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STATE WATER RESOURCES  
CONTROL BOARD

BEFORE THE

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CALIFORNIA STATE WATER RESOURCES CONTROL BOARD  
DIV. OF WATER RIGHTS  
SACRAMENTO

U. S. Army Corps of Engineers

Los Angeles District

Santa Ana River

Water Right Hearing

DECLARATION

**DECLARATION OF RUTH BAJZA VILLALOBOS**

I, RUTH BAJZA VILLALOBOS, declare, under penalty of perjury, as follows:

1. I am currently employed by the U.S. Army Corps of Engineers, Los Angeles District as the Chief of the Planning Division.
2. I received a request to provide factual testimony in connection with the California State Water Resources Control Board's water right hearing for the Santa Ana River.
3. The document consisting of seven typed pages entitled "Testimony of Ruth Villalobos Before California State Water Resource Control Board" submitted on May 1, 2007 is a true and correct copy of testimony which I personally prepared on that day, and contains the same facts to which I would

testify if my schedule permitted me to appear in person on May 4, 2007. My testimony consists of factual matters relating to Seven Oaks Dam about which I have personal knowledge as a result of my employment with the U.S. Army Corps of Engineers, Los Angeles District. True and correct copies of a letter from Mr. Peter J. Kiel dated April 30, 2007 requesting my testimony and from Mr. Lawrence N. Minch dated May 1, 2007, District Counsel for the U.S. Army Corps of Engineers, Los Angeles District, permitting my testimony under applicable Army regulations are attached to my testimony.

Executed in Los Angeles, California on this 4<sup>th</sup> day of May 2007.



Ruth Bajza Villalobos

Testimony of Ruth Villalobos Before California State Water Resource Control Board

Submitted on May 1, 2007

My name is Ruth Bajza Villalobos, and I am Chief of the Planning Division, United States Army, Corps of Engineers, Los Angeles District. My testimony before this board was requested by the non-Federal sponsors of Seven Oaks Dam. I am giving this testimony to help ensure that the Corps of Engineers retains its ability to require the non-Federal sponsors of the Seven Oaks Dam project, particularly San Bernardino County Flood Control District, to operate Seven Oaks Dam in accordance with the requirements set forth in the U.S. Fish and Wildlife Service's Final Biological Opinion dated December 19, 2002, under the federal Endangered Species Act and other federal statutes.

I am providing my testimony here today pursuant to the authority of the Department of the Army's regulation on litigation, which is codified at Title 32 of the Code of Federal Regulations, Subpart G, and particularly Sections 516.47 and 516.48. I am not permitted to provide expert opinions, nor to provide testimony beyond the scope of my pre-submitted written statement. Army lawyers refer to these as the "Touhy regs," because they follow and cite the 1951 Supreme Court decision in United States ex. Rel. Touhy v. Ragen, 340 U.S. 462. The Army policy is stated in Section 516.41 of Title 32 of the C.F.R. Copies of Mr. Peter Kiel's request for my testimony and a letter pursuant to the Touhy regulations authorizing me to testify on the subjects specified therein are attached to my testimony.

Please understand that the Corps of Engineers maintains complete neutrality with respect to the applications of all parties, and takes no position with respect to whether the construction or operation of Seven Oaks Dam has created any new water that may be appropriated by any party, or whether Seven Oaks Dam will be later approved for operation for water conservation purposes. Since its completion in December 1999,

Seven Oaks Dam has been operated so as not to interfere with existing downstream water rights.

The non-Federal sponsors of the Seven Oaks project are Orange County Flood Control District, San Bernardino County Flood Control District, and Riverside County Flood Control and Water Conservation District. These sponsors are joint owner and operators of the dam and associated flood control features. The Corps of Engineers turned over the operation of Seven Oaks Dam to the non-Federal sponsors of the project in October 2002.

