

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of Wastewater Petition WW0107

Los Angeles County Sanitation Districts

**ORDER APPROVING CHANGE IN PLACE OF USE,
PURPOSE OF USE, AND QUANTITY OF DISCHARGE**

SOURCE: San Jose Creek and San Gabriel River

COUNTY: Los Angeles

WHEREAS:

1. On August 12, 2019, the Los Angeles County Sanitation Districts (Sanitation Districts) filed Wastewater Change Petition WW0107 with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), pursuant to Water Code section 1211. The petition seeks to change the place of use, purpose of use, and quantity of treated wastewater currently discharged to the San Gabriel River.
2. Water Code section 1211 requires the owner of a wastewater treatment plant to obtain approval from the State Water Board prior to making any change in the point of discharge, place of use, or purpose of use of treated wastewater where changes in the discharge or use of treated wastewater result in decreasing the flow in any portion of a watercourse.
3. The Sanitation Districts' San Jose Creek Water Reclamation Plant (SJCWRP) is a wastewater treatment facility in the City of Whittier. The SJCWRP generates approximately 54.4 million gallons per day (MGD) (5-water-year average from 2014 through 2018 of discharge volumes) of tertiary-treated effluent, of which approximately 25.4 MGD is discharged to the concrete lined/unlined San Gabriel River and San Jose Creek. The SJCWRP has five discharge points: SJC001, SJC001A, SJC001B, SJC002, and SJC003 which discharge to San Jose Creek and/or the San Gabriel River. The SJCWRP discharge is rotated between its five discharge locations within the San Gabriel River watershed. The proposed reduction in discharge would only occur at two of the five discharge points. The proposed discharge from SJCWRP at discharge point SJC002 to unlined San Jose Creek would be reduced from a monthly average of approximately 9.5 MGD to a minimum monthly average of approximately 5 MGD. Discharge to the lined portion

of the San Gabriel River at SJC001 would be reduced from a monthly average of approximately 5.4 MGD to zero, with some discharge only during wet weather.

4. Discharge of treated wastewater from the SJCWRP for non-potable purposes, is currently authorized by the Los Angeles Regional Water Quality Control Board (Los Angeles Regional Water Board) under Order. No. 87-50 and readopted under Order No. 97-072.
5. Discharge of treated wastewater from the SJCWRP to the San Gabriel River is currently authorized by the Los Angeles Regional Water Board under the NPDES Permit, Order No. R4-2015-0070.
6. For the purposes of this Order, the State Water Board considers the following information as the Sanitation Districts' existing points of discharge, place of use, and purpose of use of treated wastewater:
 - a. The points of discharge are the following: SJCWRP discharge points at California Coordinate System, NAD 83, Zone 5: 1) SJC001: Northing: 61,797,145.626 and Easting: 6,528,972.73; 2) SJC001A: Northing: 1,820,267.50 and Easting: 6,539,437.79; 3) SJC001B: Northing: 1,811,375.55 and Easting: 6,534,798.54; 4) SJC002: Northing: 1,835,281.52 and Easting: 6,555,279.46; and 5) SJC003: Northing 1,835,511.82 and Easting: 6,552,391.97;
 - b. There is no current place of use; and,
 - c. There is not current purpose of use.
7. As previously stated, the Sanitation Districts propose to reduce SJCWRP discharge to San Jose Creek and/or the San Gabriel River from SJC002 from approximately 9.5 MGD down to approximately 5 MGD, and from SJC001 from approximately 5.4 MGD down to zero, with some discharge in high rain years when less recycled water is needed. There is no proposed reduction from Discharge Points SCJ001A, SJC001B, and SJC003. Historically, SJC003 is rarely used. The reduced flow would be directed to projects in the Central Basin Municipal Water District, Water Replenishment District of Southern California, Upper San Gabriel Valley Municipal Water District, and Walnut Valley Water District service areas and Rose Hills Memorial Park for potable and non-potable uses, including landscape irrigation of parks, schools, golf courses, greenbelts, etc., and industrial and municipal uses by local entities.
8. On October 15, 2019, the Division issued a public notice of the petition in accordance with Water Code section 1703. Protests were received from Los Angeles Waterkeeper (LAW) and Heal the Bay (HTB), collectively, and California Department of Fish and Wildlife (CDFW).

