

# CITY OF SAN BERNARDINO MUNICIPAL WATER DEPARTMENT

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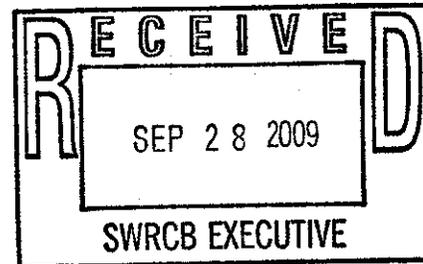
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September 28, 2009

Via Electronic Mail and Regular Mail

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



Re: Draft Decision Partially Approving Applications 31165 and 31370 by San Bernardino Valley Municipal Water District and Western Municipal Water District (Muni/Western) from Bear Creek, Breakneck Creek, Keller Creek, Alder Creek and the Santa Ana River in San Bernardino County

Dear Ms. Townsend:

The following comments are submitted on behalf of the City of San Bernardino Municipal Water Department (Department) and the San Bernardino/Colton Regional Tertiary Treatment and Wastewater Reclamation Authority (Authority) for consideration by the State Water Resources Control Board during its October 7, 2009 workshop on the above-referenced draft decision.

The Department is an eighty percent (80%) owner of the Authority's Rapid Infiltration and Extraction (RIX) Facility. The Authority is a joint powers authority consisting of the cities of San Bernardino and Colton. The undersigned is the chairman of the Authority's board. The Authority contracts with the Department to manage the RIX Facility.

The Department's and Authority's comments are directed to Order Term No. 25, which states, "Within 90 days of the issuance of permits on Applications 031165 and 031370, Muni/Western shall submit to the Chief, Division of Water Rights, a plan to maintain historical flows in the Santa Ana River from the Rialto Drain to the Imperial Highway Bridge, measured at USGS gage [sic] 11066460, consistent with Riverside exhibit 2-7." (Page 52, *Draft Decision*.)

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Order Term No. 25 arises from evidence presented at the hearing to the effect that the proposed Project would "significantly decrease river flow in Segment F [of the Santa Ana River] on non-storm days." Page 16, *Draft Decision*. (This segment includes Reach 4 of the river, into which the RIX Facility discharges tertiary-treated effluent.) Evidence at the hearing from Roy Leidy, a biologist for San Bernardino Valley Municipal Water District, resulted in a conclusion by the SWRCB that "special status native fishes are restricted to downstream of the Regional Rapid Infiltration and Extraction (RIX) Facility/Rialto Outfall." Page 19, *Draft Decision*. Presumably, the "special status native fish" to which the SWRCB refers is the Santa Ana Sucker, the subject of the testimony of Mr. Leidy, Mr. Beehler, Mr. Baskin and Ms. Anderson.

As a participant in the multi-year Santa Ana Sucker Conservation Team, the Department and the Authority have participated in the surveys, reports and funding for the Team. Dr. Baskin conducted all of the work of the Team, with Camm Swift. Neither Mr. Leidy nor Ms. Anderson has any substantive work in this area. Mr. Beehler manages the Team's work for SAWPA.

The conclusion by the SWRCB that reductions in flow must inevitably result in negative impacts to the Santa Ana Sucker are without any real evidentiary support, based on the testimony of Dr. Baskin the only truly qualified expert to testify on these biological issues. The most salient testimony on this issue was as follows:

Hearing Transcript, May 3, 2007, Page 142:

4 MS. WILLIS: And one last question, in general,  
5 is more water better for the Sucker in every instance?

6 DR. BASKIN: No, not at all. This general idea  
7 here that the more water the better. Quite the contrary.  
8 The issue is the timing of the water. The streams in  
9 southern California are flashy. That just means high  
10 highs and low lows. And here in the area what we have is  
11 the velocity of flow. The peaks are really not present  
12 anymore to a large extent. And we add extra water.  
13 There's excessive water really in this reach. This was  
14 done in early testimony and some of the other data. That  
15 means that it doesn't get as dry, that is as little water  
16 as the Sucker really actually likes.

17 One of the important things here is we have a lot  
18 of exotic species around. And the exotic species do well

19 when there are -- when there's extra water around, because  
20 they can't handle the really high flows and they need to  
21 have more water for their own life history. But the  
22 Sucker doesn't really. So when you encourage the exotics,  
23 what we think of happening is they'll chow down on the  
24 suckers and that's not a good thing.

At least with respect to the Santa Ana Sucker and its habitat, the conclusion that more water is better and less is bad is not supported by the evidence provided at the hearing.

Order Term No. 25 is ambiguous with respect to the requirement that Muni/Western develop a plan to "maintain historic flows" from the Rialto Drain to the Imperial Highway bridge. What constitutes "historic flow?" Does that term account for the fact that the RIX Facility first began discharging in Reach 4, Section F in 1996? Before that, the cities of Colton and Rialto discharged into that section, but it was a minimal flow compared to that discharged by RIX.

Finally, the Draft Decision appears to improperly place the burden for mitigating the Muni/Western project on a third party, namely, the Authority and, through it, the Department. Even assuming *arguendo* that either Muni or Western has the authority or jurisdiction to dictate the terms of continuing discharges to the Santa Ana River from the RIX Facility (which they do not), the cities of San Bernardino and Colton have incurred the expenses associated with building, maintaining and operating the RIX Facility. As the State's continuing water crisis accelerates, it is incumbent on all Southern California municipalities to look to conservation and recycling. That is the City of San Bernardino's plan. Imposing a regulatory scheme for Muni/Western's project that may prevent the City of San Bernardino from fully implementing plans to recycle is manifestly unfair, inequitable and not in the public interest.

The Department would appreciate an opportunity to be heard on these issues at the workshop on October 7, 2009, and I will be present to answer any questions that arise from this comment letter.

Very truly yours,



Stacey R. Aldstadt  
General Manager

Cc: Randy Van Gelder  
John Rossi  
Eric Fraser  
BOWC  
RIX Board