



# SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT

Established 1932

1630 West Redlands Boulevard, Suite A  
Redlands, CA 92373-8032  
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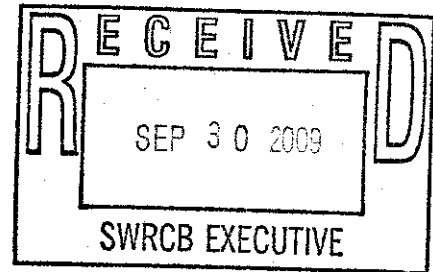
10/7/09 Board Workshop  
Draft Muni/Western Decision  
Deadline: 9/30/09 by 12 noon

P.O. Box 1839  
Redlands, CA 92373-0581  
Email: info@sbvwcd.dst.ca.us  
www.sbvwcd.dst.ca.us

September 29, 2009

**VIA ELECTRONIC MAIL**  
**(Commentletters@waterboards.ca.gov)**  
**AND OVERNIGHT DELIVERY**

Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
Division of Water Rights  
1001 I Street  
Sacramento, CA 95814



Re: Comment Letter: Draft Muni/Western Decision Workshop

Dear Ms. Townsend:

I am writing on behalf of the San Bernardino Valley Water Conservation District ("Conservation District") relating to the Public Workshop to receive comments regarding the August 27, 2009 Draft Decision (hereafter "Draft Decision") Partially Approving Applications 31165 and 31370, filed by the San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County (collectively "Muni/Western"). Pursuant to the Notice of Public Workshop issued by the State Water Resources Control Board ("Board"), the Conservation District submits the comments herein, in hopes that the Board will clarify an important issue that is not clearly addressed in the Draft Decision.

Specifically, the Conservation District seeks a clarification that like the other parties referenced in footnote 9 of the Draft Decision, it claims pre-1914 appropriative rights on the Santa Ana River. These were identified in the 1977 Judgment (defined below). If the Board intends to forbear from any statement or ruling as to the validity of the claims of pre-1914 rights, it should be consistent throughout, and do so with respect to all such claimed rights, and not a selected portion.

In this regard, the Conservation District requests the following revisions to the Draft Decision, to be incorporated into the final decision approved by the Board:

- On page 9, second paragraph, second sentence, strike "and the San Bernardino Valley Water Conservation District (Conservation District)" and amend the sentence to read:

BOARD  
OF  
DIRECTORS

Richard W. Corneille  
Clare Henry Day

Arnold L. Wright  
John Longville

Cheryl A. Tubbs  
Melody McDonald  
Manuel Aranda, Jr.

GENERAL  
MANAGER

R. Robert Neufeld

- The exhibit is a graphical representation of historical flow below Seven Oaks Dam and includes historical diversions by the Senior Water Rights Claimants.<sup>9</sup>
- On page 9, amend footnote 9 to read (deletions have been ~~stricken~~ and additions in ***bold/italics***):
  - The “Senior Water Rights Claimants” are a group of purveyors who claim pre-1914 water rights on the Santa Ana River. They are Bear Valley Mutual Water Company (and shareholders including City of Redlands), Lugonia Water Company, North Fork Water Company (and shareholders including East Valley Water District), ~~and~~ Redlands Water Company, ***and San Bernardino Valley Water Conservation District***. The Senior Water Rights Claimants receive all of their Santa Ana River water via diversions made from the Santa Ana River at the Redlands Tunnel, the New Southern California Edison Conduit, Old Southern California Edison Conduit, ~~and~~ the smaller Auxiliary River Pickup, ***and the Cuttle Weir***. (Muni/Western 5-1, p. 11; Muni/Western 4-3, p. 2-2.) The State Water Board does not express any opinion in this decision on the validity or invalidity of any of these water rights.
- On page 3, last paragraph, first sentence, add parenthetical definition “Conservation District” so that said sentence reads (additions in ***bold/italics***):
  - Protests by California Department of Fish and Game (CDFG), San Bernardino Valley Water Conservation District (***Conservation District***), and United States Forest Service were resolved through a separate settlement or memorandum of Agreement.

\* \* \* \* \*

By way of background, the Conservation District holds both appropriative licenses and pre-1914 rights for diversions from the Santa Ana River. It exercises these rights primarily at the Cuttle Weir diversion structure. The Conservation District’s most recent Statement of Water Diversion and Use, filed on or about April 23, 2007, was submitted to the Board as part of the protest to Temporary Urgency Application No. 31776, filed by Muni/Western. As set forth therein, the Conservation District’s pre-1914 rights were recognized in the Judgment filed February 7, 1977 (“1977 Judgment”) in the case Big Bear Municipal Water District v. North Fork Water Company, et al., San Bernardino County Superior Court Case No. 165493 (the “Big Bear case”). A copy of the 1977 Judgment is Attachment “1” hereto.

