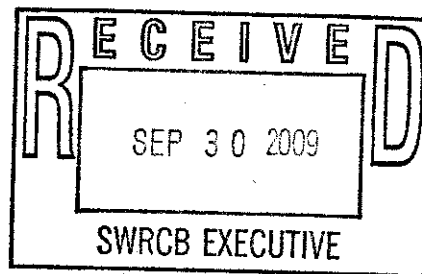


September 30, 2009

Via E-Mail – Commentletters@waterboards.ca.gov

Jeanine Townsend
Clerk of the Board
State Water Resources Control Board
1001 I Street
Sacramento, California 95814



Re: Draft Decision Partially Approving Water Right Applications 31165 and 31370 – San Bernardino Valley Municipal Water District and Western Municipal Water District (Muni/Western)

Dear Ms. Townsend:

San Bernardino Valley Municipal Water District (“Valley District” or “Muni”) and Western Municipal Water District of Riverside County (“Western”) are pleased to submit the following comments on the August 27, 2009 draft decision by the State Water Resources Control Board (the “SWRCB”) relating to Water Right Application Nos. 31165 and 31370 (the “Draft Decision”).

At the outset, Muni/Western wish to thank the SWRCB, and particularly the SWRCB staff members, for a carefully reasoned, thoughtful decision. We have a few concerns with the Draft Decision, as described below. Overall we very much appreciate the final result.

Our concerns are as follows:

1. Ordering paragraph 25 (page 52 of the Draft Decision) requires Muni/Western to “maintain historical flows in the Santa Ana River from the Rialto Drain to the Imperial Highway Bridge, measured at USGS gage 11066460, consistent with Riverside exhibit 2-7.” As a threshold matter, USGS gage 11066460 is not located at the Imperial Highway Bridge, but instead is located at the MWDSC crossing well upstream of the Imperial Highway Bridge. We believe that the reference to the Imperial Highway Bridge is a typographical error because Riverside exhibit 2-7 identifies USGS gage 11066460 as being located at the MWDSC crossing.

The basis for this requirement is a statement in the Draft EIR that the “Project will significantly decrease river flow in Segment F on non-storm days (Impact SW-7). The EIR found the Project

could not be modified to reduce the impact, therefore it remained significant and unavoidable" (Draft Decision, p. 22). Unfortunately, it appears that the Draft Decision confused the Draft EIR's finding that the Project would have a significant and unavoidable impact on *hydrology* with the Draft and Final EIR's finding that the Project would have a less-than-significant impact on *biology*.

The Draft EIR shows that the Project would have an impact on Segment F hydrology on approximately 0.5% of non-storm days. (Draft EIR, p. 3.1-47) (copy attached as Exhibit 1). The Draft EIR noted that the reduction in Santa Ana River flows would involve a reduction from flows of about 300 cfs to flows of about 240 cfs on those 1-2 days/year. (Draft EIR, Figure 3.1-19) (copy attached as Exhibit 2). Although this change was deemed to be a significant and unavoidable *hydrologic* impact (Draft EIR, p. 3.1-47), the Draft EIR concluded that the *biological* impact on the Santa Ana sucker from the change in hydrology would be less than significant. (Draft EIR, pp. 3.3-63 to 3.3-64, Final EIR, Table 2.3-19) (copies attached as Exhibits 3 and 4). Consequently, Valley District and Western request that the SWRCB delete ordering paragraph 25 from any final decision.

2. Ordering paragraph 23 requires Muni/Western to file a report of waste discharge with the Regional Water Quality Control Board, Santa Ana Region, prior to any diversions under the new permit. As the SWRCB is well-aware, at present Seven Oaks Dam is operated solely for flood control purposes by Santa Ana River Mainstem Project Local Sponsors, acting under the direction of the United States Army Corps of Engineers ("USACE"). Muni/Western have proposed that USACE modify its water control manual for Seven Oaks Dam in order to allow for water conservation; USACE has not yet approved the requested change. (Muni/Western Exhibit 3-1, pp. 9-11; Local Sponsors Exhibit 1, pp.5-8) (copies attached as Exhibits 5 and 6).

It is premature to require Muni/Western to file a report of waste discharge with the Regional Board until such time as USACE agrees to modify operations at Seven Oaks Dam for water conservation purposes. Requiring a report of waste discharge before that time would either hold Muni/Western responsible for managing operations over which we have no control or would usurp the authority of USACE and the Santa Ana River Mainstem Project Local Sponsors. Neither of these alternatives is fair or consistent with applicable law.

For these reasons, Muni/Western request that the following language be added as a general introduction to ordering paragraph 23: "Upon a decision by the United States Army Corps of Engineers and/or Santa Ana River Mainstem Project Local Sponsors to modify the water control manual for Seven Oaks Dam to allow for water conservation;" This language is consistent with the current legal responsibilities of USACE, the Santa Ana River Mainstem Project Local Sponsors and Muni/Western and achieves the SWRCB's goal in ordering paragraph 23, which is to prevent the Project from creating water quality impacts in the Santa Ana River.

3. Ordering paragraph 8 requires that construction of the Project be completed by October 1, 2015. As the SWRCB understands, the quantity of water that is available for diversion under the

proposed permit will be based, in part, on the need for bypass flows under the Biological Opinion for the operation of Seven Oaks Dam. (Draft EIR, p. 3.1-26; Muni/Western Exhibit 5-1, p. 29; Muni/Western Exhibits 5-70 and 5-71) (copies attached as Exhibits 7, 8 and 9). The quantity, timing and other key features of those bypass flows are being developed by USACE through a Multi-Species Habitat Management Plan (the "MSHMP"). (Local Sponsors Exhibit 17, pp. 2-4) (copy attached as Exhibit 10). The MSHMP, however, still has not been completed.

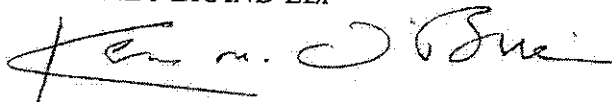
The details of the MSHMP may affect Muni/Western's decisions on the sizing of facilities to divert water from the Santa Ana River. For this reason, Muni/Western believe that the completion date for construction in ordering paragraph 8 should be extended to five years after the completion of the MSHMP. That period will require Muni/Western to act promptly but not without consideration for the quantity of water that could be bypassed consistent with the MSHMP.

In order to encourage USACE to finish the MSHMP as quickly as possible, Muni/Western are willing to contribute the sum of \$100,000 annually during fiscal years 2009/10, 2010/11, and 2011/12 to USACE to provide staff resources to complete the MSHMP. Muni/Western will also commit our own staffs to playing an active role in this process. We believe it is in the public interest to complete this process as quickly as possible and pledge to do our part to achieve that goal.

Once again, Muni/Western wish to thank the SWRCB for a careful and thoughtful decision on a very complicated river system. We will be pleased to answer any questions that you or your staff may have at the October 7 workshop.

Very truly yours,

DOWNEY BRAND LLP



Kevin M. O'Brien
Enclosures

cc: Boards of Directors
Randy Van Gelder
John Rossi
Attached Service List

1027450.2

1 **STATEMENT OF SERVICE**

2 I, Cassandra J. Baines, am a resident of the State of California, over the age of eighteen
3 years, and not a party to the within action. My business address is Downey Brand LLP, 621
4 Capitol Mall, 18th Floor, Sacramento, California, 95814-4731. On September 30, 2009, I served
5 the within document(s):

6 **Comments of Western Municipal Water District to Draft
7 Decision Partially Approving Water Right Applications 31165
8 and 31370 – San Bernardino Valley Municipal Water District
9 (Muni/Western), Various Tributary Creeks, and the Santa Ana
10 River, San Bernardino and Riverside Counties**

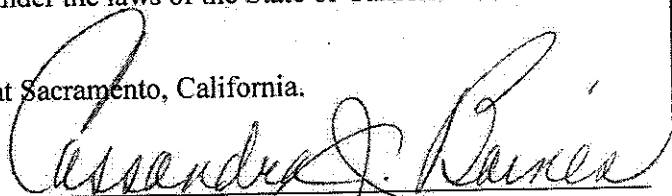
- 11 **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax
12 number(s) set forth below on this date before 5:00 p.m.
- 13 **BY HAND:** by personally delivering the document(s) listed above to the person(s)
14 at the address(es) set forth below.
- 15 **BY MAIL:** by placing the document(s) listed above in a sealed envelope with
16 postage thereon fully prepaid, in the United States mail at Sacramento, California
17 addressed as set forth below on the Interested Parties List.
- 18 **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an
19 overnight delivery service company for delivery to the addressee(s) on the next
20 business day.
- 21 **BY PERSONAL DELIVERY:** by causing personal delivery by _____ of
22 the document(s) listed above to the person(s) at the address(es) set forth below.
- 23 **BY ELECTRONIC MAIL:** by transmitting the document(s) listed above via
24 electronic mail to all parties listed to receive electronic service at the electronic
25 mail address set forth on the Interested Parties List.

26 ***See Attached Interested Parties Service List***

27 I am readily familiar with the firm's practice of collection and processing correspondence
28 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.

I declare under penalty of perjury under the laws of the State of California that the above
is true and correct.

Executed on September 30, 2009, at Sacramento, California.


Cassandra J. Baines

1031748-1

**Muni/Western
Interested Parties List**

<p>Adam Keats Center for Viological Diversity 1095 Market Street, Suite 511 San Francisco, CA 94103 akeats@biologicaldiversity.org</p>	<p>Kevin M. O'Brien San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County Downey Brand LLP 621 Capitol Mall, 18th Floor Sacramento, CA 95814 kobrien@downeybrand.com</p>
<p>Peter J. Keil Ellis, Schneider & Harris 2015 H Street Sacramento, CA 95814-3109 pjk@eslawfirm.com</p>	<p>James L. Erickson City of Chino Counsel to the City of Chino City Attorney c/o Jimmy L. Gutierrez, APC 12618 Central Avenue Chino, CA 91701 jim@city-attorney.com</p>
<p>Steven M. Kennedy, Esq. East Valley Water District Brunick, McElhaney & Beckett 1839 Commercenter West Post Office Box 6425 San Bernardino, CA 92412-6425 skennedy@bbmblaw.com</p>	<p>Warren P. Felger City of Redlands Felger & Associates 726 West Barstow Avenue, Suite 106 Fresno, CA 93704 waterlaw@pacbell.net</p>
<p>Morgan Evans Chino Basin Watermaster Hatch & Parent 21 East Carrillo Street Santa Barbara, CA 93101 mevans@hatchparent.com</p>	<p>Michael T. Fife Chino Basin Watermaster Brownstein Hyatt Farber Shreck, LLP 21 East Carrillo Street Santa Barbara, CA 93101-2706 bherrema@bhfs.com</p>
<p>Nino Mascolo Southern California Edison Company 2244 Walnut Grove Avenue Rosemead, CA 91770 Nino.mascolo@sce.com</p>	<p>Bradley J. Herrema Chino Basin Watermaster Brownstein Hyatt Farber Shreck, LLP 21 East Carrillo Street Santa Barbara, CA 93101-2708 bherrema@bhfs.com</p>

Muni/Western Interested Parties Service List

<p>Jill N. Willis Best, Best & Krieger LLP 3750 University Avenue Post Office Box 1028 Riverside, CA 92502-1028 Jill.willis@bbklaw.com</p>	<p>Joshua S. Rider, Staff Attorney Forest Service, USDA 33 New Montgomery Street, 17th Floor San Francisco, CA 94105 Joshua.rider@usda.gov</p>
<p>Christopher J. McNevin Pillsbury Winthrop Shaw Pittman 725 South Figueroa Street, Suite 2800 Los Angeles, CA 90017-5406 chrismcnevin@pillsburylaw.com</p>	<p>Susan D. Wilson Office of the City Attorney City of Riverside 3900 Main Street Riverside, CA 92522 swilson@riversideca.gov</p>

1031754.1

EXHIBIT 1

1 It is estimated that peak flow during a 100-year flood event under No Project conditions would
2 be 67,000 cfs in the river segment from "E" Street to RIX-Rialto. With the Project, peak flow
3 related to the 100-year flood event would be no more than 65,500 cfs. Because the Project would
4 decrease flow from the upper Santa Ana Canyon, it is possible that the frequency with which
5 sand, cobble, and gravel is mobilized and transported in this river segment could decline
6 slightly. But the affect of the Project would be minor as City and Plunge creeks (which are
7 unaffected by the Project) dominate sediment contribution and transport in this river segment
8 (EIP 2004). Therefore, this is a less than significant impact, and no mitigation is required.

9 SEGMENT F - RIX AND RIALTO EFFLUENT OUTFALL TO JUST ABOVE RIVERSIDE NARROWS

10 **Impact SW-7**, a significant decrease in non-storm flow, also applies to this river segment.

