

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

**DIVISION OF WATER RIGHTS**

**ORDER WR 2009-0002-DWR**

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In the Matter of Application T031732

**San Bernardino Valley Municipal Water District and  
Western Municipal Water District of Riverside County**

**ORDER APPROVING ISSUANCE OF TEMPORARY PERMIT**

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SOURCE: Santa Ana River tributary to the Pacific Ocean

COUNTY: San Bernardino

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BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

**WHEREAS:**

1. The San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County (Applicants) filed temporary urgency Application T031693 on February 1, 2008 with the State Water Resources Control Board (State Water Board). Temporary Permit 21212 was issued on February 21, 2008, with a 180-day diversion period that ended on August 20, 2008. On November 7, 2008, the Applicants filed temporary urgency Application T031732, requesting that the State Water Board renew Temporary Permit 21212 for water year 2009.
2. The Applicants request a temporary right to divert 25,000 acre-feet (af) of water that is stored behind or regulated by the Seven Oaks Dam and subsequently flows downstream to be collected to underground storage at a maximum rate of 410 cubic feet per second (cfs) at: (a) Cuttle Weir, where it will be diverted or rediverted to offstream percolation ponds, and (b) rediversion to groundwater percolation in the stream reach between Cuttle Weir Overflow and E Street; and (c) rediversion at Auxiliary River Pickup and Greenspot Forebay for delivery to the Sweetwater, Waterman, East Twin, Airport, Judson and Mill Creek spreading basins. Water will be used for municipal, domestic and industrial purposes. Diversion of water for these reasons is considered beneficial use of water. (tit. 23, CCR §§ 660, 663 and 665.) It is in the public interest to approve use of water for the identified beneficial uses.
3. Applicants have demonstrated an urgent need to store Santa Ana River water in the San Bernardino Groundwater Basin Area in order to continue delivering water throughout the Applicants' service areas:
  - a. During the past two years, precipitation in Southern California has been less than 60% of normal. Precipitation at the USGS gage at Gilbert Street in San Bernardino during water year 2008 was approximately 76% of the average from water years 1935 to 1960. Statewide precipitation during 2007-08 was only 77% of normal and statewide precipitation during the past two years has been only 70% of normal. The lack of rainfall

reduced groundwater elevations, due to reduced infiltration of surface water. Therefore, the local groundwater supply has been adversely affected. Governor Schwarzenegger recognized California's critical water supply situation in 2008 in declaring a statewide drought emergency.

- b. A principal water source for the Applicants is water delivered by the State Water Project (SWP). Lake Oroville is presently at 31% of capacity, which is the lowest carryover storage since the drought of 1977. The Department of Water Resources estimates that, by the end of this calendar year, Lake Oroville may fall to a new record low. Moreover, San Luis Reservoir presently contains about 11% of its capacity. Diamond Valley Lake is currently at 59% of capacity.
- c. Diversions from the Delta are contingent on compliance with the delta smelt biological opinion for operation of the SWP. The United States District Court for the Eastern District of California found the delta smelt biological opinion to be inadequate and has ordered the U.S. Fish and Wildlife Service to develop a new biological opinion. On December 14, 2007, the court issued an Interim Remedial Order, imposing further limitations on Delta diversions by the Department of Water Resources for SWP contractors for the protection of delta smelt. Therefore, the Applicants anticipate a reduced SWP water supply during the 2008-09 water year.

4. The water will be diverted and used without unreasonable effect upon fish, wildlife or other instream beneficial uses. Division staff contacted the Department of Fish and Game (DFG) on February 11, 2008 regarding the original temporary permit application and contacted DFG on December 30, 2008 regarding the request to renew the permit for water year 2008-09. In addition to temporary urgency Application T031732, the Applicants are seeking long-term water rights pursuant to Applications 31165 and 31370. DFG staff advised the Division during both telephone conversations that it has a March 21, 2007 Memorandum of Agreement (MOA) with the Applicants to dismiss the DFG protest of Applications 31165 and 31370. The only permit condition identified in the MOA is a requirement for the Applicants to provide financial support to the Santa Ana Sucker Conservation Team by depositing a sum of \$50,000 in the Restoration/Recovery Trust Fund. On December 30, 2008, DFG staff confirmed that the Applicants are complying with the MOA.

Operation of Seven Oaks Dam is contingent on compliance with the December 19, 2002 Biological Opinion issued by U.S. Fish and Wildlife Service for flood control operations and the Operations Manual for the dam. Operation of the dam includes specified flows at times downstream of the dam for over-bank inundation to preserve State and federally listed threatened and endangered species and their habitat. Temporary Permit 21232 shall require compliance with the Biological Opinion.

