

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

DIVISION OF WATER RIGHTS

In the Matter of Wastewater Petition WW0095

San Bernardino Valley Municipal Water District

**ORDER APPROVING CHANGE IN POINT OF DISCHARGE, PLACE OF
USE, PURPOSE OF USE, AND QUANTITY OF DISCHARGE**

SOURCE: Santa Ana River

COUNTY: San Bernardino

WHEREAS:

1. On September 16, 2016, the San Bernardino Valley Municipal Water District (Valley District) filed Wastewater Change Petition WW0095 with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), pursuant to Water Code section 1211. The purpose of the petition is for the Valley District to obtain the State Water Board's authorization for the construction and operation of the Sterling Natural Resources Center (SNRC). The SNRC is to be jointly owned by the Valley District and the East Valley Water District (East District). The petition seeks to change the point of discharge, place of use, purpose of use and quantity of discharge of treated wastewater currently discharged to the Santa Ana River.
2. Water Code section 1211 requires the owner of a wastewater treatment plant to obtain approval from the State Water Board prior to making any change in the point of discharge, place of use, or purpose of use of treated wastewater where changes in the discharge or use of treated wastewater result in decreasing the flow in any portion of a watercourse. The Valley District has not yet obtained approval of any such changes under Water Code section 1211.
3. The East District service area currently generates wastewater at an approximate rate of six million gallons per day (mgd) for a total annual amount of approximately 6,725 acre-feet per year (afy). Pursuant to an agreement, the East District conveys wastewater generated within its service area to the City of San Bernardino (City) for treatment. The wastewater receives primary and secondary treatment at the San Bernardino Water Reclamation Plant (Plant) and tertiary treatment at the Rapid Infiltration and Extraction Facility (RIX). After treatment at the RIX, the treated wastewater is discharged to the Santa Ana River.
4. The SNRC is a wastewater treatment facility to be built within the City of Highland. The SNRC will have the capacity to treat up to 10 mgd of wastewater generated within the East District service area, which is located entirely within the Valley District service area. The SNRC will use bio-membrane technology to produce disinfected tertiary recycled water (Title 22 quality water) for Municipal, Industrial, Domestic, Irrigation, Heat Control, Frost Protection, and Fish and Wildlife Preservation and Enhancement use. Once constructed, all wastewater generated within the East District service area will be delivered to the SNRC for treatment.

5. Redirection of wastewater generated within the East District service area to the SNRC will reduce the amount of treated wastewater discharged from the RIX to the Santa Ana River by approximately 6 mgd. Once treated at the SNRC, the water will be conveyed primarily to City Creek. During peak flows, water will be conveyed to underground storage within existing basins currently operated by the City of Redlands (Redlands Basins). Currently, the San Bernardino basin area is managed by the Western-San Bernardino Watermaster pursuant to the Western Judgment (*Western Municipal Water District of Riverside County v. East San Bernardino County Water District*, Case No. 78426). When necessary, treated wastewater may also be sent to the RIX for discharge to the Santa Ana River. Water delivered to City Creek, the Redlands Basins and the RIX will be metered. All extraction wells in the San Bernardino basin area are metered and the results are reported annually to the Western-San Bernardino Watermaster.
6. Discharge of treated wastewater from the RIX to the Santa Ana River is currently authorized by the Santa Ana Regional Water Quality Control Board under Order No. R8-2013-0032 and NPDES Permit No. CA8000304.
7. The Valley District is participating in the development of the Upper Santa Ana River Habitat Conservation Plan (HCP), a collaborative effort among the water resource agencies of the Santa Ana River watershed, in partnership with the U.S. Fish and Wildlife Service (Service), the California Department of Fish and Wildlife (Department), and several other government agencies and stakeholder organizations. The purpose of the Upper Santa Ana River HCP is to enable the water resource agencies to continue to provide and maintain a secure source of water for the residents and businesses in the watershed, and to conserve and maintain natural rivers and streams that provide habitat for a diversity of unique and rare species in the watershed. The protection of these habitats and the river systems they depend on also provides recreational opportunities for activities such as hiking, fishing, and wildlife viewing. The Upper Santa Ana River HCP will specify how species and their habitats will be protected and managed in the future and will provide the incidental take permits needed by the water resource agencies under the federal and state endangered species acts to maintain, operate, and improve their water resource infrastructure.
8. For the purposes of this Order, the State Water Board considers the following information as the Valley District's existing point of discharge, place of use, and purpose of use of treated wastewater:
 - a. The point of discharge is the following: City of San Bernardino Rapid Infiltration and Exfiltration Facility Discharge Point at North 1,838,060 feet and East 6,757,195 feet by California Coordinate System 1983, Zone 5, being within NE ¼ of SE ¼ of Section 36, T1S, R5W, SBB&M;
 - b. There is no current place of use; and,
 - c. There is no current purpose of use.
9. Summary of Protests

On September 22, 2016, the Division issued a public notice of the petition in accordance with Water Code section 1703. The Division received the following protests:

Protestant	Basis of Protest	Date of Protest
Center for Biological Diversity	Environmental	September 27, 2016
City of Riverside	Environmental, Prior Rights	October 3, 2016
U.S. Fish and Wildlife/California Department of Fish and Wildlife	Environmental	October 10, 2016

City of San Bernardino	Environmental, Contrary to Law, Prior Rights, Public Interest	October 10, 2016
Anthony Serrano	Environmental, Contrary to Law	October 10, 2016

9.1 *Center for Biological Diversity*

The protest submitted by the Center for Biological Diversity alleges that approval of the petition would result in an adverse environmental impact. The Center alleges that a reduction in surface flow in the Santa Ana River would adversely affect downstream environmental resources in the Santa Ana River, including instream habitat for the Santa Ana sucker (*Catostomus santaanae*) and water quality, including temperature.

On November 10, 2016, the Center for Biological Diversity submitted an email to the Division withdrawing its protest.

9.2 *City of Riverside*

The protest submitted by the City of Riverside alleges that approval of the petition would result in an adverse environmental impact and injury to adjudicated water rights in the Upper Santa Ana River watershed. The City of Riverside alleges that approval of the petition would result in an increase in Total Dissolved Solids (TDS) concentrations in its groundwater supply and the potential for reductions in native groundwater being considered as a diluent source due to future projects. The City of Riverside further alleges that approval of the petition would impair the ability for the City of San Bernardino to maintain the discharge of at least 16,000 afy of treated wastewater to the Riverside North basin, as specified in the Orange County Judgment (*Orange County v. the City of Chino et al. Al.*, Orange County Superior Court No. 117628) and the Western Judgment.

On October 27, 2016, the City of Riverside submitted a letter to the Division withdrawing its protest.

9.3 *U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife*

The joint protest submitted by the U.S. Fish and Wildlife Service (Service) and the California Department of Fish and Wildlife (Department) alleges that approval of the petition would result in an adverse environmental impact. The Service and the Department allege that the reduction in surface flow has the potential for harm to fish and wildlife resources and their Santa Ana River habitats. The protest recommended inclusion of the following conditions in any order approving the petition:

Condition 1: Incidental take authorization, either through the execution of the Upper Santa Ana River HCP or through other mechanisms, for California Endangered Species Act and federal Endangered Species Act listed species shall be obtained by the Valley District before the SNRC diversion of 6 mgd of wastewater from the Plant and RIX, as proposed in the Petition, shall be permitted to occur.

Condition 2: If incidental take authorization is obtained through a mechanism other than the Upper Santa Ana River HCP, the Valley District shall complete early consultation with the Service and the Department to facilitate the development of a Habitat Mitigation and Monitoring Plan (HMMP) that will address potential impacts to riparian habitat in the Santa Ana River and City Creek, and include specific thresholds and/or success criteria to protect fish and wildlife resources. The Service and the Department shall approve the HMMP prior to the SNRC commencing operation.

By letter dated November 14, 2016, the Valley District responded to the protest and accepted the two conditions proposed by the Service and the Department, thereby resolving the protest.

9.4 *City of San Bernardino*

The protest submitted by the City of San Bernardino (City) alleges that approval of the petition would be contrary to law, result in an adverse environmental impact, not serve the public interest, and result in injury to the City's prior rights.

The City's protest is dismissed. A detailed discussion of the protest allegations and the reasons for dismissal are provided below.