11 As can be seen in Table 3.1-17 and Figure 3.1-18, in the SAR below the RIX and Rialto Effluent
12 Outfall, water flows are continuous, even on non-storm days. With Seven Oaks Dam in place
13 median non-storm day flow is 74 cfs (Table 3.1-17 and Figure 3.1-18). Under all Project
14 scenarios, flows, even in low flow periods on non-storm days, would be similar to the
15 No Project. The only noticeable difference between the Project (Scenario A or B) and No Project
16 below the RIX and Rialto Effluent Outfall during low flow periods would occur in the 200 to
17 300 cfs range. Figure 3.1-19 shows a detail of mean daily discharge for the No Project and
18 Project Scenarios A or B. Scenarios C and D are not shown because there is no measurable
19 difference between these scenarios and the No Project. Figure 3.1-19 illustrates that, for a small
20 percentage of non-storm days (approximately 0.5 percent), the decline in non-storm flows with
21 Scenarios A or B, relative to the No Project, is greater than could be attributable to the
22 measurement error, albeit for only a very limited flow range. Thus, a measurable change in
23 non-storm day flows is attributable to the Project and this is a significant impact.

24 MITIGATION MEASURES

25 Various potential mitigation measures involving changes in the timing, pattern, and volume of
26 Muni/Western diversion were assessed. However, no feasible mitigation measures were
27 identified that would avoid a significant change in river flow on non-storm days while still
28 allowing a consistent and reliable diversion for beneficial use by the Project.

29 RESIDUAL IMPACTS

30 **Impact SW-7** is significant and unavoidable.

31 SEGMENT G - RIVERSIDE NARROWS TO PRADO DAM

32 Hydrologic modeling performed for the Project found no detectable changes to flows in River
33 Segment G.

34

EXHIBIT 2

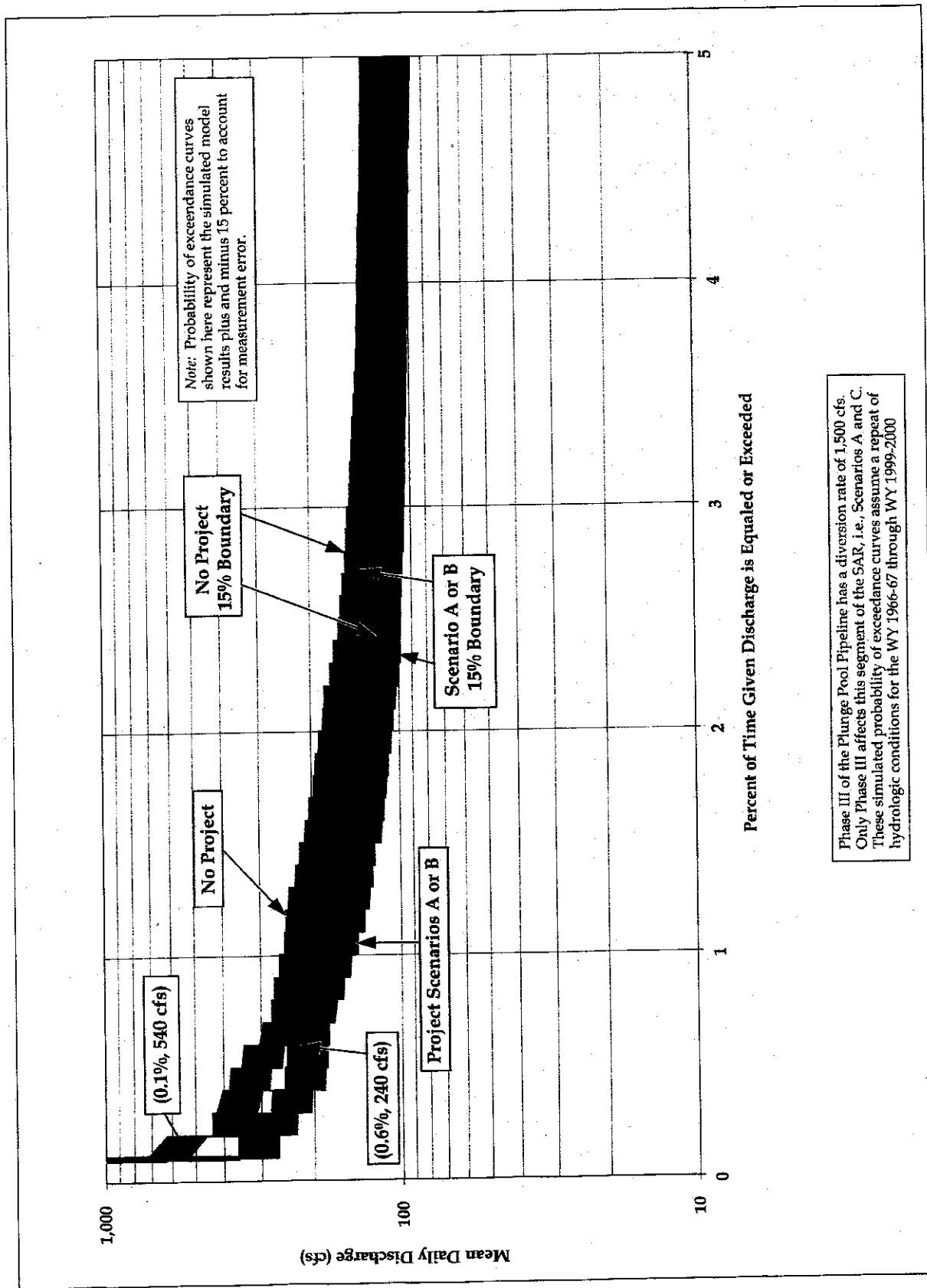


Figure 3.1-19. Detail of Probability of Exceedance (Non-Storm Days) for SAR Segment F, below RIX and Rialto Effluent Outfall

EXHIBIT 3

1 In Segment F, the proportion of flow attributable to releases from Seven Oaks Dam and from
2 flows at the Project diversion point is extremely small. Consequently, changes resulting from
3 Project diversions in this segment are minor and the effects of the Project on aquatic resources
4 are less than significant.

5 Segment G from Riverside Narrows to Prado Dam, includes an extensive aquatic environment
6 largely due to the presence of Prado Flood Control Basin. Both the basin and the SAR support
7 large populations of aquatic species within a variety of aquatic habitat types. The effects of the
8 Project within this segment would be essentially undetectable due to the minimal reduction
9 relative to the total flow. Impacts to aquatic resources within this segment are expected to be
10 less than significant. No mitigation is required.

11 **Impact BIO-19.** *Changes in storm flows caused by the Project could affect the Santa Ana sucker*
12 *downstream of the point of diversion. This impact would be less than significant.*

13 Changes in peak storm flows are not expected to adversely affect the Santa Ana sucker,
14 although there is a slight potential that lower velocities in storm peaks could degrade habitat by
15 removing less fine sediment from river bed gravels potentially used for spawning. Such
16 impacts are less likely in the downstream habitats (below the RIX and Rialto discharge channel)
17 where the species is found due to the small Project-related effect on total flow in these areas.
18 These flow changes could result in benefits to this species by reducing flood flows that may
19 otherwise wash some individuals downstream.

20 Designated Critical Habitat for the Santa Ana sucker is located in Segments C, D, and E (from
21 Cuttle Weir to the RIX and Rialto effluent outfall), although the species is not currently
22 supported in this stretch of the SAR. Project diversions would have no effect on sediment input
23 from tributaries and would have less than significant impacts on sediment transport in these
24 segments of the river as described in section 3.1 (Impact SW-9). The minor decrease in
25 frequency of gravel and cobble transport during flood events between Mill Creek and "E" Street
26 would not adversely affect critical habitat or the physical habitat occupied by the Santa Ana
27 sucker. Thus, impacts on the Santa Ana sucker would be less than significant, and no
28 mitigation is required.

29 **Impact BIO-20.** *Changes in non-storm day flows caused by the Project could affect the Santa Ana*
30 *sucker downstream of the point of diversion. This impact would be less than significant.*

31 The following discussion is limited to the reaches in which Santa Ana sucker is present. This
32 species is present or potentially present within the lowest three SAR segments analyzed.
33 Within Segment E ("E" Street to the RIX and Rialto effluent outfall), a small amount of
34 historically suitable habitat occurs, with a single record of observation. The potential to support
35 this species in this segment has been substantially diminished due to re-routing of water
36 treatment plant effluent to a new location further downstream. It is likely that a large
37 proportion of the non-storm flow in the historical data for this segment was effluent outflow
38 that no longer exists. Consequently, the potential to support the Santa Ana sucker is
39 substantially reduced. The effects of the Project on this species within this segment would be
40 less than significant due to the unlikely presence of the species.

3.3 Biological Resources

1 Habitat within Segment F (from the RIX and Rialto effluent outfall to Riverside Narrows) is
2 suitable for the Santa Ana sucker nearly throughout. In addition, populations of this species
3 have been detected in several locations within this segment. The effects of the Project within
4 this segment, as previously described, are extremely small. In a similar fashion, the effect of the
5 Project within Segment G (Riverside Narrows to Prado Dam) is expected to have even less of an
6 effect. As a result, the Project is not expected to adversely affect the Santa Ana sucker.

7 **Impact BIO-21.** *Changes in non-storm day flows caused by the Project could affect riparian and*
8 *wetland habitat and species downstream of the point of diversion. This impact would be less than*
9 *significant.*

10 Within Segment B (Seven Oaks Dam to Cuttle Weir) and with implementation of Phase III of the
11 Plunge Pool Pipeline, there would be substantial reductions in average non-storm day flows
12 throughout the year. Riparian and wetland habitat is present throughout most of this segment.
13 As described above, with the Phase III Plunge Pool Pipeline in place, Project diversions would
14 occur at the plunge pool and flows within this segment would be reduced to 3 cfs year-round.
15 Although reductions would occur, the continued flow of 3 cfs on non-storm days would likely
16 be sufficient to support the small amount of riparian habitat that exists in this reach and a
17 measurable reduction in habitat is not expected. Common plant and wildlife species associated
18 with the riparian and wetland habitat in this segment are therefore unlikely to be adversely
19 affected. In addition, no sensitive aquatic species are expected to occur here. Reductions in
20 non-storm flows within this segment would result in less than significant impacts on riparian
21 and wetland habitat and associated species. Reduction in storm flows within this segment are
22 not expected to adversely affect riparian resources and would therefore be less than significant
23 and may aid in their expansion due to reduced scouring. Without Phase III of the Plunge Pool
24 Pipeline, Project diversions would take place at Cuttle Weir and flows in Segment B would not
25 be affected.

26 Within the subsequent downstream segments, riparian and wetland habitat gradually
27 transitions, from very scarce to absent between Cuttle Weir and Mill Creek, to extensive just
28 above Prado Flood Control Basin. The Project's effect on flows is greater in the upstream
29 portions although the amount of habitat is relatively small. This effect is further diminished
30 continuing downstream as flows from other tributaries and sources become predominant and
31 Project-related effects become indiscernible in the furthest downstream segments.
32 Consequently, the Project would have a small effect on those areas with a small amount of
33 wetland and riparian habitat and virtually no effect in those areas that support substantial
34 amounts of riparian habitat and associated species. Reductions in flow within these lower five
35 segments would result in less than significant impacts on riparian and wetland habitat and
36 associated species. No mitigation is required.

