

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

DIVISION OF WATER RIGHTS

In the Matter of Wastewater Petition WW0092
Sacramento Regional County Sanitation District

**ORDER APPROVING CHANGE IN
PURPOSE OF USE AND PLACE OF USE
OF TREATED WASTEWATER**

WATERSHED: Sacramento River

COUNTY: Sacramento

WHEREAS:

1. On August 3, 2016, Sacramento Regional County Sanitation District (Regional San or Petitioner) filed Wastewater Change Petition WW0092 with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) pursuant to Water Code section 1210 et seq. With the petition, Regional San seeks authorization to reduce the quantity of its treated wastewater discharged from the Sacramento Regional Wastewater Treatment Plant (SRWTP) into the Sacramento River by up to 108 cubic feet per second (cfs); or 70 million gallons per day (mgd), average recycled water delivery rate, as calculated across a 7-day running-average period (subject to the exception noted in Order Condition 3 below), not to exceed 6,427 acre-feet per month (up to 50,000 acre-feet annually (afa)), and direct that water to Regional San's proposed South Sacramento County Agriculture & Habitat Lands Recycled Water Program (hereinafter referred to as Program or Project). The recycled water will be used for irrigation and fish and wildlife habitat enhancement purposes at Program facilities.
2. Regional San's wastewater discharge is regulated under National Pollutant Discharge Elimination System (NPDES) Permit No. CA0077682, Waste Discharge Requirements (WDR) Order No. R5-2016-0020-01, originally issued by the Central Valley Regional Water Quality Control Board (Central Valley Regional Board) on April 21, 2016, and as amended on August 2, 2018. WDR Order No. R5-2016-0020-01 currently permits Regional San to discharge an average dry-weather flow of up to 181 mgd (approximately 280 cfs) of secondary-treated wastewater effluent from the SRWTP to the Sacramento River near the community of Freeport. WDR Order No. R5-2016-0020-01 requires Regional San to discharge mainly disinfected, tertiary-treated recycled water for a portion

of the year by 2023. Regional San is in the process of updating its wastewater treatment facilities for tertiary treatment. According to WDR Order No. R5-2016-0020-01, as of April 2016, SRWTP's average dry weather flow was approximately 119 mgd (approximately 184 cfs).

3. The Program is projected to deliver up to 50,000 afa of recycled water to 16,000 acres of currently irrigated land, 400 acres of managed wetlands, and a 500-acre groundwater recharge area, all within south Sacramento County. Recycled water could account for up to two-thirds of the maximum monthly irrigation demand on the 16,000 acres of private land under the Program. Initially, an estimated average of 32,500 afa of recycled water will be provided for growing season (April through October) irrigation to landowners who have agreed to participate in the Program. Regional San indicates that using the recycled water for irrigation will result in in-lieu groundwater recharge in the area. Regional San also proposes to implement non-growing season irrigation of 12,000 to 17,500 afa for fish and wildlife enhancement, which Regional San indicates will passively recharge groundwater in the area. In the future, Regional San proposes to directly recharge groundwater with up to 5,000 afa of recycled water for fish and wildlife enhancement purposes in the Cosumnes River, and provide up to 500 afa of recycled water, mostly delivered during the spring and fall, to 400 acres of wetlands at the Stone Lakes National Wildlife Refuge (Stone Lakes NWR), also for fish and wildlife enhancement purposes.
4. Under the California Environmental Quality Act (CEQA), Regional San is the lead agency for preparation of environmental documentation for the project. Accordingly, on July 8, 2016, Regional San issued the South Sacramento County Agriculture and Habitat Lands Recycled Water Program Draft Environmental Impact Report (DEIR) (SCH # 2015022067). After considering the environmental analysis provided in the DEIR and public comments submitted on the DEIR, Regional San determined that construction and operation of the Program would not have a significant effect on the environment with implementation of the mitigation measures identified in the Mitigation Monitoring and Reporting Program (MMRP) which was adopted for the project along with the Final EIR (FEIR) in January 2017. (The DEIR and FEIR will hereinafter be referred to collectively as the EIR.) On March 8, 2017, Regional San issued a Notice of Determination (NOD) for the project.
5. The Division issued public notice of Regional San's Wastewater Change Petition WW0092 on August 19, 2016. Protests were received from the following: California Department of Fish and Wildlife (CDFW); U.S. Bureau of Reclamation (Reclamation); Westlands Water District (Westlands); San Luis Delta-Mendota Water Authority (SLDMWA); and Mr. Richard Morat. The protests are discussed below.
6. By letter dated September 15, 2016, CDFW protested Regional San's petition. CDFW indicated that the proposed reduction in wastewater discharge could result in cumulative adverse impacts to environmental and public trust resources in the Sacramento River, including potentially negative impacts to Central Valley steelhead, Sacramento winter-run