5. Notice of the temporary permit application was provided on November 24, 2008. Any objections were required to be submitted by December 24, 2008. The following objections were received.

Johntommy Rosas, Tongva Ancestral Territorial Tribal Nation:

The objection states "We oppose, object and protest this application and any urgency claims." No further information was provided on the basis for objection to the temporary permit. The objection provided an August 18, 2008 letter from the Native American Heritage Commission to the Division of Water Rights regarding the consultation process with California tribes and eligible Native American individuals.

No further action will be taken on the objection because of the lack of specificity of the basis for objection.

San Bernardino Valley Water Conservation District (Conservation District):

On December 23, 2008, the Conservation District objected on the basis that the application makes neither mention of, nor accommodation for, the diversion of up to 39,600 af by the Conservation District recognized in the "Stipulation Among Applicants" signed by the Conservation District and Applicants, dated April 5, 2007. The Applicants likewise have not secured rights to access to utilize Conservation District facilities for this application. The objection indicates that it can be resolved by a suitable arrangement allowing Muni/Western to exercise priority of its requested diversions for the applicable six-month period, while still recognizing the long-term existence and relative priority of the Conservation District's 39,600 af of diversions referenced in the Stipulation Agreement. A satisfactory access agreement is anticipated if the diversions are recognized.

The Applicants responded to the objection on December 24, 2008, agreeing with recognition of the Conservation District's licensed rights<sup>1</sup>. The Applicants stated that the Division has questioned the Conservation District's claims of pre-1914 appropriative rights. The Applicants referred to the February 4, 2004 letter from Division staff Jane Farwell to Larry Libeu, which states that "it is questionable whether the [Conservation] District can establish that it holds valid pre-1914 rights in the amount that it claims. In addition, the [Conservation] District has not addressed the issue of whether some portion of its claimed pre-1914 rights may have been lost through non-use." The Applicants also referred to an August 27, 2004 letter from Division staff Jane Farwell to Larry Libeu, which casts doubt on the Conservation District's claims of pre-1914 rights.

The Applicants clarified that the Stipulation Agreement recognizes additional rights of the Conservation District, once a permit is issued pursuant to water right Application 31371. However, the Conservation District withdrew Application 31371 and the application was subsequently cancelled. Thus, the Applicants maintain that the Stipulation does not provide any basis for the Conservation District's objection.

To resolve the objection, the Division will condition the temporary permit to recognize License 2831 and any valid pre-1914 appropriative right confirmed by the Court.

6. The water can be diverted and used without injury to any lawful user of water with the following provisions. The Applicants must comply with the judgment in *Orange County Water District v. City of Chino, et al.* (Orange County Superior Court Case No. 117628, April 17, 1969.). Issuance of this temporary permit shall not be construed as releasing the Applicants from any obligations resulting from the judgment. The State Water Board is not responsible for enforcing the conditions of the judgment. The following permit conditions address prior rights:
  - a. This permit is specifically subject to the prior rights of Bear Valley Mutual Water Company, City of Redlands, East Valley Water District, Lugonia Water Company, North Fork Water Company and Redlands Water Company to divert the first 88 cubic feet per second of the natural flow of the Santa Ana River pursuant to pre-1914 appropriative rights, to the extent that such rights may exist.
  - b. The permit is specifically subject to the prior rights of San Bernardino Valley Water Conservation District (Conservation District) under License 2831 (Application 2217) and any valid pre-1914 appropriative right confirmed by the Court. License 2831 authorizes the collection to groundwater storage of 8,300 af using several of the percolation ponds that will also be used pursuant to the temporary permit.

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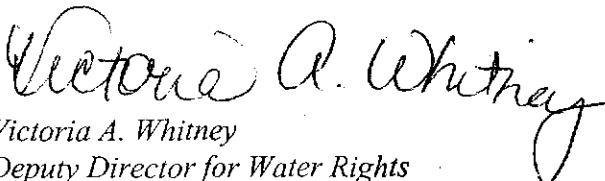
<sup>1</sup> The Conservation District has two licenses, License 2831 and 2832. Only License 2831 is recognized in Temporary Permit 21232, because the diversion season for License 2832 does not overlap the Temporary Permit 21232 diversion season.

c. In the event that there is unappropriated water being released from Seven Oaks Reservoir in excess of the instantaneous demands/diversion capacity of Bear Valley Mutual Water Company et al. and the Conservation District, the Permittee may divert or red divert such quantities of water.