37

Table 2-3-19. Impact to Public Trust Resources (Page 1 of 6)

Project Area	Impacts to Public Trust Resources			
	Scenario A (seasonal storage, 1,500 cfs diversion)	Scenario B (seasonal storage, 500 cfs diversion)	Scenario C (no seasonal storage, 1,500 cfs diversion)	Scenario D (no seasonal storage, 500 cfs diversion)
River Segment A Upstream of Seven Oaks Dam	<p>Change in hydrology from Baseline:</p> <ul style="list-style-type: none"> 1. Peak 100-year flood flows: NA 2. Number of zero flow days: NA 3. Median non-storm day flow: NA <p>Effects on public trust resources</p> <ul style="list-style-type: none"> • Increased frequency of inundation up to elevation 2,418 ft not during seasonal storage period, impacts to public trust resources similar to flood control operations. Impacts less than significant. Biological resources within the flood control reservoir pool (below elevation 2,425 ft and already permitted and mitigated for loss during flood control operations. Adverse effects associated with increased aquatic habitat and duration of inundation, such as establishment of introduced fish species are not expected due to the brevity of inundation as well as operating procedures that result in a dry segment of river between the reservoir and upper wetted reaches. Draft EIR page 3.3-55. 	<p>Change in hydrology from Baseline:</p> <ul style="list-style-type: none"> 1. Peak 100-year flood flows: NA 2. Number of zero flow days: NA 3. Median non-storm day flow: NA <p>Effects on public trust resources</p> <ul style="list-style-type: none"> • Increased frequency of inundation up to elevation 2,418 ft not during seasonal storage period, impacts to public trust resources similar to flood control operations. Impacts less than significant. Biological resources within the flood control reservoir pool (below elevation 2,425 ft and already permitted and mitigated for loss during flood control operations. Adverse effects associated with increased aquatic habitat and duration of inundation, such as establishment of introduced fish species are not expected due to the brevity of inundation as well as operating procedures that result in a dry segment of river between the reservoir and upper wetted reaches. Draft EIR page 3.3-55. 	<p>Change in hydrology from Baseline:</p> <ul style="list-style-type: none"> 1. Peak 100-year flood flows: NA 2. Number of zero flow days: NA 3. Median non-storm day flow: NA <p>Effects on public trust resources</p> <ul style="list-style-type: none"> • No change from existing conditions. 	<p>Change in hydrology from Baseline:</p> <ul style="list-style-type: none"> 1. Peak 100-year flood flows: NA 2. Number of zero flow days: NA 3. Median non-storm day flow: NA <p>Effects on public trust resources</p> <ul style="list-style-type: none"> • No change from existing conditions.
River Segment B Seven Oaks Dam to Cattle Weir	<p>Change in hydrology from Baseline:</p> <ul style="list-style-type: none"> 1. Peak 100-year flood flows: -1,500 cfs 2. Number of zero flow days: 0 3. Median non-storm day flow: -1 cfs <p>Effects on public trust resources</p> <ul style="list-style-type: none"> • Reduction in non-storm day flow affecting aquatic, riparian, and wetland habitat. Less than significant impact. Three cfs, which would remain in the river, considered sufficient to support aquatic community that exists. Draft EIR pages 3.3-62 to 3.3-63. 	<p>Change in hydrology from Baseline:</p> <ul style="list-style-type: none"> 1. Peak 100-year flood flows: -500 cfs 2. Number of zero flow days: 0 3. Median non-storm day flow: -1 cfs <p>Effects on public trust resources</p> <ul style="list-style-type: none"> • Reduction in non-storm day flow affecting aquatic, riparian, and wetland habitat. Less than significant impact. Three cfs, which would remain in the river, considered sufficient to support aquatic community that exists. Draft EIR pages 3.3-62 to 3.3-63. 	<p>Change in hydrology from Baseline:</p> <ul style="list-style-type: none"> 1. Peak 100-year flood flows: -1,500 cfs 2. Number of zero flow days: 0 3. Median non-storm day flow: -1 cfs <p>Effects on public trust resources</p> <ul style="list-style-type: none"> • Reduction in non-storm day flow affecting aquatic, riparian, and wetland habitat. Less than significant impact. Three cfs, which would remain in the river, considered sufficient to support aquatic community that exists. Draft EIR pages 3.3-62 to 3.3-63. 	<p>Change in hydrology from Baseline:</p> <ul style="list-style-type: none"> 1. Peak 100-year flood flows: -500 cfs 2. Number of zero flow days: 0 3. Median non-storm day flow: -1 cfs <p>Effects on public trust resources</p> <ul style="list-style-type: none"> • Reduction in non-storm day flow affecting aquatic, riparian, and wetland habitat. Less than significant impact. Three cfs, which would remain in the river, considered sufficient to support aquatic community that exists. Draft EIR pages 3.3-62 to 3.3-63.

Table 2.3-19. Impact to Public Trust Resources (Page 2 of 6)

Project Area	Impacts to Public Trust Resources			
	Scenario A (seasonal storage, 1,500 cfs diversion)	Scenario B (seasonal storage, 500 cfs diversion)	Scenario C (no seasonal storage, 1,500 cfs diversion)	Scenario D (no seasonal storage, 500 cfs diversion)
River Segment C Cattle Wier to Mill Creek	<p>Change in hydrology from baseline:</p> <ol style="list-style-type: none"> 1. Peak 100-year flood flows: -1,500 cfs 2. Number of zero flow days: +1,868 3. Median non-storm day flow: 0 cfs <p>Effects on public trust resources</p> <ul style="list-style-type: none"> • Reduction in non-storm day flow affecting aquatic, riparian, and wetland habitat. Less than a significant impact. This segment is generally dry and only limited resources are present. Draft EIR pages 3.3-62 to 3.3-63. • Reduction in frequency and extent of flood flows hindering habitat renewal processes in RAJSS. Less than significant impact. Flood flows would be reduced by up to 1,500 cfs, resulting in a change in the return interval of the current 50-year flood flow from 50 years to 140 years, leading to RAJSS maturation. Maturation of RAJSS is a less than significant impact. Draft EIR pages 3.3-56, 3.3-59 to 3.3-60. • Reduction in frequency and extent of overbank flooding leading to maturation to less suitable SBKR and Santa Ana River woolly-star habitat. Significant but mitigable impact. Flood flows would be reduced by up to 1,500 cfs, resulting in a change in the return interval of the current 50-year flood flow from 50 years to 140 years, leading to RAJSS maturation, an undesirable habitat for SBKR. Identified mitigation measures involve the removal of invasive non-native plant species that diminish the value of SBKR and Santa Ana River woolly-star habitats and development of a program of habitat manipulation that simulates the aftermath of natural flooding. Draft EIR pages 3.3-60 to 3.3-62. • Change in sediment transport. Less than significant impact. Diversion of 1,500 cfs would have no effect on sediment input from tributaries, and only minor changes to sediment transport in the SAR. Minor decreases in gravel and cobble transport would not adversely effect critical habitat for the Santa Ana sucker. Draft EIR page 3.3-63. 	<p>Change in hydrology from baseline:</p> <ol style="list-style-type: none"> 1. Peak 100-year flood flows: -500 cfs 2. Number of zero flow days: +1,268 3. Median non-storm day flow: 0 cfs <p>Effects on public trust resources</p> <ul style="list-style-type: none"> • Reduction in non-storm day flow affecting aquatic, riparian, and wetland habitat. Less than significant impact. This segment is generally dry and only limited resources are present. Draft EIR pages 3.3-62 to 3.3-63. • Reduction in frequency and extent of flood flows hindering habitat renewal processes in RAJSS. Less than significant impact. Flood flows would be reduced by up to 500 cfs, resulting in a change in the return interval of the current 50-year flood flow from 50 years to 80 years, leading to RAJSS maturation. Maturation of RAJSS is a less than significant impact. Draft EIR pages 3.3-59 to 3.3-60. • Reduction in frequency and extent of overbank flooding leading to maturation to less suitable SBKR and Santa Ana River woolly-star habitat. Significant but mitigable impact. Flood flows would be reduced by up to 500 cfs, resulting in a change in the return interval of the current 50-year flood flow from 50 years to 80 years, leading to RAJSS maturation, undesirable habitat for SBKR. Identified mitigation measures involve the removal of invasive non-native plant species that diminish the value of SBKR and Santa Ana River woolly-star habitats and development of a program of habitat manipulation that simulates the aftermath of natural flooding. Draft EIR pages 3.3-60 to 3.3-62. • Change in sediment transport. Less than significant impact. Diversion of 500 cfs would have no effect on sediment input from tributaries, and only minor changes to sediment transport in the SAR. Minor decreases in gravel and cobble transport would not adversely effect critical habitat for the Santa Ana sucker. Draft EIR page 3.3-63. 	<p>Change in hydrology from baseline:</p> <ol style="list-style-type: none"> 1. Peak 100-year flood flows: -1,500 cfs 2. Number of zero flow days: +1,868 3. Median non-storm day flow: 0 cfs <p>Effects on public trust resources</p> <ul style="list-style-type: none"> • Reduction in non-storm day flow affecting aquatic, riparian, and wetland habitat. Less than significant impact. This segment is generally dry and only limited resources are present. Draft EIR pages 3.3-62 to 3.3-63. • Reduction in frequency and extent of flood flows hindering habitat renewal processes in RAJSS. Less than significant impact. Flood flows would be reduced by up to 1,500 cfs, resulting in a change in the return interval of the current 50-year flood flow from 50 years to 140 years, leading to RAJSS maturation. Maturation of RAJSS is a less than significant impact. Draft EIR pages 3.3-59 to 3.3-60. • Reduction in frequency and extent of overbank flooding leading to maturation to less suitable SBKR and Santa Ana River woolly-star habitat. Significant but mitigable impact. Flood flows would be reduced by up to 1,500 cfs, resulting in a change in the return interval of the current 50-year flood flow from 50 years to 140 years, leading to RAJSS maturation, undesirable habitat for SBKR. Identified mitigation measures involve the removal of invasive non-native plant species that diminish the value of SBKR and Santa Ana River woolly-star habitats and development of a program of habitat manipulation that simulates the aftermath of natural flooding. Draft EIR pages 3.3-60 to 3.3-62. • Change in sediment transport. Less than significant impact. Diversion of 1,500 cfs would have no effect on sediment input from tributaries, and only minor changes to sediment transport in the SAR. Minor decreases in gravel and cobble transport would not adversely effect critical habitat for the Santa Ana sucker. Draft EIR page 3.3-63. 	<p>Change in hydrology from baseline:</p> <ol style="list-style-type: none"> 1. Peak 100-year flood flows: -500 cfs 2. Number of zero flow days: +1,868 3. Median non-storm day flow: 0 cfs <p>Effects on public trust resources</p> <ul style="list-style-type: none"> • Reduction in non-storm day flow affecting aquatic, riparian, and wetland habitat. Less than significant impact. This segment is generally dry and only limited resources are present. Draft EIR pages 3.3-62 to 3.3-63. • Reduction in frequency and extent of flood flows hindering habitat renewal processes in RAJSS. Less than significant impact. Flood flows would be reduced by up to 500 cfs, resulting in a change in the return interval of the current 50-year flood flow from 50 years to 80 years, leading to RAJSS maturation. Maturation of RAJSS is a less than significant impact. Draft EIR pages 3.3-59 to 3.3-60. • Reduction in frequency and extent of overbank flooding leading to maturation to less suitable SBKR and Santa Ana River woolly-star habitat. Significant but mitigable impact. Flood flows would be reduced by up to 500 cfs, resulting in a change in the return interval of the current 50-year flood flow from 50 years, leading to RAJSS maturation, undesirable habitat for SBKR. Identified mitigation measures involve the removal of invasive non-native plant species that diminish the value of SBKR and Santa Ana River woolly-star habitats and development of a program of habitat manipulation that simulates the aftermath of natural flooding. Draft EIR pages 3.3-60 to 3.3-62. • Change in sediment transport. Less than significant impact. Diversion of 500 cfs would have no effect on sediment input from tributaries, and only minor changes to sediment transport in the SAR. Minor decreases in gravel and cobble transport would not adversely effect critical habitat for the Santa Ana sucker. Draft EIR page 3.3-63.

Table 2.3-19. Impact to Public Trust Resources (Page 3 of 6)