The 1977 Judgment resolved years of litigation between numerous entities. In the "Declaration of Rights," the Superior Court recognized the following appropriative rights held by the Conservation District:

Conservation District owns an appropriative right to divert and spread storm flows of the Santa Ana River at and below the Mouth of the Canyon, for the benefit of water right claimants within Conservation District. Said rights are derived from and based upon License No. 2831, Permit No. 2488 [8300 acre feet] and License No. 2832, Permit No. 2593 [2100 acre feet], issued by the Division of Water Rights of the California Water Resources Control Board, and from a prior statutory filing by Conservation District's predecessors dated October 6, 1911.

(Attachment 1, pp. 7-8.) It is the final recognized right – the prior statutory filing by Conservation District's predecessors dated October 6, 1911 – that the Conservation District is asking the Board to acknowledge, without expressing an opinion as to the validity, in a final decision for Applications 31165 and 31370.

The revisions requested by the conservation District are consistent with prior statements made by the Board, most specifically the Board's prior decision in Temporary Permit 21232, a copy of which is Attachment "2" hereto. In response to Application T031732 filed by Muni/Western, the Board conditioned the temporary permit for the diversion and use of water from the Santa Ana River on "the prior rights of [Conservation District] under License 2831 issued pursuant to Application 2217 *and any valid pre-1914 appropriative right confirmed by the Court.*" (Attachment 2, p. 3, item 12 [emphasis added].) The Conservation District is simply requesting that the Board recognize and follow its prior position that these pre-1914 rights are claimed, even though the Board takes no position on the validity thereof.

Indeed, this approach comports with the Board's Draft Decision to the extent it recognizes potential pre-1914 rights for Bear Valley Mutual Water Company, City of Redlands, East Valley Water District, Lugonia Water Company, North Fork Water Company, and Redlands Water Company. (Draft Decision, p. 9, fn. 9.) In Temporary Permit 21232, the Board recognized, without expressly ruling on the validity of, the pre-1914 appropriative rights of these entities to divert a specified amount of Santa Ana River water, "*to the extent that such [pre-1914] rights may exist.*" (Attachment 2, p. 3, item 11 [emphasis added].) The Board followed this approach in the Draft Decision for these entities, and the Conservation District requests that the Board do the same in the final decision for Applications 31165 and 31370.

In sum, the Conservation District merely requests that the Board revise the Draft Decision, and approve a conforming final decision, that treats the Conservation District's pre-1914 appropriative right claims the same as all other claimants.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Robert Neufeld", written in a cursive style.

Robert Neufeld  
General Manager

**ATTACHMENT "1"**

("1977 Judgment")

[Attached]

FILED ORIGINAL

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JOSEPH WARDLE  
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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO

BIG BEAR MUNICIPAL WATER DISTRICT,  
  
Plaintiff,  
  
v.  
  
NORTH FORK WATER COMPANY, et al.,  
  
Defendants.

MICROFILMED

No. 165493

JUDGMENT

This action having been pending on appeal from a prior judgment of this Court, and the parties having stipulated to a form of judgment disposing of the issues raised by the complaint, and the Court of Appeal, pursuant to stipulation, having remanded the case for proceedings in accordance with said Stipulation for Judgment, and good cause appearing

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I. DEFINITIONS AND EXHIBITS

1. Definitions. As used in this judgment, the following terms shall have the meanings herein set forth:

(a) Basin Make-up Water. Water provided by District to

1 replace water lost to San Bernardino Basin by reason of  
2 operations under terms of the physical solution herein.

3 (b) Bear Creek. That certain tributary of the Santa  
4 Ana River rising in Upper Bear Creek Watershed and flowing  
5 past the Dam and down to the confluence of said creek and  
6 river, all as shown on Exhibit "A".

7 (c) Confluence. The point at which Bear Creek joins  
8 the Santa Ana River, as shown on Exhibit "A".

9 (d) Conservation District. San Bernardino Valley Water  
10 Conservation District.

11 (e) Dam. The multiple-arch concrete dam constructed in  
12 1911 at the location shown on Exhibit "A".

13 (f) District. Big Bear Municipal Water District.

14 (g) Division Box. The structure at the discharge from  
15 Power Plant No. 3, where Mutual divides the flow from the  
16 Edison Conduit between the North Fork and Redlands Canals.

17 (h) Edison. Southern California Edison Company.

18 (i) Edison Diversion. The works and facilities of  
19 Edison at the Confluence used to divert water into the  
20 Edison Conduit.