LAW and HTB Protests

In a November 1, 2019 letter, LAW and HTB protested the Sanitation Districts' WW0104 (Pomona WRP) and WW0107 (San Jose Creek WRP) petitions. The letter was sent prior to the November 8, 2019 issuance and November 18, 2019 approval of the Final Environmental Impact Report for the San Gabriel River Watershed Project to Reuse River Discharge in Support of Increased Recycled Water Reuse (Final EIR). In the letter, LAW and HTB asked for a study of existing baseline recreational uses of the San Gabriel River.

On November 13, 2019 LAW and HTB submitted a letter in response to the Final EIR in which they indicated that the Final EIR generally addressed their concerns with regards to protection of rare species, climate change, and tribal consultation.

In a meeting on January 10, 2020 with the Sanitation Districts, LAW and HTB again asked for a study of existing baseline recreational uses of the San Gabriel River.

The Division received a letter from the Sanitation Districts dated January 22, 2020, updating the State Water Board regarding resolution of the LAW and HTB protests of WW0104 and WW0107. The Division also received an email from LAW and HTB on May 12, 2020 regarding a subsequent update on protest resolution which included reference to pending discussions with the Habitat Management Committee (HMC), and the Sanitation Districts' letter dated May 18, 2020 in response to that email. A subsequent discussion with the HMC regarding San Gabriel River flow management issues occurred in June 2020.

The Division sent a letter dated August 17, 2020 to LAW and HTB asking for further information regarding protest resolution. In a letter dated September 9, 2020, LAW and HTB informed the Division that the Sanitation Districts have adequately addressed their concerns underlying the protests and all outstanding issues are substantively resolved. LAW and HTB requested the Division dismiss their protests.

CDFW Protest

In a November 12, 2019 letter, CDFW protested WW0107. The basis of the protest was potential adverse environmental impacts and conservation of public trust resources.

The protest submitted by CDFW alleges that reduction in surface flow has the potential for harm to fish and wildlife resources and their San Jose Creek and San Gabriel River habitats. CDFW's letter dated November 12, 2019 recommended inclusion of certain conditions to protect fish and wildlife resources as enforceable terms in any order approving the petition to resolve the protest. Those terms have been included in this Order.

9. Under the California Environmental Quality Act (CEQA), the Sanitation Districts are the lead agency for preparation of environmental documentation for this project. In 2019, the Sanitation Districts issued a Notice of Preparation and Initial Study for an

Environmental Impact Report (EIR) and released a Draft EIR in August 2019. A Final EIR was certified and a Notice of Determination (NOD) was issued in November 2019 (State Clearinghouse No. 2018071021).

10. The State Water Board is a CEQA responsible agency for purposes of considering whether to approve the petition that will allow the Sanitation Districts to proceed with the proposed project. As a CEQA responsible agency, the State Water Board must consider the environmental documentation prepared by the lead agency and any other relevant evidence in the record and must reach its own conclusions on whether and how to approve the project involved. (Cal. Code Regs., tit. 14, § 15096, subd. (a).)
11. The State Water Board has considered the Final EIR in deciding whether to approve the petition. The Final EIR considers the potential impacts of reduced flows to the San Gabriel River Watershed. The flow impacts are evaluated in the Final EIR and it is determined that there will be no significant impact to fish, wildlife, or the environment. The State Water Board will issue a Notice of Determination (NOD) within five days of the date of this Order.
12. The State Water Board has reviewed the petition, protests, and the entire administrative record, including all associated CEQA documents for the project. The State Water Board finds that the petition for change in the place of use, purpose of use and quantity of discharge to a watercourse will not cause injury to any other lawful user of the water.
13. In addition to any obligation the State Water Board may have under CEQA, the State Water Board has an independent obligation to consider the effect of the change on public trust resources and to protect those resources where feasible, and to balance any adverse public trust effects against the benefits of the project. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346].) Based on the State Water Board's review of all relevant evidence in the administrative record, no adverse impacts to public trust resources are expected as a result of the proposed project.
14. The State Water Board has a Policy for Water Quality Control for Recycled Water (Recycled Water Policy), originally adopted on February 23, 2009 and amended on January 22, 2013 and December 11, 2018. The purpose of the Recycled Water Policy is to increase the use of recycled water from municipal wastewater sources, and one of the goals for California, as stipulated in the Recycled Water Policy, is to increase the use of recycled water over 2002 levels by at least one million acre-feet per year by 2020, and by at least two million acre-feet per year by 2030. The Sanitation Districts' project, as proposed in the petition, is consistent with the purpose of the Recycled Water Policy and will help California meet the goals of the Recycled Water Policy.

