

1 JILL N. WILLIS, # 200121
STEFANIE D. HEDLUND, # 239787
2 BEST BEST & KRIEGER LLP
3750 University Avenue
3 P.O. Box 1028
Riverside, California 92502
4 Telephone: (951) 686-1450
Telecopier: (951) 686-3083
5

6 CITY OF RIVERSIDE
GREGORY PRIAMOS, City Attorney # 136766
SUSAN WILSON, Dep. City Attorney # 157652
7 3900 Main Street
Riverside, California 92522
8 Telephone: (951) 826-5567
Telecopier: (951) 826-5540
9

10 Attorneys for City of Riverside

11 STATE WATER RESOURCES CONTROL BOARD

12 DIVISION OF WATER RIGHTS

13
14 In the matter of:
15 Santa Ana River Water Right Applications
16 31165, 31174, 31369, 31370, 31371, and
31372 and Wastewater Change Petition
No. WW-0045.
17
18

Hearing Officer: Arthur Baggett, Jr.

CITY OF RIVERSIDE'S CLOSING BRIEF

19
20
21
22
23
24
25
26
27
28

1 **I. INTRODUCTION**

2
3 For nearly forty years, stakeholders in Santa Ana River Watershed have worked together
4 to maximize the beneficial use of water. Water users in the Santa Ana River Watershed have
5 achieved a high level of efficiency by emphasizing multiple re-uses of water. Water users in the
6 Santa Ana River Watershed have also achieved a high level of cooperation and integrated
7 planning. Through the Santa Ana Watershed Planning Agency (“SAWPA”) and its programs, the
8 various stakeholders have developed a comprehensive basin plan to address water supply,
9 wastewater disposal and water quality management. The integrated regional planning and
10 management of the Santa Ana Watershed serves as a model for other water users throughout the
11 State.

12
13 The institutional framework and high level of cooperation within the Watershed allowed
14 the Applicants in this matter to settle all issues relating to water rights and priorities before the
15 Hearing began. None of the Applicants object to any of the other Applicants’ Projects. Thus, the
16 Board need not decide relative rights and priorities between the parties; rather, the primary task
17 for the Board is to balance the highly sophisticated and complex uses of Santa Ana River water
18 with any public trust concerns and to determine whether the Applicants’ proposed Projects are in
19 the public interest.

20
21 The City of Riverside’s proposed Project is a recycled water project that advances the
22 strong Statewide public interest in maximizing the re-use of reclaimed water. The Project is
23 consistent with the institutional framework that has been established in the Watershed and
24 furthers the goals and policies within the Watershed of maximizing local supplies, making the
25 highest and best use of water, and maximizing efficiency. The proposed Project does not
26 unreasonably impact public trust resources, and no evidence opposing the Project was presented
27 at the Hearing. Thus, the City of Riverside requests that the Board grant, without condition, the
28 City’s Wastewater Change Petition.

1 **II. PROCEDURAL HISTORY**

2
3 **A. Application 31372**

4
5 The City submitted Application 31372 to the Board on March 15, 2002. The Application
6 was accepted by the Board on November 6, 2002. The Application was filed in conjunction with
7 the City's Public Utilities Recycled Water Program. As part of this Program, the City expects to
8 beneficially re-use 41,400 afy of treated effluent from its own Regional Water Quality Control
9 Plant ("RWQCP"). The City plans on using the recycled water for agricultural irrigation,
10 landscape irrigation and other municipal and industrial purposes. All of these anticipated uses
11 occur in the watershed.

12
13 The water requested by Application 31372 is not water diverted from the Santa Ana River.
14 Rather, the City's proposed Project seeks to increase use of recycled water that will be taken
15 directly from the RWQCP rather than being released into the Santa Ana River. Currently,
16 approximately 36,000 afy of the City's treated effluent is discharged into the Santa Ana River.
17 As part of the City's Recycled Water Program, the City will reduce the amount discharged, over
18 time, by a maximum of 11,000 afy and by 10,000 afy at Project build-out. Concurrent with the
19 change in use of wastewater, the City will also expand the capacity of the RWQCP to 60 mgd,
20 meaning that there will be up to 67,000 afy of treated effluent for use as recycled water or
21 discharge to the Santa Ana River. Under the Application, the City would never discharge less
22 than 25,000 afy into the Santa Ana River, as the amount of available effluent will be
23 approximately 67,000 afy, with approximately 41,000 afy used for the Project and at least 25,000
24 afy always discharged to the River. (See Exhibit 2-2 table summarizing Application 31372).