Project Area	Impacts to Public Trust Resources			
	Scenario A (seasonal storage, 1,500 cfs diversion)	Scenario B (seasonal storage, 500 cfs diversion)	Scenario C (no seasonal storage, 1,500 cfs diversion)	Scenario D (no seasonal storage, 500 cfs diversion)
River Segment D Mill Creek Confluence to E Street	<p>Change in hydrology from baseline:</p> <ol style="list-style-type: none"> 1. Peak 100-year flood flows: -1,500 cfs 2. Number of zero flow days: +812 3. Median non-storm day flow: 0 cfs <p>Effects on public trust resources:</p> <ul style="list-style-type: none"> • Reduction in non-storm day flow affecting aquatic, riparian, and wetland habitat. Less than significant impact. This segment is generally dry and only limited resources are present. Draft EIR pages 3.3-62 to 3.3-63. • Reduction in frequency and extent of flood flows hindering habitat renewal processes of RAFFS. Less than significant impact. Flood flows would be reduced by up to 1,500 cfs, resulting in a change in the return interval of the current 50-year flood flow from 50 years to 56 years, leading to RAFFS maturation. Maturation of RAFFS is a less than significant impact. Draft EIR pages 3.3-59 to 3.3-60. • Reduction in frequency and extent of overbank flooding leading to maturation to less suitable SBKR and Santa Ana River woody-star habitat. Less than significant impact. Flood flows would be reduced by up to 1,500 cfs, resulting in a change in the return interval of the current 50-year flood flow from 50 years to 56 years. This small change in flood frequency would not have a noticeable or ecologically meaningful effect on vegetation/habitat. Draft EIR pages 3.3-60 to 3.3-62. • Change in sediment transport. Less than significant impact. Diversions of 1,500 cfs would have no effect on sediment input from tributaries, and only minor decreases in gravel and cobble transport would not adversely affect critical habitat for the Santa Ana sucker. Draft EIR page 3.3-63. 	<p>Change in hydrology from baseline:</p> <ol style="list-style-type: none"> 1. Peak 100-year flood flows: -500 cfs 2. Number of zero flow days: +812 3. Median non-storm day flow: 0 cfs <p>Effects on public trust resources:</p> <ul style="list-style-type: none"> • Reduction in non-storm day flow affecting aquatic, riparian, and wetland habitat. Less than significant impact. This segment is generally dry and only limited resources are present. Draft EIR pages 3.3-62 to 3.3-63. • Reduction in frequency and extent of flood flows hindering habitat renewal processes of RAFFS. Less than significant impact. Flood flows would be reduced by up to 500 cfs, resulting in a change in the return interval of the current 50-year flood flow by less than six years, leading to RAFFS maturation. Maturation of RAFFS is a less than significant impact. Draft EIR pages 3.3-59 to 3.3-60. • Reduction in frequency and extent of overbank flooding leading to maturation to less suitable SBKR and Santa Ana River woody-star habitat. Less than significant impact. Flood flows would be reduced by up to 500 cfs, resulting in a change in the return interval of the current 50-year flood flow by less than six years, leading to RAFFS maturation. This small change in flood frequency would not have a noticeable or ecologically meaningful effect on vegetation/habitat. Draft EIR pages 3.3-60 to 3.3-62. • Change in sediment transport. Less than significant impact. Diversions of 500 cfs would have no effect on sediment input from tributaries, and only minor changes to sediment transport in the SAR. Minor decreases in gravel and cobble transport would not adversely affect critical habitat for the Santa Ana sucker. Draft EIR page 3.3-63. 	<p>Change in hydrology from baseline:</p> <ol style="list-style-type: none"> 1. Peak 100-year flood flows: -1,500 cfs 2. Number of zero flow days: +812 3. Median non-storm day flow: 0 cfs <p>Effects on public trust resources:</p> <ul style="list-style-type: none"> • Reduction in non-storm day flow affecting aquatic, riparian, and wetland habitat. Less than significant impact. This segment is generally dry and only limited resources are present. Draft EIR pages 3.3-62 to 3.3-63. • Reduction in frequency and extent of flood flows hindering habitat renewal processes of RAFFS. Less than significant impact. Flood flows would be reduced by up to 1,500 cfs, resulting in a change in the return interval of the current 50-year flood flow from 50 years to 56 years, leading to RAFFS maturation. Maturation of RAFFS is a less than significant impact. Draft EIR pages 3.3-59 to 3.3-60. • Reduction in frequency and extent of overbank flooding leading to maturation to less suitable SBKR and Santa Ana River woody-star habitat. Less than significant impact. Flood flows would be reduced by up to 1,500 cfs, resulting in a change in the return interval of the current 50-year flood flow from 50 years to 56 years, leading to RAFFS maturation. This small change in flood frequency would not have a noticeable or ecologically meaningful effect on vegetation. Draft EIR pages 3.3-60 to 3.3-62. • Change in sediment transport. Less than significant impact. Diversions of 1,500 cfs would have no effect on sediment input from tributaries, and only minor decreases in gravel and cobble transport would not adversely affect critical habitat for the Santa Ana sucker. Draft EIR page 3.3-63. 	<p>Change in hydrology from baseline:</p> <ol style="list-style-type: none"> 1. Peak 100-year flood flows: -500 cfs 2. Number of zero flow days: +812 3. Median non-storm day flow: 0 cfs <p>Effects on public trust resources:</p> <ul style="list-style-type: none"> • Reduction in non-storm day flow affecting aquatic, riparian, and wetland habitat. Less than significant impact. This segment is generally dry and only limited resources are present. Draft EIR pages 3.3-62 to 3.3-63. • Reduction in frequency and extent of flood flows hindering habitat renewal processes of RAFFS. Less than significant impact. Flood flows would be reduced by up to 500 cfs, resulting in a change in the return interval of the current 50-year flood flow by less than six years, leading to RAFFS maturation. Maturation of RAFFS is a less than significant impact. Draft EIR pages 3.3-59 to 3.3-60. • Reduction in frequency and extent of overbank flooding leading to maturation to less suitable SBKR and Santa Ana River woody-star habitat. Less than significant impact. Flood flows would be reduced by up to 500 cfs, resulting in a change in the return interval of the current 50-year flood flow by less than six years, leading to RAFFS maturation. This small change in flood frequency would not have a noticeable or ecologically meaningful effect on vegetation. Draft EIR pages 3.3-60 to 3.3-62. • Change in sediment transport. Less than significant impact. Diversions of 500 cfs would have no effect on sediment input from tributaries, and only minor decreases in gravel and cobble transport would not adversely affect critical habitat for the Santa Ana sucker. Draft EIR page 3.3-63.

Table 2.3-19. Impact to Public Trust Resources (Page 4 of 6)

Project Area	Impacts to Public Trust Resources			
	Scenario A (seasonal storage 1,500 cfs diversion)	Scenario B (seasonal storage 500 cfs diversion)	Scenario C (no seasonal storage 1,500 cfs diversion)	Scenario D (no seasonal storage 500 cfs diversion)
River Segment B Street to RIX Facility	<p>Change in hydrology from Baseline:</p> <ul style="list-style-type: none"> 1. Peak 100-year flood flows: -1,500 cfs 2. Number of zero flow days: +190 3. Median non-storm day flow: 0 cfs <p>Effects on public trust resources</p> <ul style="list-style-type: none"> • Reduction in non-storm day flow affecting aquatic, riparian, and wetland habitat. Change in flow negligible in this segment. Draft EIR pages 3.3-62 to 3.3-63. • Change in sediment transport. Less than significant impact. Diversions of 1,500 cfs would have no effect on sediment input from tributaries, and only minor changes to sediment transport in the SAR. Minor decreases in gravel and cobble transport would not adversely affect critical habitat for the Santa Ana sucker. Draft EIR page 3.3-63. • Reduction in non-storm day flow affecting Santa Ana sucker. Less than significant impact. A small amount of historically suitable Santa Ana sucker habitat exists in Segment E; however, there has only been a single fish observation and the potential to support the species has been substantially reduced. Draft EIR pages 3.3-63 to 3.3-64. 	<p>Change in hydrology from Baseline:</p> <ul style="list-style-type: none"> 1. Peak 100-year flood flows: -500 cfs 2. Number of zero flow days: +190 3. Median non-storm day flow: 0 cfs <p>Effects on public trust resources</p> <ul style="list-style-type: none"> • Reduction in non-storm day flow affecting aquatic, riparian, and wetland habitat. Change in flow negligible in this segment. Draft EIR pages 3.3-62 to 3.3-63. • Change in sediment transport. Less than significant impact. Diversions of 500 cfs would have no effect on sediment input from tributaries, and only minor changes to sediment transport in the SAR. Minor decreases in gravel and cobble transport would not adversely affect critical habitat for the Santa Ana sucker. Draft EIR page 3.3-63. • Reduction in non-storm day flow affecting Santa Ana sucker. Less than significant impact. A small amount of historically suitable Santa Ana sucker habitat exists in Segment E; however, there has only been a single fish observation and the potential to support the species has been substantially reduced. Draft EIR pages 3.3-63 to 3.3-64. 	<p>Change in hydrology from Baseline:</p> <ul style="list-style-type: none"> 1. Peak 100-year flood flows: -1,500 cfs 2. Number of zero flow days: 0 3. Median non-storm day flow: 0 cfs <p>Effects on public trust resources</p> <ul style="list-style-type: none"> • Reduction in non-storm day flow affecting aquatic, riparian, and wetland habitat. Change in flow negligible in this segment. Draft EIR pages 3.3-62 to 3.3-63. • Change in sediment transport. Less than significant impact. Diversions of 1,500 cfs would have no effect on sediment input from tributaries, and only minor changes to sediment transport in the SAR. Minor decreases in gravel and cobble transport would not adversely affect critical habitat for the Santa Ana sucker. Draft EIR page 3.3-63. • Reduction in non-storm day flow affecting Santa Ana sucker. Less than significant impact. A small amount of historically suitable Santa Ana sucker habitat exists in Segment E; however, there has only been a single fish observation and the potential to support the species has been substantially reduced. Draft EIR pages 3.3-63 to 3.3-64. 	<p>Change in hydrology from Baseline:</p> <ul style="list-style-type: none"> 1. Peak 100-year flood flows: -500 cfs 2. Number of zero flow days: 0 3. Median non-storm day flow: 0 cfs <p>Effects on public trust resources</p> <ul style="list-style-type: none"> • Reduction in non-storm day flow affecting aquatic, riparian, and wetland habitat. Change in flow negligible in this segment. Draft EIR pages 3.3-62 to 3.3-63. • Change in sediment transport. Less than significant impact. Diversions of 500 cfs would have no effect on sediment input from tributaries, and only minor changes to sediment transport in the SAR. Minor decreases in gravel and cobble transport would not adversely affect critical habitat for the Santa Ana sucker. Draft EIR page 3.3-63. • Reduction in non-storm day flow affecting Santa Ana sucker. Less than significant impact. A small amount of historically suitable Santa Ana sucker habitat exists in Segment E; however, there has only been a single fish observation and the potential to support the species has been substantially reduced. Draft EIR pages 3.3-63 to 3.3-64.
River Segment F RIX Facility to Riverside Narrows	<p>Change in hydrology from Baseline:</p> <ul style="list-style-type: none"> 1. Peak 100-year flood flows: -1,500 cfs 2. Number of zero flow days: 0 3. Median non-storm day flow: 0 cfs <p>Effects on public trust resources</p> <ul style="list-style-type: none"> • Reduction in non-storm day flow affecting aquatic, riparian, and wetland habitat. Change in flow negligible in this segment. Draft EIR pages 3.3-62 to 3.3-63. • Reduction in non-storm day flow affecting Santa Ana sucker. Less than significant impact. Habitat in Segment F is suitable for the species, and populations have been detected there. Project effects within this segment are extremely small, and then the only measurable difference occurs in flow ranges of 720 to 300 cfs. Draft EIR pages 3.3-63 to 3.3-64. 	<p>Change in hydrology from Baseline:</p> <ul style="list-style-type: none"> 1. Peak 100-year flood flows: -500 cfs 2. Number of zero flow days: 0 3. Median non-storm day flow: 0 cfs <p>Effects on public trust resources</p> <ul style="list-style-type: none"> • Reduction in non-storm day flow affecting aquatic, riparian, and wetland habitat. Change in flow negligible in this segment. Draft EIR pages 3.3-62 to 3.3-63. • Reduction in non-storm day flow affecting Santa Ana sucker. Less than significant impact. Habitat in Segment F is suitable for the species, and populations have been detected there. Project effects within this segment are extremely small, and then the only measurable difference occurs in flow ranges of 200 to 300 cfs. Draft EIR pages 3.3-63 to 3.3-64. 	<p>Change in hydrology from Baseline:</p> <ul style="list-style-type: none"> 1. Peak 100-year flood flows: -1,500 cfs 2. Number of zero flow days: 0 3. Median non-storm day flow: 0 cfs <p>Effects on public trust resources</p> <ul style="list-style-type: none"> • Reduction in non-storm day flow affecting aquatic, riparian, and wetland habitat. Change in flow negligible in this segment. Draft EIR pages 3.3-62 to 3.3-63. • Change in sediment transport. Less than significant impact. Diversions of 1,500 cfs would have no effect on sediment input from tributaries, and only minor changes to sediment transport in the SAR. Minor decreases in gravel and cobble transport would not adversely affect critical habitat for the Santa Ana sucker. Draft EIR page 3.3-63. • Reduction in non-storm day flow affecting Santa Ana sucker. Less than significant impact. A small amount of historically suitable Santa Ana sucker habitat exists in Segment F; however, there has only been a single fish observation and the potential to support the species has been substantially reduced. Draft EIR pages 3.3-63 to 3.3-64. 	<p>Change in hydrology from Baseline:</p> <ul style="list-style-type: none"> 1. Peak 100-year flood flows: -500 cfs 2. Number of zero flow days: 0 3. Median non-storm day flow: 0 cfs <p>Effects on public trust resources</p> <ul style="list-style-type: none"> • Reduction in non-storm day flow affecting aquatic, riparian, and wetland habitat. Change in flow negligible in this segment. Draft EIR pages 3.3-62 to 3.3-63. • Change in sediment transport. Less than significant impact. Diversions of 500 cfs would have no effect on sediment input from tributaries, and only minor changes to sediment transport in the SAR. Minor decreases in gravel and cobble transport would not adversely affect critical habitat for the Santa Ana sucker. Draft EIR page 3.3-63. • Reduction in non-storm day flow affecting Santa Ana sucker. Less than significant impact. A small amount of historically suitable Santa Ana sucker habitat exists in Segment F; however, there has only been a single fish observation and the potential to support the species has been substantially reduced. Draft EIR pages 3.3-63 to 3.3-64.
River Segment G Riverside Narrows to Prado Flood Control Basin	<p>Change in hydrology from Baseline:</p> <ul style="list-style-type: none"> 1. Peak 100-year flood flows: -1,500 cfs 2. Number of zero flow days: 0 3. Median non-storm day flow: -1 cfs <p>Effects on public trust resources</p> <ul style="list-style-type: none"> • Reduction in non-storm day flow affecting aquatic, riparian, and wetland habitat. No measurable impact. Change in flow in Segment G too small to be accurately measured. Draft EIR page 3.1-47. • Reduction in non-storm day flow affecting Santa Ana sucker. No measurable impact. Change in flow in Segment G too small to be accurately measured. Draft EIR page 3.1-47. 	<p>Change in hydrology from Baseline:</p> <ul style="list-style-type: none"> 1. Peak 100-year flood flows: -500 cfs 2. Number of zero flow days: 0 3. Median non-storm day flow: -1 cfs <p>Effects on public trust resources</p> <ul style="list-style-type: none"> • Reduction in non-storm day flow affecting aquatic, riparian, and wetland habitat. No measurable impact. Change in flow in Segment G too small to be accurately measured. Draft EIR page 3.1-47. • Reduction in non-storm day flow affecting Santa Ana sucker. No measurable impact. Change in flow in Segment G too small to be accurately measured. Draft EIR page 3.1-47. 	<p>Change in hydrology from Baseline:</p> <ul style="list-style-type: none"> 1. Peak 100-year flood flows: -1,500 cfs 2. Number of zero flow days: 0 3. Median non-storm day flow: 0 cfs <p>Effects on public trust resources</p> <ul style="list-style-type: none"> • Reduction in non-storm day flow affecting aquatic, riparian, and wetland habitat. No measurable impact. Change in flow in Segment G too small to be accurately measured. Draft EIR page 3.1-47. • Reduction in non-storm day flow affecting Santa Ana sucker. No measurable impact. Change in flow in Segment G too small to be accurately measured. Draft EIR page 3.1-47. 	<p>Change in hydrology from Baseline:</p> <ul style="list-style-type: none"> 1. Peak 100-year flood flows: -500 cfs 2. Number of zero flow days: 0 3. Median non-storm day flow: 0 cfs <p>Effects on public trust resources</p> <ul style="list-style-type: none"> • Reduction in non-storm day flow affecting aquatic, riparian, and wetland habitat. No measurable impact. Change in flow in Segment G too small to be accurately measured. Draft EIR page 3.1-47. • Reduction in non-storm day flow affecting Santa Ana sucker. No measurable impact. Change in flow in Segment G too small to be accurately measured. Draft EIR page 3.1-47.