9.4.1 *Contrary to Law*

The City contends that approval of the petition would be contrary to law because it would frustrate the ability of the City to meet its discharge obligations set forth in its 1969 Agreement with the Valley District and related court rulings. The City currently discharges between 28,000 and 34,000 afy from the RIX into the Santa Ana River in order to meet its obligations to the Valley District under the 1969 Agreement designed to ensure the Valley District's compliance with the terms of the Orange County Judgment and the Western Judgment. That Agreement requires that the City discharge at least 16,000 afy to provide flows and protect downstream rights. The SNRC project would reduce those discharges by approximately 6,700 afy, leaving discharges by the City from the RIX to range between 21,300 afy to 27,300 afy. These discharges are sufficient to meet the discharge requirements under the 1969 Agreement. Since the Valley District is bound to its commitments under the Western and Orange County judgments, and adherence by the Valley District to those commitments is a condition of this order, approval of the petition is not contrary to law.

The City also claims that the petition is contrary to law on the basis that East District is not currently authorized by the San Bernardino County Local Agency Formation Commission (LAFCO) to provide wastewater treatment and disposal services. A court of competent jurisdiction will ultimately determine whether the actions of East District are contrary to law. As a condition of this order, the Valley District is required to obtain all necessary approvals from Federal, State and local agencies prior to construction and operation of the project.

9.4.2 *Environmental Impact*

The City's protest indicates that the City is currently litigating the adequacy of the Valley District's final Environmental Impact Report (EIR) for the SNRC project. The litigation is based on the final EIR's alleged failure to adequately disclose and analyze impacts including: 1) impacts to groundwater quality due to high levels of TDS anticipated in the SNRC's effluent; 2) impacts to the Santa Ana River and Santa Ana Sucker from supplemental flow sources from groundwater wells to make up for reduced flows at the RIX facility; and 3) potential stranding of Santa Ana Sucker by diurnal fluctuations in discharges occurring due to reduced discharges to City Creek during the late evening and early morning hours.

As a responsible agency under the California Environmental Quality Act (CEQA), the State Water Board is required to assume that the final EIR fully meets the requirements of CEQA. (Cal. Code Regs., tit. 14, § 15231, subd. (b).) The final EIR addresses these

concerns with appropriate mitigation measures. A court of competent jurisdiction will ultimately determine the adequacy of the final EIR. This order incorporates the mitigation terms of the final EIR and any amendment thereof that may arise from subsequent litigation, and that are within the purview of the State Water Board. As a condition of this order, the Valley District is required to obtain all necessary approvals from Federal, State and local agencies.

9.4.3 *Public Interest*

The City's protest also alleges that the project is not in the public interest due to East District's failure to follow the LAFCO process. A court of proper jurisdiction will ultimately determine whether East District's actions are contrary to law. However, as stated in this order, the Valley District is required to obtain all necessary approvals from Federal, State, and local agencies prior to construction and operation of the project.

The City also alleges that the petition is against the public interest due to fiscal impact. The City cites a third party estimate it commissioned, which concluded that the cost of constructing and operating the SNRC project will be approximately \$300 million, twice the cost estimated by the Valley District's analysis. The State Water Board's authority to examine whether a change petition is in the public interest includes the authority to consider a proposed project's financial viability. At the same time, market forces and public opinion will often prevent non-viable projects from being built. The State Water Board is reluctant to second-guess the financial viability of a project, such as the SNRC, that has already been vetted through the CEQA and other public processes.

Potential fiscal impact should be weighed against the potential public interest benefits of the project. The SNRC proposes to recycle treated wastewater and to recharge local groundwater supplies for Municipal, Industrial, Domestic, Irrigation, Heat Control, Frost Protection and Fish and Wildlife Preservation and Enhancement uses. The State Water Board has a Policy for Water Quality Control for Recycled Water (Recycled Water Policy), originally adopted on February 3, 2009 and amended on January 22, 2013. The purpose of the Recycled Water Policy is to increase the use of recycled water from municipal wastewater sources. One of the goals for California, as stipulated in the Recycled Water Policy, is to increase the use of recycled water over 2002 levels by at least one million acre-feet per year by 2020, and by at least two million acre-feet per year by 2030. The Valley District's project, as proposed in the petition, is consistent with the purpose of the Recycled Water Policy.

On balance, the SNRC will help California meet the goals of the Recycled Water Policy. This is consistent with the public interest. There may be a disputed issue of fact between the City and Valley District as to whether the SNRC will cost more than projected. The material issue, however, is whether the SNRC costs too much, in light of its benefits, to justify being built. The City does not make this argument. There is not substantial evidence in the City's protest, its January 4, 2017 response, or in light of the whole record to support such an allegation. Accordingly, there is no disputed issue of material fact as to the SNRC's financial viability.

9.4.4 *Injury to Prior Rights*

The City's protest alleges that approval of the petition would impair the City's superior rights to the treated wastewater it discharges from its RIX facility. The City cites Water Code section 1210, claiming that the City, as owner of the RIX treatment plant, holds the

exclusive right to the treated wastewater as against anyone who has supplied the water discharged into the wastewater collection and treatment system.

The petition does not assert a prior right to wastewater that has been treated by the City. The petition proposes to change the location of the point of discharge, place of use, and purpose of use of untreated wastewater of East District in furtherance of the SNRC project. Water Code section 1210 does not give the City a prior right to untreated wastewater generated by East District. Since 1984, the East District has provided untreated wastewater to the City under a pay as you go, optional, per dwelling service relationship. Although the East District was required to provide all of its raw sewage to the City under a Joint Powers Authority agreement prior to 1984, the JPA was amended in 1984 to make the discharge requirement optional. Rights would not attach under Water Code 1210 until the City actually receives and treats East District's wastewater. The petition merely proposes to send East District's untreated wastewater elsewhere per East District's contract with the City under the JPA. Therefore, the petition does not impair the prior rights of the City.

9.5 *Anthony Serrano*

The protest submitted by Anthony Serrano alleges that approval of the petition would be contrary to law and result in adverse environmental impacts. Subsequent correspondence from Mr. Serrano received after the close of the protest period included the apparent addition of a protest concern that approval of the petition would not serve the public interest.

Mr. Serrano's protest is dismissed. A detailed discussion of the protest allegations and the reasons for dismissal are provided below.

9.5.1 *Contrary to Law*

The protest states that "[t]he original EIR was based on a CEQA Plus type that is not authorized under California CEQA law in Article 11, Types of EIR's, Sections 15160-15170. The type of EIR should have been an 'EIR-EIS' because the surrounding and affected areas are part of the Santa Ana River Mainstem Project authorized by the United States Congress in 1978 and managed by the U.S. Army Corps of Engineers (Corps). A December 1989 Local Cooperation Agreement by the USACE and Local Sponsors requires Federal approvals."

The Valley District contends in its answer that, in addition to meeting the EIR requirements of CEQA, the Valley District also complied with the separate environmental review obligations imposed by the State Water Board on applicants seeking funding from the State Revolving Fund (SRF). The Valley District argues that the SRF is subject to federal environmental regulations, and as such must comply with specific "CEQA-Plus" requirements established by the U.S. Environmental Protection Agency in its operating Agreement with the State Water Board for administering the SRF program. Therefore, the District contends that the City has complied with the CEQA-Plus requirements of the SRF funding process as well as CEQA.

The Valley District's answer further argues that the Local Cooperation Agreement (LCA) between the Corps and the Local Sponsors of the Mainstem Project contains no provision requiring federal action or approval. It contends that the Serrano protest does not provide a sufficient basis to conclude that the Mainstem Project provides federal National Environmental Policy Act (NEPA) jurisdiction over the SNRC.

Mr. Serrano's January 13, 2017 letter raised new arguments regarding CEQA compliance, both with respect to compliance with the requirements of Assembly Bill 52 (2013-2014 Reg. Sess.) and the holding in *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal. 4th 369. These arguments are untimely. There appears to be no evidence, in light of the whole record, of non-compliance with requirements of Assembly Bill 52 (2013-2014 Reg. Sess.), nor is there information indicating that the requirements of *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal. 4th 369 directly apply in this circumstance.

Insofar as the adequacy of the final EIR is concerned, the State Water Board, as a responsible agency, is required to assume that the final EIR fully meets the requirements of CEQA. (Cal. Code Regs., tit. 14, § 15231, subd. (b).) A court of competent jurisdiction will ultimately determine whether the actions of the Valley District are contrary to law. As a condition of this order, the Valley District is required to obtain all necessary approvals from Federal, State, and local agencies prior to construction and operation of the project.

