State Water Resources Control Board

Division of Water Rights
1001 I Street • Sacramento, California 95814 • (916) 341-5302
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812
FAX (916) 341-5400 • Web Site Address: http://www.swrcb.ca.gov

Winston H. Hickox
Secretary for Environmental Protection

Gray Davis
Governor

TO: Enclosed Mailing List

Enclosed is a copy of Order WRO-2002-0006, entitled "In the Matter of the Petitions to Revise Declaration of Fully Appropriated Streams to Allow Processing Specified Applications to Appropriate Water from the Santa Ana River". This order was adopted by the State Water Resources Control Board on July 2, 2002. Should you choose to petition for reconsideration of the above order, I also enclose an excerpt from Title 23, California Code of Regulations, which sets forth the requirements applicable to requests for reconsideration of such orders.

If you have any questions regarding this order, please contact me at (916) 341-5302.

Sincerely,

David R. Bunger

for Edward C. Anton, Chief
Division of Water Rights

Enclosures

U:\EXECDR\Board\Order tools\Cover letter adopted order 2002-0006

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WRO-2002 - 0006

In the Matter of the Petitions to
Revise Declaration of Fully Appropriated Streams
To Allow Processing Specified Applications to
Appropriate Water from the Santa Ana River

SOURCE: Santa Ana River
COUNTIES: Riverside, San Bernardino, Orange

ORDER AMENDING DECLARATION AND DIRECTING DIVISION OF WATER RIGHTS TO PROCEED WITH PROCESSING SPECIFIED APPLICATIONS

1.0 INTRODUCTION

In Order WR 2000-12, the SWRCB acted on two petitions to revise the Declaration of Fully Appropriated Streams (Declaration) to allow for processing two applications to appropriate water from the Santa Ana River.[1] Based upon the evidence in the record, the SWRCB found that the Declaration, as adopted in Order WR 98-08, should be revised to allow for processing Applications 31165 and 31174. The SWRCB has received additional petitions since it issued Order WR 2000-12, requesting that the SWRCB revise the Declaration to allow for processing applications to appropriate water from the Santa Ana River stream system.

The findings required to approve the current petitions before the SWRCB are essentially identical to the SWRCB's previous findings in Order WR 2000-12. The SWRCB held a pre-hearing conference at which all parties agreed that the evidentiary record for the proceeding on the pending petitions would be limited to Order WR 2000-12 and 1999 evidentiary record that served as the basis for Order WR 2000-12. This order summarizes and incorporates by reference the findings and conclusions of Order WR 2000-12.

[1] The petitions were submitted by the San Bernardino Valley Municipal Water District (Municipal Water District), Western Municipal Water District of Riverside County (Western), and the Orange County Water District (OCWD), accompanied with hydrologic data demonstrating that new water exists since the Santa Ana stream system was designated as fully appropriated. The additional water that is potentially available for appropriation consists of flood flows that may be stored or regulated by the new Seven Oaks Dam flood control project, increased run-off due to upstream urbanization, and increased releases of treated wastewater into the stream system in the lower reaches of the Santa Ana River. The water right applications have since been accepted for processing based on Order WR 2000-12, and assigned application numbers 31165 and 31174.

Based on the evidence in the record, the SWRCB finds that the Declaration of Fully Appropriated Streams, as adopted in Order WR 98-08, should be revised to allow processing the water right applications specified below. All questions regarding the specific amount of water available for appropriation under the applications, the season of water availability, approval or denial of the applications, and the conditions to be included in any permits that may be issued on the applications will be resolved in further proceedings on each application pursuant to applicable provisions of the Water Code. In concluding that the specified applications should be processed, this order makes no finding regarding the relative priority of any rights that may be acquired under the specified applications and other rights or applications for water rights in the Santa Ana River Basin.

2.0 BACKGROUND

Section 3.0 of Order WR 2000-12 fully describes the Santa Ana River watershed and is hereby incorporated by reference. The statutory provisions governing the appropriation of water in California and the classification of the Santa Ana River as fully appropriated are described in detail in Sections 2.1 and 2.2 of Order WR 2000-12, and these sections are incorporated herein, by reference. Pursuant to Water Code sections 1205 through 1207, the SWRCB adopted a Declaration,[2] which contains a list of stream systems found to be fully appropriated in previous water right decisions. The statute prohibits the SWRCB from accepting any new applications to appropriate water from watercourses listed on the Declaration, except in accordance with the provisions of the Declaration. The Declaration includes the Santa Ana River stream system as fully appropriated on a year-round basis, based on a number of court judgments, two of which establish the overall framework for the division of rights and responsibilities among the major water users in the basin.[3] The discussion of the Santa Ana River court judgments is contained in section 4.0 of Order WR 2000-12 and is incorporated by reference.