21 (j) Edison Conduit. The canal, pipeline and tunnels  
22 extending from the Edison Diversion, through Power Plants  
23 Nos. 1, 2 and 3 to the High Line and Division Box.

24 (k) Fiscal Year. July 1 to June 30, following.

25 (l) In Lieu Water. Water which is to be provided  
26 pursuant to the Physical Solution to Mutual by District,  
27 without cost to Mutual, in lieu of releases of Lake water.

28 (m) Lake. Big Bear Lake, being the body of water

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DRIVE  
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1 impounded by the Dam.

2 (n) Lake Storage Right. The right of Mutual to use the  
3 full storage capacity of the Lake for storage of water  
4 diverted at the Dam, pursuant to Mutual's appropriative  
5 right, which storage right was expressly reserved by Mutual  
6 in its conveyance of the Lake Properties to Bear Valley  
7 Mutual Water Company Partial Liquidation Trust.

8 (o) Mill Creek Exchange. The Santa Ana River-Mill  
9 Creek Cooperative Water Project Agreement, dated May 3, 1976,  
10 as amended from time to time.

11 (p) Mouth of the Canyon. The location at which the  
12 Santa Ana River passes from its mountain canyon onto the  
13 alluvial valley overlying San Bernardino Basin, as shown on  
14 Exhibits "A" and "C".

15 (q) Mutual. Bear Valley Mutual Water Company.

16 (r) Mutual's Lake Water Operations. The calculated,  
17 hypothetical account of operation of the lake under condi-  
18 tions of In Lieu Water deliveries pursuant to the physical  
19 solution herein, which account shall be maintained by Water-  
20 master in accordance with Watermaster Criteria.

21 (s) North Fork Agreement. That certain agreement dated  
22 May 23, 1885, between Bear Valley Land and Water Company and  
23 North Fork Water Company, attached as Exhibit "E".

24 (t) Prior Right Agreements. Collectively, the North  
25 Fork Agreement and the Sunnyside Agreement, Exhibits "E" and  
26 "F".

27 (u) Prior Right Companies. Collectively, North Fork  
28 Water Company, Lugonia Water Company and Redlands Water



Company.

(v) San Bernardino Basin. The ground water basin underlying the San Bernardino Valley above the Bunker Hill Fault and downstream from the Mouth of the Canyon.

(w) Sunnyside Agreement. That certain agreement dated February 27, 1886, between The Shareholders in South Fork Ditch of the Santa Ana River, Sunnyside Division, and Bear Valley Land and Water Company, attached as Exhibit "F".

(x) Upper Bear Creek Watershed. The surface drainage area tributary to the Dam and drained by Bear Creek and its tributaries, as shown on Exhibit "A".

(y) Upper Santa Ana River Watershed. The surface drainage area tributary to the Edison Diversion on the Santa Ana River, as shown on Exhibit "A".

(z) Watermaster Criteria. The detailed engineering criteria, set forth in Exhibit "D".

Geographical Names, not otherwise defined herein, are used with reference to their appearance on Exhibits "A", "B" and "C".

2. Exhibits. The following exhibits are attached to this Judgment and by this reference are made a part hereof:

"A" -- General Location Map.

"B" -- Hydrologic Map of Upper Bear Creek Watershed.

"C" -- Map showing diversion facilities and relevant system of Mutual.

"D" -- Watermaster Operating Criteria.

"E" -- North Fork Agreement.

"F" -- Sunnyside Agreement.

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II. DECLARATIONS

A. HYDROLOGY

3. Upper Bear Creek Watershed is commonly known as Bear Valley. Its surrounding mountains rise to elevations of 8500 feet, and the watershed extends down to the Dam at elevation 6743 feet. Said watershed is drained by Bear Creek and its tributaries. Immediately easterly of Upper Bear Creek Watershed is the watershed of Baldwin Lake. The dominant geographic feature in Upper Bear Creek Watershed is the Lake, which has existed continuously since 1883. Surrounding the Lake are several mountain communities, the largest of which is Big Bear Village, situate on the southerly border of the Lake. Easterly of Big Bear Village and within Baldwin Lake Watershed is Big Bear City. Domestic water service in Upper Bear Creek Watershed is provided by Southern California Water Company, a public utility, Big Bear City Community Services District, and through individual domestic wells. All of the privately-held lands in Upper Bear Creek Watershed lie within the boundaries of District.