9.5.2 *Environmental Impact*

Mr. Serrano's protest further alleges that the petition will result in the reduction in flows in the Santa Ana River, resulting in adverse impacts to the Santa Ana Sucker.

The final EIR addresses these concerns with appropriate mitigation measures. This order incorporates the mitigation terms of the final EIR or any amendment thereof that may arise from subsequent litigation, and that are within the purview of the State Water Board. As a further condition of this order, the Valley District is required to obtain all necessary approvals from Federal, State, and local agencies.

9.5.3 *Public Interest*

Mr. Serrano's statement of supporting facts, which the Division received on December 8, 2016, discusses project financing in the course of making the argument that the SNRC will have an adverse environmental impact. It also contains an allegation that "the proposed appropriation would not be within the board's jurisdiction, would not best conserve the public interest or public trust uses, and is contrary to law." In support of this allegation, Mr. Serrano submitted several articles discussing litigation between East District and other agencies and concludes that "[t]he Water Board can spend tax payer dollars on other water related projects while EVWD [East District] and SBVMWD [Valley District] work out their differences with local constituents who view the Sterling Natural Resources Center (waste water treatment facility) as a redundant and non- cost effective [sic] project because we already have a waste water treatment facility." On February 2, 2017, Mr. Serrano submitted an email which appeared to argue that, because of additional costs associated with filing a wastewater change petition for the SNRC, the wastewater change petition should be dismissed. This email also asserts, without reference to evidence, that "we cannot afford the additional estimated \$127M for the new SNRC."

Mr. Serrano did not raise these objections during the noticed protest period. It is unclear whether the protestant's untimely, conclusory reference to "local constituents who view" the SNRC as not cost effective was even intended as an argument that the project is not in the public interest. The arguments presented in Mr. Serrano's February 2, 2017 email are untimely. This Order considers a hypothetical public interest protest based on fiscal

issues without conceding whether Mr. Serrano has actually filed a valid protest on this issue.

The State Water Board's authority to examine whether a change petition is in the public interest includes the authority to consider a proposed project's financial viability. At the same time, market forces and public opinion will often prevent non-viable projects from being built. The State Water Board is reluctant to second-guess the financial viability of a project, such as the SNRC, that has already been vetted through CEQA and other public processes. Potential fiscal impact should be weighed against the potential public interest benefits of the project.

For the reasons previously discussed in section 8.4.3 above, the Valley District's project, as proposed in the petition, will help California meet the goals of the State Water Board's Policy for Water Quality Control for Recycled Water and is in the public interest. This is a benefit above and beyond the SNRC's wastewater treatment functions. There is no disputed issue of material fact as to the SNRC's financial viability. For the reasons discussed above, it would not be appropriate for the State Water Board to apply its public interest authority in this case.

10. The State Water Board has determined that the petition for change in the point of discharge, place of use, purpose of use and quantity of discharge to a watercourse will not cause injury to any other lawful user of water.
11. Under the CEQA, the Valley District is the lead agency for preparation of environmental documentation for the SNRC project. On March 15, 2016, the Valley District certified the final EIR and approved and adopted the CEQA Findings, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Plan (MMRP) for the SNRC project (SCH No. 2015101058). On March 16, 2016, the Valley District issued a Notice of Determination (NOD). The State Water Board is a CEQA responsible agency for purposes of considering whether to approve the petition that will allow the Valley District to proceed with the proposed project. As a CEQA responsible agency, the State Water Board must consider the environmental documentation prepared by the lead agency and any other relevant evidence in the record, and must reach its own conclusions on whether and how to approve the project involved. (Cal. Code Regs., tit. 14, § 15096, subd. (a).) The State Water Board will issue an NOD within five days of the date of this order.
12. CEQA Impacts and Mitigation

The State Water Board has reviewed and considered the final EIR in approving the petition. As a responsible agency, the State Water Board must mitigate or avoid to the extent feasible the identified significant impacts to resources within the State Water Board's purview. In addition, the State Water Board must balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. (Cal. Code Regs., tit. 14, § 15093, subd. (a).) Listed below are the significant impacts identified in the EIR that fall within the State Water Board's purview. These significant impacts result from the construction of the points of discharge and related infrastructure and by the diversion and use of the water that will result from operation of the project:

- Adverse impacts to special-status plant and wildlife species, including indirect impacts through habitat modification, due to project construction and operation;
- Adverse impacts to sensitive habitats (including riparian, wetlands, and/or other sensitive natural communities) within the project area due to project construction;

- Adverse impacts to water quality due to the violation of water quality standards or waste discharge requirements or otherwise substantially degrade water quality.
- Adverse impacts to water quality due to the alteration of the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion, siltation or flooding on or offsite.
- Adverse impacts to water quality due to the creation or contribution of runoff water which could exceed the capacity of stormwater drainage systems or provide additional sources of polluted runoff.

The mitigation measures identified in the SNRC final EIR and recited below pertain to the protection of resources within the State Water Board's purview, and have been incorporated into the project. With the exception of impacts to the Santa Ana sucker through habitat modification, incorporation of these mitigation measures avoids the impacts or reduces them to a less than significant level.

12.1 *Impacts to Special Status Species*

Construction and operation of the project could have a substantial adverse effect, either directly or through habitat modifications on plant and wildlife species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the Department or Service.

Mitigation Measures:

- BIO-1: *Disturbance to Special-Status Plants.* The following measures will reduce potential project-related impacts to special-status plant species that may occur adjacent to the project site within City Creek to a less than significant level. Potential project-related impacts may result from the construction of the pipeline extension and discharge structure within City Creek and the Redlands Basins.
- a. Prior to the start of construction within City Creek and/or the Redlands Basins, a focused botanical survey will be conducted to determine the presence/absence of any of the special-status species with a moderate or high potential to occur. The focused botanical survey will be conducted by a botanist or qualified biologist knowledgeable in the identification of local special-status plant species, and according to accepted protocol outlined by the California Native Plant Society and/or the Department.
 - b. If a special status plant species is discovered in a project impact area, informal consultation with the Department and/or the Service will be required prior to the impact occurring to develop an appropriate avoidance strategy. Depending on the sensitivity of the species, relocation, site restoration, or other habitat improvement actions may be an acceptable option to avoid significant impacts, as determined through consultation with the Department and/or the Service.
 - c. If impact avoidance of a state or federally-listed species is not feasible, the Valley District shall quantify the impacted acreage supporting state or federally-listed plant species within the construction area and estimated

perennial flow area and prepare a Biological Assessment pursuant to Section 7 of the Endangered Species Act and Section 2081 of the State Endangered Species Act. The Biological Assessment shall quantify compensation requirements for affected plants species. The Valley District shall implement the conservation measures and compensation requirements identified through consultation by USACE with both the Department and the Service.

- d. Permanent impacts to Riversidean alluvial fan sage scrub (RAFSS) habitat from construction and operation of the discharge including within the City Creek channel resulting from perennial flow shall require on-site replacement or off-site compensation at a ratio of at least 3:1 in consultation with the Department and the Service. Temporary impacts to RAFSS habitat would be mitigated at a ratio of at least 1:1 in consultation with the Department and the Service.

BIO-2: *Disturbance to Special-Status Wildlife.* The following measures will reduce potential project-related impacts to special-status wildlife species that may occur within disturbed and native habitats, to a less than significant level. Potential project-related impacts may result from construction of the SNRC, construction of the discharge structures within City Creek and other discharge locations, and perennial discharges to City Creek or other discharge locations.

- a. Prior to the start of construction within City Creek or other discharge locations, Valley District shall conduct focused surveys within the project impact areas to determine if any state or federally-listed wildlife species (southwestern willow flycatcher, coastal California gnatcatcher, San Bernardino kangaroo rat, and least Bell's vireo) are located within project impact areas. Focused surveys will be conducted by a qualified and/or permitted biologist, following approved survey protocol. Survey results will be forwarded to the Department and the Service. If state or federally-listed species are determined to occur on the project site with the potential to be impacted by the project, consultation with the Department and/or the Service will be required.
- b. If impact avoidance is not feasible, the Valley District shall quantify the impacted acreage supporting state or federally-listed wildlife species within the construction area and estimated perennial flow area and prepare a Biological Assessment pursuant to Section 7 of the Endangered Species Act and Section 2081 of the State Endangered Species Act. The Biological Assessment shall quantify compensation requirements for affected wildlife species. The Valley District shall implement the conservation measures and compensation requirements identified through consultation by the USACE with both the Department and the Service.
- c. Prior to the start of construction of the SNRC building and the recycled water pipeline along 6th Street, focused burrowing owl surveys shall be conducted to determine the presence/absence of burrowing owl adjacent to the project area. The focused burrowing owl survey must be conducted by a qualified biologist and following the survey guidelines included in the Department 2012 Staff Report on Burrowing Owl

Mitigation. If burrowing owl is observed within undeveloped habitat within or immediately adjacent to the project impact area, avoidance/minimization measures would be required such as establishing a suitable buffer around the nest (typically 500-feet) and monitoring during construction, or delaying construction until after the nest is no longer active and the burrowing owls have left. However, if burrowing owl avoidance is infeasible, a qualified biologist shall implement a passive relocation program in accordance with the *Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans* of the Department 2012 Staff Report on Burrowing Owl Mitigation.