25
26 **B. Wastewater Change Petition WW-0045**

27
28 Board Staff indicated that because the City's intended use of the recycled water would not

1 involve a diversion of water that is flowing in the watercourse, no appropriative water right would
2 be required because the treated effluent does not leave the City's possession. (SWRCB Comment
3 Letter pp. 1-2). To that end, on December 1, 2006, at the request of Board Staff, the City
4 submitted Petition WW-0045 for Change in Amount of Discharge, Place of Use, and Purposes of
5 Use of Treated Wastewater to the Board. The Petition covers the same activities as Application
6 31372 and seeks approval to reduce the amount of treated effluent presently discharged to the
7 Santa Ana River by directing treated effluent, which was previously discharged to the Santa Ana
8 River, to recycled water uses. (See Ex. 2-3 summary table of Wastewater Change Petition WW-
9 0045

10
11 ***C. Request for Dismissal Of Application 31372***

12
13 The City has not withdrawn Application 31372; however, it appears that Application
14 31372 is not necessary since the City's proposed Project does not contemplate diverting water
15 from the Santa Ana River and the water will not leave the possession of the City. Thus, the City
16 requests that the Board approve the City's Wastewater Change Petition WW-0045 without
17 condition and dismiss the City's Application 31372 as unnecessary.

18
19 ***D. Protests To Application 31372 and Wastewater Change Petition WW-0045***

20
21 Four entities protested Application 31372: The California Department of Fish and Game;
22 the California Sportfishing Protection Alliance; East Valley Water District; and the United States
23 Forest Service. Prior to the Hearing, the City resolved all protests except the California
24 Sportfishing Protection Alliance, which did not appear at the Hearing or submit evidence against
25 any Application, including the City's Application. According to California Water Code Section
26 1335, the Board may deem California Sportfishing Protection Alliance's protest canceled for
27 failure to appear. The Board issued a letter on April 6, 2007, notifying California Sportfishing
28 Protection Alliance that it had thirty days from the receipt of the letter to show cause for the State

1 Board to not dismiss its protest. California Sportfishing Protection Alliance failed to respond
2 within thirty days and the protest was dismissed without further notice, according to Cal. Code
3 Regs., tit. 253 § 7520.

4
5 One entity protested Wastewater Change Petition WW-0045: the Center for Biological
6 Diversity. Prior to the Hearing, the City resolved this protest. Thus, all protests to both the
7 Application and the Wastewater Change Petition were resolved prior to the Hearing.

8
9 *E. Overview of the Hearing Key Issues*

10
11 On February 16, 2007, the Board issued a Notice of Public Hearing regarding the Santa
12 Ana River Watershed. The Notice identified six key issues for consideration at the Hearing. On
13 April 5, 2007, the Applicants¹ entered into a Stipulation that resolved key issues four and five.
14 No interested parties objected to the Stipulation; thus, no parties presented evidence at the
15 Hearing regarding key issues four and five. The four remaining key issues addressed at the
16 Hearing are as follows:

- 17
18 1. Key Issue #1- Is there water available for appropriation by each of the
19 applicants? If so, when is water available and under what circumstances?
20
21 2. Key Issue #2- Will approval of any of the applications or the petition result in
22 any significant adverse impacts to water quality, the environment or public trust
23 resources? If so, what adverse impact or impacts would result from the project
24 or projects? Can these impacts be avoided or mitigated to a level of non-
25 significance? If so, how? What conditions should the State Water Board adopt

26
27 ¹ The term "Applicants," for purposes of this Brief, refers collectively to Western Municipal Water District, San
28 Bernardino Valley Municipal Water District, San Bernardino Valley Water Conservation District, Chino Basin
Watermaster, Orange County Water District, and the City of Riverside. Prior to the Hearing, the San Bernardino
Valley Water Conservation District withdrew its application.