Table 2.3-19. Impact to Public Trust Resources (Page 5 of 6)

Project Area	Impacts to Public Trust Resources			
	Scenario A (seasonal storage, 1,500 cfs diversion)	Scenario B (seasonal storage, 500 cfs diversion)	Scenario C (no seasonal storage, 1,500 cfs diversion)	Scenario D (no seasonal storage, 500 cfs diversion)
<p>Santa Ana River Construction Area</p> <p>Seven Oaks Dam and Reservoir Construction Area</p>	<p>The Draft EIR identifies loss of native chaparral vegetation and common wildlife due to road-relocation, but road relocation has been removed as a Project component at the request of the Forest Service.</p> <p>Disturbance and temporary removal of riparian and wetland habitat, and mortality in common riparian wildlife species due to construction. This is a significant but mitigable impact. Construction would temporarily reduce wetland habitat by more than an acre. Identified mitigation measures would restore an equal or greater amount of riparian and wetland habitat compared to that impacted by construction. Draft EIR page 3.3-42.</p> <p>Disturbance and removal of RA/FSS and other upland habitats, mortality of common wildlife species due to construction. This is a less than significant impact for habitat affected by Low Flow Connector Pipeline and Motion Canyon Connector II Pipeline construction because most of the affected habitat has been recently disturbed and is of low quality, supporting only the most ubiquitous wildlife species. Draft EIR pages 3.3-49 to 3.3-50. This is a significant but mitigable impact for Plunge Pool Pipeline construction. The size of the affected area, the status of RA/FSS as a CDRC highest priority community, its overall scarcity, and time required to regenerate the plant community make disturbance and removal by Plunge Pool Pipeline construction a significant impact. Identified mitigation measures would realign pipelines to minimize the amount of RA/FSS affected, and acquire and place in conservation easements, 1 acre of good quality habitat for every 1 acre RA/FSS lost. Draft EIR pages 3.3-43 to 3.3-46.</p> <p>Disturbance and removal of non-listed sensitive species such as Pummer's mariposa fly and Perry's sphinifer due to construction. This is a significant but mitigable impact. Loss of individuals and habitat of Perry's sphinifer and Pummer's mariposa fly would be a significant impact because of the substantial amount of habitat affected (more than 1 acre), the scarcity of the remaining suitable habitat, and the sensitive status of these species. Identified mitigation measures would realign pipelines to minimize the amount of habitat impacted as well as provide for habitat restoration after construction. Draft EIR pages 3.3-46 to 3.3-47.</p> <p>Disturbance and removal of habitat potentially occupied by non-listed sensitive wildlife species due to construction. This is a less than significant impact. Populations of these species are generally not localized or rare, and loss of individuals is not expected to substantially affect regional populations. Draft EIR pages 3.3-48 to 3.3-52.</p>	<p>The Draft EIR identifies loss of native chaparral vegetation and common wildlife due to road-relocation, but road relocation has been removed as a Project component at the request of the Forest Service.</p> <p>Disturbance and temporary removal of riparian and wetland habitat, and mortality in common riparian wildlife species due to construction. This is a significant but mitigable impact. Construction would temporarily reduce wetland habitat by more than an acre. Identified mitigation measures would restore an equal or greater amount of riparian and wetland habitat compared to that impacted by construction. Draft EIR page 3.3-42.</p> <p>Disturbance and removal of RA/FSS and other upland habitats, mortality of common wildlife species due to construction. This is a less than significant impact for habitat affected by Low Flow Connector Pipeline and Motion Canyon Connector II Pipeline construction because most of the affected habitat has been recently disturbed and is of low quality, supporting only the most ubiquitous wildlife species. Draft EIR pages 3.3-49 to 3.3-50. This is a significant but mitigable impact for Plunge Pool Pipeline construction. The size of the affected area, the status of RA/FSS as a CDRC highest priority community, its overall scarcity, and time required to regenerate the plant community make disturbance and removal by Plunge Pool Pipeline construction a significant impact. Identified mitigation measures would realign pipelines to minimize the amount of RA/FSS affected, and acquire and place in conservation easements, 1 acre of good quality habitat for every 1 acre RA/FSS lost. Draft EIR pages 3.3-43 to 3.3-46.</p> <p>Disturbance and removal of non-listed sensitive species such as Pummer's mariposa fly and Perry's sphinifer due to construction. This is a significant but mitigable impact. Loss of individuals and habitat of Perry's sphinifer and Pummer's mariposa fly would be a significant impact because of the substantial amount of habitat affected (more than 1 acre), the scarcity of the remaining suitable habitat, and the sensitive status of these species. Identified mitigation measures would realign pipelines to minimize the amount of habitat impacted as well as provide for habitat restoration after construction. Draft EIR pages 3.3-46 to 3.3-47.</p> <p>Disturbance and removal of habitat potentially occupied by non-listed sensitive wildlife species due to construction. This is a less than significant impact. Populations of these species are generally not localized or rare, and loss of individuals is not expected to substantially affect regional populations. Draft EIR pages 3.3-48 to 3.3-52.</p>	<p>The Draft EIR identifies loss of native chaparral vegetation and common wildlife due to road-relocation, but road relocation has been removed as a Project component at the request of the Forest Service.</p> <p>Disturbance and temporary removal of riparian and wetland habitat, and mortality in common riparian wildlife species due to construction. This is a significant but mitigable impact. Construction would temporarily reduce wetland habitat by more than an acre. Identified mitigation measures would restore an equal or greater amount of riparian and wetland habitat compared to that impacted by construction. Draft EIR page 3.3-42.</p> <p>Disturbance and removal of RA/FSS and other upland habitats, mortality of common wildlife species due to construction. This is a less than significant impact for habitat affected by Low Flow Connector Pipeline and Motion Canyon Connector II Pipeline construction because most of the affected habitat has been recently disturbed and is of low quality, supporting only the most ubiquitous wildlife species. Draft EIR pages 3.3-49 to 3.3-50. This is a significant but mitigable impact for Plunge Pool Pipeline construction. The size of the affected area, the status of RA/FSS as a CDRC highest priority community, its overall scarcity, and time required to regenerate the plant community make disturbance and removal by Plunge Pool Pipeline construction a significant impact. Identified mitigation measures would realign pipelines to minimize the amount of RA/FSS affected, and acquire and place in conservation easements, 1 acre of good quality habitat for every 1 acre RA/FSS lost. Draft EIR pages 3.3-43 to 3.3-46.</p> <p>Disturbance and removal of non-listed sensitive species such as Pummer's mariposa fly and Perry's sphinifer due to construction. This is a significant but mitigable impact. Loss of individuals and habitat of Perry's sphinifer and Pummer's mariposa fly would be a significant impact because of the substantial amount of habitat affected (more than 1 acre), the scarcity of the remaining suitable habitat, and the sensitive status of these species. Identified mitigation measures would realign pipelines to minimize the amount of habitat impacted as well as provide for habitat restoration after construction. Draft EIR pages 3.3-46 to 3.3-47.</p> <p>Disturbance and removal of habitat potentially occupied by non-listed sensitive wildlife species due to construction. This is a less than significant impact. Populations of these species are generally not localized or rare, and loss of individuals is not expected to substantially affect regional populations. Draft EIR pages 3.3-48 to 3.3-52.</p>	<p>The Draft EIR identifies loss of native chaparral vegetation and common wildlife due to road-relocation, but road relocation has been removed as a Project component at the request of the Forest Service.</p> <p>Disturbance and temporary removal of riparian and wetland habitat, and mortality in common riparian wildlife species due to construction. This is a significant but mitigable impact. Construction would temporarily reduce wetland habitat by more than an acre. Identified mitigation measures would restore an equal or greater amount of riparian and wetland habitat compared to that impacted by construction. Draft EIR page 3.3-42.</p> <p>Disturbance and removal of RA/FSS and other upland habitats, mortality of common wildlife species due to construction. This is a less than significant impact for habitat affected by Low Flow Connector Pipeline and Motion Canyon Connector II Pipeline construction because most of the affected habitat has been recently disturbed and is of low quality, supporting only the most ubiquitous wildlife species. Draft EIR pages 3.3-49 to 3.3-50. This is a significant but mitigable impact for Plunge Pool Pipeline construction. The size of the affected area, the status of RA/FSS as a CDRC highest priority community, its overall scarcity, and time required to regenerate the plant community make disturbance and removal by Plunge Pool Pipeline construction a significant impact. Identified mitigation measures would realign pipelines to minimize the amount of RA/FSS affected, and acquire and place in conservation easements, 1 acre of good quality habitat for every 1 acre RA/FSS lost. Draft EIR pages 3.3-43 to 3.3-46.</p> <p>Disturbance and removal of non-listed sensitive species such as Pummer's mariposa fly and Perry's sphinifer due to construction. This is a significant but mitigable impact. Loss of individuals and habitat of Perry's sphinifer and Pummer's mariposa fly would be a significant impact because of the substantial amount of habitat affected (more than 1 acre), the scarcity of the remaining suitable habitat, and the sensitive status of these species. Identified mitigation measures would realign pipelines to minimize the amount of habitat impacted as well as provide for habitat restoration after construction. Draft EIR pages 3.3-46 to 3.3-47.</p> <p>Disturbance and removal of habitat potentially occupied by non-listed sensitive wildlife species due to construction. This is a less than significant impact. Populations of these species are generally not localized or rare, and loss of individuals is not expected to substantially affect regional populations. Draft EIR pages 3.3-48 to 3.3-52.</p>

Table 2.3-19. Impact to Public Trust Resources (Page 6 of 6)