BIO-3: *Disturbance to Santa Ana Sucker.* The following measures will reduce potential project-related impacts to avoid, minimize, and compensate for impacts to Santa Ana sucker while contributing to the long-term conservation of the species.

- a. The diversion of wastewater flow to the new SNRC shall not occur until either the Upper Santa Ana River HCP has been fully executed by the Service and the Department or Valley District's Santa Ana sucker HMMP has been approved by the Service and the Department.
- b. The Valley District will be a signatory to the Upper Santa Ana River HCP that will include the proposed project as a covered activity. The HCP will include a menu of projects to be implemented by the signatory agencies that will create habitat, restore habitat, and establish self-sustaining populations in the watershed. The HCP will be approved by the Department and the Service.
- c. In the event that the Upper Santa Ana River HCP is not approved in time to meet the project schedule, Valley District shall prepare and implement a HMMP that identifies habitat improvement actions, implementation methods, monitoring, and maintenance methods. The HMMP will consist of measures listed below to offset direct and indirect impacts to the Santa Ana sucker and its habitat resulting from the loss of 6 mgd of discharged water. The HMMP will be implemented by a contracted, qualified and permitted entity such as the Riverside-Corona Resource Conservation District in coordination with the Service and the Department. The HMMP will identify the goals and performance criteria of each conservation measure and will identify annual reporting and work forecasting requirements. The HMMP will be approved by the Service and the Department under their authority to enforce the federal and state Endangered Species Acts. The proposed diversion of 6 mgd from the RIX discharge will not occur until the HMMP has been approved by the Service and the Department. The HMMP will include the following elements:

SAS-1: *Microhabitat Enhancements.* The HMMP will identify microhabitat enhancements within the upstream reach of the affected river segment using natural materials to increase scour and pool formation. This could include placement of large boulders and/or large woody debris to increase velocity of flow and gravel bar patches as well as deep pool refugia areas.

SAS-2: *Aquatic Predator Control Program*. The HMMP will include an Aquatic Predator Control Program to be implemented within the upstream reach of the affected river segment that will target and remove exotic fish, amphibians, and reptiles immediately prior to the Santa Ana sucker spawning season.

SAS-3: *Exotic Weed Management Program*. The HMMP will include an Exotic Weed Management Program targeting the removal of non-native species such as tamarisk, castor bean, tree of heaven, etc. The HMMP will include an annual maintenance and performance goal for non-native plant removal within the upper reach of the affected river segment.

SAS-4: *High Flow Pulse Events*. The HMMP will identify means to create high flow pulse events as needed based on substrate conditions, up to 2 times per year. The high flow pulse events would be implemented through a cooperative agreement with the City of San Bernardino Municipal Water Department.

SAS-5: *Supplemental Water*. Valley District will increase habitat availability in Rialto Channel during the summer months by providing cool supplemental water from nearby groundwater source to lower the water temperature in this tributary. Supplemental water will be added to the Rialto Channel when water temperatures reach 85 degrees. Supplemental water could be pumped groundwater or other water source. The discharge into the Rialto Channel will require a discharge permit from the Regional Water Quality Control Board.

SAS-6: *Upper Watershed Santa Ana Sucker Population Establishment*. The HMMP will outline a plan for establishing a population of Santa Ana sucker in City Creek, or other suitable watershed tributary, in coordination with the Wildlife Agencies. The HMMP will identify measures to directly increase the number of Santa Ana sucker in the SAR population, increase the amount of suitable and occupied habitat in this watershed, and distribute the risk of a catastrophic event between multiple locations. The HMMP will identify the goals and success criteria of the establishment plan and will identify the amount of financial assistance to be provided by Valley District for the regionally-beneficial population establishment program.

SAS-7: *Monitoring*. The HMMP will outline a monitoring program to collect hydrology data in the segment of river between the RIX discharge and Mission Boulevard. The data will include flow velocity and depth.

Findings: The project as mitigated will limit adverse impacts to fisheries and, in particular, to Santa Ana sucker populations. Measures included in the HMMP and the HCP will act to substantially offset direct and indirect impacts to the Santa Ana sucker and its habitat resulting from the loss of 6 mgd of discharged water. Avoidance strategies will be applied in consultation with the Service and the Department to protect special status plant species. The project is unlikely to adversely affect candidate, sensitive, or special-status wildlife species

other than the Santa Ana sucker, which shall be protected via conservation measures and compensation requirements identified through consultation by the Corps with both the Department and the Service.

This order adopts the above mitigation measures (BIO-1, BIO-2, BIO-3, and SAS-1 through 7) and incorporates them as a condition of the order. These measures will be implemented as set forth in the MMRP and will commit the Valley District to implement these actions. Accordingly, the State Water Board finds that, with the inclusion of the above mitigation measures, direct and indirect impacts to plant and wildlife other than the Santa Ana Sucker by the project construction and operation would be reduced to a less than significant level. Changes with or alterations have been required in, or incorporated into, the project which avoid the significant environmental effect or reduce them to a less than significant level.

Potentially adverse impacts to the Santa Ana Sucker will be carefully monitored and mitigated in accordance with the measures contained in the HMMP and HCP, including mitigation measures BIO-3 and SAS-1 through 7. Despite these measures, the final EIR identified that the remaining impact to the Santa Ana sucker through habitat modification would be significant and unavoidable. For the reasons stated here and in paragraph 14, and in light of the whole record, the State Water Board finds that specific economic, legal, social, technological, or other considerations, including in particular the water supply and Santa Ana sucker conservation benefits of the project, make further mitigation infeasible.

12.2 *Impacts to Riparian Habitat*

Construction of the project could result in potential direct and indirect impacts to riparian habitat and other sensitive natural communities within the project area.

Mitigation Measure:

- BIO-4: *Construction Best Management Practices.* The Contractor shall implement the following Best Management Practices during construction of the pipeline and discharge structure adjacent to and within City Creek to protect any adjacent sensitive natural communities that provide habitat for special-status species.
- a. The following water quality protection measures shall be implemented during construction:
 - Stationary engines, such as compressors, generators, light plants, etc., shall have drip pans beneath them to prevent any leakage from entering runoff or receiving waters.
 - All construction equipment shall be inspected for leaks and maintained regularly to avoid soil contamination. Leaks and smears of petroleum products will be wiped clean prior to use.
 - Any grout waste or spills will be cleaned up immediately and disposed of off-site.
 - Spill kits capable of containing hazardous spills will be stored on-site.

- b. To prevent inadvertent entrapment of common and special-status wildlife during construction, all excavated, steep-walled holes or trenches more than two-feet deep shall be covered with tarp, plywood or similar materials at the close of each working day to prevent animals from being trapped. Ramps may be constructed of earth fill or wooden planks within deep walled trenches to allow for animals to escape, if necessary. Before such holes or trenches are backfilled, they should be thoroughly inspected for trapped animals. If trapped wildlife are observed, escape ramps or structures shall be installed immediately to allow escape. All construction pipes, culverts, or similar structures that are stored at a construction site for one or more overnight periods should be thoroughly inspected for burrowing owls and nesting birds before the pipe is subsequently buried, capped, or otherwise used or moved.

Findings: Construction of the pipeline and discharge structure adjacent to and within City Creek may impact sensitive habitats. Riparian habitat and fishery habitat are located adjacent to the construction site but with implementation of the above mitigation measure (BIO-4), impacts to these sensitive habitats will be minimized. During construction, best management practices shall be implemented to protect any adjacent sensitive natural communities that provide habitat for special-status species. Water quality protection measures will be implemented to prevent leakage of contaminants to soil and receiving waters. In addition, numerous measures will be taken to prevent inadvertent entrapment of common and special status wildlife during construction.