The Corps, the sponsors, and other interested stakeholders are continuing the process of developing a Multi-Species Habitat Management Plan, what we call "the MSHMP," to fulfill part of the endangered species mitigation requirements for flood control operation of Seven Oaks Dam. The MSHMP will include the use of adaptive management techniques to monitor habitat, respond to information as it becomes available, and define for the non-Federal sponsors, as operators of the project, the operations to follow to optimize environmental mitigation when sufficient flood runoff occurs. Section 9 of the Corps' Water Control Manual, Exhibit LS-1-6, generally describes the decision-making processes involved.

The Fish and Wildlife Service's final Biological Opinion of December 19, 2002 anticipated that completion of the MSHMP and associated environmental documentation could take two years. Completing the MSHMP is taking longer than expected. As recently as late 2004, the Corps estimated that the MSHMP would be completed by October 2005. It is still not completed because of the complexity of the habitat and the numerous resource agencies and other stakeholders involved in developing the plan.

The MSHMP will consist of a detailed plan that will allow for the analysis of any endangered species impacts of potential water conservation operations. The MSHMP will guide endangered species mitigation requirements for flood control operation of the dam with which any proposed water conservation operations cannot interfere. The acceptability of any specific proposed water conservation operation will be evaluated for

consistency with the MSHMP. Even if the Corps of Engineers determines a particular plan to be consistent, it will be the responsibility of any agency proposing water conservation operations to ensure that all appropriate resource agencies have been consulted with to the extent required by law, and that all mitigation requirements necessitated by water conservation operations will be undertaken at no cost to the Federal Government and without interference with mitigation for flood control.

Before my promotion to the Chief of Planning Division in 2000, I was Chief of the Environmental Resources Branch, Planning Division, United States Army, Corps of Engineers, Los Angeles District. In my capacity as Chief of the Environmental Resources Branch, among other duties, I supervised the preparation of Biological Assessments for Corps of Engineers construction projects; led coordination with the U.S. Fish and Wildlife Service; and performed other activities required for compliance with the Endangered Species Act. I am still actively participating in discussions and meetings to complete the MSHMP.

As contemplated in the Biological Opinion and as discussed in planning for the MSHMP, adaptive management means that the releases and diversion protocols are subject to modification whenever observations indicate that we should try a different plan in order to avoid harm to the endangered species that were the subject of our consultation with the Fish and Wildlife Service under Section 7 of the Endangered Species Act. For this reason and other reasons, it is not possible for the Corps to make any commitment concerning any water conservation proposal that would interfere with our responsibilities under the Endangered Species Act. Similarly, the Corps will not make any commitment concerning any water conservation proposal that could interfere with existing water rights along the Santa Ana River.

The adaptive management concept for the MSHMP will outline detailed methods and implementation strategies for habitat and species surveys, experimental surveys, and habitat management measures, as well as the decision-making process for implementing management measures or changes in design. The MSHMP will also address possible

construction of temporary and permanent features such as diversion dikes, and will be accompanied by a supplement to the Environmental Impact Statement under NEPA and EIR under CEQA. These documents will not address specific water conservation proposals. They will be focused solely on mitigation required as a consequence of constructing flood control measures. However, it may be possible to identify potential management measures that also provide opportunities for incidental water conservation. If this occurs, a separate EIS/EIR and decision document (ROD) would be prepared to address the specifics of water conservation proposals and alternatives involving discharge of water that has been temporarily impounded during flood conditions.

The Water Resources Development Act of 1986, P.L. 99-662 ("1986 WRDA"), authorized the Corps to plan, design, and construct a flood control storage dam on the upper Santa Ana River which became known as Seven Oaks Dam. Seven Oaks Dam was authorized, designed, and is being operated only for the purpose of flood control. The operations plan does not allocate reservoir storage space for water conservation. Please understand that the Corps does not endorse any attempt to use the Water Control Manual for any other purpose beyond that which is stated in the manual, and that the manual does not imply any commitment that would interfere with existing water rights.