Chinook salmon, Central Valley spring-run Chinook salmon, the Southern Distinct Population Segment of green sturgeon, and Sacramento splittail. CDFW also identified concerns about Regional San providing recycled wastewater to Stone Lakes NWR, which is tributary to Snodgrass Slough. Snodgrass Slough is considered to have poor quality holding and rearing salmonid habitat and CDFW was concerned that providing out of basin origin water to Stone Lakes NWR could create attractant flows in Stone Lakes NWR and Snodgrass Slough during adult salmon migration, negatively impacting the presently poor return success of Mokelumne River salmon. CDFW also indicated concern regarding potential direct, indirect, and cumulative impacts to terrestrial species and their habitat due to construction of the Program's conveyance system. CDFW listed the sensitive species as California tiger salamander, giant garter snake, Swainson's hawk, tricolored blackbird, and western pond turtle.

7. Following protest dismissal negotiations between Regional San and CDFW, on May 7, 2018, Regional San provided the Division with protest dismissal conditions that resolved CDFW's protest. The protest dismissal conditions included specific conditions Regional San developed with CDFW staff, as well as CDFW's request that all protest dismissal conditions developed for Reclamation, Westlands, and SLDMWA be included in any order approving Regional San's petition. By letter dated May 10, 2018, CDFW confirmed that the May 7 protest dismissal conditions would resolve CDFW's protest. CDFW's three specific protest dismissal conditions included: 1) a requirement that the proposed project not result in the taking of a threatened, endangered, or candidate species under either the California Endangered Species Act (CESA) or the federal Endangered Species Act (federal ESA); 2) a requirement that Regional San obtain all necessary federal, state, and local agency permits prior to construction and operation of the project; and 3) a requirement that Regional San consult with CDFW to develop and implement a monitoring and reporting plan, including adaptive management of the riparian forest monitoring within the Program, consistent with Regional San's March 23, 2018, technical memorandum, "*Approach for Groundwater and Riparian Forest Monitoring and Reporting.*" The monitoring will be required to be conducted for at least 30 years from implementation of the Program. The proposed conditions are included as Condition Nos. 5 and 6 of this Order.
8. By letter dated September 16, 2017, Reclamation protested Regional San's petition. Reclamation's protest was based on potential harm to the stored water supplies of the Central Valley Project (CVP) that may result from the decrease in flows in the Sacramento River due to the reduced discharge from the SRWTP. Reclamation indicated that it was not requesting that the State Water Board deny Regional San's petition and requested that the Board condition any order approving the petition to address the potential injury. Reclamation indicated that the SRWTP discharge represents 85 percent of all wastewater discharged to the Sacramento River downstream of Shasta Dam. Reclamation also indicated that it considers SRWTP's treated wastewater discharge a significant source of return flow relative to the operations of the CVP and the Department of Water Resources (DWR) State Water Project (SWP), and as such, initiation of Term 91 diversion restrictions

in part reflect the discharge flow from the SRWTP. Reclamation also indicated that Regional San's reduction in discharge during months when the CVP and SWP are required to release stored water to meet required Delta water quality standards could result in the CVP and SWP having to release more water to meet those standards. Reclamation provided several terms to be included in any order approving Regional San's petition that would resolve their protest issues.