This order adopts the above mitigation measure (BIO-4) and incorporates it as a condition of this order. This measure will be implemented as set forth in the MMRP and will commit the Valley District to implement these actions. Thus with the inclusion of the above mitigation measure, direct and indirect impacts to sensitive natural communities that provide habitat for special-status species by the project construction and operation would be reduced to a less than significant level.

12.3 *Impacts to Water Quality*

The project could violate water quality standards or waste discharge requirements, or otherwise substantially degrade water quality.

Mitigation Measures:

HYDRO-1: The Valley District will prepare a Water Quality Management Plan (WQMP) to ensure that the SNRC facility design complies with stormwater management goals of the County of San Bernardino municipal separate storm sewer system (MS4) permit.

HYDRO-2: Valley District shall prepare and implement a groundwater monitoring program that includes installation of an array of groundwater monitoring wells sufficient to characterize the effects of the discharge on local groundwater quality. If monitoring shows that beneficial uses of the groundwater may become adversely affected by the discharge, the monitoring program would require either modifications to treatment, modify the well screened area by sealing the affected portion of the screen in the impacted groundwater bearing zone, or compensation for adversely affected groundwater wells through replacement of the affected well or through providing replacement water.

Findings: Development of the SNRC has the potential to result in increased impervious surfaces that would increase stormwater runoff if uncontrolled. The facility would be subject to the County of San Bernardino MS4 permit that requires new development to prepare a Water Quality Management Plan (WQMP). Implementation of the WQMP would reduce potential impacts to runoff water quality. Discharge to City Creek or the Redlands Basin could result in the treated effluent infiltrating into the groundwater basin, thereby affecting groundwater quality. To ensure that groundwater quality is not adversely affected, HYDRO-2 would require that the Valley District install a groundwater monitoring network to monitor the discharge's effect on local groundwater quality. Any adverse impact to groundwater quality would be mitigated through treatment modifications or compensation.

This order adopts the above mitigation measures (HYDRO-1 and HYDRO-2) and incorporates them as a condition of this order. These measures will be implemented as set forth in the MMRP and will commit the Valley District to implement these actions. With the inclusion of the above mitigation measures, the potential for the discharge to adversely affect surface and groundwater quality would be reduced to a less than significant level.

12.4 *Impacts to Site Drainage*

The project could substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion, siltation or flooding on or offsite.

Mitigation Measures:

HYDRO-3: The City Creek discharge structures shall be designed with velocity dissipation features as needed to prevent scour at the point of discharge. The design and location of these discharge facilities would be approved by the San Bernardino County Flood Control District (SBCFCD) and USACE to ensure that they do not impede high flow capacity.

HYDRO-4: Valley District shall prepare a City Creek Channel Vegetation Management Plan in coordination with SBCFCD and Department that outlines vegetation management measures to minimize impacts to the flood control function within City Creek. The plan will include periodic vegetation trimming to remove large trees that could impact flood control facilities downstream. The plan will outline schedule, permitting and reporting requirements.

Findings: Due to long-term operation of the City Creek discharge facility and the changing environment, the potential exists that the discharge may cause erosional impacts if left unmaintained or unsupervised. The above mitigation measure (HYDRO-3) is designed to dissipate water velocity as needed to prevent scour at the point of discharge. The Vegetation Management Plan (HYDRO-4) will ensure that vegetation in and around City Creek is managed so as to minimize impacts to the flood control function within City Creek.

This order adopts the above mitigation measures (HYDRO-3 and HYDRO-4) and incorporates them as a condition of this order. These measures will be implemented as set forth in the MMRP and will commit the Valley District to implement these actions. With the inclusion of the above mitigation measures, the potential for the discharge to induce erosion and sedimentation in downstream waters would be reduced to a less than significant level.

12.5 *Impacts to Stormwater Runoff*

The project would create or contribute runoff water which could exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff.

Mitigation Measure:

HYDRO-5: The Valley District shall prepare an Operational Manual for the discharge to City Creek that identifies when discharges would be conveyed to other discharge basins to avoid contributing to flood flows in City Creek during peak flow periods.

Findings: Discharge to City Creek during high flow events has the potential to contribute to flood flows. During these high flow events, the treatment plant could discharge to other discharge locations to avoid contributing flow to the creek that could result in downstream flooding or contribute to polluted runoff during peak flow periods. The above mitigation measure (HYDRO-5) ensures that operational procedures are in place prior to project implementation to allow peak flows to be routed to other discharge basins to avoid the contribution of the project to flood flows.

This order adopts the above mitigation measure (HYDRO-5) and incorporates it as a condition of this order. This measure will be implemented as set forth in the MMRP and will commit the Valley District to implement this action. With the inclusion of the above mitigation measure, the potential for the project to create excessive runoff water that would exceed existing stormwater drainage systems or create additional sources of polluted runoff to City Creek would be reduced to a less than significant level.

13. The State Water Board prepared a MMRP which includes the mitigation measures described above in Paragraph 11 and specifies implementation, monitoring, and reporting on the mitigation measures. Compliance with these measures is an enforceable term within this order. Adoption of mitigation measures described in Paragraph 11 of this order avoid or significantly minimize all of the significant impacts under the State Water Board's purview to a less than significant level except for impacts to the Santa Ana sucker. While the proposed project may still result in significant and unavoidable impacts to the aquatic habitat of the Santa Ana Sucker, the State Water Board has determined that the significant impact to the Santa Ana sucker is acceptable due to the overriding considerations discussed in Paragraph 14 below.

14. Statement of Overriding Considerations.

14.1 *Impacts of the Project*

The impacts that are within the State Water Board's purview are described in Paragraph 11.

14.2 *Benefits of the Project*

Consistent with the State Water Board's recycled water policy, the project will provide numerous benefits. By recharging groundwater, the project will serve both existing and future water demands and increase local availability and use of recycled water. It will also help to meet regional water supply needs, while providing greater flexibility in the management of water supplies. The project includes a mitigation plan that adopts a comprehensive, habitat-focused approach that is intended to address specific factors that currently limit the health and abundance of the Santa Ana sucker. By providing supplemental water in the Rialto Channel,

when needed, the plan will increase the availability of suitable habitat for the existing sucker population during summer months, thereby improving the long-term resiliency of the sucker population in the Santa Ana River. This will also establish a distinct sucker population in a suitable upper watershed tributary to the Santa Ana River.

14.3 *Statement of Overriding Considerations*

The State Water Board finds and declares that, on balance, the economic, legal, social, technological, and other benefits, including water supply, wastewater treatment, and Santa Ana sucker conservation and resiliency benefits outweigh the significant and unavoidable impacts to the Santa Ana sucker through habitat modification.

15. Regardless of any obligation the Valley District or the State Water Board may have under CEQA, the State Water Board has an independent obligation to consider the effect of the change on public trust resources and to protect those resources where feasible, and to balance any adverse public trust effects against the benefits of the project. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346].) Staff evaluated potential effects to public trust resources in the April 25, 2017 memorandum titled *Staff Evaluation of Potential Effect to Public Trust Resources Caused by Approval of WW0095* for reduction in discharge under the petition, including specific consideration of effects related to special-status plants or wildlife, instream flow, water quality and riparian habitat. Staff concluded the petition will not result in adverse effects to special-status plants or wildlife, water quality or riparian habitat.

The Deputy Director has reviewed staff's conclusions and recommendations, and concurs. Potentially adverse effects to public trust resources from changes in stream flow that may interfere with Santa Ana sucker migration in the Santa Ana River may occur from the reduction in discharge and use of water as described in the change, but these effects are adequately addressed by the mitigation measures and protest dismissal requirements incorporated into this Order. With the inclusion of protest dismissal terms, standard terms and conditions, and mitigation measures evaluated in Paragraph 11 of this Order, the change will not cause an unreasonable effect to public trust resources and approval of the project is not contrary to the State Water Board's public trust responsibilities.

16. Pursuant to Resolution 2012-0029, the State Water Board has delegated the authority to administer the State Water Board's water rights program to the Deputy Director for Water Rights. The Deputy Director for Water Rights has redelegated the authority.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT:

1. The protests of the City of San Bernardino and Anthony Serrano are dismissed.
2. The request to change the point of discharge is approved. The points of discharge shall be:
 - a. City Creek at California Coordinate System, NAD 83, Zone 5, North 1,866,229 feet and East 6,805,246 feet, being within the NE $\frac{1}{4}$ of Section 4, T1S, R3W, SBB&M; and
 - b. City of San Bernardino Rapid Infiltration and Exfiltration Facility Discharge Point at North 1,838,060 feet and East 6,757,195 feet by California Coordinate System 1983, Zone 5, being within NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 36, T1S, R5W, SBB&M.