The 1986 WRDA also authorized a study of the feasibility of adding water conservation to the flood control facilities at Prado Dam, but not at Seven Oaks Dam. The San Bernardino County Flood Control District, on behalf of the non-Federal Sponsors, entered into the Seven Oaks Dam Water Conservation Study Agreement with the United States in November 1993 pursuant to a resolution of the Committee on Public Works of the House of Representatives from 1964. *Local Sponsors' Exhibit LS-1-9 is copy of the "Agreement with the United States for the Seven Oaks Dam Water Conservation Study on May 23, 1993" that I am referring to.* The Study Agreement provided that the Corps would prepare a Feasibility Study to investigate the feasibility of providing water conservation at Seven Oaks Dam and for San Bernardino County Flood Control District to pay 50% of the costs of the study.

With respect to the right of the Corps to terminate the Study Agreement and Corps' work on the Feasibility Report, the 1993 Study Agreement provided that the Corps "will not continue the Study if it determines that there is no solution in which there is a Federal interest or which is not in accord with current policies or budget priorities," unless the designated Local Sponsor is given an exception to continue under the Study Agreement.

In June 1997, the Corps published a feasibility report concerning water conservation at Seven Oaks Dam. *Exhibit LS-1-13 is a copy of the 1997 Feasibility Report.* Since publication of the 1997 feasibility report, it has been understood that approval of plans and specifications for implementation of water conservation by the non-Federal sponsor would require approval by the Commander of the Corps' South Pacific Division. No Record of Decision has been issued by the Corps of Engineers. A Record of Decision was not adopted due to uncertainty regarding the ongoing consultation with the United States Fish and Wildlife Service under the Endangered Species Act and the mitigation measures that were expected to be imposed through the consultation. The project EIS/EIR needed to be updated to address potential impacts on endangered species including the San Bernardino Kangaroo Rat, after consultation with the Fish and Wildlife Service was completed. Consultation resulted in the requirement to prepare an MSHMP which, as I previously noted, is still not completed.

The 1997 study concludes that water conservation at Seven Oaks Dam is technically and economically feasible. The study does not approve water conservation.

I wrote a letter to Ken Miller of SBCFCD on May 29, 2001 that defines the steps that must be completed in order to obtain Corps approval to operate Seven Oaks Dam for water conservation. *Exhibit LS-1-12 is a copy of my letter.* It says:

1. All hydrological requirements for flood control and related environmental mitigation purposes for Seven Oaks Dam must be met before water conservation is considered.
2. The interested water agencies, and not the Local Sponsors or the U.S. Army Corps of Engineers, are fully responsible to assess the potential

impacts of their proposed water conservation program, and to pay for all costs – including potential mitigation costs – associated with their proposed program. The water agencies are required to prepare adequate environmental documentation, such as an Environmental Impact Statement/ Environmental Impact Report and Biological Assessment.

3. The water agencies must acquire all permits necessary to implement their proposed water conservation program, and pay all associated costs. The permitting agencies include the U.S. Forest Service, the United States Fish and Wildlife Service, the California Department of Fish and Game, the State Board, the California Regional Water Quality Control Board, and the Corps.

4. The water agencies must complete Endangered Species Act consultation under both state and federal acts.

5. The water agencies must ensure that existing water rights are not impacted by their proposed water conservation program, and must acquire additional rights, if necessary, in accordance with State Board requirements.

6. The water agencies must work with the Army Corps of Engineers and non-Federal Sponsors to ensure that flood control operations, including endangered species requirements, are not adversely affected by any water conservation activities.

7. As the non-Federal Sponsors are responsible for Seven Oaks Dam operations and maintenance, the Corps of Engineers will not consider supporting implementation of water conservation unless requested by the Local Sponsors; the water agencies must enter into an agreement with the Local Sponsors to implement any water conservation program at Seven Oaks Dam.

