

## STIPULATION FOR DISMISSAL OF PROTEST

This Stipulation is made and entered into this 29th day of March, 2007 by and between the City of Riverside ("City") and the California Department of Fish and Game ("CDFG"), collectively referred to as the ("Parties.")

### RECITALS

1. City filed Application No. 31372 on November 6, 2002 with the California State Water Resources Control Board ("SWRCB") for a water right permit to divert water from the Santa Ana River year-round at a maximum rate of 75 cfs, with a maximum diversion of 41,400 afa for municipal, industrial and agricultural uses. City subsequently filed Wastewater Change Petition WW-0045 on December 1, 2006 to decrease its discharge of treated wastewater to the Santa Ana River by approximately 10,000 to 11,000 afa.

2. CDFG protested Application No. 31372 because of the potential adverse effects of the diversions on fish and wildlife resources and their habitats; particularly that of the federally threatened Santa Ana Sucker.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the Parties do agree as follows:

1. CDFG hereby withdraws its protest to Application 31372 based upon the terms and conditions set forth below. Further, CDFG agrees to not submit a protest to City's pending Wastewater Change Petition WW-0045.

2. City agrees to continue its existing monthly monitoring and report the results of such monitoring annually to CDFG in a form approved by the Department. Reporting should include at a minimum the following: Average monthly flow data that indicates any changes in the amount of flow in the Santa Ana River caused by changes in City's discharge of effluent from its wastewater treatment facility.

3. The Parties do not anticipate an impact on fish, wildlife or other instream beneficial uses ("Resources") as a result of City's requested appropriation described in Application 31372 or Wastewater Change Petition WW-0045. The parties agree that they will meet annually for the first five years after a permit for appropriation of water or wastewater change is issued to confirm that no such impacts have resulted.

4. In the event that either Party determines that City's actual appropriation pursuant to a permit issued under Application 31372 or a wastewater change issued under WW-0045 causes adverse impacts on the Resources, then the Parties agree to meet and confer and work together in good faith to develop a mechanism for the immediate mitigation of such impacts.

5. In the event the Parties are unable to agree as to either the impacts of City's appropriation on the Resources or a mitigation mechanism within 60 days from the date that one party gives written notice that it believes an adverse impact has occurred, they will jointly request that the SWRCB, subject to its retained jurisdiction over City's permit, determine

whether City's appropriation is the cause of negative impacts on the Resources and requires amendment of City's permit in order to avoid such impacts. The Parties shall each have the opportunity to submit evidence to the SWRCB in regard to their dispute.

6. The Parties agree that City will provide a copy of this Stipulation to the SWRCB as soon as possible upon execution by all Parties, and present it as evidence on the date of the hearing regarding Application 31372 and WW-0045. City shall request that the SWRCB include the following among the conditions of any permit issued pursuant to Application No. 31372 or WW-0045:

- i. City's implementation of the measures set forth in Sections 2, 3, 4, and 5 above; and
- ii. The terms and conditions of this Stipulation shall bind any transferees and assignees of the water rights granted under Application 31372.

7. CDFG shall not be precluded from appearing as an interested party in the hearing on the Santa Ana River applications and petition, but shall not oppose the SWRCB's issuance of a permit or wastewater change petition to City upon the conditions described in paragraph 6, above, and shall not maintain a position inconsistent with this Stipulation.

8. This Stipulation sets forth the entire agreement of the Parties. No changes or amendments of this Stipulation shall be binding unless agreed to in writing by the Parties.

9. This Stipulation may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

**IN WITNESS WHEREOF**, the Parties have executed this Stipulation as of the dates written below.

Date: March 29, 2007

CITY OF RIVERSIDE

By: [Signature]

Title: Assistant City Manager

Attest: [Signature]  
City Clerk

Date: \_\_\_\_\_

CALIFORNIA DEPARTMENT OF FISH AND GAME

By: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM  
CITY ATTORNEY'S OFFICE  
[Signature]  
Deputy City Attorney

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Date: \_\_\_\_\_

CITY OF RIVERSIDE

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: 3/27/07

CALIFORNIA DEPARTMENT OF FISH AND GAME

By: 

Title: Regional Manager