1 to avoid or mitigate any potential adverse impacts on fish, wildlife, or other
2 public trust resources that would otherwise occur as a result of approval of the
3 applications and petition?
4

5 3. Key Issue #3- Is each of the proposed projects in the public interest? If so, what
6 conditions, if any, should the State Water Board adopt in any permits that may
7 be issued on the pending applications, or in any order that may be issued on the
8 wastewater change petition, to best serve the public interest?
9

10 4. Key Issue #6- What effect, if any, will the projects have on groundwater and/or
11 movement of any contaminated groundwater plumes? Can the effects be
12 mitigated? If so, how?
13

14 The Hearing was conducted on May 2, 3, 4 and 8, 2007, and the City presented evidence
15 regarding each of the four key issues listed above. This evidence was not questioned and no
16 evidence was presented in opposition to the City's Application and Wastewater Change Petition.
17 This brief summarizes the evidence supporting the City's Application and Wastewater Change
18 Petition and also addresses the City's compliance with the California Environmental Policy Act
19 ("CEQA").
20

21 **III. OVERVIEW AND PROJECT DESCRIPTION** 22

23 The City is committed to developing water projects that maximize the reuse of reclaimed
24 water and minimize the City's dependence on groundwater and non-local sources of water. (RT
25 Vol. I, 127:4-17.) To that end, the City, through its proposed Project, seeks to expand its
26 treatment facility and direct a portion of the treated effluent from the RWQCP to recycled water
27 users, while continuing to contribute flow to the Santa Ana River for the protection of water
28 quality and biological resources in the River. The proposed Project will increase the City's

1 ability to rely on localized water supplies to meet domestic water needs and will enable the City
2 to decrease reliance on imported water supplies, such as State Water from the Sacramento-San
3 Joaquin Bay Delta. (See Written Testimony of Kevin Milligan ¶ 3.) While the City currently
4 relies almost exclusively on local groundwater to meet its demands, the City is currently utilizing
5 all of its adjudicated groundwater rights in the Bunker Hill Basins and nearly all in the Riverside
6 North Basin. (See Written Testimony of Kevin Milligan ¶¶ 8 and 9.) Without this Project, the
7 City will be forced to rely more heavily on imported supplies as the City's population increases.

8
9 The RWQCP is currently permitted to treat 40 million gallons per day (mgd) of
10 wastewater. Presently, the plant produces approximately 33 mgd, which translates to
11 approximately 36,000 afa of treated effluent. (RT Vol. I, 126:9-12.) Following treatment and
12 chlorination/dechlorination, almost all of the final effluent is discharged into a constructed
13 channel that parallels the Santa Ana River flow. Eventually, the effluent flow is split, with some
14 water discharged through a constructed channel that ultimately intersects the flow of the Santa
15 Ana River. The balance of the effluent travels through a constructed channel to the Hidden
16 Valley Wetlands Enhancement Project ("HVWEP"). Water flows through the HVWEP and re-
17 enters a constructed channel where it intersects the Santa Ana River. (RT Vol. I, 129:6-12.)

18
19 The HVWEP was designed for an average influent flow of approximately 16 cfs. The
20 HVWEP was constructed in 1995 and was initially used for additional treatment of effluent. The
21 HVWEP is no longer used for treatment since the City is able to remove nitrogen in the plant.
22 Since the HVWEP has numerous community and biological benefits the City has decided to
23 continue its operation. (RT Vol. I, 129:13-21.)

24
25 Pursuant to the proposed Project, the City plans a phased expansion of the RWQCP from
26 the existing permitted capacity of 40 mgd to the ultimate capacity of 60 mgd or approximately
27 67,000 afy. (RT Vol. I, 126:9-20.) The City expects the plant to be operating at capacity by
28 2030. (See Written Testimony of Kevin Milligan ¶ 14; RT Vol. I, 126:16-20.) The City also

1 expects to expand its existing recycled water distribution system from the present 290 afa to
2 41,400 afa by 2025. (See Written Testimony of Kevin Milligan ¶ 15.)

3
4 The City of Riverside's Project has three components: Adoption of the Master Plan;
5 implementation of near term and long term projects to deliver recycled water from the RWQCP;
6 and re-use of 41,400 afy of treated effluent from the RWQCP for use as recycled water. (See
7 Written Testimony of Kevin Milligan ¶ 16.) The re-use of 41,400 afy per year would not be
8 immediate but rather would occur over a period of time, as the plant is expanded, and as the
9 population and employment in Riverside and surrounding areas continues to grow and the amount
10 of treated effluent generated increases. (See Written Testimony of Kevin Milligan ¶ 16.)

11
12 The City anticipates using the recycled water for several types of projects within the
13 Project area, including: Landscape Irrigation within City Limits, Industrial/Commercial uses
14 within City Limits, Non-Agricultural uses outside City Limits, and Agricultural uses within and
15 outside the City limits. (See Written Testimony of Kevin Milligan ¶ 18.)