7. The State Water Board finds that: (1) the Applicants have an urgent need for the water to be diverted and used; (2) the water will be diverted and used without injury to any lawful user of water; (3) the water will be diverted and used without unreasonable effect upon fish, wildlife, or other instream beneficial uses; and (4) the proposed diversion and use is in the public interest.
8. Environmental review began on November 7, 2008. Temporary Permit 21212 is a renewal of Temporary Permit 21212. In the files for Permit 21212 (Application 31593), the Applicants provided documentation that a maximum of 52,500 af was collected to storage in the percolation basins in 1978-79 (the greatest collection to storage, 80,000 af, occurred in 1921-22 but is not considered herein). Thus, 52,500 af is the baseline for CEQA purposes. The first 10,400 af of this water is diverted pursuant to Licenses 2831 and 2832. Therefore, the Applicants must restrict diversions to 42,100 af (52,500 af – 10,400 af = 42,100 af) to qualify for a CEQA exemption. The Applicants have previously diverted at a maximum rate of 410 cfs. Applicants have applied for 25,000 af, at a rate of 410 cfs, which is within the baseline quantity of water diverted from the Santa Ana River. Approval of this project will not result in construction or expansion in the facilities or water use beyond that existing on the date environmental review began. Pursuant to the provisions of CEQA, the State Water Board issued a Notice of Exemption (NOE) based on an Existing Facilities Exemption, pursuant to Title 14, California Code of Regulations, section 15301, Class 1.
- a. The project will not cause significant adverse impacts on any sensitive environment and will not result in significant cumulative impacts.
  - b. There are no environmental objections.
  - c. DFG did not identify any public trust impacts associated with the temporary diversion from the Santa Ana River.
9. The authority to issue this permit has been delegated to the Deputy Director for Water Rights pursuant to State Water Resources Control Board Res. No. 2007-0057, section 4.2.14.

**NOW, THEREFORE, IT IS ORDERED THAT A TEMPORARY PERMIT IS ISSUED FOR APPLICATION T031732, subject to the conditions of the attached temporary permit.**

STATE WATER RESOURCES CONTROL BOARD

  
Victoria A. Whitney  
Deputy Director for Water Rights

Dated: **JAN - 6 2009**

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

DIVISION OF WATER RIGHTS

**TEMPORARY PERMIT FOR  
DIVERSION AND USE OF WATER**

**TEMPORARY PERMIT 21232**

Application T031732 of

**San Bernardino Valley Municipal Water District and  
Western Municipal Water District of Riverside County  
P.O. Box 5906  
San Bernardino, CA 92412-5906**

filed on November 7, 2008, has been approved by the State Water Resources Control Board (State Water Board) SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

**Permittee is hereby authorized to divert and use water as follows:**

1. Source of water

Source:

Tributary to:

Santa Ana River

Pacific Ocean

within the County of **San Bernardino**

2. Location of point of diversion and redirection

By California Coordinate System of 1983 in Zone 5	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
<b>Point of Diversion <u>Seven Oaks Dam</u> North 1,867,532 feet and East 6,837,528 feet</b>	<b>NE¼ of NW¼</b>	<b>4</b>	<b>1S</b>	<b>2W</b>	<b>SBB&amp;M</b>
<b>Point of Diversion and <u>Rediversion – Cuttle Weir</u> North 1,862,706 feet and East 6,833,882 feet</b>	<b>SW¼ of SW¼</b>	<b>4</b>	<b>1S</b>	<b>2W</b>	<b>SBB&amp;M</b>
<b><u>Point of Rediversion</u> Streamreach Between (1) Cuttle Weir Overflow at North 1,862,706 feet and East 6,833,882 feet, and</b>	<b>SW¼ of SW¼</b>	<b>4</b>	<b>1S</b>	<b>2W</b>	<b>SBB&amp;M</b>
<b>(2) E Street at North 1,847,108 feet and East 6,773,424 feet</b>	<b>SW¼ of SE¼</b>	<b>21</b>	<b>1S</b>	<b>4W</b>	<b>SBB&amp;M</b>

<b>Auxiliary River Pickup</b> North 1,862,975 feet and East 6,834,182 feet	<b>SW¼ of SW¼</b>	<b>4</b>	<b>1S</b>	<b>2W</b>	<b>SBB&amp;M</b>
<b>Greenspot Forebay</b> North 1,862,984 feet and East 6,834,804 feet	<b>SE¼ of SW¼</b>	<b>4</b>	<b>1S</b>	<b>2W</b>	<b>SBB&amp;M</b>