4. Early Santa Ana River Diversions. The earliest appropriations of water from the Santa Ana River commence in 1856 from the Santa Ana River as it traversed San Bernardino Basin. Two successor diversions developed by progressive moving of canal and diversion facilities upstream to the Mouth of the Canyon, from which the North Fork Canal distributed water northwesterly into San Bernardino Basin and the Sunnyside Ditch distributed water southwesterly to the vicinity of Redlands. Above these canals there subsequently developed ancillary facilities to serve higher ground through the Edwards Canal and High Line, respectively. The

1 North Fork and Sunnyside diversions had established and claimed  
 2 rights to substantially the entire surface flow of the Santa Ana  
 3 River at the Mouth of the Canyon by 1883, when the predecessors of  
 4 Mutual undertook to build the original dam at the Lake. In order  
 5 to preserve the prior appropriative rights of the North Fork and  
 6 Sunnyside diversions, Mutual's predecessors entered into the Prior  
 7 Right Agreements, which agreements are still in effect.

8       5. Mutual's Diversion Practices. Mutual has multiple  
 9 sources of supply, but its major, historic source is and has been  
 10 stream flow from the Santa Ana River at the Edison Diversion, the  
 11 supplementing of flows between the Edison Diversion and Mouth of  
 12 the Canyon, and releases by Edison onto the High Line and to the  
 13 Division Box. From the end of the Edison Conduit delivery is made  
 14 through the Edwards and North Fork Canals and the Redlands Canal  
 15 and High Line to satisfy the rights of Prior Right Companies and  
 16 to meet the needs of Mutual's irrigation shareholders. The  
 17 diversion facilities utilized by Mutual are shown on Exhibit "C".

18       6. District's Water Supply. District and its inhabitants  
 19 rely entirely upon the precipitation and runoff within Upper Bear  
 20 Creek Watershed for their water supplies for direct use and for  
 21 recharge of the several small ground water basins in said water-  
 22 shed. District does not have physical, or economically-feasible,  
 23 access to significant supplies of supplemental nontributary  
 24 sources of water. Although some inhabitants of District have  
 25 riparian, overlying and appropriative rights to waters of Upper  
 26 Bear Creek Watershed, neither District nor its inhabitants have  
 27 any rights to water in storage in the Lake, or the right to store  
 28 water in the Lake except to the extent that there is surplus

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1 storage capacity in the Lake not utilized by Mutual.

2 B. DECLARATION OF RIGHTS

3 7. Mutual. Mutual is the owner of an appropriative right,  
4 with the priorities of 1883 and 1909, to divert at the Dam and  
5 store in the Lake for subsequent release and beneficial use within  
6 Mutual's service area of all of the flow of Bear Creek at the Dam  
7 and Lake. Said diversion shall be at such rate as may be reason-  
8 ably necessary to meet the requirements of Mutual's stockholders,  
9 not exceeding 65,000 acre feet in any ten (10) year period, as  
10 determined by the Board of Directors of Mutual in its sole discre-  
11 tion. Said rights have become prescriptive in nature as to all  
12 water right claimants downstream from the Dam, excepting only the  
13 rights of Prior Right Companies.

14 8. Prior Right Companies. Prior Right Companies, as the  
15 successors to the earliest diversion rights at the Mouth of the  
16 Canyon, are the owners of the prior appropriative rights confirmed  
17 by the Prior Right Agreements, which contractual rights constitute  
18 a burden and charge upon the said appropriative right of Mutual.  
19 The exact nature, scope and extent of the rights of prior right  
20 companies are set forth in said Prior Right Agreements (Exhibits  
21 "E" and "F"), and said agreements are hereby confirmed and shall  
22 remain otherwise unimpaired by the declarations and determination  
23 of this Judgment.

24 9. Conservation District. Conservation District owns an  
25 appropriative right to divert and spread storm flows of the Santa  
26 Ana River at and below the Mouth of the Canyon, for the benefit of  
27 water right claimants within Conservation District. Said rights  
28 are derived from and based upon

1 License No. 2831, Permit No. 2488 [8300 acre feet] and  
2 License No. 2832, Permit No. 2593 [2100 acre feet],  
3 issued by the Division of Water Rights of the California Water  
4 Resources Control Board, and from a prior statutory filing by  
5 Conservation District's predecessors dated October 6, 1911.

6 10. San Bernardino Basin Producers within the boundaries of  
7 Conservation District have rights in and to the safe yield of said  
8 San Bernardino Basin. Said safe yield is dependent, in part, on  
9 the flow of the river at the Mouth of the Canyon and return flows  
10 from applied water delivered by Mutual to its stockholders for use  
11 overlying the Basin. Both of said sources have historically  
12 included, from time to time, waters released from Upper Bear Creek  
13 Watershed through or over the Dam.