16
17 At no time will the City discharge less than 25,000 afy to the River. (RT Vol. II, 143:21-
18 22.) Upon completion of the Project, the City expects discharges to be approximately 26,000 afy
19 (about 10,000 afy less than is presently discharged). (RT Vol. I, 126:13-16.) Further, the City
20 will continue to operate the HVWEP because of the benefits to natural resources and the
21 community. (RT Vol. I, 129:13-18.)

22
23 The City prepared a Draft Program Environmental Impact Report ("DPEIR") in support of
24 the Project. The DPEIR was released for public comment on October 12, 2006. Prior to the
25 Hearing, the parties to the Hearing stipulated that although the City of Riverside had not certified
26 the PEIR, the parties would agree not to object to the City's participation in the Hearing without a
27 certified PEIR. Additionally, the parties agreed to hold the record open up to August 15, 2007,
28 for the City to substitute its final PEIR for the DPEIR. Finally, the parties agreed that the Hearing

1 need not be reconvened for cross-examination as to the City's final PEIR.

2
3 The City will hold a public hearing on June 7, 2007, for the DPEIR before the City
4 Planning Commission, as required by the City's CEQA guidelines, and then expects to have the
5 City Council consider the final PEIR for certification by the end of July 2007.

6
7 **IV. KEY HEARING ISSUES**

8
9 ***A. Sufficient Water Is Available To Approve The City's Wastewater Change***
10 ***Petition***

11
12 The City's Project does not contemplate diverting water from the Santa Ana River; rather,
13 the Project seeks to reduce, over time, the amount of treated effluent the City discharges into the
14 Santa Ana River. Thus, the Project will have the full amount of water available in all years.
15 Pursuant to the proposed Project, the City would continue to discharge a minimum of 25,000 afy.
16 This is significantly more than the 15,250 afy the City is required to discharge pursuant to the
17 stipulation between the City and Western Municipal Water District dated November 30, 1968,
18 which was ultimately incorporated into the Judgment in *Orange County Water District v. City of*
19 *Chino, et al.* (Orange County Superior Court No. 117628, April 17, 1969). (See Applicants' Joint
20 Ex. 2-1.). This discharge is the only required downstream discharge; the City is not legally
21 obligated to provide other discharges to downstream users. Thus, as long as the City complies
22 with the Orange County Judgment, the City has met its legal obligations to downstream users.

23
24 Further, the City's expert on hydrology, Mr. Nick Bonsignore, provided uncontested
25 evidence regarding existing hydrologic conditions in Reach 3 of the River, as well as the effect of
26 the City's proposed decrease in discharge of treated effluent on flows in Reach 3. Mr.
27 Bonsignore's testimony shows the reductions proposed by the City represent a very small
28 percentage of the average flows historically present in Reach 3. (See City of Riverside Exhibit 2-

1 11 and 2-12; RT Vol. I, 289:5-25 and 290:1-9.) Further, the City's proposed reductions would
2 not cause either Reach 3 or the City's discharge channel to go dry. (RT Vol. II, 291:23-25 and
3 292:1.)

4
5 ***B. Approval of the City's Wastewater Change Petition Will Not Result in***
6 ***Unreasonable Or Significant Adverse Impacts to Public Trust Resources***

7
8 1. The Board Is Charged With Balancing Competing Interests

9
10 Pursuant to the public trust doctrine, the State retains ongoing supervisory control over
11 navigable waters and the lands beneath those waters. The purpose of the public trust doctrine is
12 to protect navigation, fishing, recreation, fish and wildlife habitat, and aesthetics. (*See National*
13 *Audubon Society v. Superior Court* (1983) 33 Cal. 3d 419, 434-35.) However, all diversions and
14 use of water in California are subject to the mandate of Article X, Section 2 of the California
15 Constitution, which requires that the water resources of the State be put to beneficial use to the
16 fullest extent possible and that waste, unreasonable use, unreasonable methods of use, and
17 unreasonable methods of diversion be prevented. (*Id.* at 443.) Thus, when the State acts under its
18 public trust authority, the measures it takes must meet the test of "reasonableness" under the
19 California Constitution. (*See id.* at 362.) Generally speaking, in determining the reasonableness
20 of a particular use of water or method of diversion, other competing beneficial uses of water must
21 be considered.