3.0 ORDER WR 2000-12

The focus of the SWRCB's inquiry in Order WR 2000-12 was the narrow task of determining whether the evidentiary record supported revising the fully appropriated stream status of the Santa Ana River for the limited purpose of processing two water right applications. Based on the SWRCB's review of the record and the findings contained in Order WR 2000-12, the SWRCB concluded that the Declaration, as adopted by Order WR 98-08, should be revised to allow for processing the water right applications submitted by the Municipal Water District, Western, and the Orange County Water District.

In section 6.5 of Order WR 2000-12, the SWRCB found that increased releases of treated wastewater, increased runoff due to urbanization, and increased availability of water during wet

[2] The Declaration was updated on November 19, 1998 in Order WR 98-05.

[3] In Order WR 89-25, the SWRCB cited State Water Rights Board Decision 1194 for the finding that no unappropriated water is available from the Santa Ana River watershed. Decision 1194 referred to the Court of Appeal decision in *Orange County Water Dist. v. City of Riverside* (1961) 188 Cal.App.2d 566 [10 Cal.Rptr. 899]. The subject of water rights was also addressed in two stipulated judgments entered into on April 17, 1969. (See *Orange County Water Dist. v. City of Chino et al.* (Super. Ct. Orange County, 1969, No. 117628); *Western Mun. Water Dist. v. East San Bernadino County Water Dist.* (Super. Ct. Riverside County, 1969, No. 78426).)

years, above the average used in developing the physical solution reflected in the 1969 *Orange County Water District* judgment, had substantially increased flows present in the Santa Ana River since entry of the 1969 judgment. The SWRCB also found that it was reasonable to expect a further increase in flows. In addition, the SWRCB found that the construction of the Seven Oaks Dam was a significant change in conditions that affect the flow patterns below the dam following storm events, making it feasible to divert more water for beneficial use. Finally, the SWRCB found that the possibility of using Seven Oaks Reservoir for water storage if federal approval can be obtained could further increase the quantity of water potentially available for appropriation in some years.

The hearing preceding Order WR 2000-12 focused narrowly on the issue whether to revise the Declaration to allow for processing the specified applications. Accordingly, Order WR 2000-12 states that all questions regarding the specific amount of water available for appropriation under the applications, the season of water availability, approval or denial of the applications, and the conditions to be included in any permits that may be issued on the applications will be resolved in further proceedings on each application pursuant to applicable provisions of the Water Code. In concluding that the specified applications may be processed, Order WR 2000-12 made no finding regarding the relative priority of the rights that may be acquired under the specified applications and other rights or applications for water rights in the Santa Ana River Basin.

4.0 DESCRIPTION OF PENDING PETITIONS AND APPLICATIONS

Following the hearing that resulted in Order WR 2000-12, the SWRCB received additional petitions requesting revision of the Declaration to allow for processing additional applications to appropriate water from the Santa Ana River stream system. The petitions cite the water availability information submitted in support of Order WR 2000-12 as the basis for revision of the Declaration. Each petitioner also submitted an application to appropriate the water identified in the petitions as follows:

1) Chino Basin Watermaster petition and application requesting a right to divert 97,000 acre-feet per annum (afa) to groundwater storage.

2) Municipal Water District and Western petition and application requesting a right to collect a maximum of 100,000 afa in surface and underground storage, and to directly divert at a maximum rate of 1,500 cubic feet per second (cfs). The maximum combined amount to be diverted for direct use and storage is 200,000 afa. The petition and application are in addition to the petition and application addressed in Order WR 2000-12

3) San Bernardino Valley Water Conservation District (Water Conservation District) petition and application proposing combined groundwater and surface storage of 174,545 afa, with the surface storage element not to exceed 150,065 afa.

4) City of Riverside petition and application proposing direct diversion of 75 cfs throughout the year, with a maximum direct diversion of 41,400 afa. The applicant seeks to divert treated wastewater from the applicant's Regional Water Quality Control Plant.