14 11. District. District owns the Dam and reservoir behind  
15 it, subject to the right of Mutual to store water in the Lake,  
16 pursuant to its appropriative right. To the extent that, at any  
17 time, there is surplus storage capacity in the reservoir not  
18 utilized by Mutual, District has the right to store water therein,  
19 including water acquired by reason of operation of the physical  
20 solution herein decreed or from any source or sources other than  
21 the surface flow of Bear Creek and its tributaries, or from non-  
22 tributary streams provided such non-tributary water has been  
23 diverted into the Lake by Mutual.

24  
25 III. INJUNCTIONS

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27 12. Against District. District, its officers, agents and  
28 employees are hereby ENJOINED AND RESTRAINED from interfering with

1 the release of water from the Lake to meet the requirements of  
2 Mutual, except in compliance with the physical solution herein-  
3 after decreed.

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5 IV. CONTINUING JURISDICTION

6 13. Continuing Jurisdiction. Full jurisdiction, power and  
7 authority are retained and reserved to the Court for the purpose  
8 of enabling the Court, upon application of any party by motion and  
9 upon 30 days' notice hereof, and after hearing thereon, to make  
10 such further and supplemental orders or directions as may be  
11 necessary or appropriate for interpretation, enforcement or carry-  
12 ing out this Judgment. The Court may award attorneys' fees to the  
13 prevailing party in any further proceedings, pursuant to this  
14 paragraph.

15  
16 V. WATERMASTER

17 A. APPOINTMENT AND COMPOSITION

18 14. Watermaster Committee. The Court will appoint a Water-  
19 master Committee, by subsequent order, in accordance with the  
20 following procedure:

21 (a) Nominations. On or before sixty (60) days after  
22 entry of judgment herein, nominations shall be submitted by  
23 a separate pleading filed herein. For said purpose, one  
24 nominee each shall be submitted by District, Mutual and  
25 Conservation District.

26 (b) Appointment. The three nominees, if acceptable to  
27 the Court, will thereupon be appointed by such subsequent  
28 order.

1 (c) Term. Watermaster representatives shall serve for  
2 terms of five (5) years, unless sooner removed by the Court  
3 on its own motion or at the request of the party nominating  
4 any such Watermaster representative.

5 (d) Watermaster Action. Said Watermaster members,  
6 acting as a committee, shall be and constitute the Water-  
7 master, for purposes of administering the provisions of this  
8 Judgment and subsequent orders of the Court. Action of a  
9 majority of Watermaster members shall constitute action of  
10 Watermaster.

11 B. POWERS AND DUTIES

12 15. Powers and Duties. Subject to the continuing super-  
13 vision and control of the Court, Watermaster shall have and may  
14 exercise the express powers, and shall perform the duties, as  
15 provided in this Judgment or hereafter ordered or authorized by  
16 the Court in the exercise of the Court's continuing jurisdiction.

17 16. Rules and Regulations. Watermaster shall make and adopt  
18 appropriate rules and regulations for conduct of Watermaster  
19 affairs, including meeting schedules and procedures. Said rules  
20 and regulations shall be submitted to and approved by the Court.  
21 Thereafter, Watermaster may amend said rules from time to time,  
22 upon notice to all parties and with the approval of the Court. A  
23 copy of said rules and regulations, and of any amendments thereof,  
24 shall be mailed to each party.

25 17. Studies. Watermaster shall undertake such studies and  
26 investigations and collect and maintain such hydrologic and other  
27 data and records as are necessary to implement the Physical  
28 Solution herein.

1 18. Accounting. Watermaster shall make calculations and  
2 maintain accounts to reflect both actual operation of Big Bear  
3 Lake and Mutual's Lake Water Operations. Said accounts shall be  
4 maintained in accordance with Watermaster Criteria.

5 19. Watermaster Expenses. Each party shall pay the costs  
6 and expenses of the representative of such party on Watermaster.  
7 The obligation for and cost of making measurements and accumula-  
8 ting basic data shall be assumed and paid as follows:

- 9 (a) At and upstream from Dam -- District.
- 10 (b) Downstream from Dam -- Mutual and Conservation  
11 District, in shares to be agreed upon from time  
12 to time.

13 New or additional measurements, relevant hydrologic studies or  
14 other activities of Watermaster involving significant cost shall  
15 be paid pursuant to unanimous agreement entered into before such  
16 costs are incurred. In the absence of agreement, the Court will,  
17 by subsequent order, allocate any necessary common Watermaster  
18 expenses.

19 20. Reports. Watermaster shall prepare, serve on all  
20 parties and file with the Court an annual report on or before  
21 April 1 of each year, which shall set forth the accounting for  
22 water under the Physical Solution, and a report on all significant  
23 Watermaster activity during the preceding calendar year.