22
23 In the recent *State Water Resources Control Board Cases*, Justice Robie, speaking for the
24 Court, reiterated that it is the Board's responsibility to consider and protect all beneficial uses,
25 including municipal, industrial and agricultural uses, to balance those uses, and to preserve, so far
26 as consistent with the public interest, the uses protected by the public trust. (*State Water*
27 *Resources Control Board Cases* (2006) 136 Cal. App. 4th 674, 777-779. As stated by Justice
28 Robie:

1 While the Board had a duty to adopt objectives [as part of the 1995
2 Bay-Delta Plan] to protect fish and wildlife uses and a program of
3 implementation for achieving those objectives, in doing so the
4 Board also had a duty to consider and protect all of the other
5 beneficial uses to be made of water in the Bay-Delta, including
6 municipal, industrial, and agricultural uses. It was for the Board in
7 its discretion and judgment to balance all of these competing
8 interests in adopting water quality objectives and formulating a
9 program of implementation to achieve those objectives.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. The City's Uncontested Evidence Conclusively Establishes That The
City's Proposed Project Will Not Unreasonably Or Significantly Impact
Public Trust Resources

A. Santa Ana Sucker

Dr. Jonathan Baskin, an expert biologist on the Santa Ana sucker, testified that the change in flow caused by the City's project will not have a significant negative impact on the sucker and may even have a positive impact on sucker habitat. (RT Vol. II, 141:7-13.) Dr. Baskin is an expert on the sucker fish and has over 17 years of experience studying the sucker. (RT Vol. II, 131:9-17.) Furthermore, Dr. Baskin has been hired as a consultant to do sucker research for the SAWPA Sucker Conservation team. (RT Vol. II, 131:18-25 and 132:1-5.)

Dr. Baskin testified that reach 3 of the Santa Ana River is not good sucker habitat because it contains mostly sand substrates, and that in this area of the River sucker are not common. (RT Vol. II, 141:7-13.) Dr. Baskin stated that based on the sucker habitat research conducted by San Marino Environmental Associates, that sucker prefer gravel/cobble substrate, compared to sand substrate. (RT Vol. II, 138:17-21 and 139:7-11; *See* City of Riverside Ex. 5-9.) Dr. Baskin further stated that the reason for the poor habitat was not due to a lack of water but rather the lack of good sucker habitat. (RT Vol. II, 142:4-7.) Suckers require gravel beds for spawning and feeding on algae growing on the gravel. (RT Vol. II, 133:25-134:6 and 136:20-137:10.) Finally,

1 Dr. Baskin testified that in general more water is not better, but rather that the timing of water is
2 more critical for sucker habitat. (RT Vol. II, 142:7-8.)

3
4 Based on the above findings, and Dr. Baskin's extensive research regarding the Santa Ana
5 sucker, Dr. Baskin concluded that the City's project will not have negative adverse effects on the
6 sucker. (RT Vol. II, 141:20-24.)

7
8 Likewise, Dr. Jeff Beehler testified unequivocally that the proposed Project will not have
9 any significant impacts on the Santa Ana sucker. (RT Vol. II, 131:7-8.) In support of his
10 conclusion, Dr. Beehler noted that Reach 3 of the River is primarily sand and is not preferred
11 sucker habitat. (RT Vol. II, 157:6-10.) Suckers in this area of the River are limited by the
12 availability of gravel substrate, not the availability of water. (RT Vol. II, 157:6-10.)
13 Improvements in habitat in this area depend on scour and transport of gravel from heavy storm
14 flows originating upstream. (RT Vol. II, 157:8-14.) Further, Dr. Beehler concluded that the
15 limited reduction of flow of 11,000 afy proposed by this Project will not affect the availability of
16 the limited habitat in this area. (RT Vol. II, 131:7-8.)

17 18 B. Special Status Avian Species And Riparian Habitat

19
20 With respect to avian species and riparian habitat, Mr. Tony Bomkamp testified that the
21 City's proposed Project will not significantly affect willow-dominated occupied or potential least
22 Bell's vireo ("LBV") habitat in Reach 3 or Prado Basin. (RT Vol. II, 126:16-19.) According to
23 Mr. Bomkamp's uncontradicted testimony, Reach 3 receives a projected average of about
24 206,277 acre-feet of surface water per year, whereas the 2,938 acres of LBV habitat requires a
25 maximum of about 12,075 AFY, meaning that only about 5.9 percent of the water that currently
26 enters Reach 3 is used by the existing riparian habitat. (RT Vol. II, 124:2-23; *See City of*
27 *Riverside Ex. 3-12.*) Thus, there is a substantial amount of surplus water (greater than one order
28 of magnitude) relative to the needs of existing riparian habitat in the Santa Ana River/Prado Basin