15. Pursuant to Resolution 2012-0029, the State Water Board has delegated the authority to administer the State Water Board's water rights program to the Deputy Director for the Division of Water Rights. The Deputy Director for the Division of Water Rights has redelegated that authority.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT:

1. The protests of Los Angeles Waterkeeper (LAW) and Heal the Bay (HTB), collectively, and the California Department of Fish and Wildlife (CDFW) are dismissed.
2. The points of discharge are unchanged and are located as follows. The San Jose Creek Water Reclamation Plant (SJCWRP) discharge points at California Coordinate System, NAD 83, Zone 5: 1) SJC001: Northing: 61,797,145.626 and Easting: 6,528,972.73; 2) SJC001A: Northing: 1,820,267.50 and Easting: 6,539,437.79; 3) SJC001B: Northing: 1,811,375.55 and Easting: 6,534,798.54; 4) SJC002: Northing: 1835281.52 and Easting: 6,555,279.46; and 5) SJC003: Northing 1,835,511.82 and Easting: 6,552,391.97.
3. The request to change the place of use is approved. The place of use for treated wastewater produced by the SJCWRP is within the Central Basin Municipal Water District, Water Replenishment District of Southern California, Upper San Gabriel Valley Municipal Water District, and Walnut Valley Water District service areas and Rose Hills Memorial Park, as shown in Attachment 1, Table 2.5 of the petition filed with the State Water Board.
4. The request to change the purpose of use is approved. The purposes of use for treated wastewater produced by the SJCWRP are irrigation, industrial, and municipal uses.
5. The monthly average amounts of discharge of treated wastewater from the SJCWRP to San Jose Creek, and/or the San Gabriel River may be reduced at SJC002 from approximately 9.5 MGD to approximately 5 MGD and at SJC001 from approximately 5.4 MGD down to zero, with the possibility of some discharge in high rain years when less recycled water is needed, from January 1 to December 31 of each year.

6. Prior to operation of the project, the Los Angeles County Sanitation Districts (Sanitation Districts) shall obtain any and all necessary federal (including Clean Water Act section 404), state and local agency permits, and approvals required by other agencies prior to operation of the project. Copies of such permits and approvals shall be forwarded to the Deputy Director for the Division of Water Rights.
7. The Sanitation Districts shall submit proposed modifications to the approved final Adaptive Management Plan (AMP) to CDFW and U.S. Fish and Wildlife Service (USFWS) for review and approval. Modifications to the final AMP may only be made upon written approval of CDFW and USFWS, which approval shall not be unreasonably withheld. Any approved modifications to the final AMP shall be submitted to the State Water Board Deputy Director of the Division of Water Rights.
8. The Sanitation Districts shall comply with the mitigation terms pertaining to the Biological Resources specified in the Final EIR (SCH No. 2018071021).
9. The Sanitation Districts are responsible for compliance with any applicable waste discharge or water recycling requirements issued by the Los Angeles Regional Water Board or the State Water Board.
10. The State Water Board reserves jurisdiction in the public interest to implement and amend this Order for conformity with instream flow requirements that may be established for San Jose Creek and the San Gabriel River in the future, and in the event of unforeseen adverse impacts to fish and wildlife resources and other instream beneficial uses. Modifications to this Order shall only be made after notice and opportunity for a hearing.
11. This approval order 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 CESA (Fish and Game Code Section 2050 et seq.) or FESA (16.U.S.C.A. Section 1531 et seq.). If a "take" may result from any act authorized under this order, the petitioner shall obtain authorization for such 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.
12. The Sanitation Districts shall file an annual report with the Deputy Director for the Division of Water Rights by March 31 of each year following the year of order issuance that includes at minimum the following information for the previous calendar year:
 - monthly amount of inflow to the SJCWRP;
 - daily discharge rate to San Jose Creek, and/or the San Gabriel River in million gallons per day (MGD);
 - daily recycled water delivery rate in MGD; and,
 - monthly total recycled water deliveries.

If identical information is already reported annually to the Regional Board or State Water Board under the requirements of the Recycled Water Policy, the Sanitation Districts may annually notify the Deputy Director for the Division of Water Rights of the submittal and where the information may be found in lieu of filing a redundant annual report under this term.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:
SAMUEL BOLAND-BRIEN, FOR

*Erik Ekdahl, Deputy Director
Division of Water Rights*

Dated: OCT 05 2020