

STATE WATER RESOURCES CONTROL BOARD

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DIV. OF WATER RIGHTS SACRAMENTO

BEFORE THE STATE WATER RESOURCES CONTROL BOARD STATE OF CALIFORNIA

In re Hearing to Consider Water Right Applications 31165 and 31370 of San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County; Application 31174 of Orange County Water District; Application 31369 of Chino Basin Watermaster; Application 31371 of San Bernardino Valley Water Conservation District; and Application 31372 and Wastewater Change Petition WW-0045 of the City of Riverside

STIPULATION REGARDING LOCAL SPONSORS' PROTESTS OF WATER RIGHT APPLICATIONS 031165 AND 031370

Applicants San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County (collectively "Muni/Western") and the Orange County Flood Control District, Riverside County Flood Control and Water Conservation District, and San Bernardino County Flood Control District (collectively "Local Sponsors") hereby stipulate and agree as follows.

RECITALS

- A. Muni/Western has filed with the State Water Resources Control Board ("SWRCB") water right Applications 31165 and 31370 (collectively "Applications"). Under the Applications, Muni/Western propose to appropriate up to 200,000 acre-feet per year from the Santa Ana River and its tributaries.
- B. The Local Sponsors protested the Applications by written protests dated July 17, 2002 and March 27, 2003 (collectively "Protests").
- C. Pursuant to Notice of Public Hearing dated February 16, 2007, as amended, the SWRCB commenced a hearing on the Applications and other matters ("Hearing") on May 2, 2007.
- D. Muni/Western and the Local Sponsors have negotiated certain principles for agreement for water conservation at Seven Oaks Dam attached hereto as Exhibit A.
- E. The principles for agreement provides that: the Local Sponsors and Muni/Western agree that the Seven Oaks Dam was constructed for the purpose of controlling floods along the Santa Ana River and that flood control is its primary purpose; that this agreement does not intend to infer upon or infringe upon the U.S. Army Corps of Engineers' approvals in these matters; and that the Local Sponsors support efforts by Muni/Western to investigate and, if feasible, to implement water conservation at Seven Oaks Dam as long as the Dam's primary purpose for flood control is not compromised.

F. The principles for agreement provides that the Local Sponsors shall grant Muni/Western physical access (such as through an encroachment permit) to Seven Oaks Dam and nearby San Bernardino properties to conduct near term studies and investigations. The Local Sponsors also agree to grant Muni/Western physical access (such as through an encroachment permit) for construction downstream of the plunge pool as defined in the Muni/Western Final Environmental Impact Report (e.g., Cuttle Weir diversion, etc.).

G. Muni/Western and the Local Sponsors desire to enter into this Stipulation for the purposes of (1) confirming Muni/Western's and the Local Sponsors' commitment to continue to negotiate in good faith and as expeditiously as possible toward an access agreement and (2) confirming the Local Sponsors' non-opposition to the SWRCB's issuance of appropriate water right permits in accordance with the Applications, subject to the inclusion by the SWRCB of terms and conditions in such permits as described in paragraph 2 of this Stipulation.

In this context, Muni/Western and the Local Sponsors stipulate and agree as follows:

1. Access Agreement. Consistent with the principles for agreement in Exhibit A, Muni/Western and the Local Sponsors commit to continue to negotiate in good faith and as expeditiously as possible toward an access agreement. Construction and operation of water conservation facilities at Seven Oaks Dam will not be implemented until an access agreement has been executed by all parties, which is anticipated within 12 months of the completion of the Feasibility Study being prepared by the U.S. Army Corps of Engineers.

2. Access Permit Term. Muni/Western and the Local Sponsors stipulate and agree that the following term and condition be added to all water rights permits granted by the SWRCB to Muni/Western pursuant to the Applications:

This permit shall not be construed as conferring upon permittee the right of access to Seven Oaks Dam, the points of diversion, and lands necessary for related facilities, or the lands necessary for inundation for water storage. Permittee shall not commence construction and operation of water diversion facilities at Seven Oaks Dam without a written access agreement from the Santa Ana River Mainstem Project Local Sponsors.

3. Protests to Applications. The Local Sponsors stipulate and agree that, consistent with the other provisions of this Stipulation and subject to inclusion by the SWRCB of the permit term substantially as set forth in paragraph 2, above, the Local Sponsors do not object to the granting of water right permits by the SWRCB consistent with Application Nos. 31165 and 31370, as amended.

4. No Waiver or Admissions. Notwithstanding any other terms of this Stipulation, the Parties stipulate and agree that nothing in this Stipulation shall operate or be interpreted to waive any statutory rights or powers of either party. Nothing in this Stipulation shall be interpreted as an admission by the Local Sponsors that Muni/Western has authority to acquire access to Seven Oaks Dam through eminent domain. Nothing in this Stipulation shall be interpreted as an admission by Muni/Western that the permit term terminates Muni/Western's right to commence an eminent domain action to obtain access to Seven Oaks Dam.