1 system. (RT Vol. II, 126:6-13; *See* City of Riverside Ex. 3-13.) Under any of the scenarios used
2 to evaluate the amount of water available to riparian habitat in the Santa Ana River Reach 3 and
3 Prado Basin, there is more than an order of magnitude of surplus water in the system after any
4 potential diversions occur, meaning that there is no potential impact on LBV habitat associated
5 with the Project. (RT Vol. II, 126:6-19.)
6

7 Further, Mr. Bomkamp focused his testimony on the willow because the water needs of
8 the willow are larger than those of other species in the relevant study area; thus, the willow is a
9 good umbrella for riparian habitat used to support special status species. (RT Vol. II, 145:19-22.)
10 Mr. Bomkamp focused on the LBV because it is considered an “umbrella species” for all other
11 avian species of concern in Reach 3 of the River and the Prado Basin. (RT Vol. II, 121:1-9 and
12 RT Vol. II, 145:5-14.) Finally, Mr. Bomkamp testified that the LBV was a good umbrella species
13 for all avian special status species that occur in reach 3 of the Santa Ana River. (RT Vol. II,
14 146:2-8.)
15

16 Further, the Project will not contribute to any change in groundwater levels or habitat
17 conditions that would threaten the extant protected population of the Santa Ana wooly-star, as the
18 Santa Ana wooly-star is not found in the Project Area. (*See* Center for Biological Diversity
19 Exhibit 2-1.)
20

21 ***C. Approval Of The City’s Change Petition Is In The Public Interest***
22

23 Water Code Section 461 states:
24

25 It is hereby declared that the primary interest of the people of the
26 state in the conservation of all available water resources requires
27 the maximum reuse of reclaimed water in the satisfaction of
28 requirements for beneficial uses of water.

1 The City's project advances the primary interest of the public in the conservation of water
2 resources by developing an aggressive recycled water program that allows for maximum reuse of
3 the City's treated effluent.

4
5 As stated above, the City's Project will reduce dependence on local groundwater and
6 imported supplies and will permit the beneficial re-use of 41,400 afy for a variety of recycled
7 water uses.

8
9 ***D. The City's Proposed Project Will Not Impact The Movement Of Contaminants***
10 ***Or Otherwise Negatively Impact Water Quality***

11
12 The City's Project does not have any impact on groundwater contamination or contribute
13 to the movement of any groundwater contamination. Because the Project contemplates the
14 removal of treated effluent directly from the RWQCP, there is no aspect of the Project that would
15 cause groundwater contamination or contribute to the movement of groundwater contamination.
16 Additionally, the recycled water must meet all state standards for treatment, so the beneficial use
17 of the recycled water will not cause groundwater contamination or contribute to the movement of
18 groundwater contamination. (RT Vol. III, 69:6-12.)

19
20 **V. THE CITY'S PDEIR, TOGETHER WITH THE EVIDENCE PRESENTED AT**
21 **THE HEARING, IS SUFFICIENT TO ALLOW THE BOARD TO APPROVE THE**
22 **CITY'S CHANGE PETITION IN ITS ENTIRETY**

23
24 Under CEQA, the City is the lead agency responsible for the preparation of appropriate
25 environmental documents which evaluate the potential environmental impacts of the Project. The
26 Board is a responsible agency for the project under CEQA. (14 CCR § 15381.) In this capacity,
27 the Board must review and consider the applicable environmental documents together with other
28 information contained in the record to reach its own conclusions regarding approval of the City's

1 Application and/or Wastewater Change Petition. (14 CCR § 15091.)
2

3 The City prepared a programmatic-level CEQA document (the DPEIR) addressing
4 environmental impacts associated with the City's proposed Recycled Water Program. The
5 DPEIR is contained in the Hearing Record as Riverside's Exhibit 1-3. The City prepared a
6 programmatic-level document, as opposed to a project-level document, because the proposed
7 Recycled Water Program involves a series of actions designed to take place over a substantial
8 period of time; details of the individual projects and individual recycled water uses are not
9 presently known and cannot be fully analyzed at this time. While the City may accurately
10 analyze the entire action of removing 11,000 afy from the Santa Ana River, it can not anticipate
11 where future projects may be built, thus a program-level document is necessary.
12