24 21. Review Procedures. All actions, decisions or rules of  
25 Watermaster shall be subject to review by the Court on its own  
26 motion or on timely motion by any party or Watermaster member, as  
27 follows:

- 28 (a) Effective Date of Watermaster Action. Any action,



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decision or rule of Watermaster shall be deemed to have occurred or been enacted on the date on which written notice thereof is mailed. Mailing of copies of approved Watermaster minutes to the parties shall constitute such notice to all parties.

(b) Noticed Motion. Any party or Watermaster member may, by a regularly noticed motion, apply to the Court for review of any Watermaster's action, decision or rule. Notice of such motion shall be mailed to Watermaster and to all parties. Unless otherwise ordered by the Court, such motion shall not operate to stay the effect of such Watermaster action, decision or rule.

(c) Time for Motion. Notice of motion to review any Watermaster action, decision or rule shall be served and filed within ninety (90) days after such Watermaster action, decision or rule.

(d) De Novo Nature of Proceedings. Upon the filing of any such motion, the Court shall require the moving party to notify the parties and Watermaster of a date for taking evidence and argument. On the date so designated, the Court will review de novo the question at issue. Watermaster's findings or decision, if any, may be received in evidence at said hearing, but shall not constitute presumptive or prima facie proof of any fact in issue.

(e) Decision. The decision of the Court in such proceeding shall be an appealable supplemental order in this case. When the same is final, it shall be binding upon the Watermaster and all parties.

## VI. PHYSICAL SOLUTION

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4       23. Need For Physical Solution. There exists a need for  
5 additional water for recreational and wildlife enhancement pur-  
6 poses within District. There is not an economically feasible  
7 source of supplemental water available to meet the needs of  
8 District and its inhabitants for such purposes. Any such use by  
9 District of the waters in storage in the Lake will be junior to  
10 the declared rights of Mutual and other defendants herein. Supp-  
11 lemental sources of water may, from time to time, be available  
12 within defendants' areas of use (other than Edison), but are more  
13 expensive than waters which might be diverted from storage in the  
14 Lake. In order to assure the maximum beneficial use of waters of  
15 the State, in accordance with the mandate Article X Section 2 of  
16 the Constitution, it is appropriate that the Court adopt a phys-  
17 ical solution herein.

18       24. General Plan of Operation. In general terms, the  
19 physical solution hereafter decreed will provide for retention of  
20 waters of Bear Creek in the Lake by reason of delivery of In Lieu  
21 Water to Mutual's system. The costs of In Lieu Water and Basin  
22 Make-up Water shall be borne solely by District as consideration  
23 for the right to retain an equivalent quantity of stored water in  
24 the Lake for District's account.

25       25. District's Right to Provide In Lieu Water. District  
26 shall have the right to provide In Lieu Water to Mutual, at Dis-  
27 trict's sole expense, to be delivered into Mutual's system at  
28 locations designated by Mutual, as a condition of retaining in the

1 Lake water which would otherwise be required by Mutual for its  
2 use. Such In Lieu Water may be provided from any one or more of  
3 the following sources, or any other source usable for Mutual's  
4 purposes, and of comparable quality to waters released or subject  
5 to release from the Lake:

- 6 (a) Wells in San Bernardino Basin owned by Mutual.
- 7 (b) Third party wells or other sources, which are  
8 available under contract, lease or other arrangements with  
9 Mutual.
- 10 (c) Exchange water under the Mill Creek Exchange.
- 11 (d) State Project Water.

12 Provided, that Watermaster shall determine whether production of  
13 ground water pursuant to subparagraphs (a) or (b) hereof will have  
14 an unreasonable and adverse effect on water levels in any adjacent  
15 wells. In the event of such finding, Watermaster may prohibit use  
16 of such well or wells for production of In Lieu Water until  
17 Watermaster determines that such adverse effect is eliminated.

18 Provided, moreover:

- 19 (e) High Line Obligation. Because of the requirements  
20 by Mutual for delivery of water through its High Line and to  
21 the Edwards Canal, it is necessary that a minimum of 12 cfs  
22 be diverted into the Edison Conduit from all sources, in-  
23 cluding Santa Ana River and Bear Creek water at the Edison  
24 Diversion, canyon wells and surface inflow between the Edison  
25 Diversion and the Mouth of the Canyon. To the extent that  
26 said supplies fall below 12 cfs at the forebay of Edison  
27 Power House No. 3, being the start of the High Line, District  
28 shall release water to make up any deficiency therein from

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water in storage in the Lake. Said High Line obligation shall supersede District's In Lieu Water right unless and until In Lieu Water can be provided by District to meet said High Line requirements from other sources.