On its own motion, the SWRCB proposes a revision of the Declaration to allow for processing four minor applications that seek water from the West and East Forks of Cable Creek, which are located in the Santa Ana River watershed. Water is conveyed through an existing, common pipeline to the properties owned by the following four applicants:

1) Application 29216 of Eddie Evans filed March 17, 1988. The application requests: (a) direct diversion of 0.15 cfs throughout the year, with a maximum direct diversion of 45 afa; and (b) collection to storage of 2 afa from November 1 of each year through April 1 of the following year.

2) Application 29217 of Gloria Evans filed March 17, 1988. The application requests: (a) direct diversion of 4,000 gallons per day throughout the year; and (b) collection to storage of 4 afa from November 1 of each year through April 1 of the following year.

3) Application 29945 of Samual Kirtley filed June 27, 1988. The application requests: (a) direct diversion of 0.05 cfs throughout the year, with a maximum direct diversion of 24 afa; and (b) collection to storage of 1 afa from November 1 of each year through March 31 of the following year.

4) Application 29949 of James Quiroz filed March 26, 1990. The application requests direct diversion of 0.066 cfs throughout the year, with a maximum direct diversion of 26 afa.

5.0 HEARING ON PETITIONS

Section 871 of Title 23 of the California Code of Regulations provides that the SWRCB may revoke or revise the Declaration upon its own motion or upon petition of any interested person. In this instance, the SWRCB issued a Notice of Pre-Hearing Conference and Public Hearing dated March 19, 2002. The purpose of the pre-hearing conference was to determine whether the parties agree to rely solely upon the evidentiary record that served as the basis for Order WR 2000-12 as the evidentiary record for this proceeding. The March 19 notice states that the findings required to approve the current petitions before the SWRCB are essentially identical to the SWRCB's previous findings in Order WR 2000-12.

All parties that submitted Notices of Intent to Appear for the hearing attended the pre-hearing conference. Representatives of the following parties participated in the pre-hearing conference: Municipal Water District and Western, Orange County Water District, City of Riverside, Chino Basin Watermaster, Water Conservation District, East Valley Water District, Eddie Evans, Bear Valley Mutual Water Company, City of Redlands, California Sportfishing Protection Alliance, City of San Bernardino Municipal Water Department, Santa Ana River Local Sponsors, Department of Fish and Game.

All parties agreed that the 1999 evidentiary record for the December 7 and 8, 1999 hearing on petitions to revise the Declaration for the Santa Ana River stream system, and Order WR 2000-

12, shall comprise the entire evidentiary record for the July 3, 2002,[4] hearing on the pending petitions to revise the Declaration for the Santa Ana River stream system. (See Recorded Transcript at 26.) On this basis, the SWRCB waived further requirements to submit evidence and testimony for the July 3, 2002 hearing.[5]

6.0 EVIDENCE SUPPORTING REVISION OF FULLY APPROPRIATED STREAM DECLARATION

In Order WR 2000-12, the SWRCB found that the evidentiary record supported revising the fully appropriated stream status of the Santa Ana River for the limited purpose of processing two water right applications. The amount of water contemplated for appropriation by the water right applications in that hearing is less than the amount of water proposed for appropriation by the petitions currently before the SWRCB. Based on the combined diversion limits for each filing, the total amount of water proposed in the applications that accompanied the two petitions for the 1999 hearing was 607,800 afa (100,000 afa by Municipal Water District/Western and 507,800 afa by Orange County Water District). The total amount of water proposed in the applications accompanying the petitions before us is 413,027.2 afa (second Municipal Water District/Western filing for 100,000 afa; Chino Basin Watermaster for 97,000 afa; Water Conservation District for 174,545 afa; City of Riverside for 41,400 afa, and; SWRCB's motion on four applications for a total of 82.2 afa).[6] Moreover, the previous order expressly provided that it did not establish any priority among applications filed or other rights in the Santa Ana River Basin. Therefore, it is appropriate to rely on the findings made in Order WR 2000-12 for this proceeding, as the task and evidence before us are essentially identical. The evidence regarding changes in conditions that affect availability of water for appropriation in the Santa Ana River watershed is evaluated in section 6.0 of Order WR 2000-12 and the findings of that section are hereby incorporated by reference.

7.0 ENVIRONMENTAL ISSUES

The environmental issues associated with the projects proposed by Chino Basin Watermaster, Municipal Water District and Western, Water Conservation District, City of Riverside, Eddie Evans, Gloria Evans, Samual Kirtley and James Quiroz will be addressed by the SWRCB in the context of processing the water right applications. Prior to any potential approval or decision to proceed with a proposed project, these eight persons and entities and the SWRCB must fulfill their obligations under the California Environmental Quality Act ("CEQA," Public Resources Code section 21000 et seq.) In addition to meeting statutory responsibilities under CEQA, the

---

[4] The hearing was originally noticed for July 3, 2002, and on June 17, 2002, the hearing date was changed to July 2, 2002.