13 A program-level document is appropriate and possibly even mandatory in this instance,
14 since the proposed Recycled Water Program contemplates a series of related actions that are part
15 of the larger overall Program. (14 CCR § 15165.) The basis for programmatic analysis is
16 contained in the DPEIR on page 1-1. In the future, the City is required under the law to conduct
17 the appropriate project-level CEQA analysis on individual projects if there are effects that were
18 not examined in the program EIR. (*See* 14 CCR § 15168 (c), which requires that subsequent
19 activities in the program must be examined in the light of the program EIR to determine whether
20 an additional environmental document must be prepared.)
21

22 Although the City's DPEIR does not, and cannot, provide a project-level analysis of the
23 individual proposed recycled water uses (because such uses are unknown at this time), the City's
24 DPEIR, as well as the evidence presented during the Santa Ana Hearing, fully and completely
25 analyzed the potential hydrologic, biological and cumulative impacts on the River associated with
26 the full amount requested by the City's Wastewater Change Petition.
27

28 As detailed above, the City presented at the Hearing the testimony of four expert

1 witnesses, including three biologists and one hydrologist. Each of these witnesses analyzed
2 impacts associated with the “worst case” scenario of a full 11,000 afy decrease in the City’s
3 discharge of treated effluent. Mr. Bonsignore analyzed the hydrologic impacts associated with an
4 11,000 afy decrease in the City’s discharge of treated effluent and concluded that the proposed
5 decrease would not result in significant adverse hydrologic impacts. (See Riverside Exs. 2-0
6 through 2-17.) Dr. Beehler, Dr. Baskin and Mr. Bomkamp each analyzed the biological impacts
7 associated with an 11,000 afy decrease in the City’s discharge of treated effluent and concluded
8 that the decrease would not result in significant adverse biological impacts. (See Riverside Exs.
9 3-0 through 3-16, 4-0, 4-1, and 5-0 through 5-13.) The testimony and evidence presented by each
10 of these witnesses was uncontroverted.

11
12 The City has fully analyzed, both in its DPEIR and through the uncontested and
13 uncontroverted evidence presented at the Hearing, the potential hydrologic, biological and
14 cumulative impacts to the River associated with the full amount of the City’s proposed reductions
15 in treated effluent. Thus, the City’s DPEIR, along with the testimony and other evidence
16 presented at the Hearing, provides an analysis that is sufficient to allow the State Board to fulfill
17 its duties to balance public trust resources and advance the public interest. The DPEIR, along
18 with the evidence presented at the Hearing, conclusively establishes that the City’s requested
19 change will not harm public trust resources, and that the City’s requested change is in the public
20 interest. Furthermore, as summarized above, the City must still comply with CEQA for
21 individual projects.

22
23 In addition, the proposed Recycled Water Program is considered a covered activity
24 pursuant to the Western Riverside County Multiple Species Habitat Conservation Plan (“WRC-
25 MSHCP”). Under the WRC-MSHCP, any potential impacts resulting from covered activities are
26 deemed to not have adverse unmitigated impacts. The Environmental Impact Report prepared for
27 the WRC-MSHCP was a project-level document that fully analyzed and mitigated potential
28 impacts to covered species. As various phases and components of the City’s proposed Recycled

1 Water Program are implemented, each phase and component of the Program will be prepared in
2 accordance with the WRC-MSHCP. Furthermore, individual recycled water projects will be
3 subject to all applicable Regional Board and other relevant water quality requirements.
4 Construction impacts and other impacts related to the individual projects will also undergo
5 additional project-level CEQA analysis.

6
7 **VI. PROPOSED FINDINGS**

8
9 1. There is adequate water available to grant the City of Riverside Wastewater
10 Change Petition WW-0045.

11
12 2. There is no water availability basis in the record for limiting or conditioning the
13 City of Riverside's use of recycled water.

14
15 3. There is no basis in the record for limiting the City of Riverside season of use for
16 recycled water.

17
18 4. Approval of the City of Riverside's Wastewater Change Petition will not result in
19 an adverse impact to water quality, the environment or public trust resources.

20
21 5. There is no public trust basis in the record for limiting or conditioning the City of
22 Riverside's use of recycled water under Wastewater Change Petition WW-0045.

23
24 6. The project proposed by Wastewater Change Petition WW-0045 is in the public
25 interest, and any limitation on the City of Riverside's ability to use recycled water will detract
26 from the public interest.

27
28 7. The project is consistent with and promotes the State policy of developing

1 recycled water stated in California Water Code Section 13510.

2

3 8. The project proposed by Wastewater Change Petition WW-0045 will not have any
4 negative impact on the movement of any contaminated groundwater.

5

6 9. There is no water quality basis in the record for limiting or conditioning the City of
7 Riverside's use of recycled water under Wastewater Change Petition WW-0045.