Since I wrote that letter, we have made progress toward completing the MSHMP. The Corps and non-Federal Sponsors also have proposed to amend the Study Agreement to update the feasibility report to reflect the current environmental conditions and mitigation



commitments arising out of the completion of Seven Oaks Dam construction and its operation, and to verify hydrologic assumptions and real estate considerations in the feasibility report. We anticipate that updating the study will take approximately two years to complete.

ELLISON, SCHNEIDER & HARRIS L.L.P.

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April 30, 2007

VIA FACSIMILE AND EMAIL

Ruth Villalobos  
Chief, Planning Division  
United States Army Corps of Engineers  
Los Angeles District  
P.O. Box 532711  
Los Angeles, California 90053-2325

Re: Testimony at State Water Resources Control Board Water Rights Hearing

Dear Ms. Villalobos:

You have been called to testify as a witness in the State Water Resources Control Board hearing to receive evidence regarding various water rights applications to appropriate water from the Santa Ana River, California by the San Bernardino County Flood Control District, Riverside County Flood Control and Water Conservation District, and Orange County Flood Control District, collectively the Santa Ana River Mainstem Project Local Sponsors ("Local Sponsors"). The State Water Resources Control Board Hearing Officer approved your addition to the Local Sponsors' witness list on April 27, 2007. The hearing will be held May 2 through May 9, 2007 starting at 9:00 am at the Sierra Hearing Room of the California Environmental Protection Agency Building located at 1001 "T" Street, Sacramento, California 95814. The hearing will consider, among other issues, whether and on what conditions to grant the water rights applications of Muni/Western to appropriate water from Seven Oaks Dam pursuant to California Water Code section 1200 *et seq.*

Pursuant to the Hearing Officer's ruling, you shall provide advance written testimony by 12:00 p.m. on Tuesday, May 1, 2007 and oral testimony during the Local Sponsors' direct testimony at the hearing, which is scheduled to occur on Friday, May 4, 2007, regarding the Corps of Engineers' authority over Seven Oaks Dam, the Local Sponsors' operation, management and repair of Seven Oaks Dam in accordance with federal requirements, and the proposed addition of water conservation at Seven Oaks Dam.

April 30, 2007

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Your testimony shall not exceed scope of the following exhibits submitted by the Local Sponsors:

- Local Cooperation Agreement for Construction of the Santa Ana River Mainstem, Including Santiago Creek, California Flood Control Project, dated December 13, 1989
- Letter from Brian M. Moore, Deputy District Engineer, Department of the Army, to Ken Smith, Director, Orange County Public Works, dated August 27, 2002
- Water Control Manual, Seven Oaks Dam & Reservoir, prepared by U.S. Army Corps of Engineers, September 2003
- Agreement between the United States of America and San Bernardino County, California Flood Control District for the Seven Oaks Dam Water Conservation Study, California, dated November 23, 1993 ("1993 Study Agreement")
- Letter from Ruth Bajza Villalobos, Chief, Planning Division, U.S. Army Corps of Engineers, to Ken A. Miller, Director, Transportation/Flood Control Department, San Bernardino Public Works, dated May 29, 2001
- Seven Oaks Dam Water Conservation Feasibility Report and Final EIS/EIR, Volumes I and II, June 1997, prepared by United States Army Corps of Engineers
- Draft Amendment No. 1 to Agreement between the United States of America and San Bernardino County, California Flood Control District for the Seven Oaks Dam Water Conservation Study, California

We sincerely appreciate your participation in the hearing. Please contact me if you have any questions.