[5] Three of the parties agreed to accept a written procedural stipulation in which the signatories also agreed to rely solely on the evidentiary record that served as the basis for water rights Order 2000-12 for the July 3, 2002 hearing. The SWRCB entered the stipulation into the record for the sole purpose of this cross-reference.

[6] The SWRCB made no finding in Order WR 2000-12 about the specific amount of water that may be available for appropriation under specific applications, and nor do we here. The amount of water referenced is relevant only to the extent that the prior proceeding was sufficiently similar to the present to rely on the previous findings.

SWRCB will comply with its obligations to consider environmental and public interest issues under the Water Code and the public trust doctrine in the context of processing the water right applications submitted by the petitioners.[7]

8.0 CONCLUSION

The task and evidence before us are virtually the same as that before the SWRCB when it issued Order WR 2000-12, which concluded that the evidentiary record supported revising the fully appropriated stream status of the Santa Ana River for the limited purpose of processing two water right applications. The amount of water proposed for appropriation by those two water right applications is similar to the amount contemplated by the petitions currently before us. The SWRCB has not approved either application, and Order WR 2000-12 does not commit the SWRCB to approve either application, it merely allows the applications to be processed. In addition, the SWRCB deferred any assignment of priority between water right applications or other rights to a later determination on the merits of any application. Therefore, our review of the current petitions involves essentially the same analysis as that conducted for Order WR 2000-12. If conditions have changed so as to support revisions of the Declaration of Fully Appropriated Streams to allow processing the two applications involved in Order WR 2000-12, those changed conditions should also allow processing of the applications involved in this proceeding, even if the SWRCB ultimately determines, in acting on the applications, that the total amount of water available for appropriation is insufficient to approve many of the applications. It is appropriate to rely on the SWRCB's findings in Order WR 2000-12 in this proceeding. Accordingly, we conclude that the Declaration, as adopted by Order WR 98-08, should be revised to allow for processing the water right applications submitted by Chino Basin Watermaster, Municipal Water District and Western, Water Conservation District, City of Riverside, Eddie Evans, Gloria Evans, Samual Kirtley and James Quiroz in accordance with the provisions of the Water Code and other applicable law. The SWRCB recognizes that processing the pending water right applications will require consideration of numerous issues not addressed in this order. However, as indicated in the hearing notice, the focus of our inquiry in this proceeding is on the relatively narrow task of determining if the evidentiary record supports revising the fully appropriated stream status of the Santa Ana River for the limited purpose of processing the water right applications identified in the Hearing Notice.

[7] Neither Order WR 89-25 nor subsequent revisions of the Declaration provide an extensive explanation of the basis for classifying the Santa Ana River as fully appropriated. However, there is no indication that the classification of the Santa Ana River as fully appropriated was based upon a need to reserve or retain water in the river or its tributaries for instream uses. Neither Order WR 89-25, nor Decision 1194 addresses the subject of retaining water in the river to meet instream needs. In an instance in which instream or environmental considerations were not relied upon as a basis for classifying a watercourse as fully appropriated, a decision to revise the fully appropriated designation to allow for processing new water right applications need not involve consideration and analysis of instream or other environmental uses of the water sought to be appropriated. Those issues can properly be addressed in the context of processing the applications once they are accepted for filing.

ORDER

IT IS HEREBY ORDERED, based upon the foregoing findings, that:

1. The Declaration of Fully Appropriated Streams, as adopted by SWRCB Order WR 98-08, is amended to allow for processing the following applications to appropriate water from the Santa Ana River stream system:

   (a) The application filed by Chino Basin Watermaster

   (b) The application filed by Municipal Water District and Western

   (c) The application filed by Water Conservation District

   (d) The application filed by City of Riverside

   (e) Application 29216 of Eddie Evans

   (f) Application 29217 of Gloria Evans

   (g) Application 29945 of Samual Kirtley

   (h) Application 29949 of James Quiroz

2. The SWRCB Division of Water Rights shall process the specified water right applications in accordance with applicable law.

CERTIFICATION

The undersigned, Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on July 2, 2002.

AYE: Arthur G. Baggett, Jr.
Richard Katz
Gary M. Carlton

NO: None

ABSENT: Peter S. Silva

ABSTAIN: None

Maureen Marché
Clerk to the Board