

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

DIVISION OF WATER RIGHTS

In the Matter of Wastewater Change Petition 20 (WW0020)

El Dorado Irrigation District

**ORDER REVOKING
TEMPORARY URGENCY CHANGE**

SOURCE: Deer Creek tributary to Cosumnes River

COUNTY: El Dorado County

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 BACKGROUND

On July 15, 2015, the State Water Resources Control Board (State Water Board) approved El Dorado Irrigation District's (EID) Temporary Urgency Change Petition (TUCP) for EID's Deer Creek Wastewater Treatment Plant (WWTP). TUCPs are processed pursuant to California Water Code sections 1435 through 1442.

EID filed the TUCP with the State Water Board on May 5, 2015, requesting temporary modifications to the October 8, 1994 Order approving Wastewater Change Petition 20 (WW0020), as amended by State Water Board Order WR-95-09. Order WR-95-09 requires certain minimum treated wastewater discharges from the Deer Creek WWTP into Deer Creek, which is tributary to the Cosumnes River in El Dorado County. With the TUCP, EID requested authorization to temporarily reduce the minimum treated wastewater discharge into Deer Creek from the required minimum of 0.5 million gallons per day (mgd) to 0.32 mgd. In 2014, EID requested similar temporary changes to Order WR-95-9; the State Water Board approved that TUCP on June 5, 2014, and amended the approval on August 1, 2014.

Pursuant to Water Code section 1440, temporary urgency changes may be effective for up to 180 days from the date of the Order approving the changes or revoked at the discretion of the State Water Board. Water Code section 1440 reads as follows:

Any temporary change order 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 in the discretion of the board. Any temporary change order shall automatically expire 180 days after the date of its issuance unless an earlier date is specified or it has been revoked.

2.0 PUBLIC NOTICE OF TUCP

Pursuant to Water Code section 1438, subdivision (a), the State Water Board may issue a temporary urgency change order in advance of the required notice. On July 16, 2015, the State Water Board issued public notice of the TUCP. EID published the public notice on July 22, 2015 in the Mountain Democrat. The State Water Board posted the notice of the temporary urgency change, the TUCP (and accompanying materials), and the TUCP approval Order on its website. The State Water Board also distributed the notice

through an electronic notification system and provided the notice to interested parties from the 2014 TUCP.

3.0 PUBLIC COMMENTS RECEIVED ON THE TUCP

EID began a reduction in the treated wastewater discharge to 0.32 mgd on July 19, 2015. As of July 28, 2015, Division staff began receiving complaints from residents who lived near the Latrobe Road bridge over Deer Creek, which is approximately four miles downstream of the WWTP. The residents were very concerned that Deer Creek upstream of Latrobe Road bridge was dry. Many residents also indicated that in the last 20 to 30 years, that portion of Deer Creek has never been dry.

Overall during the public notice period for the TUCP approval order, the State Water Board received over 35 comments from concerned residents who lived near Deer Creek. All of the commenters indicated they objected to EID's reduction in treated wastewater discharge to Deer Creek. A majority of the commenters specifically indicated they considered deterioration of the riparian corridor to be a direct result of the reduction in discharge from the Deer Creek WWTP.

4.0 DEER CREEK RIPARIAN HABITAT

As noted in State Water Board Order WR-95-09, the 1972 Environmental Impact Statement (EIS) that was prepared for the Deer Creek WWTP indicated that prior to EID's continuous discharge of treated wastewater into Deer Creek, the creek downstream of the WWTP was an intermittent stream whose flow was dependent on natural runoff from surrounding low-lying hills. The EIS further stated that the erratic streamflow in Deer Creek severely restricted wildlife potential, was detrimental to fishing, and resulted in dead vegetation during periods of no flow in late summer and fall. The EIS predicted that the continuous WWTP discharge would change Deer Creek from an intermittent stream to an annual stream with daily flow to enhance vegetation growth and wildlife. The EIS concluded that the year-round flow from the WWTP would be a valuable asset to the ecology and environment of the area.

State Water Board Order WR-95-09 indicated that with the added discharge from the Deer Creek WWTP, the stream would disappear into the creek bed approximately one mile upstream of Scott Road during the summer months. This location is approximately 8.5 miles downstream of the WWTP, or approximately 4.5 miles below Latrobe Road.

State Water Board Order WR-95-09 indicated the following regarding EID's 1994 Environmental Impact Report (EIR)¹: "The EIR discussed two areas of well-developed riparian vegetation. One extends approximately 3.3 miles in the area of Latrobe Road and the other is near Scott Road in Sacramento County. In the Latrobe Road area canopy heights range from 20 to 60 feet and riparian zone widths range from 50 to several hundred feet. The Legislature has declared that riparian habitat for fish and wildlife is a valuable and finite resource, and that the public interest requires its protection. (Fish and Game Code section 1386.) Pursuant to Fish and Game Code section 1389, the preservation and enhancement of riparian habitat shall be a primary concern of all state agencies whose activities impact riparian habitat."

