

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

DIVISION OF WATER RIGHTS

In the Matter of Wastewater Petition WW-52

Sacramento Municipal Utility District

**ORDER APPROVING CHANGES IN POINT OF DISCHARGE, PLACE OF
USE, AND PURPOSE OF USE**

SOURCE: Unnamed Stream tributary to Clay Creek

COUNTY: Sacramento

WHEREAS:

1. Sacramento Municipal Utility District (SMUD) filed Treated Wastewater Change Petition WW-52 with the State Water Resources Control Board (State Water Board) on April 22, 2009, pursuant to section 1211 of the Water Code. SMUD seeks to change the point of discharge, place of use, and purpose of use of treated wastewater to remove the domestic wastewater volume of 0.0125 cubic foot per second (cfs) and reroute the wastewater to an artificial wetlands treatment system and storage area. SMUD will continue to discharge 15 to 19 cfs of water obtained from Folsom South Canal and put to beneficial use to the unnamed stream.
2. Public notice of the change was issued on February 29, 2008. No protests were filed.
3. The State Water Board has determined that the petition for change in the point of discharge, place of use, and purpose of use will not cause injury to any other lawful user of water.
4. Under the California Environmental Quality Act (CEQA), SMUD is the lead agency for preparation of environmental documentation for the project. On April 2, 2008, SMUD issued an Initial Study and Mitigated Negative Declaration (MND) titled Rancho Seco Power Plant Wastewater Treatment Artificial Wetland Project, SCH #2008022151. On May 7, 2008, SMUD issued a Notice of Determination (NOD) for the project.

The State Water Board is a responsible agency for purposes of considering whether to approve the wastewater change petition that will allow SMUD to proceed with the proposed project. As a 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 reach its own conclusions on whether and how to approve the project involved. (Cal. Code Regs., tit. 14, § 15096, subd. (a).) The State Water Board has considered the MND in deciding whether to approve the petition. Approval of the wastewater change petition with inclusion of the mitigation measures minimizes impacts to biological resources to a less than significant level.

SMUD's environmental review was limited to impacts associated with the proposed wastewater change petition, i.e., the impacts associated with diversion of 0.0125 cfs. Consequently, the State Water Board's approval of the wastewater change petition must be similarly limited in scope.

In addition to any obligation the State Water Board may have under CEQA, the Board has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346].) There is no evidence that approval of the wastewater change petition, with the inclusion of mitigation measures from the MND to minimize impacts to biological resources, will have any adverse impacts on public trust resources.

The State Water Board will issue an NOD within five days of the date of this order.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT:

1. SMUD is authorized to change the point of discharge, place of use and purpose of use of 0.0125 cfs of treated wastewater effluent discharged from the Rancho Seco Nuclear Generating Station Wastewater Treatment Plant.
2. The State Water Board has determined that the wastewater discharge shall be amended to include the following specific changes:
 - a. Remove existing point of discharge within California Coordinate system, NAD 83, Zone 2, North 1,887,947 feet and East 6,812,235 feet, being within NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 29, T6N, R8E, MDB&M.
 - b. Add new point of discharge within California Coordinate system, NAD 83, Zone 2, North 1,889,483 feet and East 6,813,218 feet, being within NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 29, T6N, R8E, MDB&M.
3. Water will be used for fish and wildlife protection and/or enhancement and irrigation in an artificial wetland within NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 29, T6N, R8E, MDB&M as shown on map. The authorized diversion season is January 1 to December 31 of each year.
4. SMUD shall comply with the following Endangered Species condition:

This change does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this order, the petitioner shall obtain authorization for an incidental take prior to construction or operation of the project. Petitioner shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this order.

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5. In order to avoid or minimize impacts to biological resources, SMUD shall do the following:

Before construction activities, all workers shall be informed by a qualified biologist acceptable to the Deputy Director for Water Rights of the potential environmental effects of the construction disturbances. Information on species that may be present in or near the project site shall be

provided to the construction crews. Crews shall be informed to stop work if any special-status species are encountered and contact the qualified biologist.

(0400500)

Burrowing Owl Mitigation

If construction activities occur during the nesting season (approximately January through August), preconstruction surveys for the presence of special-status bird species shall be conducted by a qualified biologist acceptable to the Deputy Director for Water Rights within 150 meters of proposed construction areas. This survey shall be conducted no more than 14 days prior to the initiation of construction activities during the breeding season (raptors – January through August; burrowing owl – February 1 through August 31). During this survey, the biologist shall inspect all trees and electrical towers in and immediately adjacent to the place of use for raptor nests. If active nests are identified in these areas, the Department of Fish and Game shall be consulted to develop measures to avoid “take” of active nests before the initiation of any construction activities. Avoidance measures may include establishment of a buffer zone using construction fencing or the postponement of vegetation removal until after the nesting season, or until after a qualified biologist has determined the young have fledged and are independent of the nest site.

A qualified biologist shall survey the place of use, including 150-meter buffer zone around the project boundary, as shown on Project Map. If an active burrowing owl nest is found within that area, the biologist, in consultation with Department of Fish and Game, shall follow the Burrowing Owl Survey Protocol and Mitigation Guidelines prepared by the California Burrowing Owl Consortium (1993). The Mitigation Guidelines state that if construction occurs during the non-breeding season (September 1 through January 31), then a 50-meter radius must be maintained around the occupied burrow. If construction occurs during the breeding season (February 1 through August 31), then a 75-meter radius must be maintained around the occupied burrow. Throughout the year, foraging habitat around occupied burrows must be maintained at a minimum of 6.5 acres.

(0400500)

Western Spadefoot Toad and California Tiger Salamander Mitigation

If preconstruction surveys determine the presence of these species, SMUD shall consult with United States Fish and Wildlife Service (USFWS) to determine appropriate measures to avoid and minimize take of individuals.

A qualified biologist acceptable to the Deputy Director for Water Rights shall monitor construction activities. During construction, SMUD shall minimize ground disturbing activities within California tiger salamander upland habitat and, if found, cease construction activities until the salamander has been removed.

SMUD shall consult with USFWS to develop an appropriate strategy for avoiding impacts to federally listed species that may occur in the place of use.

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6. To ensure that required mitigation measures are implemented, the following condition applies:

SMUD is not authorized to divert water pursuant to this order until all construction related conditions are complied with. SMUD shall submit documentation within one year of issuance of this order and on a triennial basis thereafter, of compliance with order requirements. Said documentation shall include a description of the mitigation measures employed for each order condition and date of compliance with the mitigation measures. SMUD is not required to continue submitting construction compliance reports once full compliance with all construction related conditions is achieved.

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STATE WATER RESOURCES CONTROL BOARD

Original Signed by:

Victoria A. Whitney
Deputy Director for Water Rights

Dated: December 22, 2009

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