(f) Dry Year Releases. In the event, by reason of natural disaster or extreme drought, or otherwise, Mutual is unable to meet its obligation under the Prior Right Agreements to Prior Right Companies, and there exists water in storage in the Lake which is not otherwise available to Mutual, District shall make such releases as are necessary to enable Mutual to meet said Prior Right obligations. In such event, District shall acquire a right to replacement of such quantities in the Lake for its account from the next natural inflow to the Lake, which would otherwise be credited to Mutual.

26. Basin Make-up Water. District's lake stabilization operations by exercise of its in lieu right may have some adverse impact on the supplies of water to the San Bernardino Basin.

27. Procedures for In Lieu Water. In the operation of District's In Lieu right, the following procedures shall be followed:

(a) District's Election to Provide In Lieu Water.

District shall, on or before April 15 of each year, notify Mutual of District's intent to provide In Lieu Water during the following fiscal year, and shall designate the maximum amount it is prepared to so provide. District may, during any year, on ninety (90) day written notice, amend or modify the amount of In Lieu Water so specified.

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(b) Mutual's Order. At such time as Mutual's board, in its sole discretion, may determine that it requires the release of water from the Lake for the use of Mutual and the Prior Right Companies, Mutual shall notify District and, to the extent that District has indicated an intent to provide In Lieu Water, Mutual shall reasonably cooperate with, and give assistance to District in obtaining water from In Lieu Water sources. Any Lake water required by Mutual and not supplied by In Lieu Water shall be provided by District by Lake releases on at least 12 hours' notice by Mutual.

(c) Costs. Costs of In Lieu Water obtained by Mutual on behalf of District shall include all actual operating, maintenance and administrative costs attributable, in good accounting practice, to the acquisition of such In Lieu Water. Said costs shall also include pump tax applicable to such water, if any. In the event any well, pump, motor, booster pump or pipeline of Mutual used for production or delivery of In Lieu Water is required to be replaced at a time when such facility is being used for the production or delivery of In Lieu Water, District shall advance the cost of replacing such item; provided, however, that at the end of ten years after the completion of such replacement Mutual will reimburse District that percentage of the cost of such replacement which the number of hours said facility has been used by Mutual for its account during such ten-year period bears to the total number of hours such facility has been used during the ten-year period, plus interest on such amount at the rate of six percent (6%) per annum. In the event any

1 such facility is being used by Mutual for its own account at  
 2 the time of such replacement, Mutual shall pay such replace-  
 3 ment cost and shall be reimbursed by District in the same  
 4 manner as provided above. All such replacement facilities  
 5 shall be and remain the property of Mutual.

6 (d) Payment. Any costs incurred by Mutual with re-  
 7 lation to In Lieu Water deliveries shall be paid by District  
 8 within thirty (30) days of receipt of approved billing  
 9 therefor. All bills for such In Lieu Water shall be sub-  
 10 mitted to and approved by Watermaster, provided, however,  
 11 that Watermaster may, if it deems it to be appropriate,  
 12 require District to maintain on deposit reasonable sums to  
 13 insure advance payment of current costs in order to relieve  
 14 Mutual of any financial burden in connection with said  
 15 In Lieu Water.

16 28. Procedure for Basin Make-up Water. Watermaster shall  
 17 annually calculate the net amount of these various adjustments.  
 18 District shall be obligated to periodically balance any resulting  
 19 net deficiencies in recharge to the San Bernardino Basin as  
 20 Watermaster shall determine. Balancing of any deficiency in said  
 21 account shall occur at least once in each ten (10) year period,  
 22 the time of delivery within said period to be at the option of  
 23 District; provided, that in no event shall such negative impact be  
 24 allowed to exceed 15,000 acre feet; provided, further, that if the  
 25 net deficiency exceeds 10,000 acre feet, District shall reduce the  
 26 net deficiency to at least 10,000 acre feet within the succeeding  
 27 two (2) years; provided, however, that District shall, at the  
 28 election of Conservation District on or before January 1, 1981,

1 reimburse Conservation District for the cost of up to 10,000 acre  
2 feet of replenishment water, at not to exceed the Mill Creek Ex-  
3 change price to members. Such payment shall result in an equiva-  
4 lent credit to District's account for Basin Make-up Water. To  
5 the extent practical, recharge will be directed to the sub-basins  
6 of San Bernardino Basin proportionally to the pattern of extrac-  
7 tion of In Lieu Water hereunder.

8 29. Accounting. Watermaster shall maintain three basic  
9 accounts, in accordance with Watermaster Operating Criteria, as  
10 follows:

11 (a) District's Lake Water Operation. A detailed  
12 account to reflect actual operation of the Lake by District  
13 shall be maintained.