9. By letters dated September 19, 2016, both Westlands and SLDMWA protested Regional San's petition. Both protests were fundamentally the same and based on the potential negative impacts to their respective water supplies if CVP supplies were negatively impacted. Westlands and SLDMWA are both CVP contractors. SLDMWA's protest also incorporated Reclamation's protest by reference.
10. Following protest dismissal negotiations between Regional San, Reclamation, Westlands, and SLDMWA, on April 19, 2018, Regional San provided the Division with protest dismissal conditions that resolved the protests of Reclamation, Westlands, and SLDMWA. Reclamation, Westlands, and SLDMWA confirmed their protests could be considered resolved with inclusion of the protest dismissal conditions in any order approving Regional San's petition.
 - a. The first protest dismissal condition includes restrictions on Regional San's reduction of wastewater discharges during the irrigation season (April through October) in dry and critically dry water years. The restrictions will be required until Regional San has demonstrated certain threshold criteria regarding groundwater levels. The criteria include three consecutive biennial groundwater model simulations that show a net in-lieu groundwater recharge of 400,000 acre-feet (af) and 50 percent return of flows to surface water as a result of the Program. Regional San will be required to continue to monitor and model groundwater and return flow impacts for the life of the Program and if any subsequent modeling does not confirm the 50 percent stream return benefits remain present, Regional San will be required to confer with Reclamation to determine what measures are necessary to increase stream return flows back to the 50 percent threshold.
 - b. The second protest dismissal condition requires Regional San to comply with Mitigation Measure '*HYD-4 Coordinate Operations with Relevant Resource Agencies*' from the MMRP for the project that requires Regional San to coordinate the Program's recycled water deliveries in critically dry water years with relevant resource agencies, including Reclamation and DWR, to avoid thermal impacts to the Sacramento River below Lake Shasta. In addition, the condition requires that until Regional San has met the previously described threshold criteria, certain storage levels in Lake Shasta will also require reduction of deliveries of recycled water.

- c. The third protest dismissal condition indicates that the second dismissal condition, “shall not constitute precedent as to any terms and conditions that may be imposed in an order on any future wastewater change petition filed by Regional San.” The State Water Board will not include the third proposed dismissal condition in the approval Order because it is unnecessary. Only orders adopted by the State Water Board at a public meeting are considered precedential. (See Order WR 96-01, p. 17, fn. 11).

The first and second protest dismissal conditions are included as Conditions No. 7 and 8 of this Order.

11. By letter dated August 22, 2016, Richard Morat protested Regional San’s petition. Mr. Morat’s protest was based on the arguments that the project would not best serve the public interest and that the project would have adverse environmental impacts. Specifically, the protest described concerns about potential negative impacts to fishery resources in the Sacramento River and Sacramento-San Joaquin Bay-Delta due to the decreased flows in the Sacramento River and downstream that will result from the reduction in SRWTP’s wastewater discharge. Mr. Morat requested that any Division order approving Regional San’s proposed reduction of SRWTP’s discharge flows include project operation terms and conditions that will be protective of fish and wildlife resources in the Sacramento-San Joaquin Bay-Delta and its tributaries. Mr. Morat also indicated his belief that the State Water Board’s 2006 Sacramento-San Joaquin Bay-Delta Water Quality Control Plan (2006 Bay-Delta Plan) is not adequately protective of fish and wildlife; however, he did acknowledge that the State Water Board is in the process of updating the Bay-Delta Plan.
12. By letter dated November 21, 2016, Regional San responded to Mr. Morat’s protest indicating that the Regional San Program’s EIR provided extensive analyses of the potential environmental impacts associated with the Program, including potential negative impacts of Regional San’s reduced discharge and the change in the place and purpose of use of the treated wastewater. Regional San indicated that the EIR included information regarding the potential adverse impacts to aquatic species and habitat in the Sacramento River and Sacramento-San Joaquin Delta resulting from the proposed decrease in wastewater discharge to the Sacramento River. The EIR included analyses of the impacts of the proposed reduced discharge under a wide range of conditions, including times when Reclamation and DWR are operating the CVP and the SWP during excess and balanced conditions in the Delta¹. The EIR concluded that the proposed wastewater

¹ The Delta is considered to be experiencing excess conditions when there is sufficient outflow in the Delta to meet water quality objectives and in-basin entitlements without requiring the release of supplemental CVP or SWP stored water. The Delta is considered to be in balanced conditions when the SWP and CVP agree that releases from the upstream reservoirs, plus unregulated flow, approximately equal water supply needed to meet Sacramento Valley in-basin uses and Project exports. During balanced conditions in the Delta when water must be withdrawn from storage to meet Sacramento Valley and Delta