3. Purposes of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
<b>Municipal, Domestic, and Industrial</b>	<b>Within the boundaries of San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County</b>					

The place of use is shown on maps on file with the State Water Board for Applications 31165 and 31370.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed **25,000** acre-feet per annum to be collected to underground storage at a maximum rate of **410** cubic feet per second from **January 1, 2009 through June 29, 2009 (180 days)**.  
(0000005H)
6. Permittees shall install and maintain measuring devices, satisfactory to the State Water Board, which are capable of (1) measuring the instantaneous rate of diversion and the cumulative quantity of water diverted to groundwater storage and (2) the cumulative quantity of water extracted from groundwater storage. Permittees shall calculate the rediversions to underground storage between Cuttle Weir and E Street, after deducting the natural recharge rate of the streambed from the surface flow record. This permit does not authorize diversion of uncontrolled, natural recharge.  
  
The diversion data shall be posted on both Permittees web sites on a weekly basis throughout the diversion period and provided to the State Water Board on disk by August 1, 2009.  
(0110900)
7. Permittees shall report to the State Water Board by August 1, 2009 the total quantity of water diverted under this temporary permit.
8. This temporary permit is issued and Permittees take it subject to California Water Code, Division 2, Chapter 6.5, section 1425, et seq. Any temporary permit issued under this chapter shall not result in creation of a vested right, even of a temporary nature, but shall be subject at all times to modification or revocation at the discretion of the State Water Board.  
(0510800)
9. Issuance of this temporary permit shall not be construed as indicating State Water Board approval of Applications 31165 and/or 31370, nor shall it be construed as establishing the conditions for any

permits issued pursuant to Applications 31165 and/or 31370. Upon issuance of permits pursuant to Applications 31165 and/or 31370, this temporary permit shall expire regardless of whether the 180-day temporary permit period has ended.

(0510999)

10. This permit shall not be construed as conferring upon the Permittees right of access to facilities of the U.S. Army Corps of Engineers.

(0000022)

11. This permit is specifically subject to the prior rights of Bear Valley Mutual Water Company, City of Redlands, East Valley Water District, Lugonia Water Company, North Fork Water Company and Redlands Water Company to divert the first 88 cubic feet per second of the natural flow of the Santa Ana River pursuant to pre-1914 appropriative right, to the extent that such rights may exist.

(00000T)

12. This permit is specifically subject to the prior rights of San Bernardino Valley Water Conservation District (Conservation District) under License 2831 issued pursuant to Application 2217 and any valid pre-1914 appropriative right confirmed by the Court.

(00000T)

13. In the event that there is unappropriated water being released from Seven Oaks Reservoir in excess of the instantaneous demands/diversion capacity of Bear Valley Mutual Water Company et al. and the Conservation District, the Permittee may divert or redivert such quantities of water.

(00000T)

14. Nothing in this Permit shall be construed as authorizing any diversions contrary to the provisions of the December 19, 2002 Biological Opinion issued by United States Fish and Wildlife Service for operation of Seven Oaks Dam, including flow releases for downstream over-bank inundation to preserve State and federally listed threatened and endangered species and their habitat.

#### STANDARD TERMS AND CONDITIONS

#### ALL PERMITS ISSUED BY THE STATE WATER RESOURCES CONTROL BOARD ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- A. The amount authorized for appropriation may be reduced in the license if investigation warrants.

(0000006)

- B. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board (State Water Board) until a license is issued.

(0000010)

- C. Permittee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by said State Water Board, reasonable access to project works to determine compliance with the terms of this permit.

(0000011)

- D. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of State Water Board in accordance with law and in the interest of the public welfare to

protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

- E. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to the permittee and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

- F. This permit does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050 - 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 - 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

- G. Permittee shall maintain records of the amount of water diverted and used to enable the State Water Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code Section 1605.

(0000015)

- H. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between the State Department of Fish and Game and the permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the permittee. If a stream or lake agreement is not necessary for



this permitted project, the permittee shall provide the Division of Water Rights a copy of a waiver signed by the State Department of Fish and Game.

(0000063)

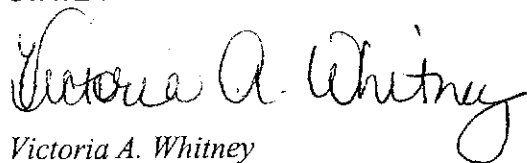
***This permit is issued and permittee takes it subject to the following provisions of the Water Code:***

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefore shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

STATE WATER RESOURCES CONTROL BOARD



*Victoria A. Whitney*  
*Deputy Director for Water Rights*

Dated: **JAN - 6 2009**