14 (b) Mutual's Lake Water Operations. In addition, a  
15 corollary account shall be maintained to simulate the effect  
16 of Mutual's operations with regard to Lake water under the In  
17 Lieu Water operations.

18 (c) Basin Make-up Account. An account of District's  
19 annual and cumulative obligation for Basin Make-up Water  
20 shall also be maintained.

21 30. District's Obligation to Maintain Dam. Pursuant to  
22 District's stipulation and agreement, District shall perpetually  
23 maintain and protect the Dam and Lake to preserve and maintain the  
24 existing usable storage capacity of the Lake and shall comply with  
25 all dam safety regulations of the State of California or other  
26 appropriate public authority. No excavation or filling of the  
27 Lake or any part thereof shall be done within 500 feet of the Dam,  
28 except as necessary for repair, maintenance or replacement of the

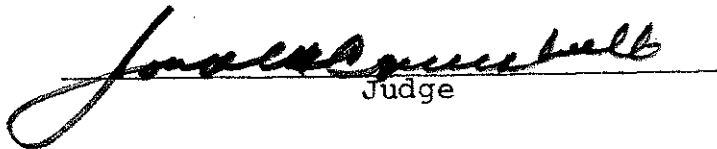
1 Dam.

2 31. District to Hold Mutual Harmless. District shall hold  
3 Mutual free and harmless from any and all liability, cost or ex-  
4 pense (including attorney's fees) arising from District's opera-  
5 tion of the Lake pursuant to the Lake Surface Rights, and shall  
6 cause Mutual to be named as an additional insured on any public  
7 liability insurance policies which District may obtain covering  
8 its operation of the Lake.

9 32. Physical Solution Agreement. That certain "Physical  
10 Solution Agreement" heretofore entered into between District,  
11 Mutual and Conservation District on December 23, 1976, is super-  
12 seded by this Judgment.

13 33. Costs. No party shall recover any costs in this pro-  
14 ceeding from any other party.

15 DATED: ~~January~~ FEBRUARY 4, 1977.

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18 Judge

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**ATTACHMENT "2"**

("Temporary Permit 21232")

[Attached]

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

DIVISION OF WATER RIGHTS

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

**TEMPORARY PERMIT 21232**

Application T031732 of

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

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

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

1. Source of water

Source:

Tributary to:

Santa Ana River

Pacific Ocean

within the County of San Bernardino

2. Location of point of diversion and redirection

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

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

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

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

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

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

(0510999)

10. This permit shall not be construed as conferring upon the Permittees right of access to facilities of the U.S. Army Corps of Engineers. (0000022)
11. This permit is specifically subject to the prior rights of Bear Valley Mutual Water Company, City of Redlands, East Valley Water District, Lugonia Water Company, North Fork Water Company and Redlands Water Company to divert the first 88 cubic feet per second of the natural flow of the Santa Ana River pursuant to pre-1914 appropriative right, to the extent that such rights may exist. (00000T)
12. This permit is specifically subject to the prior rights of San Bernardino Valley Water Conservation District (Conservation District) under License 2831 issued pursuant to Application 2217 and any valid pre-1914 appropriative right confirmed by the Court. (00000T)
13. In the event that there is unappropriated water being released from Seven Oaks Reservoir in excess of the instantaneous demands/diversion capacity of Bear Valley Mutual Water Company et al. and the Conservation District, the Permittee may divert or divert such quantities of water. (00000T)
14. Nothing in this Permit shall be construed as authorizing any diversions contrary to the provisions of the December 19, 2002 Biological Opinion issued by United States Fish and Wildlife Service for operation of Seven Oaks Dam, including flow releases for downstream over-bank inundation to preserve State and federally listed threatened and endangered species and their habitat.

#### STANDARD TERMS AND CONDITIONS

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

- A. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)
- B. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board (State Water Board) until a license is issued. (0000010)
- C. Permittee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by said State Water Board, reasonable access to project works to determine compliance with the terms of this permit. (0000011)
- D. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of State Water Board in accordance with law and in the interest of the public welfare to

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

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

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

(0000012)

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

(0000013)

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

(0000014)

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

(0000015)

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

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

(0000063)

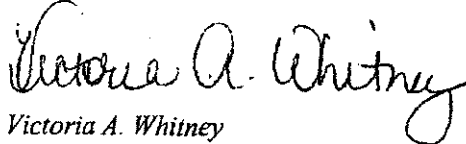
*This permit is issued and permittee takes it subject to the following provisions of the Water Code:*

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

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

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

STATE WATER RESOURCES CONTROL BOARD



Victoria A. Whitney  
Deputy Director for Water Rights

Dated: JAN - 6 2009