Project Area	Impacts to Public Trust Resources			
	Scenario A (seasonal storage, 1,500 cfs diversion)	Scenario B (seasonal storage, 500 cfs diversion)	Scenario C (no seasonal storage, 1,200 cfs diversion)	Scenario D (no seasonal storage, 500 cfs diversion)
<p>Santa Ana River (cont)</p> <p>Construction Area</p>	<ul style="list-style-type: none"> Disturbance and removal of habitat occupied by listed wildlife species including CAGN and SBKR due to construction. This is a less than significant impact. Habitat within the area to be impacted is low to moderate in quality due to past disturbance, continued disturbance by Greenport Road traffic, and distance from the Santa Ana River. Surveys for the Project resulted in no observations or indications of CAGN or SBKR. In or adjacent to the area that would be impacted, therefore impacts would be less than significant. Draft EIR pages 3.3-47 to 3.3-48. 	<ul style="list-style-type: none"> Disturbance and removal of habitat occupied by listed wildlife species including CAGN and SBKR due to construction. This is a less than significant impact. Habitat within the area to be impacted is low to moderate in quality due to past disturbance, continued disturbance by Greenport Road traffic, and distance from the Santa Ana River. Surveys for the Project resulted in no observations or indications of CAGN or SBKR. In or adjacent to the area that would be impacted, therefore impacts would be less than significant. Draft EIR pages 3.3-47 to 3.3-48. 	<ul style="list-style-type: none"> Disturbance and removal of habitat occupied by listed wildlife species including CAGN and SBKR due to construction. This is a less than significant impact. Habitat within the area to be impacted is low to moderate in quality due to past disturbance, continued disturbance by Greenport Road traffic, and distance from the Santa Ana River. Surveys for the Project resulted in no observations or indications of CAGN or SBKR. In or adjacent to the area that would be impacted, therefore impacts would be less than significant. Draft EIR pages 3.3-47 to 3.3-48. 	<ul style="list-style-type: none"> Disturbance and removal of habitat occupied by listed wildlife species including CAGN and SBKR due to construction. This is a less than significant impact. Habitat within the area to be impacted is low to moderate in quality due to past disturbance, continued disturbance by Greenport Road traffic, and distance from the Santa Ana River. Surveys for the Project resulted in no observations or indications of CAGN or SBKR. In or adjacent to the area that would be impacted, therefore impacts would be less than significant. Draft EIR pages 3.3-47 to 3.3-48.
<p>Devil Canyon Construction Area</p>	<ul style="list-style-type: none"> Disturbance and removal of upland, wetland, and riparian vegetation and wildlife habitat and mortality of common wildlife species. Impacts are significant but mitigable. Identified mitigation measures would minimize construction disturbance and include actions designed to keep animals out of the construction area (removal of sedentary animals in the construction right of way prior to clearing, exclusionary fencing). Draft EIR pages 3.3-52 to 3.3-53. Disturbance of habitat potentially occupied by listed and non-listed sensitive wildlife species. This is a less than significant impact. Habitat affected is sparsely vegetated and unlikely to support a wide diversity of wildlife. Non-listed sensitive species likely sparse in this poor habitat and resulting mortality during construction would be minimal. Draft EIR page 3.3-53. 	<ul style="list-style-type: none"> Disturbance and removal of upland, wetland, and riparian vegetation and wildlife habitat and mortality of common wildlife species. Impacts are significant but mitigable. Identified mitigation measures would minimize construction disturbance and include actions designed to keep animals out of the construction area (removal of sedentary animals in the construction right of way prior to clearing, exclusionary fencing). Draft EIR pages 3.3-52 to 3.3-53. Disturbance of habitat potentially occupied by listed and non-listed sensitive wildlife species. This is a less than significant impact. Habitat affected is sparsely vegetated and unlikely to support a wide diversity of wildlife. Non-listed sensitive species likely sparse in this poor habitat and resulting mortality during construction would be minimal. Draft EIR page 3.3-53. 	<ul style="list-style-type: none"> Disturbance and removal of upland, wetland, and riparian vegetation and wildlife habitat and mortality of common wildlife species. Impacts are significant but mitigable. Identified mitigation measures would minimize construction disturbance and include actions designed to keep animals out of the construction area (removal of sedentary animals in the construction right of way prior to clearing, exclusionary fencing). Draft EIR pages 3.3-52 to 3.3-53. Disturbance of habitat potentially occupied by listed and non-listed sensitive wildlife species. This is a less than significant impact. Habitat affected is sparsely vegetated and unlikely to support a wide diversity of wildlife. Non-listed sensitive species likely sparse in this poor habitat and resulting mortality during construction would be minimal. Draft EIR page 3.3-53. 	<ul style="list-style-type: none"> Disturbance and removal of upland, wetland, and riparian vegetation and wildlife habitat and mortality of common wildlife species. Impacts are significant but mitigable. Identified mitigation measures would minimize construction disturbance and include actions designed to keep animals out of the construction area (removal of sedentary animals in the construction right of way prior to clearing, exclusionary fencing). Draft EIR pages 3.3-52 to 3.3-53. Disturbance of habitat potentially occupied by listed and non-listed sensitive wildlife species. This is a less than significant impact. Habitat affected is sparsely vegetated and unlikely to support a wide diversity of wildlife. Non-listed sensitive species likely sparse in this poor habitat and resulting mortality during construction would be minimal. Draft EIR page 3.3-53.
<p>Lyle Creek Construction Area</p>	<ul style="list-style-type: none"> Disturbance and removal of upland vegetation and wildlife habitat and mortality of common wildlife species. This is a less than significant impact. Habitat affected would be small and has limited wildlife value and impacts would be temporary. Draft EIR page 3.3-54. Disturbance and removal of habitat potentially occupied by non-listed sensitive wildlife species. This would be a less than significant impact. Populations of non-listed sensitive species are not typically as isolated as listed species and the amount of habitat to be affected is minimal and of low quality. Draft EIR pages 3.3-54 to 3.3-55. 	<ul style="list-style-type: none"> Disturbance and removal of upland vegetation and wildlife habitat and mortality of common wildlife species. This is a less than significant impact. Habitat affected would be small and has limited wildlife value and impacts would be temporary. Draft EIR page 3.3-54. Disturbance and removal of habitat potentially occupied by non-listed sensitive wildlife species. This would be a less than significant impact. Populations of non-listed sensitive species are not typically as isolated as listed species and the amount of habitat to be affected is minimal and of low quality. Draft EIR pages 3.3-54 to 3.3-55. 	<ul style="list-style-type: none"> Disturbance and removal of upland vegetation and wildlife habitat and mortality of common wildlife species. This is a less than significant impact. Habitat affected would be small and has limited wildlife value and impacts would be temporary. Draft EIR page 3.3-54. Disturbance and removal of habitat potentially occupied by non-listed sensitive wildlife species. This would be a less than significant impact. Populations of non-listed sensitive species are not typically as isolated as listed species and the amount of habitat to be affected is minimal and of low quality. Draft EIR pages 3.3-54 to 3.3-55. 	<ul style="list-style-type: none"> Disturbance and removal of upland vegetation and wildlife habitat and mortality of common wildlife species. This is a less than significant impact. Habitat affected would be small and has limited wildlife value and impacts would be temporary. Draft EIR page 3.3-54. Disturbance and removal of habitat potentially occupied by non-listed sensitive wildlife species. This would be a less than significant impact. Populations of non-listed sensitive species are not typically as isolated as listed species and the amount of habitat to be affected is minimal and of low quality. Draft EIR pages 3.3-54 to 3.3-55.

EXHIBIT 5

1 operations for flood control, as well as the environmental effects and economic benefits
2 of a water conservation program.

3 25. To determine the potential water conservation yield at Seven Oaks, the Corps obtained
4 raw data from a USGS report which memorialized the daily flow of the Santa Ana River
5 at Mentone. Focusing on the 1914-15 to 1990-91 period of record, the Corps determined
6 the conservation yield by adding the daily values at the end of May for each year. The
7 Corps then divided that number by the total number of years to obtain an average annual
8 inflow of 24,000 acre-feet. Using that base inflow, the computer simulation estimated
9 that the dam could make approximately 12,950 acre-feet per year of conserved water
10 available to downstream users. A true and correct copy of the Corps' Feasibility Report
11 is attached hereto as Muni/Western Exhibit 3-4.

12 26. The Corps is currently initiating a supplemental study to the 1997 feasibility study which
13 will lead to a record of decision. This supplement is necessary due to the listing of
14 additional endangered species which may affect the flood control operation of Seven
15 Oaks Dam. Muni has entered into an agreement with the Local Sponsors (Orange
16 County Flood Control District, Riverside County Flood Control & Water Conservation
17 District and San Bernardino County Flood Control District) to fund the non-federal share
18 of this study. I understand that the Board of Directors of Western will consider approval
19 of that agreement during its meeting on April 18, 2007.

20 *Proposed Water Conservation Operations*

21 27. The Draft EIR (Muni/Western Exhibit 4-3) fully describes the manner in which
22 Muni/Western propose to engage in water conservation operations at Seven Oaks.
23 Nonetheless, there are several points that are important to note about Muni/Western's
24 proposed water conservation operations.

25 28. First, water conservation operations involving construction of facilities in the inundation
26 area upstream of Seven Oaks Dam or involving the reoperation of Seven Oaks Dam can
27 only occur once the Corps of Engineers fully analyzes the effects of those activities
28 (including, for instance, compliance with the National Environmental Policy Act and the

1 Federal Endangered Species Act) and then approves such reoperation in a Record of
2 Decision and a revised Water Control Manual. The purpose of the supplemental study
3 described above is to compile the information necessary for the Corps to make this
4 decision. Muni/Western believe that, based on the results from the 1997 feasibility study
5 and the analysis included in the Draft and Final EIRs, the supplemental study will show
6 that water conservation can occur without interfering with flood control operations; that
7 determination, however, ultimately belongs to the Corps.

8 29. Second, Muni/Western can conserve substantial quantities of water without using Seven
9 Oaks Dam storage, *per se*. The very presence of Seven Oaks Dam regulates flows in the
10 Santa Ana River and so, with the construction of a 1,500 cfs pipeline intake at the Cuttle
11 Weir, Muni/Western would be able to divert the same quantity of water as with the use of
12 conservation storage at Seven Oaks.

13 30. Third, even though the Draft and Final EIRs (Muni/Western Exhibits 4-3 and 4-4)
14 demonstrate that Muni/Western could divert the same quantity of water with or without
15 conservation storage, there are substantial benefits to Muni/Western from the use of
16 conservation storage at Seven Oaks Dam. For instance, as shown in the testimony of
17 Jack Safely (Muni/Western Exhibit 7-1), during a repeat of WY 1969 hydrology,
18 Muni/Western would use almost 45,000 af of conservation storage in Seven Oaks.
19 Muni/Western would rather use that storage rather than conveying the water to other
20 locations because leaving the water in Seven Oaks provides Muni/Western with
21 substantial flexibility to deliver water to virtually any location within our combined
22 service areas. Storage in other locations (above or below ground) would provide less
23 flexibility for deliveries and subsequent use.

24 31. Fourth, the use of Seven Oaks Dam for water conservation provides substantial flexibility
25 for Muni/Western to match deliveries of water with demands and so provides reliability.
26 The modeling contained in the Draft and Final EIRs, which is consistent with the
27 modeling performed for other major water resources projects, uses 20-20 hindsight to
28 determine where water would have gone during a repetition of historical hydrology.
29 Real-time operations, though, do not have the luxury of time to determine the best place

1 to deliver water during a wet year. For this reason, the flexibility provided by Seven
2 Oaks is particularly important to real-time operations, because it gives the operators of
3 the system additional time to make decisions on water deliveries.

4 32. Fifth, although access to Seven Oaks Dam is not essential to the Muni/Western proposed
5 water conservation operations, it certainly would be a significant benefit. Because of
6 these benefits, Muni/Western intend to pursue the acquisition of rights to access at Seven
7 Oaks, preferably by amicable agreement with the Local Sponsors, but if necessary by
8 other means.

9 33. Muni/Western understand that the Local Sponsors are parties to a Local Cooperation
10 Agreement ("LCA") with the Department of the Army dated December 13, 1989, which
11 establishes the rights and responsibilities of the Local Sponsors and the Department of
12 the Army regarding the Santa Ana River Mainstem, including Santiago Creek, California
13 Flood Control Project ("Project"). A true and correct copy of the LCA is attached as
14 Muni/Western Exhibit 2-4. Seven Oaks Dam and Reservoir are elements of the Project,
15 as described in the LCA. In general, the Local Sponsors are the owners and operators of
16 Seven Oaks Dam, and are responsible for ensuring that any water conservation at Seven
17 Oaks Dam does not unreasonably interfere with the Dam's primary use as a flood control
18 facility. Seven Oaks Dam is presently operated as a flood control facility and operation
19 of Seven Oaks Dam is governed by the Water Control Manual prepared by the Corps.

20 34. As mentioned above, Muni is a signatory to the "Agreement Among Santa Ana River
21 Mainstem Project Local Sponsors and San Bernardino Valley Municipal Water District
22 and Western Municipal Water District of Riverside County Funding a Seven Oaks Dam
23 Water Conservation Feasibility Report" (hereinafter "Funding Agreement") a true and
24 correct copy of which is attached as Muni/Western Exhibit 3-5. Under the Funding
25 Agreement, Muni will provide 72.05 percent share of the "Study Costs," as defined in the
26 Funding Agreement, relating to the updating of the 1997 Feasibility Report prepared by
27 the Corps and associated analyses, studies, reports and documents prepared by the Corps
28 with the support and assistance of the Local Sponsors, regarding the feasibility of water
29 conservation at Seven Oaks Dam.

EXHIBIT 6

PROCESS FOR ADDING WATER CONSERVATION TO SEVEN OAKS DAM

Seven Oaks Dam is authorized to be operated as a flood control facility only. The following agreements govern the process for evaluating the use of Seven Oaks Dam for water conservation purposes. Water conservation is not at this time an authorized or approved use of Seven Oaks Dam.²

Water Resources Development Act of 1986

The Water Resources Development Act of 1986, P.L. 99-662, ("1986 WRDA") authorized the USACE to study the feasibility of adding water conservation to flood control facilities. The USACE conducted a reconnaissance study of water conservation at Seven Oaks Dam and Prado Dam in 1986, and determined that a feasibility study of water conservation at Seven Oaks Dam was required. The 1986 WRDA requires that a local sponsor contribute 50% of the cost of the feasibility study.