discharge reductions will have only a negligible impact on Sacramento River flows, water temperatures, and salinity gradients during operational conditions when the Delta is in excess, and the impacts to sensitive fish species using the reach of the Sacramento River below Freeport, and the Delta, are also anticipated to be negligible under these conditions. The EIR further concluded that during balanced operational conditions, a reduction in SRWTP's treated wastewater discharge at Freeport has the potential to deplete cold water storage in CVP or SWP reservoirs and affect Sacramento River and Delta fisheries during a multi-year drought. However, the EIR provides for mitigation of these potential impacts (through Mitigation Measure HYD-4) by committing Regional San to work with Reclamation and DWR so that the timing of wastewater discharge reductions will preserve Reclamation's and DWR's stored water and cold water pools for the benefit of aquatic species and water quality in the Sacramento River and Delta. The EIR concluded that cumulative impacts to aquatic species are expected to be less than significant with implementation of Mitigation Measure HYD-4. Mitigation Measure HYD-4 is included as an enforceable condition of this Order and as part of the MMRP attached to this Order.

13. By letter dated January 9, 2017, the State Water Board requested that Mr. Morat review Regional San's November 21, 2016, response to his protest and indicate whether it was adequate to resolve the protest. The State Water Board requested, pursuant to Water Code section 1703.5², that if Mr. Morat determined that Regional San's response was not adequate, he must provide a statement of facts supporting his allegations and include substantial evidence that the project would not be in the public interest, would adversely affect public trust uses, or would have an adverse environmental impact. Mr. Morat responded by letter dated January 10, 2017, indicating that Regional San's response did not resolve his protest. Mr. Morat's January 10, 2017, response contends, without explanation, that Regional San's CEQA analysis on the fishery impacts of the proposed reductions in SRWTP's discharges was incorrect due to the use of the wrong hydrologic baselines for with or without project comparisons. The sole support for this assertion appears to be quotes from a hydrologist describing general issues with baseline setting in CEQA documents. Mr. Morat did not provide specific project-related information to substantiate his view that the baseline Regional San used in its CEQA analysis was incorrect or what alternative baseline should have been used.
14. Subsequent to Mr. Morat's January 10 letter, he was contacted by Regional San in an effort to address his concerns. Regional San discussed with Mr. Morat the protest dismissal conditions of Reclamation, Westlands, and SLDMWA and whether those conditions would address his concerns. A May 8, 2018, email from Mr. Morat included

requirements, 75 percent of the responsibility to withdraw from storage is borne by the CVP and 25 percent by the SWP.

² Water Code section 1703.5 states, "The board may request from the protestant or the petitioner additional information that the board determines is reasonably necessary to attempt to resolve the protest. The board shall provide a reasonable period for submitting the information, and may allow additional time for good cause shown."

several questions regarding operations of the Program related to the protest dismissal conditions. Regional San responded to Mr. Morat's May 8 questions and then conducted a teleconference call with Mr. Morat on May 18, 2018. Following the teleconference call, on May 21, 2018, Regional San provided an email to the State Water Board and Mr. Morat indicating that they were unable to resolve Mr. Morat's concerns; however, Regional San believed the protest dismissal conditions agreed to with the other protestants should be sufficient to resolve Mr. Morat's protest. Mr. Morat responded to Regional San's May 21 email on the same day and reiterated his concerns about managing flow and maintaining habitat conditions that are suitable for protection of fish and wildlife in the Delta and its tributaries. Mr. Morat also acknowledged that the Bay-Delta Plan is in the process of being updated, and specifically mentioned the State Water Board's pending Phase II Bay-Delta Plan updates that may include various new or updated flow requirements for the Sacramento River, its tributaries, and the Bay-Delta that will be protective of fish and wildlife. Further, Mr. Morat indicated that his protest did not request that Regional San's petition be denied, but that protective terms and conditions be included in any order approving the petition. Mr. Morat has provided no proposed conditions to include in an approval order but requested that the State Water Board share the order with him.

15. This Order includes conditions that will ensure that Regional San's proposed reductions in wastewater discharge to the Sacramento River will not negatively impact Reclamation and DWR operations of the CVP and SWP relative to compliance with water quality and flow objectives contained in the State Water Board's Bay-Delta Plan and State Water Board Decision 1641. Further, this Order includes a condition whereby the State Water Board has continuing authority to re-open and amend this Order if necessary, to reflect new or modified flow or water quality criteria that result from the impending update to the 2006 Bay-Delta Plan.
16. The State Water Board believes that, to the extent they relate to the specific effects of this project, the issues identified in Mr. Morat's protest are addressed through the following items: Mitigation Measure HYD-4 and the other protest dismissal conditions included in this Order from CDFW, Reclamation, Westlands, and SLDWMA; the condition in the Order regarding the State Water Board's continuing authority to amend this Order relative to the impending update to the 2006 Bay-Delta Plan; and the mitigation measures included in the MMRP attached to this Order. The public review period for the DEIR expired on August 22, 2016. Mr. Morat provided only general statements about Bay-Delta issues and baseline assessment in response to the State Water Board's request for additional information. He has not explained how these broad, general concerns pertain to this specific project in light of the EIR, mitigation measures, and protest dismissal terms. Accordingly, there is not substantial evidence in light of the whole record to support the allegations contained in Mr. Morat's protest. Therefore, the protest may be dismissed pursuant to Water Code section 1703.6, subdivision (d).³