3. The request to change the place of use is approved. The place of use for treated wastewater produced by the SNRC is within the San Bernardino Valley Municipal Water District service area and portions of the Santa Ana River and City Creek, as shown on map dated November 28, 2016 filed with the State Water Board.
4. The request to change the purpose of use is approved. The purposes of use for treated wastewater produced by the SNRC are Municipal, Industrial, Domestic, Irrigation, Heat Control, Frost Protection and Fish and Wildlife Preservation and Enhancement.
5. The quantity of discharge of treated wastewater from the RIX to the Santa Ana River may be reduced by an average monthly rate of up to 6.0 mgd, for a total reduction of 6,725 afy, from January 1 to December 31 of each year.
6. The place of storage for treated wastewater is the Bunker Hill Subbasin within the Upper Santa Ana Valley Groundwater Basin as shown on map dated November 28, 2016 filed with the State Water Board.
7. The CEQA findings specified in paragraphs 11-14 above are hereby adopted.
8. This Order incorporates the mitigation terms of the final EIR specified in paragraph 11 above and in the Attachment 1. The Valley District shall implement the measures to mitigate significant impacts to biological resources and conduct the required reporting and monitoring of those measures. The State Water Board reserves jurisdiction to require any reasonable amendments to these measures and requirements to ensure that they will accomplish the stated goal or as appropriate to take into account any modifications to the final EIR as a result of litigation or otherwise.
9. The Valley District shall operate the project consistent with its obligations under the judgments in *Western Municipal Water District of Riverside County v. East San Bernardino County Water District*, Case No. 78426, and *Orange County v. the City of Chino et al. Al.*, Orange County Superior Court No. 117628.
10. The Valley District shall obtain all necessary federal (including Clean Water Act section 404), state and local agency permits and approvals required by other agencies prior to construction and operation of the project. Copies of such permits and approvals shall be forwarded to the Deputy Director for Water Rights.
11. The Valley District is responsible for compliance with any applicable waste discharge or water recycling requirements issued by the Regional Water Board or the State Water Board.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:
JOHN O'HAGAN FOR:

Leslie F. Grober, Deputy Director
Division of Water Rights

Dated: APR 28 2017

Attachment 1

Mitigation Monitoring and Reporting Plan for WW0095

State Water Resources Control Board

MITIGATION MONITORING AND REPORTING PLAN Wastewater Change Petition WW0095 San Bernardino Valley Municipal Water District

This Mitigation Monitoring and Reporting Plan (MMRP) has been prepared in conformance with the California Environmental Quality Act (CEQA) (Public Resources Code section 21081.6). The MMRP has been developed based on the information and mitigation measures contained in the Environmental Impact Report (EIR) for the Sterling Natural Resource Center (SNRC) (SCH No. 2015101058) which includes the project described in wastewater change petition WW0095. The MMRP lists mitigation measures recommended in the EIR for the proposed project and specifies implementation and monitoring responsibilities. Pursuant to Public Resources Code section 21081.6, subdivision (b), each of the mitigation measures identified in the MMRP will be included as enforceable terms in any order authorizing construction, change the point of discharge, place of use, purpose of use and quantity of discharge of treated wastewater currently discharged pursuant to wastewater change petition WW0095.

Generally, the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) Permitting Section staff will monitor mitigation measures requiring pre-construction actions or submittals. Construction and post construction mitigation measures will be reported to Division staff as specified in the attached matrix. Implementation of mitigation measures is the sole responsibility of the San Bernardino Valley Municipal Water District (Valley District). Compliance with mitigation measures will be assessed through the Division's routine compliance monitoring activities. Non-compliance with mitigation measures may be addressed through the Division's ongoing enforcement program on an as needed basis.

All documents and other information that constitute the public record for this project shall be maintained by the Division and shall be available for public review at the following address:

State Water Resources Control Board
Division of Water Rights, 2nd Floor
1001 I Street
Sacramento, CA 95814

PROJECT DESCRIPTION:

On September 16, 2016, the Valley District filed Wastewater Change Petition WW0095 with the State Water Board pursuant to Water Code section 1211. The purpose of the petition is for the Valley District to obtain the State Water Board's authorization for the construction and operation of the SNRC. The SNRC is to be jointly owned by the Valley District and the East Valley Water District (East District). The petition seeks to change the point of discharge, place of use, purpose of use and quantity of discharge of treated wastewater currently discharged to the Santa Ana River.

Water Code section 1211 requires the owner of a wastewater treatment plant to obtain approval from the State Water Board prior to making any change in the point of discharge, place of use, or purpose of use of treated wastewater where changes in the discharge or use of treated wastewater result in decreasing the flow in any portion of a watercourse.

The East District service area currently generates wastewater at an approximate rate of six million gallons per day (mgd) for a total annual amount of approximately 6,725 acre-feet per year (afy). Pursuant to an agreement, the East District conveys wastewater generated within its service area to the City of San Bernardino for treatment. The wastewater receives primary and secondary treatment at the San Bernardino Water Reclamation Plant and tertiary treatment at the Rapid Infiltration and Extraction Facility (RIX). After treatment at the RIX, the treated wastewater is discharged to the Santa Ana River.

The SNRC is a wastewater treatment facility to be built within the City of Highland. The SNRC will have the capacity to treat up to 10 mgd of wastewater generated within the East District service area, which is located entirely within the Valley District service area. The SNRC will use bio-membrane technology to produce disinfected tertiary recycled water (Title 22 quality water) for Municipal, Industrial, Domestic, Irrigation, Heat Control, Frost Protection, and Fish and Wildlife Preservation and Enhancement use. Once constructed, all wastewater generated within the East District service area will be delivered to the SNRC for treatment.

Redirection of wastewater generated within the East District service area to the SNRC will reduce the amount of treated wastewater discharged from the RIX to the Santa Ana River by approximately 6 mgd. Once treated at the SNRC, the water will be conveyed primarily to City Creek. During peak flows, water will be conveyed to underground storage within existing basins currently operated by the City of Redlands (Redlands Basins). When necessary, treated wastewater may also be sent to the RIX for discharge to the Santa Ana River. Water delivered into spreading grounds will be metered. All extraction wells in the San Bernardino basin area are metered and the results are reported annually to the Western-San Bernardino Watermaster.

Discharge of treated wastewater from the RIX to the Santa Ana River is currently authorized by the Santa Ana Regional Water Quality Control Board under Order No. R8-2013-0032 and NPDES Permit No. CA8000304.

In accordance with the CEQA, the Valley District, as lead agency, completed a Draft Environmental Impact Report (EIR; State Clearinghouse No. 2015101058) in December 2015 and issued a Notice of Determination for the Final EIR on March 15, 2016. The State Water Board, acting as a responsible agency under the CEQA, has reviewed the Final EIR and will issue a Notice of Determination within five days of the date that the petition is approved.

