOTICE OF INTENT TO APPEAR

_____ plans to participate in the water right hearing regarding:
(name of party or participant)

**SANTA ANA RIVER HEARING
scheduled to commence
Wednesday, May 2, 2007**

- I/we wish to protest Wastewater Change Petition WW-0045.
- I/we intend to participate in the portion of the hearing regarding water right Applications 31165, 31370, 31174, 31369, 31371 and 31372.
- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we agree to accept electronic service of hearing-related materials.
- I/we plan to call the following witnesses to testify at the hearing.

| NAME | SUBJECT OF PROPOSED TESTIMONY (Please indicate Application Number if Appropriate) | ESTIMATED LENGTH OF DIRECT TESTIMONY | EXPERT WITNESS (YES/NO) |
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Name, Address, Phone Number and Fax Number of Attorney or Other Representative

Signature: _____ Dated: _____

Name (Print): _____

Mailing: _____
Address: _____

Phone Number: (____) _____ Fax Number: (____) _____

E-mail Address: _____

**MAY 2, 2007 HEARING ON SANTA ANA RIVER APPLICATIONS AND
WASTEWATER CHANGE PETITION WW-0045**

Exhibit Identification Index

Participant: _____

| Exhibit No. | Description | Status as Evidence | | |
|-------------|-------------|--------------------|----------|--------------------------|
| | | Introduced | Accepted | By Official Notice |
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