³ Water Code section 1703.6 states, "If the protest is based on an allegation other than injury to a legal user of water, the board may cancel the protest for failure to submit information

17. The State Water Board is in the process of updating the 2006 Bay-Delta Plan. Amendments to the 2006 Bay-Delta Plan could, if adopted, include new inflow requirements for the Sacramento River, its tributaries, and eastside tributaries to the Delta; new and modified Delta outflow requirements; new requirements for cold water habitat; new and modified interior Delta Flow requirements; recommendations for complementary ecosystem protection actions that others should take; and adaptive management, monitoring, evaluation, special study, and reporting provisions. Changes to the 2006 Bay-Delta Plan will be implemented through water rights requirements, Federal Energy Regulatory Commission licensing requirements, or other measures.
18. Approval of Regional San's wastewater change petition WW0092 would result in a reduction of Sacramento River flow up to 50,000 af per year. Although Regional San's Program EIR indicates that the impact of reduction in SRWTP's current wastewater discharge on the Sacramento River flow is less than significant, any reduction in the Sacramento River flow may affect the water balance in the Bay-Delta watershed and have a secondary effect on the implementation of Sacramento River flow requirements. When implementing new Sacramento River flow requirements pursuant to an update of the 2006 Bay-Delta Plan, parties affected by the requirements may have to compensate for the impacts resulting from the reduction of the SRWTP's wastewater discharge into the Sacramento River. The State Water Board will reserve jurisdiction to modify the terms and conditions of this Order if, after notice to interested parties and an opportunity for hearing as required by statute, regulation, or constitutional due process, the State Water Board finds that such modification is necessary to meet water quality and flow objectives in the update of the 2006 Bay-Delta Plan.
19. The State Water Board has determined that, with the inclusion of the protest dismissal terms, the petition for change in the purpose of use and place of use of SRWTP's treated wastewater discharge will not cause injury to any other lawful user of water.
20. On August 14, 2017, the Petitioner submitted an application for funding under the Water Storage Investment Program (WSIP) administered by the California Water Commission (Commission) pursuant to chapter 8 of division 26.7 of the Water Code. On July 24, 2018, the Commission determined that the Program is eligible for a maximum of \$280.5 million in WSIP funding. Section 79755, subdivision (a)(3) of the Water Code requires that the Commission cannot make a final allocation of funds for a project until the commission determines that "[t]he project applicant has entered into a contract with each public

requested by the board if the board determines both of the following: (1) The public review period has expired for any draft environmental document or negative declaration required to be circulated for public review and comment pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code; (2) In the absence of the requested information, there is no substantial evidence in light of the whole record to support the allegation."

agency identified in Section 79754 that administers the public benefits, after that agency makes a finding that the public benefits of the project for which that agency is responsible meet all the requirements of this chapter, to ensure that the public contribution of funds pursuant to this chapter achieves the public benefits identified for the project.” These public agencies potentially include the State Water Board, CDFW, and DWR. To date, Petitioner has not entered into contracts for the administration of public benefits pursuant to its WSIP application. Accordingly, the State Water Board will reserve jurisdiction to modify the terms and conditions of this Order if the State Water Board finds that modification is necessary to implement and ensure consistency with future contracts for the administration of public benefits under WSIP. Petitioner and the State Water Board will negotiate what process may be required for modifying the Order during negotiation of a future contract for the administration of public benefits under WSIP.