1993 Study Agreement and Reimbursement Agreement

At the request of Muni/Western, the San Bernardino County Flood Control District, on behalf of the Local Sponsors, entered into the Agreement with the United States for the Seven Oaks Dam Water Conservation Study on May 23, 1993 ("1993 Study Agreement"), whereby the USACE agreed to prepare a Feasibility Study to investigate the feasibility of providing water conservation at Seven Oaks Dam and for San Bernardino County Flood Control District to pay 50% of the costs of the study. (Exhibit LS-1-9.)

Muni/Western and San Bernardino County Flood Control District entered into a separate agreement, the Agreement between the San Bernardino Flood Control District and San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County Seven Oaks Water Conservation Study, dated November 23, 1993 ("1993 Reimbursement Agreement"), to reimburse San Bernardino County Flood Control District for the Local Sponsor's 50% share of the study cost. (Exhibit LS-1-10.)

The 1993 Study Agreement provided that the USACE "will not continue the Study if it determines that there is no solution in which there is a Federal interest or which is not in accord with current policies or budget priorities," unless the designated Local Sponsor is given an exception to continue under the Study Agreement. (1993 Study Agreement, Art. II(f), Exhibit LS-1-9 at 2.) The Local Sponsor "may wish to conclude the Study if it determines that there is no solution in which it has an interest or which is not in accord with its current policies and budget priorities." (*Id.*, Art. II(g).)

² "Water Conservation" is a term of art under federal law regarding federal water resource projects. In this testimony we refer to "water conservation" as the use of Seven Oaks Dam for the purpose of storage of water and diversion of water for consumptive purposes.

Blanket Drain Reimbursement

During construction of Seven Oaks Dam and before completion of the Water Conservation Feasibility Study, Muni/Western requested and paid for certain improvements to Seven Oaks Dam that would facilitate its use for water conservation, if ultimately deemed feasible and approved. On behalf of Muni/Western, the San Bernardino County Flood Control District requested that the USACE extend the blanket drain of the Dam to a height that would permit future water conservation reservoir elevations. (Exhibit LS-1-11.) Muni/Western reimbursed San Bernardino County Flood Control District for its cost share in accordance with the 1993 reimbursement agreement. (*Id.*) As stated in a USACE letter, “[a]s the water agencies have no standing relative to requesting a design modification for this purpose, San Bernardino County Flood Control District requested the modification on their behalf as a courtesy.” (Letter from Ruth Villalobos, USACE, to Ken Miller, San Bernardino County Flood Control District, dated May 21, 2001 (“Villalobos Letter”), Exhibit LS-1-12 at 2.)

1997 Feasibility Study

A Seven Oaks Dam Water Conservation Feasibility Study and EIS/EIR were completed by the USACE in June 1997 in accordance with the 1993 Study Agreement. (Exhibit LS-1-13.) The Study concludes that water conservation at Seven Oaks Dam is technically and economically feasible. The Study, however, does not approve water conservation. A final Record of Decision on the Feasibility Study was not adopted due to uncertainty regarding the ongoing consultation with the United States Fish and Wildlife Service under the Endangered Species Act and the mitigation measures that may be imposed through the consultation. (Villalobos Letter, Exhibit LS-1-12 at 2.)

Muni/Western Obligations to Obtain USACE Approval to Use Seven Oaks Dam for Water Conservation

A 2001 USACE letter defines the steps that Muni/Western must complete in order to obtain USACE approval to operate Seven Oaks Dam for water conservation:

If it is determined that water conservation [at Seven Oaks Dam] is feasible, the interested agencies [Muni/Western] would be required to complete the following steps prior to Corps approval and agency implementation:

1. All hydrological requirements for flood control and related environmental mitigation purposes for Seven Oaks Dam must be met before water conservation is considered.
2. The interested water agencies, and not the Local Sponsors or the USACE, are fully responsible to assess the potential impacts of their proposed water conservation program, and to pay for all costs – including potential mitigation costs – associated with their proposed program. The water agencies are required to prepare adequate environmental documentation, such as an Environmental

Impact Statement/Environmental Impact Report and Biological Assessment.

3. The water agencies must acquire all permits necessary to implement their proposed water conservation program, and pay all associated costs. The permitting agencies include the U.S. Forest Service, the United States Fish and Wildlife Service, the California Department of Fish and Game, the State Board, the California Regional Water Quality Control Board, and the USACE.
4. The water agencies must complete Endangered Species Act consultation under both state and federal acts.
5. The water agencies must ensure that existing water rights are not impacted by their proposed water conservation program, and must acquire additional rights, if necessary, in accordance with State Board requirements.
6. The water agencies must work with the USACE and Local Sponsors to ensure that flood control operations, including endangered species requirements, are not adversely affected by any water conservation activities.
7. As the Local Sponsors are responsible for Seven Oaks Dam operations and maintenance, the USACE will not consider supporting implementation of water conservation unless requested by the Local Sponsors; the water agencies must enter into an agreement with the Local Sponsors to implement any water conservation program at Seven Oaks Dam.

(Villalobos Letter, Exhibit LS-1-12 at 2-3.)

Proposed Feasibility Study Update and Study Agreement Amendment No. 1

Muni/Western has requested an update to the 1997 Feasibility Report to further investigate water conservation options and impacts and that the USACE and Local Sponsors revise the Seven Oaks Dam Water Control Manual to include water conservation in addition to flood control.

An amendment to the 1993 Study Agreement is required to authorize the USACE to update the 1997 Feasibility Study and to establish the Local Sponsor cost share. The USACE has prepared a draft Amendment No. 1 to the Study Agreement. (Exhibit LS-1-14.) The USACE will not execute the amendment and commence the update to the Feasibility Study until funding of the Local Sponsor's cost share is committed, which requires Muni/Western committing to reimburse San Bernardino County Flood Control District for the Local Sponsor cost share.

Funding Agreement

Muni/Western and the Local Sponsors have negotiated a Funding Agreement whereby Muni/Western will pay 100% of the costs to update the Feasibility Study and indemnify the Local Sponsors for any liability arising out of the agreement. (Exhibit LS-1-15.) The Funding Agreement provides, among other things, that the Local Sponsors are not representing or warranting the suitability of Seven Oaks Dam for water conservation purposes, and that any operational or facility changes at Seven Oaks Dam will require a separate agreement approved by the Local Sponsors. (*Id.*, ¶¶ 6.a., 6.b.) All parties except for Western have executed the Funding Agreement. Western will consider approval of the Funding Agreement on April 18, 2007.

CONDITIONS OF THE LOCAL SPONSORS NON-OPPOSITION TO THE GRANTING OF WATER RIGHTS PERMITS TO MUNI/WESTERN

The Local Sponsors do not object to the granting of water rights permits and licenses to Muni/Western in accordance with Application Nos. 31165 and 31370 and the Final EIR, subject to following terms and conditions:

Requirement that All Necessary Federal, State and Local Approvals be Obtained

The State Board imposes a standard term and condition on all new permits that no construction shall be commenced and no water shall be diverted until all necessary federal, state and local approvals have been obtained. The Local Sponsors request that the record for this proceeding reflect that Muni/Western must obtain approvals from the USACE and the Local Sponsors in accordance with this standard term and condition.

Access Agreement

Before construction of facilities and operation of Seven Oaks Dam for water conservation, Muni/Western must enter into an access agreement with the Local Sponsors that will govern Muni/Western access to Seven Oaks Dam for purposes of exercise of water rights which may be granted by the State Board in accordance with the Applications. The access agreement shall include Muni/Western payment for the separable costs for adding water conservation at Seven Oaks Dam, reimbursement of the Local Sponsors' expenses incurred as a result of granting Muni/Western access and for operating Seven Oaks Dam for water conservation purposes, indemnification of the Local Sponsors for liability and losses associated with Muni/Western's access to the Seven Oaks Dam and associated facilities, insurance, and related provisions.

The following term and condition must be added to all water rights permits granted by the SWRCB to Muni/Western:

Permittee shall not, without prior written agreement of the Santa Ana River Mainstem Project Local Sponsors, have the right of access to, or commence

EXHIBIT 7

3.1 Surface Water Hydrology and Water Quality

1 3.1.1.7.7 *Segment G, Riverside Narrows to Prado Dam*

2 Segment G extends from Riverside Narrows at RM 45.7 to Prado Dam at RM 30.5. This river
3 segment falls entirely within SARWQCB Reach 3 and is in USACE Sub-Area 3. Stream flow is
4 perennial throughout Segment G due to inflow from WWTPs and groundwater up-welling.

5 3.1.2 **Impacts and Mitigation Measures**

6 3.1.2.1 *Impact Assessment Methodology*

7 This section outlines the general impact assessment methodology and includes a description of
8 the hydrologic modeling undertaken to support the impact analysis. Detailed information on
9 modeling tools and processes is provided in Appendix A.

10 3.1.2.1.1 *Surface Water Models*

11 The impact analysis methodology requires that future surface water conditions be forecast.
12 This is accomplished using information derived from a suite of three models: Operations
13 Model (OPMODEL); Allocation Model; and River Analysis. The first model (OPMODEL)
14 estimates the quantities of unappropriated water potentially available for diversion from the
15 SAR. The second model (Allocation Model) analyzes how such diversions could be distributed
16 among a number of beneficial uses. With information on the amount of potential diversions
17 and allocation of water, the third model (River Analysis) evaluates the potential effects that
18 diversions may have on hydrologic processes in the SAR, particularly instream flows and
19 overbank flooding. The different models and their interactions are illustrated in Figure 3.1-12.

20 OPMODEL

21 The Operations Model, referred to as OPMODEL, is a tool used to estimate the quantity of
22 unappropriated SAR water available for diversion by Muni/Western after accounting for
23 diversions by prior rights holders and other uses. This model simulates monthly releases that
24 could be made from Seven Oaks Dam under a varying set of factors. Estimates of the quantities
25 of unappropriated water are influenced by a number of factors, the most critical of which are
26 listed below.

- 27 • Diversions by senior water rights claimants;
- 28 • Diversions by the Conservation District;
- 29 • Releases designed to accomplish habitat restoration as prescribed by the terms of the
30 Biological Opinion (BO) for the operation of Seven Oaks Dam; and
- 31 • Operation of Seven Oaks Dam for flood control only or flood control with seasonal
32 water conservation storage.

33 As detailed in Appendix A, there are high and low estimates for each of these factors. For
34 example, habitat restoration plans per the BO are still under development. Ultimate habitat
35 restoration plans may use large volumes of water released from Seven Oaks Dam or may rely
36 on other treatments that use little or no water. Likewise the model can accommodate either
37 licensed or historical Conservation District diversions (see Figure 3.1-13). The combination of

EXHIBIT 8

- 1 • Diversions by the Conservation District;
- 2 • Releases designed to accomplish habitat restoration as prescribed by the terms of the
- 3 Biological Opinion (BO) for the operation of Seven Oaks Dam; and
- 4 • Operation of Seven Oaks Dam for flood control only or flood control with seasonal
- 5 water conservation storage.

6 86. The treatment of these four parameters in the analyses can have major impacts on the
7 amount of water from the SAR potentially captured and put to beneficial use. The
8 significance of each parameter is described in the following paragraphs. Various
9 combinations of these critical parameters were used to develop the scenarios analyzed to
10 estimate the potential capture by Muni/Western. These scenarios are described following
11 the discussion of each parameter.

12 87. **Diversion Rate for Senior Water Rights Claimants** - Future diversions by the Senior
13 Water Right Claimants could vary from historical diversions up to 88 cfs. During the
14 period Water Year 1961-62 to Water Year 1999-2000, average annual Senior Water Right
15 Claimant diversions are estimated at approximately 26,600 afy. However, the Senior
16 Water Rights Claimants assert pre-1914 water rights of more than this amount. In July
17 2004, Muni, Western, and the Senior Water Right Claimants signed a settlement agreement
18 known as the Seven Oaks Accord. As a result of this Accord, Muni/Western have agreed
19 not to object to diversions by the Senior Water Right Claimants of up to 88 cfs. In the
20 future it is anticipated that the amount of water taken by the Senior Water Rights Claimants
21 will vary between their historical amount and 88 cfs (or about 36,323 afy on average).

22 88. **Conservation District** - Future diversions by the San Bernardino Valley Water
23 Conservation District could vary between their licensed right and their historical
24 diversions. The Conservation District holds two licenses issued by the SWRCB to divert
25 water from the SAR as discussed earlier. In addition to these licensed diversions, the
26 Conservation District also claims pre-1914 water rights and has diverted water in excess of
27 10,400 af in some years. For example, from Water Year 1969-70 to 1999-2000 diversions
28 averaged 14,299 af per year. Accordingly and for purposes of analysis, a set of scenarios
29 was based on diversions limited by the licensed right and another set was based on the
30 Conservation District's actual historical diversions to the SAR Spreading Grounds.

