



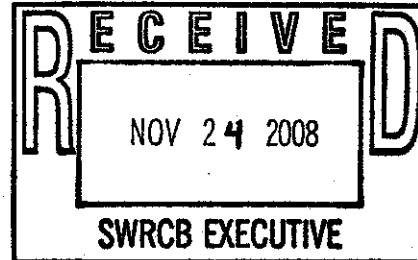
State of California - The Resources Agency

ARNOLD SCHWARZENEGGER, Governor

## DEPARTMENT OF FISH AND GAME

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November 24, 2008

Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100  
Fax (916)341-5620**Subject: Comment Letter for December 2, 2008 Board Meeting: Orange County Water District Draft Decision**

Dear Ms. Townsend:

Thank you for the opportunity to comment on the draft decision of the partially approved Water Rights Application (WRA) 31174. If adopted, the draft decision would approve, in part, OCWD's application to appropriate water for storage along various basins along the Santa Ana River in Riverside and Orange Counties.

Eight protests were filed against WRA 31174, five of which were resolved by stipulated agreements prior to the SWRCB hearing on May 2, 2007. The Department entered into a stipulated agreement (Agreement) with OCWD, on September 26, 2006, which became effective October 2, 2006. In an April 26, 2007 letter to SWRCB, the Department stated that it had resolved its protests against multiple applications on the Santa Ana River, including WRA 31174, and therefore did not appear at the May 2, 2007 hearing.

The Department of Fish and Game (Department) on November 5, 2008, received the draft decision from the State Water Resources Control Board (SWRCB). SWRCB requested comments on the proposed draft decision related to its general acceptability or possible technical corrections. The Department requests that SWRCB consider modifying the draft decision to reflect certain technical changes proposed by the Department (discussed below). Because the draft decision specifically directs OCWD to comply with certain terms of the Agreement, the Department requests that the SWRCB consider staying the approval of the draft decision until OCWD is in compliance with certain terms of the Agreement or new compliance dates are in place. The Department respectfully submits the following comments regarding WRA 31174 for SWRCB's consideration.

**COMMENTS**

The Department, pursuant to Fish and Game Code § 711.7, is entrusted with fish and wildlife resources for the people of the state. A stated purpose of the proposed water use in the draft decision (page 3) is to preserve and enhance fish and wildlife resources.

*Conserving California's Wildlife Since 1870*

Ms. Jeanine Townsend  
November 24, 2008  
Page 2 of 4

The Agreement between the Department and OCWD identified six actions intended to preserve and enhance fish and wildlife resources. These actions were to be implemented by OCWD by specific compliance dates after Department approval. However, the compliance dates have lapsed without completion of the required actions by OCWD or the Department approvals stipulated in the conditions. The Department and OCWD are scheduled to meet on November 25, 2008, to discuss history of the actions undertaken to comply with the conditions of the Agreement.

The Department requests that the draft decision reflect the six conditions listed in the Agreement. Specifically, the Department requests that the draft decision be revised to include Agreement conditions (4) and (6), and include extended compliance dates for Agreement conditions (1) through (6). The Department recommends page 35 of the draft decision incorporate conditions (4) and (6) from the Agreement. Agreement conditions (4) and (6) relate to the assessment and implementation of experimental habitat restoration in areas of the Santa Ana River with existing populations of Santa Ana sucker (*Catostomus santaanae*) (sucker). OCWD agreed to assess and implement experimental habitat restoration for sucker, in addition to submitting an experimental habitat restoration and monitoring plan, in accordance with the Agreement.

Additionally, conditions (1), (2), (3), and (5) from the Agreement are incorporated in the draft decision without compliance dates. The Department requests the draft decision include the extended compliance dates subject to mutual agreement by all parties, as follows:

1. Assess sites for sucker re-introduction within the Santa Ana River watershed by October 31, 2006. Department proposed extension January 31, 2009.
2. Submit re-introduction and monitoring plan for Department review and approval. The monitoring plan shall include site specific location information with mapped GIS points and photos and annual reports, by June 30, 2007. Department proposed extension June 30, 2009.
3. Implement sucker re-introduction and monitoring at Department approved sites(s) within the SAR watershed by March 31, 2008. Department proposed extension December 31, 2009.
4. Assess sites for experimental sucker habitat restoration above River Road Bridge in the Santa Ana River watershed by December 31, 2006. Department proposed extension January 31, 2009.
5. Submit experimental sucker habitat restoration and monitoring plan for Department review and approval. The monitoring plan shall include site specific location information with mapped GIS points and photos and annual reports by June 30, 2007. Department proposed extension June 30, 2009.
6. Implement experimental sucker habitat restoration and monitoring at Department approved sites(s) within the SAR watershed by October 31, 2007. Department proposed extension December 31, 2009.

The Department requests that SWRCB consider incorporating these modifications into the final decision and, if mutually agreeable to OCWD, the final permit for WRA 31174. If the Department-proposed extension dates to the Agreement are not mutually agreeable to all parties, the Department requests that a decision to partially approve

Ms. Jeanine Townsend  
November 24, 2008  
Page 3 of 4

WRA 31174 be stayed until a mutually agreeable decision can be incorporated, to acceptably preserve and enhance fish and wildlife resources entrusted to the Department.

The Department appreciates the opportunity to comment on WRA 31174. Additional questions and further coordination regarding these comments can be conducted by contacting Matt Chirdon (760) 757-3734 or Anna Milloy (909) 987-8176.

Sincerely,



Edmund J. Pert  
Regional Manager  
California Department of Fish and Game  
Region 5 - South Coast



for Curt Taucher  
Regional Manager  
California Department of Fish and Game  
Region 6 - Inland Deserts

CC:

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