21. Regional San is currently party to a multi-jurisdictional partnership (including Regional San, Sacramento County, the cities of Rancho Cordova and Galt, Sacramento County Water Agency and the Capital SouthEast Connector Joint Powers Authority) that is implementing the South Sacramento Habitat Conservation Plan (SSHCP), which was adopted by all participating entities in the fall of 2018, following Regional San’s certification of its EIR. The SSHCP is a Habitat Conservation Plan (HCP) that will secure permission to incidentally take Covered Species that will be listed on the CESA and federal ESA Incidental Take Permits issued by U.S. Fish and Wildlife Service (USFWS) and CDFW. The SSHCP includes and analyzes projects and activities and estimates the effects from each activity on Covered Species identified in the HCP. Projects and activities described in the SSHCP are referred to as “covered activities” and are conditionally afforded coverage from take prohibitions if they are implemented in a manner that is consistent with the expectations of and commitments with the HCP.

The Project as described in Regional San’s EIR would be a covered activity within the SSHCP; the SSHCP has been adopted and permitting is expected to be complete by the end of summer of 2019. The proposed mitigation measures included in the EIR are consistent with the SSHCP.

22. The State Water Board is a CEQA responsible agency for purposes of considering whether to approve the wastewater change petition that will allow Regional San 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 reach its own conclusions on whether and how to approve the project involved. (Cal. Code Regs., tit. 14, § 15096, subd. (a).)
23. The State Water Board has reviewed and considered Regional San’s EIR in approving the wastewater change 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 and discussed below are the potentially significant impacts identified in the EIR that fall within the State Water Board's purview. The potentially significant impacts result from the construction activities related to the Program as well as the reduction in discharge of treated wastewater into the Sacramento River and the use of that recycled water pursuant to the Program:

a) Biological Resources

- i. **Impact BIO-1** – Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS.

The EIR indicated that a number of sensitive species (plants, invertebrates, amphibians and reptiles, birds) have the potential to occur in or near the project area and construction of the proposed project could kill or injure individuals, particularly during ground-disturbing activities. Construction activities could also adversely impact habitat for sensitive species. Therefore, substantial impacts to sensitive species, either directly, or indirectly through habitat impacts, may occur, which would be a potentially significant impact.

Regional San has proposed Mitigation Measures BIO-1a, BIO-1b, BIO-1c, and BIO-1d to reduce impacts to sensitive species and their habitats to less than significant. The following are brief summaries of Mitigation Measures BIO-1a, BIO-1b, BIO-1c, and BIO-1d.

Mitigation Measure BIO-1a: Regional San and its contractors will avoid and minimize permanent and temporary impacts to habitats and land cover types used by HCP-Covered and Non-HCP-Covered sensitive species by implementation of construction-related Best Management Practices (BMPs) as included in the Stormwater Pollution Prevention Plan (SWPPP) for the Project.

Mitigation Measure BIO-1b: Regional San will mitigate unavoidable losses to habitats used by both SSHCP-Covered and non-SSHCP-covered sensitive species by participating in and complying with habitat-level conservation measures identified in the SSHCP. The conservation commitments of the SSHCP will be implemented by Regional San even if the SSHCP is not adopted and involve Regional San's compensation for impacts to various types of sensitive habitats including vernal pools, wetlands, streams, freshwater marshes, riparian areas, and croplands and grasslands.

Mitigation Measure BIO-1c: Regional San will mitigate impacts to HCP-Covered species by participating in and complying with species-specific conservation measures identified in the SSHCP that would be implemented by

Regional San even if the SSHCP is not adopted. The conservation commitments are intended to mitigate construction-related impacts and cover the following species: Sacramento Orcutt grass and slender Orcutt grass; California tiger salamander; western spadefoot toad; western pond turtle; giant garter snake; tricolored blackbird; burrowing owl; and Swainson's hawk.

Mitigation Measure BIO-1d: Regional San will mitigate impacts to non-HCP-covered sensitive plant and covered bird species by conducting appropriate surveys prior to the commencement of construction activities. If sensitive plant or bird species are identified in the Project area, Regional San will coordinate with Sacramento County and CDFW and/or USFWS to determine what protective course of action is necessary.

Findings: This Order adopts Mitigation Measures BIO-1a, BIO-1b, BIO-1c, and BIO-1d and incorporates them as conditions pursuant to the MMRP attached to this Order. With the inclusion of the above mitigation measures, the potential for the project to have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS would be reduced to a less than significant level.⁴

- ii. **Impact BIO-2** – Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or USFWS.