31 89. **Biological Opinion Flows** - The USACE prepared a "Biological Assessment" (BA) that
32 indicated a certain flowrate be released from Seven Oaks Dam to maintain habitat
33 immediately downstream from the Dam by causing overbank flooding and to aid in fluvial
34 processes. To respond to this requirement, Muni/Western used the Operations Model
35 (discussed later in my testimony) to determine the appropriate duration and rate of releases.
36 The modeling allowed Muni/Western to conclude that releases of SAR surface water from
37 Seven Oaks Dam to accommodate habitat restoration at flowrates up to 1,000 cfs for
38 2 days, when water is available, would accommodate habitat restoration.

EXHIBIT 9

Table 3.0-4. Estimates of Unappropriated SAR Water Available for Capture by Muni/Western for Base Period WY 1961-62 through WY 1999-2000
Project Diversion Capacity of 500 cfs
(Values in Acre-Feet)

Scenario	Project Scenario																	
	User-Specified Rate of up to 88 cfs																	
	Historical Diversions		Licensed Right (up to 10,400 acft)		Historical Diversions		Historical Diversions		Historical Diversions		Historical Diversions		Licensed Right (up to 10,400 acft)		Other Habitat Treatment			
	1,000 cfs / 2 days	Yes	No	1,000 cfs / 2 days	Yes	No	1,000 cfs / 2 days	Yes	No	1,000 cfs / 2 days	Yes	No	1,000 cfs / 2 days	Yes	No	1,000 cfs / 2 days	Yes	No
Senior Claimant Diversions	1,416,607	1,416,608	1,416,605	1,416,610	1,416,610	1,416,610	1,038,137	1,038,139	1,038,138	1,038,138	1,038,132	1,038,132	1,038,132	1,038,132	1,038,132	1,038,132	1,038,132	1,038,132
Reservoir Evaporation	3,234	3,196	3,228	3,196	3,196	3,196	5,734	5,608	5,788	5,608	5,608	5,608	5,608	5,608	5,608	5,608	5,608	5,608
Conservation District Diversion	398,466	398,466	107,060	107,060	107,060	107,060	404,980	404,980	404,980	404,980	193,483	193,483	193,483	193,483	193,483	193,483	193,483	193,483
Environmental Habitat Release	27,769	-	35,703	-	-	-	35,703	35,703	-	-	35,703	35,703	35,703	35,703	35,703	35,703	35,703	35,703
Total Muni/Western Potential Capture	407,312	431,097	420,165	680,106	663,260	712,085	748,045	727,788	768,762	740,623	954,556	916,718	916,718	916,718	916,718	916,718	916,718	916,718
Undiverted from SAR*	36,503	42,470	53,439	48,772	66,047	52,739	76,488	59,275	74,210	102,525	60,008	102,230	102,230	102,230	102,230	102,230	102,230	102,230
Total	2,291,874	2,291,874	2,291,874	2,291,874	2,291,874	2,291,874	2,291,874	2,291,874	2,291,874	2,291,874	2,291,874	2,291,874	2,291,874	2,291,874	2,291,874	2,291,874	2,291,874	2,291,874
Average Annual																		
Senior Claimant Diversions	36,323	36,323	36,323	36,323	36,323	36,323	26,619	26,619	26,619	26,619	26,619	26,619	26,619	26,619	26,619	26,619	26,619	26,619
Reservoir Evaporation	83	82	85	87	87	87	147	144	148	144	144	144	144	144	144	144	144	144
Conservation District Diversion	10,217	10,217	2,745	2,745	2,745	2,745	10,384	10,384	10,384	10,384	4,961	4,961	4,961	4,961	4,961	4,961	4,961	4,961
Environmental Habitat Release	712	-	915	-	-	-	915	915	-	-	1,017	915	915	915	915	915	915	915
Total Muni/Western Potential Capture	10,444	11,054	10,773	17,446	17,007	18,259	17,634	18,661	19,712	18,990	24,476	23,506	23,506	23,506	23,506	23,506	23,506	23,506
Undiverted from SAR*	967	1,089	1,370	1,251	1,694	1,352	1,961	1,520	2,042	1,903	2,629	2,621	2,621	2,621	2,621	2,621	2,621	2,621
Maximum Annual																		
Senior Claimant Diversions	58,528	58,528	58,528	58,528	58,528	58,528	45,245	45,245	45,245	45,245	45,245	45,245	45,245	45,245	45,245	45,245	45,245	45,245
Reservoir Evaporation	278	273	343	343	343	343	410	368	410	368	368	368	368	368	368	368	368	368
Conservation District Diversion	56,953	56,953	10,400	10,400	10,400	10,400	48,152	48,152	48,152	48,152	10,400	10,400	10,400	10,400	10,400	10,400	10,400	10,400
Environmental Habitat Release	3,967	-	3,967	-	-	-	3,967	3,967	-	-	7,934	3,967	3,967	3,967	3,967	3,967	3,967	3,967
Total Muni/Western Potential Capture	104,294	108,261	128,351	132,318	126,721	132,318	130,688	145,880	144,520	145,880	144,520	145,880	145,880	145,880	145,880	145,880	145,880	145,880
Undiverted from SAR*	22,101	26,068	32,472	30,024	41,347	33,991	45,314	34,538	41,841	40,703	47,971	47,971	47,971	47,971	47,971	47,971	47,971	47,971

* Estimate (on a monthly basis) of the quantity of water remaining in the channel below Cattle Weir after all diversions have occurred.

- Model input variables that are common to all scenarios include the following (variables described in OP/MODEL documentation):
- a) Values shown in table for Total Potential Capture and Undiverted from SAR are estimated using OP/MODEL and Allocation Model
 - b) Synthesized hydrology based on re-operated Bear Valley Dam
 - c) Release of continual 3 cfs from dam to account for groundwater interruption by the dam foundation
 - d) USCS gage differences and rounding accounted for in senior water claimant diversions
 - e) Conservation District diversion capacity = 300 cfs
 - f) Release frequency for environmental releases is no more than every 6 months for 8 scenarios with environmental releases
 - g) Maximum number of environmental releases = 100% of potential releases for 6 of the scenarios with environmental releases
 - h) Maximum annual diversion by Muni/Western = 200,000 acft
 - i) Percent of available dam release un-divertable through Plunge Pool Pipeline = 0%
 - j) Flood/Conservation target storages from USACE Feasibility Report and Interim Water Control Plan
 - k) Evaporation rates from USACE Feasibility Report

Table 3.0-3. Estimates of Unappropriated SAR Water Available for Capture by Muni/Western for Base Period WY 1961-62 through WY 1999-2000
Project Diversion Capacity of 1,500 cfs
(Values in Acre-Feet)

Scenario	Project Scenario																															
	1		2		3		4		5		6		7		8		9		10		11		12		13		14		15		16	
	User-Specified Rate of up to 88 cfs		Historical Diversions		Historical Diversions		Historical Diversions		Historical Diversions		Historical Diversions		Historical Diversions		Historical Diversions		Historical Diversions		Historical Diversions		Historical Diversions		Historical Diversions		Historical Diversions		Historical Diversions		Historical Diversions		Historical Diversions	
Senior Claimant Diversions	1,416,607		1,416,607		1,416,607		1,416,607		1,416,607		1,416,607		1,416,607		1,416,607		1,416,607		1,416,607		1,416,607		1,416,607		1,416,607		1,416,607		1,416,607		1,416,607	
Conservation District Diversion	3,196		3,196		3,196		3,196		3,196		3,196		3,196		3,196		3,196		3,196		3,196		3,196		3,196		3,196		3,196		3,196	
Environmental Habitat Release	398,466		398,466		398,466		398,466		398,466		398,466		398,466		398,466		398,466		398,466		398,466		398,466		398,466		398,466		398,466		398,466	
Seasonal Storage	27,769		27,769		27,769		27,769		27,769		27,769		27,769		27,769		27,769		27,769		27,769		27,769		27,769		27,769		27,769		27,769	
Cumulative Total	1,818,836		1,818,836		1,818,836		1,818,836		1,818,836		1,818,836		1,818,836		1,818,836		1,818,836		1,818,836		1,818,836		1,818,836		1,818,836		1,818,836		1,818,836		1,818,836	
Senior Claimant Diversions	1,416,607		1,416,607		1,416,607		1,416,607		1,416,607		1,416,607		1,416,607		1,416,607		1,416,607		1,416,607		1,416,607		1,416,607		1,416,607		1,416,607		1,416,607		1,416,607	
Reservoir Evaporation	3,196		3,196		3,196		3,196		3,196		3,196		3,196		3,196		3,196		3,196		3,196		3,196		3,196		3,196		3,196		3,196	
Conservation District Diversion	398,466		398,466		398,466		398,466		398,466		398,466		398,466		398,466		398,466		398,466		398,466		398,466		398,466		398,466		398,466		398,466	
Environmental Habitat Release	27,769		27,769		27,769		27,769		27,769		27,769		27,769		27,769		27,769		27,769		27,769		27,769		27,769		27,769		27,769		27,769	
Total Muni/Western Potential Capture	1,818,836		1,818,836		1,818,836		1,818,836		1,818,836		1,818,836		1,818,836		1,818,836		1,818,836		1,818,836		1,818,836		1,818,836		1,818,836		1,818,836		1,818,836		1,818,836	
Undiverted from SAR*	2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874	
Total	4,090,532		4,090,532		4,090,532		4,090,532		4,090,532		4,090,532		4,090,532		4,090,532		4,090,532		4,090,532		4,090,532		4,090,532		4,090,532		4,090,532		4,090,532		4,090,532	
Average Annual	36,323		36,323		36,323		36,323		36,323		36,323		36,323		36,323		36,323		36,323		36,323		36,323		36,323		36,323		36,323		36,323	
Senior Claimant Diversions	82		82		82		82		82		82		82		82		82		82		82		82		82		82		82		82	
Reservoir Evaporation	10,217		10,217		10,217		10,217		10,217		10,217		10,217		10,217		10,217		10,217		10,217		10,217		10,217		10,217		10,217		10,217	
Conservation District Diversion	712		712		712		712		712		712		712		712		712		712		712		712		712		712		712		712	
Environmental Habitat Release	11,432		11,432		11,432		11,432		11,432		11,432		11,432		11,432		11,432		11,432		11,432		11,432		11,432		11,432		11,432		11,432	
Total Muni/Western Potential Capture	18,700		18,700		18,700		18,700		18,700		18,700		18,700		18,700		18,700		18,700		18,700		18,700		18,700		18,700		18,700		18,700	
Undiverted from SAR*	2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874	
Total	40,905,320		40,905,320		40,905,320		40,905,320		40,905,320		40,905,320		40,905,320		40,905,320		40,905,320		40,905,320		40,905,320		40,905,320		40,905,320		40,905,320		40,905,320		40,905,320	
Average Annual	58,528		58,528		58,528		58,528		58,528		58,528		58,528		58,528		58,528		58,528		58,528		58,528		58,528		58,528		58,528		58,528	
Senior Claimant Diversions	273		273		273		273		273		273		273		273		273		273		273		273		273		273		273		273	
Reservoir Evaporation	56,953		56,953		56,953		56,953		56,953		56,953		56,953		56,953		56,953		56,953		56,953		56,953		56,953		56,953		56,953		56,953	
Conservation District Diversion	3,967		3,967		3,967		3,967		3,967		3,967		3,967		3,967		3,967		3,967		3,967		3,967		3,967		3,967		3,967		3,967	
Environmental Habitat Release	121,026		121,026		121,026		121,026		121,026		121,026		121,026		121,026		121,026		121,026		121,026		121,026		121,026		121,026		121,026		121,026	
Total Muni/Western Potential Capture	171,389		171,389		171,389		171,389		171,389		171,389		171,389		171,389		171,389		171,389		171,389		171,389		171,389		171,389		171,389		171,389	
Undiverted from SAR*	2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874		2,291,874	
Total	40,905,320		40,905,320		40,905,320		40,905,320		40,905,320		40,905,320		40,905,320		40,905,320		40,905,320		40,905,320		40,905,320		40,905,320		40,905,320		40,905,320		40,905,320		40,905,320	

* Estimate (on a monthly basis) of the quantity of water remaining in the channel below Cuttie Weir after all diversions have occurred.

- Model input variables that are common to all scenarios include the following (variables described in OFPMODEL documentation):
- a) Values shown in table for Total Potential Capture and Undiverted from SAR are estimated using OFPMODEL and Allocation Model
 - b) Synthesized hydrology based on re-operated Bear Valley Dam
 - c) Release of continual 3 cfs from dam to account for groundwater interruption by the dam foundation
 - d) USGS gage differences and rounding accounted for in senior water claimant diversions
 - e) Conservation District diversion capacity = 300 cfs
 - f) Release frequency for environmental releases is no more than every 6 months for 8 scenarios with environmental releases
 - g) Maximum number of environmental releases = 100% of potential releases for 6 of the scenarios with environmental releases
 - h) Maximum annual diversion by Muni/Western = 200,000 afy
 - i) Percent of available dam release un-divertable through Plunge Pool Pipeline = 0%
 - j) Flood/Conservation target storages from USACE Feasibility Report and Interim Water Control Plan
 - k) Evaporation rates from USACE Feasibility Report

EXHIBIT 10

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

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

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

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

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

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

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

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

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

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

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

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