Sincerely,

ELLISON, SCHNEIDER & HARRIS LLP



Peter J. Kiel  
Outside Counsel for the Santa Ana River  
Mainstem Project Local Sponsors

cc: Mr. Lawrence N. Minch, District Counsel



**DEPARTMENT OF THE ARMY**

LOS ANGELES DISTRICT, CORPS OF ENGINEERS  
P.O. BOX 532711  
LOS ANGELES, CALIFORNIA 90053-2325

May 1, 2007



REPLY TO  
ATTENTION OF

Office of the  
District Counsel

Peter J. Kiel, Esq.  
Ellison, Schneider & Harris L.L.P.  
2015 H Street  
Sacramento, CA 95814-3109

RE: Testimony at State Water Resources Control Board Water Rights Hearing

Dear Mr. Kiel:

I have reviewed your letter dated April 30, 2007 to Ms. Ruth Villalobos wherein you describe the expected nature of her testimony in the above referenced matter, along with the letter dated April 27, 2007 from the State Water Resources Control Board addressing the witness list for this hearing. In accordance with the provisions of 32 C.F.R. 516.41(b), I am informing Ms. Villalobos of the limited scope of the official testimony she may provide in response to your request.

As a civilian employee of the Department of the Army, Ms. Villalobos is prohibited from releasing official information without the written legal opinion of the appropriate staff judge advocate, legal adviser, or Litigation Division representative. As the District Counsel for the Los Angeles District, I am the appropriate authority to issue such a written legal opinion in this matter. By this letter, I am informing you that Ms. Villalobos is authorized to participate in the hearing scheduled for May 4, 2007; however, her testimony shall be limited.

As set forth in your letter Ms. Villalobos may provide testimony in accordance with her seven-page written submission of today's date. That is, she may provide testimony concerning information that was the subject of her letter dated May 29, 2001 to Ken Miller of San Bernardino County Flood Control District, and the eight other documentary exhibits which you have listed and which relate to the Corps of Engineers' authority over Seven Oaks Dam, and the non-Federal sponsors' operation of the dam in accordance with federal requirements including potential operation for water conservation purposes.

Ms. Villalobos may not release official information that is not covered by the subject matter described in your letter. She may not provide testimony that would be considered to be "opinion" or "expert" testimony, as specified in 32 C.F.R. §516.49. Several of the documents listed in your request are legal agreements between the Corps and the non-Federal sponsors of the project. Ms. Villalobos is not authorized to provide testimony where such testimony could be interpreted to modify any such agreement in any manner. An attorney on my staff, Mark Weintraub, will be present at the Board hearing to ensure that her testimony does not exceed that which is authorized.

Peter J. Kiel, Esq.

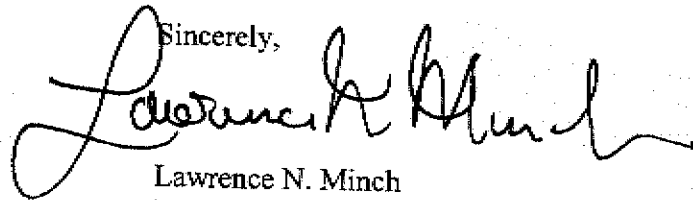
May 1, 2007

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This letter is not issued for the purpose of assisting any party in the above referenced matter. This decision is based solely on the needs of the Corps, in particular, its need to conserve its resources, including attorney resources and to protect its ability to freely and openly engage in discussions to carry out its statutory and regulatory obligations relating to construction and operation of the Seven Oaks Dam project.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence N. Minch". The signature is written in a cursive, flowing style with a large initial "L".

Lawrence N. Minch  
District Counsel

cc: Ruth Villalobos

PROOF OF SERVICE

I declare that:

I am employed in the County of Sacramento, State of California. I am over the age of eighteen years and am not a party to the within action. My business address is ELLISON, SCHNEIDER & HARRIS L.L.P.; 2015 H Street; Sacramento, California 95814-3109; telephone (916) 447-2166.

On May 7, 2007, I served the attached *Declaration of Ruth Bajza Villalobos* and *Testimony of Ruth Villalobos Before California State Water Resource Control Board* by electronic mail to each person shown on the attached service list.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on May 7, 2007, at Sacramento, California.



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Peter J. Kiel

SANTA ANA RIVER HEARING  
May 2, 2007 HEARING  
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