8

9 10. The rights of other users of water and the priority of those rights are fully defined
10 in the judgments and agreements described in the Stipulation of the Applicants on file with the
11 SWRCB.

12

13 11. The Santa Ana Watershed has a well-developed and complex system for the
14 integrated regional water management of the Santa Ana River, and for the administration of the
15 rights of the parties of the watershed to use the River and its tributaries.

16

17 12. In the Santa Ana Watershed the most effective manner in which the SWRCB can
18 fulfill its statutory and common law duties is to give a high level of deference to the existing
19 judgments, agreements, and integrated management of the watershed.

20

21 June 6, 2007

BEST BEST & KRIEGER LLP

22

23

By: 

24

Jill N. Willis
Stefanie D. Hedlund
Attorneys for City of Riverside

25

26

27

28

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3750 UNIVERSITY AVENUE, SUITE 400
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

PROOF OF SERVICE

I, Lynda A. Kocis, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 3750 University Avenue, Suite 400, P.O. Box 1028, Riverside, California 92502. On June 6, 2007, I served the within document(s):

CITY OF RIVERSIDE'S CLOSING BRIEF

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Riverside, California addressed as set forth below.
- by causing personal delivery by _____ of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by _____ following the firm's ordinary business practices.
- By electronic mailing to the email address given.

Adam Keats
Center for Biological Diversity
1095 Market Street, Ste. 511
San Francisco, CA 94103

Email: akeats@biologicaldiversity.org

Bradley J. Herrema
Chino Basin Watermaster
Hatch & Parent
21 East Carrillo Street
Santa Barbara, CA 93101

Email: bherrema@hatchparent.com

Warren P. Felger
City of Redlands
Felger & Associates
726 West Barstow Ave., Ste 106
Fresno, CA 93704

Email: waterlaw@pacbell.net

Susan Wilson, Deputy City Attorney
City of Riverside
3900 Main Street
Riverside, CA 92522

Email: swilson@riversideca.gov

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Steven M. Kennedy
East Valley Water District
Brunick McElhaney & Beckett
1839 Commercenter West
POB 6425
San Bernardino, CA 92412-6425

Email: skennedy@bbmblaw.com

Joshua S. Rider, Staff Attorney
Forest Service, USDA
33 New Montgomery, 17th Floor
San Francisco, CA 94105

Email: joshua.rider@usda.gov

David R.E. Aladjem
San Bernardino Valley Muni Water District
Downey Brand LLP
555 Capitol Mall, 10th Floor
Sacramento, CA 95814

Email: daladjem@downeybrand.com

David Cosgrove
San Bernardino Valley Water Conservation
District
Rutan & Tucker LLP
611 Anton Blvd. 14th Floor
Costa Mesa, CA 92626-1931

Email: dcosgrove@rutan.com

Peter J. Keil
Santa Ana River Mainsten Project
Ellison Schneider & Harris LLP
2015 H Street
Sacramento, CA 95814-3109

Email: pjke@eslawfirm.com

James L. Erickson
City of Chino
c/o Jimmy L. Gutierrez, APC
12616 Central Avenue
Chino, CA 91710

Email: jim@city-attorney.com

Christopher J. McNevin
Orange County Water District
Pillsbury Winthrop Shaw Pittman, LLP
725 S. Figueroa Street, Ste. 2800
Los Angeles, CA 90017-5406

Email: chrismcnevin@pillsburylaw.com

Kevin M. O'Brien
San Bernardino Muni Water District and
Western Muni Water District
Downey Brand LLP
555 Capitol Mall, 10th Floor
Sacramento, CA 95814

Email: kobrien@downeybrand.com

Marc Luesebrink
Santa Ana River Mainstem Project
Manatt Phelps & Phillips
11355 West Olympic Blvd.
Los Angeles, CA 90064

Email: mluesebrink@mannatt.com

Nino Mascolo
Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, CA 91770

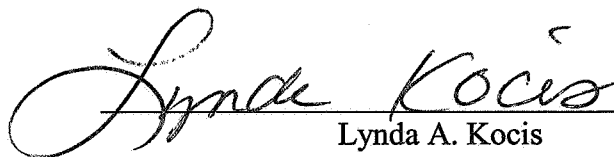
Email: nino.mascolo@sce.com

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June 6, 2007, at Riverside, California.


Lynda A. Kocis

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3750 UNIVERSITY AVENUE, SUITE 400
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502