In the EIR, Regional San found that construction of the proposed project could substantially and adversely affect riparian habitat or other sensitive natural communities known to occur in the project area. The EIR determined that implementation of Mitigation Measures BIO-1a, BIO-1b, and BIO-2 would reduce impacts to riparian habitats and other sensitive natural communities to less than significant.

Mitigation Measure BIO-2 requires SCRSD to secure regulatory permits for all actions that may impact riparian habitat and other sensitive natural communities, including Clean Water Act section 401 and 404 permits, federal ESA and CESA permits, and CDFW Lake and Streambed Alteration Agreement. Mitigation Measure BIO-2 also requires restoration of any habitats that were affected during construction potentially including purchase of credits from a mitigation bank.

Findings: This Order adopts Mitigation Measures BIO-1a, BIO-1b, and BIO-2 and incorporates them as conditions pursuant to the MMRP attached to this Order. With the inclusion of the above mitigation measures, the potential for the

⁴ Regional San EIR, pp. 3.5-29 through 3.5-30

project to have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or USFWS would be reduced to a less than significant level.⁵

- iii. **Impact BIO-3** – Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.

The EIR determined that construction-related impacts to federally protected wetlands as defined by Section 404 of the Clean Water Act would be reduced to less than significant with implementation of Mitigation Measures BIO-1a, BIO-1b, BIO-2, and BIO-3.

Mitigation Measure BIO-3 requires Regional San to prepare a wetland delineation report for review and verification by the U.S. Army Corps of Engineers, which will be used to secure permits and approvals under sections 401 and 404 of the Clean Water Act. Mitigation Measure BIO-3 also includes restoration of affected jurisdictional areas to ensure no net loss of wetland functions and values.

The Project may deliver treated wastewater to Stone Lakes NWR to supplement irrigation water for high value natural communities and sensitive habitats, including federally-protected wetlands, and the species that use these communities and habitats, and the EIR indicates that this is a beneficial effect. In order to confirm that use of the recycled water will be beneficial to the Stone Lakes NWR, this Order requires that Regional San obtain any necessary NPDES permit for the discharge of treated wastewater to Stone Lakes NWR.

Findings: This Order adopts Mitigation Measures BIO-1a, BIO-1b, BIO-2, and BIO-3 and incorporates them as conditions pursuant to the MMRP attached to this Order. With the inclusion of the above mitigation measures, and the requirement in the Order to obtain any necessary NPDES permit for the use of treated wastewater in the Stone Lakes NWR, the potential for the project to have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means would be reduced to a less than significant level.⁶

⁵ Regional San EIR, p. 3.5-46

⁶ Regional San EIR, pp. 3.5-48 through 3.5-49

- iv. **Impact BIO-4** – Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.

The EIR evaluated both direct impacts to drainage corridors of the project area during construction and operation activities (Impact BIO-4a) and indirect impacts to the Sacramento River and Delta resulting from project operations (Impact BIO-4b).

Impact BIO-4a covers the potential impact to movement of native resident species in drainage corridors of the project area. The EIR found that project area drainage features with currently disturbed riparian vegetation may be impacted during construction activities, and that previous and existing intensive land uses within the project area have resulted in degraded conditions such that no intact, high-value drainage corridors or riparian vegetation occur in the project area. Therefore, relative to Impact BIO-4A, the EIR found that there was a less than significant impact to drainage corridors during construction of the project and no mitigation measures are required.⁷

Impact BIO-4b covers the reduction of up to 50,000 afa of treated wastewater that is normally discharged to the Sacramento River, and the reduction in flows in the Sacramento River at Freeport by up to 108 cfs (or 70 mgd), average recycled water delivery rate, as calculated across a 7-day running-average period, not to exceed 6,427 acre-feet per month, during periods (months) of peak irrigation demand.

Although reductions in discharges from the SRWTP would decrease flows in the Sacramento River at Freeport, Regional San expects that operation of the Program will produce an increase in in-lieu groundwater recharge that would benefit the groundwater basin. Regional San expects that the higher groundwater levels would potentially result in increased flows in the Cosumnes, lower Mokelumne, and Sacramento rivers. The EIR indicates that once the groundwater basin approaches a long-term balance from operation of the Program, there is expected to be an increase in stream flows by approximately 45,000 afa with implementation of wintertime irrigation.

The EIR indicates it is anticipated that as storage in the groundwater basin increases from operation of the program, the net effect of the reduction in the SRWTP discharge reduction will be reduced; although the benefits will not be fully realized until the groundwater system reaches a new balance with the surface water system. Regional San's modeling conducted in support of the EIR indicated that the eventual net change in annual flows is a reduction of about 4,800 af with wintertime irrigation.