Impact: Direct or indirect modifications of habitat for special-status plan and wildlife species and their habitat due to project construction		
	Mitigation Measures:	<p>BIO-1: Disturbance to Special-Status Plants. The following measures will reduce potential project-related impacts to special-status plant species that may occur adjacent to the project site within City Creek to a less than significant level. Potential project-related impacts may result from the construction of the pipeline extension and discharge structure within City Creek and the Redlands Basins.</p> <ol style="list-style-type: none"> Prior to the start of construction within City Creek and/or the Redlands Basins, a focused botanical survey will be conducted to determine the presence/absence of any of the special-status species with a moderate or high potential to occur. The focused botanical survey will be conducted by a botanist or qualified biologist knowledgeable in the identification of local special-status plant species, and according to accepted protocol outlined by the California Native Plant Society and/or the California Department of Fish and Wildlife (Department). If a special status plant species is discovered in a project impact area, informal consultation with the Department and/or the U.S. Fish and Wildlife Service (Service) will be required prior to the impact occurring to develop an appropriate avoidance strategy. Depending on the sensitivity of the species, relocation, site restoration, or other habitat improvement actions may be an acceptable option to avoid significant impacts, as determined through consultation with the Department and/or the Service. If impact avoidance of a state or federally-listed species is not feasible, the San Bernardino Valley Municipal Water District (Valley District) shall quantify the impacted acreage supporting state or federally-listed plant species within the construction area and estimated perennial flow area and prepare a Biological Assessment pursuant to Section 7 of the Endangered Species Act and Section 2081 of the State Endangered Species Act. The Biological Assessment shall quantify compensation requirements for affected plants species. The Valley District shall implement the conservation measures and compensation requirements identified through consultation by the U.S. Army Corps of Engineers (Corps) with both the Department and the Service. Permanent impacts to Riversidian Alluvial Fan Sage Scrub (RAFSS) habitat from construction and operation of the discharge including within the City Creek channel resulting from perennial flow shall require on-site replacement or off-site compensation at a ratio of at least 3:1 in consultation with the Department and the Service. Temporary impacts to RAFSS habitat would be mitigated at a ratio of at least 1:1 in consultation with the Department and the Service.
	Level of Impact Before and After Mitigation:	<p>Before: Potentially Significant After: Less than Significant with mitigation incorporation</p>
	Implementation, Monitoring, and Implementation Action:	<ul style="list-style-type: none"> A qualified biologist will conduct pre-construction botanical survey as defined. Prepare documentation to record results of the pre-construction survey. If a special status plant species is detected, then implement measures as appropriate.

		<ul style="list-style-type: none"> • If impact avoidance is not feasible, then implement measures as appropriate. Prepare Biological Assessment as suggested. • Perform construction site inspections to ensure measures are implemented properly. An inspection log will be maintained to document results of site inspections. • Retain copies of pre-construction survey documentation and any subsequent reports in the project file. <p>Consult with Service and Department to prepare and implement on-site or off-site compensation of 3:1 or 1:1 and mitigate impacts to RAFSS habitat.</p>
	Timing in Reporting on Implementation and Monitoring:	Prior to and during project construction by the Valley District
Impact: Direct or indirect modifications of habitat for endangered or threatened fish species due to construction at City Creek		
	Mitigation Measures:	<p>BIO-2: Disturbance to Special-Status Wildlife. The following measures will reduce potential project-related impacts to special-status wildlife species that may occur within disturbed and native habitats, to a less than significant level. Potential project-related impacts may result from construction of the Sterling Natural Resource Center (SNRC), construction of the discharge structures within City Creek and other discharge locations, and perennial discharges to City Creek or other discharge locations.</p> <ol style="list-style-type: none"> Prior to the start of construction within City Creek or other discharge locations, Valley District shall conduct focused surveys within the project impact areas to determine if any state or federally-listed wildlife species (southwestern willow flycatcher, coastal California gnatcatcher, San Bernardino kangaroo rat, and least Bell's vireo) are located within project impact areas. Focused surveys will be conducted by a qualified and/or permitted biologist, following approved survey protocol. Survey results will be forwarded to the Department and the Service. If state or federally-listed species are determined to occur on the project site with the potential to be impacted by the project, consultation with the Department and/or the Service will be required. If impact avoidance is not feasible, the Valley District shall quantify the impacted acreage supporting state or federally-listed wildlife species within the construction area and estimated perennial flow area and prepare a Biological Assessment pursuant to Section 7 of the Endangered Species Act and Section 2081 of the State Endangered Species Act. The Biological Assessment shall quantify compensation requirements for affected wildlife species. Valley District shall implement the conservation measures and compensation requirements identified through consultation by the Corps with both the Department and the Service. Prior to the start of construction of the SNRC building and the recycled water pipeline along 6th Street, focused burrowing owl surveys shall be conducted to determine the presence/absence of burrowing owl adjacent to the project area. The focused burrowing owl survey must be conducted by a qualified biologist and following the survey guidelines included in the Department 2012 Staff Report on Burrowing Owl Mitigation. If burrowing owl is observed within

		undeveloped habitat within or immediately adjacent to the project impact area, avoidance/minimization measures would be required such as establishing a suitable buffer around the nest (typically 500-feet) and monitoring during construction, or delaying construction until after the nest is no longer active and the burrowing owls have left. However, if burrowing owl avoidance is infeasible, a qualified biologist shall implement a passive relocation program in accordance with the <i>Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans</i> of the Department 2012 Staff Report on Burrowing Owl Mitigation.
	Level of Impact Before and After Mitigation:	Before: Potentially Significant After: Less than Significant with mitigation incorporation
	Implementation, Monitoring, and Implementation Action:	<ul style="list-style-type: none"> • Include mitigation measure in construction contractor specifications. • A qualified biologist will conduct pre-construction surveys for state or federally-listed wildlife species (southwestern willow flycatcher, coastal California gnatcatcher, San Bernardino kangaroo rat, and least Bell's vireo) as defined. • A qualified biologist will conduct pre-construction survey for burrowing owl as defined. • A qualified biologist will conduct pre-construction site clearing survey for project impact area of natural habitat within City Creek. • Prepare documentation to record results of all of the pre-construction survey. • If a state or federally-listed species is detected, then implement measures as appropriate. If impact avoidance is not feasible, implement measures as appropriate. Prepare Biological assessment if required. • If a burrowing owl is detected, then implement measures as appropriate. If burrowing owl avoidance is not feasible, implement measures as appropriate. • Perform construction site inspections to ensure measures are implemented properly. An inspection log will be maintained to document results of site inspections. • Retain copies of both of the pre-construction surveys documentation in the project file.
	Timing in Reporting on Implementation and Monitoring:	Within 60 days after construction is completed by the Valley District
Impact: Adverse impacts to sensitive habitats (including riparian, wetlands, and/or other sensitive natural communities) within the project area due to project construction.		
	Mitigation Measures:	<p>BIO-3: Disturbance to Santa Ana Sucker. The following measures will reduce potential project-related impacts to avoid, minimize, and compensate for impacts to Santa Ana sucker while contributing to the long-term conservation of the species.</p> <p>a) The diversion of wastewater flow to the new SNRC shall not occur until either the Upper Santa Ana River Habitat Conservation Plan (HCP) has been fully executed by the Service and the Department or Valley District's Santa Ana sucker Habitat Monitoring and Management Plan</p>