Dated: May 8, 2007

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Dated: May 8, 2007

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District, Riverside County Flood Control
and Water Conservation District and San
Bernardino County Flood Control District

Exhibit A

Principles for Agreement between Muni/Western and the Local Sponsors for Muni/Western Water Conservation at Seven Oaks Dam

- 1) Local Sponsors and Muni/Western agree that the Seven Oaks Dam (SOD) was constructed for the purpose of controlling floods along the Santa Ana River and that flood control is its primary purpose. This agreement does not intend to infer upon or infringe upon the U.S. Army Corps of Engineers' approvals in these matters.
- 2) Local Sponsors and Muni/Western further agree that water availability and supply is an important issue in Southern California and that SOD potentially offers an excellent opportunity to accomplish water conservation.
- 3) Local Sponsors support efforts by Muni/Western to investigate and, if feasible, to implement water conservation at SOD as long as the Dam's primary purpose for flood control is not compromised.
- 4) Muni/Western acknowledge that the Local Sponsors and the U.S. Army Corps of Engineers are continuing to work with various State and Federal agencies to negotiate mitigation for the environmental impacts associated with the construction and operation of SOD. Muni/Western further acknowledge that the mitigation may involve periodic releases of waters captured behind SOD and that waters needed for such mitigation may not be available for water conservation. Local Sponsors are open to considering alternative mitigation methods as might be suggested by Muni/Western or others but retain the right to select the alternative(s) that is the most feasible in Local/Sponsors' judgment.
- 5) In addition to normal SOD operations, Muni/Western acknowledge that Local Sponsors and the U.S. Army Corps of Engineers may at times release waters captured behind SOD in order to conduct emergency operations, repairs, tests or critical operations and maintenance activities and, that such waters may not be available for water conservation. Muni/Western further agree that Local Sponsors are not expected to reimburse Muni/Western for any released water for those purposes. If and when such releases are necessary, Local Sponsors agree to afford to Muni/Western as much advance notice and coordination as is reasonably possible for the purpose of maximizing water conservation.
- 6) Parties agree to continue to negotiate in good faith and as expeditiously as possible toward an access agreement. Construction and operation of water conservation facilities at SOD will not be implemented until an access agreement has been executed by all parties, which is anticipated within 12 months of the completion of the Feasibility Study being prepared by the U.S. Army Corps of Engineers.
- 7) Local Sponsors will grant physical access (such as through an encroachment permit) to SOD and nearby San Bernardino properties to Muni/Western to conduct near term studies and investigations. Local Sponsors also agree to grant physical access (such as through an

encroachment permit) for construction downstream of the plunge pool as defined in the Muni/Western FEIR (e.g., Cuttle Weir diversion etc.).

- 8) Muni/Western's proposed access for construction and implementation of water conservation activities at SOD would be conditioned on obtaining final approvals to re-operate SOD for water conservation and that water conservation not interfere with flood control operations or environmental mitigation. Water conservation activities downstream of the plunge pool would not be subject to this provision provided they are consistent with authorized flood control operations and environmental mitigation.
- 9) Muni/Western agrees to pay 100% of the incremental cost of adding water con to SOD, which includes, but is not limited to, the full payment for new water conservation facilities, the additional O&M costs, and Local Sponsors' staff time spent on water con related activities. Local Sponsors will continue to be responsible for all the costs related to the flood operations of SOD.
- 10) Parties agree to negotiate mutually acceptable indemnification. It is anticipated that said indemnification will be modeled after the mutual indemnification provision in the Operations Agreement between OCFC and OCWD.
- 11) Consistent with prior actions of the Muni/Western Boards of Directors, Muni/Western will remove all references in their applications and testimony to the use of eminent domain as it pertains to Local Sponsors. To the extent eminent domain references have been made within the application process, Muni/Western will replace said references with this agreement through written actions and verbal testimony.
- 12) In recognition of the above mutual agreement the Parties will enter into a Stipulation whereby the Local Sponsors will withdraw their water rights protest on the condition that the SWRCB add an access term and condition to any Muni/Western permits that Muni/Western shall not commence construction and operation of water diversion facilities at Seven Oaks Dam without a written access agreement from the Local Sponsors..
- 13) Notwithstanding any other terms of this agreement, the agreement to negotiate toward an access agreement shall not operate or be interpreted to waive any statutory rights or powers of either party.
- 14) Nothing in this agreement shall be interpreted as an admission by the Local Sponsors that Muni/Western has authority to acquire access to Seven Oaks Dam through eminent domain. Nothing in this agreement shall be interpreted as an admission by Muni/Western that the permit term terminates Muni/Western's right to commence an eminent domain action to obtain access to Seven Oaks Dam.