The area surrounding Deer Creek immediately upstream of Latrobe Road is within the National Wetlands Inventory (NWI), as designated by U.S. Fish and Wildlife Service. The wetland area immediately upstream of Latrobe Road is classified under the NWI as "Palustrine Forested and Seasonally Flooded." Also, pursuant to the NWI, Deer Creek both upstream and downstream of Latrobe Road is classified as "Riverine, Upper Perennial, with Unconsolidated Shore/Bottom and Permanently Flooded." The Deer Creek flows in this vicinity have contributed to the creation of these wetlands.

¹ EID filed a wastewater change petition (WW0020) with the State Water Board in 1992 requesting a reduction in the treated wastewater discharge from the Deer Creek WWTP into Deer Creek. Subsequently, in May 1994, EID issued an EIR pertaining to the reduction in discharge to Deer Creek as proposed by WW0020.

5.0 REQUIRED MONITORING OF DEER CREEK BY EID

EID's consultants, Robertson-Bryan, Inc. (RBI), conducted two monitoring events downstream of the Deer Creek WWTP in July and August 2015 subsequent to the reduction in treated wastewater discharge to 0.32 mgd, as required by the TUCP approval Order. RBI submitted two reports summarizing the results of those monitoring events to both the State Water Board and California Department of Fish and Wildlife (CDFW) for review. Both of RBI's reports indicate that Deer Creek was dry the last 0.5 to one mile upstream of Latrobe Road during their monitoring events. Both reports also indicate that Deer Creek surface flow is normally intact as far as one to two miles downstream of Latrobe Road during the summer, and in wetter years flow may persist further downstream during the summer months.

RBI's monitoring reports, as required by Term 2, 3, and 4 of July 15 Order, focused on the viability of fish populations and habitat in the areas of Deer Creek where flow remained this summer. RBI reports did not include discussion of the riparian corridors adjacent to those areas where Deer Creek had run dry this year as a result of the reduction in wastewater discharge. RBI's reports of field monitoring of the Deer Creek corridor included photographs showing the riparian habitat along the creek. The submitted photographs show negative impacts to the riparian corridor as Deer Creek approaches Latrobe Road.

Term 8 of the Order states that the State Water Board retains jurisdiction to supervise the temporary urgency change approved the July 15, 2015 Order and to modify the terms and conditions of the order for the protection of vested rights, fish, wildlife, instream beneficial uses, and the public interest as conditions warrant.

6.0 RIPARIAN HABITAT IN CALIFORNIA

The California Wildlife Conservation Board estimates that losses of riparian habitat in California in the Central Valley may be as high as 95 percent of historic levels². The State Water Board, along with CDFW, the Sacramento-San Joaquin Delta Conservancy and the Coastal Conservancy, is a signatory agency to the State of California's Five Year Coordinated Work Plan for Wetlands Conservation Program Development³ which was revised in March 2014. The overall goal for the work plan is to increase the abundance and diversity of California's wetlands and riparian areas, and to sustain and enhance the delivery of ecosystem services.

Therefore, conservation of established wetlands and riparian habitats in California must be considered by the State Water Board when rendering decisions that may have negative impacts upon these areas.

7.0 REQUIRED FINDINGS OF FACT

Pursuant to Water Code section 1435 subsection (b), approval of a temporary urgency change requires the State Water Board to make various findings including the following:

The proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses.

Based on adverse impacts to the riparian corridor of Deer Creek near Latrobe Road as noted by the residents of the Deer Creek area and EID's monitoring reports, and the importance of maintaining California's wetlands and riparian areas, and to sustain and enhance the delivery of ecosystem services, I cannot find that the changes approved pursuant to the TUCP may be made without an unreasonable impact upon the riparian habitat of Deer Creek.

² <https://www.wcb.ca.gov/Programs/Wetlands/Program-History>

³ http://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/wrapp/2014_five_year_coordinated_workplan.pdf

8.0 STATE WATER RESOURCES CONTROL BOARD DELEGATION OF AUTHORITY

The State Water Board has delegated the authority to act on a TUCP when objections are received to Board Members Individually, pursuant to Resolution No. 2012-0029.

9.0 CONCLUSION

The information above indicates that the reduction in treated wastewater discharge to Deer Creek has had a negative impact on the riparian habitat in Deer Creek. Therefore, I conclude that the State Water Board cannot make the finding that the proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses.

ORDER

NOW, THEREFORE, IT IS ORDERED that the July 15, 2015 Order approving El Dorado Irrigation District's Temporary Urgency Change Petition is revoked.

All existing terms and conditions of Order WR-95-09 remain in effect.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

Tom Howard

Executive Director

Dated: September 18, 2015