		<p>(HMMP) has been approved by the Service and the Department.</p> <p>b) The Valley District will be a signatory to the Upper Santa Ana River HCP that will include the proposed project as a covered activity. The HCP will include a menu of projects to be implemented by the signatory agencies that will create habitat, restore habitat, and establish self-sustaining populations in the watershed. The HCP will be approved by the Department and the Service.</p> <p>c) In the event that the Upper Santa Ana River HCP is not approved in time to meet the project schedule, Valley District shall prepare and implement a HMMP that identifies habitat improvement actions, implementation methods, monitoring, and maintenance methods. The HMMP will consist of measures listed below to offset direct and indirect impacts to the Santa Ana sucker and its habitat resulting from the loss of 6 million gallons per day of discharged water. The HMMP will be implemented by a contracted, qualified and permitted entity such as the Riverside-Corona Resource Conservation District in coordination with the Service and the Department. The HMMP will identify the goals and performance criteria of each conservation measure and will identify annual reporting and work forecasting requirements. The HMMP will be approved by the Service and the Department under their authority to enforce the federal and state Endangered Species Acts. The proposed diversion of 6 million gallons per day from the Rapid Infiltration and Exfiltration Facility discharge will not occur until the HMMP has been approved by the Service and the Department. The HMMP will include the following elements.</p> <ul style="list-style-type: none"> • SAS-1: Microhabitat Enhancements. The HMMP will identify microhabitat enhancements within the upstream reach of the affected river segment using natural materials to increase scour and pool formation. This could include placement of large boulders and/or large woody debris to increase velocity of flow and gravel bar patches as well as deep pool refugia areas. • SAS-2: Aquatic Predator Control Program. The HMMP will include an Aquatic Predator Control Program to be implemented within the upstream reach of the affected river segment that will target and remove exotic fish, amphibians, and reptiles immediately prior to the Santa Ana sucker spawning season. • SAS-3: Exotic Weed Management Program. The HMMP will include an Exotic Weed Management Program targeting the removal of non-native species such as tamarisk, castor bean, tree of heaven, etc. The HMMP will include an annual maintenance and performance goal for non-native plant removal within the upper reach of the affected river segment. • SAS-4: High Flow Pulse Events. The HMMP will identify means to create high flow pulse events as needed based on substrate conditions, up to 2 times per year. The high flow pulse events would be implemented through a cooperative agreement with the City of San Bernardino Municipal Water Department. • SAS-5: Supplemental Water. Valley District will increase habitat availability in Rialto Channel during the summer months by providing cool supplemental water from nearby groundwater source to lower the water temperature in this tributary. Supplemental water
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		<p>will be added to the Rialto Channel when water temperatures reach 85 degrees. Supplemental water could be pumped groundwater or other water source. The discharge into the Rialto Channel will require a discharge permit from the Regional Water Quality Control Board.</p> <ul style="list-style-type: none"> • SAS-6: Upper Watershed Santa Ana Sucker Population Establishment. The HMMP will outline a plan for establishing a population of Santa Ana sucker in City Creek, or other suitable watershed tributary, in coordination with the Service and the Department. The HMMP will identify measures to directly increase the number of Santa Ana sucker in the Santa Ana River population, increase the amount of suitable and occupied habitat in this watershed, and distribute the risk of a catastrophic event between multiple locations. The HMMP will identify the goals and success criteria of the establishment plan and will identify the amount of financial assistance to be provided by Valley District for the regionally-beneficial population establishment program. • SAS-7: Monitoring. The HMMP will outline a monitoring program to collect hydrology data in the segment of river between the Rapid Infiltration and Exfiltration Facility discharge and Mission Boulevard. The data will include flow velocity and depth.
	Level of Impact Before and After Mitigation:	<p>Before: Significant and unavoidable After: Significant and unavoidable with mitigation incorporation</p>
	Implementation, Monitoring, and Implementation Action:	<ul style="list-style-type: none"> • Verify that the Upper Santa Ana River HCP is executed and approved before project construction begins. • If Upper Santa Ana River HCP is not approved in time, prepare and implement Santa Ana sucker HMMP. • A contracted and qualified entity will implement the HMMP. • Verify that the HMMP has been prepared and approved by the applicable entities, including the Service and the Department. • Verify that the agreement for the high pulse flow events has been executed with the City of San Bernardino Municipal Water Department. • Verify that the Rialto Channel discharge permit has been prepared and approved by the Regional Water Quality Control Board. • Include mitigation measures SAS-1 through SAS-7 in construction contractor specifications. • Perform construction site inspections to ensure measures are implemented properly and the construction contractor is complying with construction limitations. An inspection log will be maintained to document results of site inspections. • Retain copies of Upper Santa Ana River HCP or Santa Ana sucker HMMP documentation and construction site inspection logs in the project file.
	Timing in Reporting on Implementation and Monitoring:	<p>Prior to and during construction by the Valley District.</p>

Impact: Adverse impacts due to construction of the project that could result in the interference with the movement of any native resident or migratory fish or wildlife species.		
	Mitigation Measure:	<p>BIO-4: Construction Best Management Practices. The Contractor shall implement the following Best Management Practices during construction of the pipeline and discharge structure adjacent to and within City Creek to protect any adjacent sensitive natural communities that provide habitat for special-status species.</p> <p>a) The following water quality protection measures shall be implemented during construction:</p> <ul style="list-style-type: none"> Stationary engines, such as compressors, generators, light plants, etc., shall have drip pans beneath them to prevent any leakage from entering runoff or receiving waters. All construction equipment shall be inspected for leaks and maintained regularly to avoid soil contamination. Leaks and smears of petroleum products will be wiped clean prior to use. Any grout waste or spills will be cleaned up immediately and disposed of off-site. Spill kits capable of containing hazardous spills will be stored on-site. <p>b) To prevent inadvertent entrapment of common and special-status wildlife during construction, all excavated, steep-walled holes or trenches more than two-feet deep shall be covered with tarp, plywood or similar materials at the close of each working day to prevent animals from being trapped. Ramps may be constructed of earth fill or wooden planks within deep walled trenches to allow for animals to escape, if necessary. Before such holes or trenches are backfilled, they should be thoroughly inspected for trapped animals. If trapped wildlife are observed, escape ramps or structures shall be installed immediately to allow escape. All construction pipes, culverts, or similar structures that are stored at a construction site for one or more overnight periods should be thoroughly inspected for burrowing owls and nesting birds before the pipe is subsequently buried, capped, or otherwise used or moved.</p>
	Level of Impact Before and After Mitigation:	<p>Before: Potentially Significant After: Less than Significant with mitigation incorporation</p>
	Implementation, Monitoring, and Implementation Action:	<ul style="list-style-type: none"> Include mitigation measure in construction contractor specifications. Conduct evaluation of project area for trapped animals during construction. If trapped animals are found within construction sites, then implement measures as defined. Perform construction site inspections to ensure mitigation measures are implemented properly. Retain copies of survey documentation and construction site inspection logs in the project file
	Timing in Reporting on Implementation and Monitoring:	Prior to and during construction by the Valley District

Impact: Adverse impacts to water quality due to potential violation of water quality standards or waste discharge requirements or otherwise substantially degrading water quality		
	Mitigation Measures:	<p>HYDRO-1: The Valley District will prepare a Water Quality Management Plan (WQMP) to ensure that the SNRC facility design complies with stormwater management goals of the County of San Bernardino municipal separate storm sewer system (MS4) permit.</p> <p>HYDRO-2: Valley District shall prepare and implement a groundwater monitoring program that includes installation of an array of groundwater monitoring wells sufficient to characterize the effects of the discharge on local groundwater quality. If monitoring shows that beneficial uses of the groundwater may become adversely affected by the discharge, the monitoring program would require either modifications to treatment, modify the well screened area by sealing the affected portion of the screen in the impacted groundwater bearing zone, or compensation for adversely affected groundwater wells through replacement of the affected well or through providing replacement water.</p>
	Level if Impact Before and After Mitigation:	<p>Before: Potentially Significant</p> <p>After: Less than Significant with mitigation incorporation</p>
	Implementation, Monitoring, and Implementation Action:	<ul style="list-style-type: none"> • Prepare the WQMP prior to project implementation. • Retain copies of the plan in the project file. • Retain copies of sampling and analyses conducted in accordance with the WQMP in the project file. • Conduct site inspections in accordance with the WQMP to ensure proper implementation of stormwater management goals. • Prepare the groundwater monitoring program prior to project implementation. • Retain copies of the program report in the project file. • During plan implementation, retain copies of the monitoring reports in the project file. • Implement suggested mitigation measure if monitoring shows groundwater is adversely affected.
	Timing in Reporting on Implementation and Monitoring:	Prior to and during construction by the Valley District
Impact: Adverse impacts to water quality due to the alteration of the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion, siltation or flooding on or offsite		
	Mitigation Measures:	<p>HYDRO-3: The City Creek discharge structures shall be designed with velocity dissipation features as needed to prevent scour at the point of discharge. The design and location of these discharge facilities would be approved by the San Bernardino County Flood Control District (SBCFCD) and the Corps to ensure that they do not impede high flow capacity.</p> <p>HYDRO-4: Valley District shall prepare a City Creek Channel Vegetation Management Plan in coordination with SBCFCD and Department that outlines vegetation management measures to minimize impacts to the flood control function within City Creek. The plan will include periodic vegetation trimming to remove large trees that could impact flood control facilities</p>

		downstream. The plan will outline schedule, permitting and reporting requirements.
	Level if Impact Before and After Mitigation:	Before: Potentially Significant After: Less than Significant with mitigation incorporation
	Implementation, Monitoring, and Implementation Action:	<ul style="list-style-type: none"> • Include mitigation measure in project design specifications. • Retain specifications related to discharge facilities in the project file. • Prepare Vegetation Management Plan prior to project implementation. • Retain Vegetation Management Plan in the project file
	Timing in Reporting on Implementation and Monitoring:	Prior to construction by the Valley District
Impact: Adverse impacts to water quality due to potential to create or contribute runoff water which could exceed the capacity of planned stormwater drainage systems or provide substantial additional sources of polluted runoff.		
	Mitigation Measures:	HYDRO-5: The Valley District shall prepare an Operational Manual for the discharge to City Creek that identifies when discharges would be conveyed to other discharge basins to avoid contributing to flood flows in City Creek during peak flow periods.
	Level if Impact Before and After Mitigation:	Before: Potentially Significant After: Less than Significant with mitigation incorporation
	Implementation, Monitoring, and Implementation Action:	<ul style="list-style-type: none"> • Prepare Operational Manual prior to project implementation. • Retain Operation Manual in the project file.
	Timing in Reporting on Implementation and Monitoring:	Prior to construction by the Valley District