⁷ Regional San EIR, pp. 3.5-49 through 3.5-50

Project Impacts During Balanced Delta Conditions

Balanced conditions in the Delta typically require the CVP and SWP to make releases from storage to meet downstream senior water right demands and Delta flow and water quality requirements. The EIR indicates that balanced operations conditions occur on average 50 percent of the time in which Program-related reductions would occur. The EIR indicates that during balanced operations conditions, a reduction in SRWTP's discharge at Freeport has the potential to increase storage depletion in CVP or SWP reservoirs (mainly Lake Shasta), if increased releases are required to meet regulatory requirements.

According to the EIR, CalSim II modeling of sequential drought years during 1929-1934 and 1986-1992 showed that the Program would have reduced Shasta storage by up to approximately 30,000 af with wintertime irrigation over a worst-case 6-year drought period without changes to retain more cold water at Lake Shasta. The decrease in storage has the potential to create thermal impacts to fisheries habitats downstream of Lake Shasta. Regional San has proposed Mitigation Measure HYD-4 (discussed above in Paragraph 10 of this Order) which requires Regional San to coordinate operations of the Program with at a minimum Reclamation, DWR, and CDFW, to ensure that discharge reductions during balanced Delta conditions are timed to reduce impacts associated with reduced Shasta storage to less than significant.⁸

Project Impacts During Excess Delta Conditions

During Delta excess conditions, CVP and SWP reservoirs are generally not making releases of stored water to meet Delta flow and water quality requirements. The EIR indicates that excess operational conditions occur on average 50 percent of the time during which Program-related SRWTP discharge reductions would occur.

The EIR concluded that the impacts to operation of the Program during Delta excess conditions would be negligible to Sacramento River flows, water temperature, and to Delta salinity gradients; therefore, impacts to sensitive fish species from the Sacramento River at Freeport to the Delta were also anticipated to be negligible during Delta excess conditions.⁹

Findings: This Order adopts Mitigation Measure HYD-4 and incorporates it as a condition pursuant to the MMRP attached to this Order. This measure will be implemented as set forth in the MMRP, as well as a specific protest-dismissal

⁸ Regional San EIR, pp. 3.5-53 through 3.5-54

⁹ Regional San EIR, pp. 3.5-52 through 3.5-53

condition of this Order and will commit Regional San to implement this action. With the inclusion of the above mitigation measure, the potential for the project to interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors or impede the use of native wildlife nursery sites would be reduced to a less than significant level.

- v. **Impact BIO-5** – Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.

The EIR indicates that Mitigation Measures BIO-1a through BIO-1d and BIO-2 would address the Sacramento County General Plan, the Bufferlands Master Plan, and the City of Elk Grove General Plan policies regarding habitat and species preservation. Mitigation Measure BIO-5 requires that during construction of the Project, Regional San participate and comply with the terms of the Sacramento County Tree Preservation Ordinance.

Findings: This Order adopts Mitigation Measures BIO-1a, BIO-1b, BIO-1c, BIO-1d, BIO-2, and BIO-5 and incorporates them as conditions pursuant to the MMRP attached to this Order. With the inclusion of the above mitigation measures, the potential for the project to conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance, would be reduced to a less than significant level.

b) Hydrology and Water Quality

- i. **Impact HYD-1** – Violate water quality standards or waste discharge requirements, create substantial sources of polluted runoff, or otherwise substantially degrade water quality.

The EIR indicates that construction activities involving soil disturbance, excavation, cutting and filling, stockpiling, dewatering, and grading activities could result in increased erosion and sedimentation to surface water during construction of the proposed project. Regional San must take precautions to contain contaminants, including hazardous materials associated with construction equipment, or construction activities that could produce contaminated stormwater runoff and contribute to degradation of surface water or groundwater quality. Regional San will be required to comply with the State Water Board's NPDES General Permit for Storm Water Discharges Associated with Construction Activities (NPDES General Construction Permit), including preparation and compliance with a SWPPP that will include BMPs to prevent polluted runoff resulting from construction activities of the proposed Project. Regional San will also conduct any necessary dewatering operations during construction of the project pursuant to the Central Valley Regional Board's NPDES General Order for Dewatering (NPDES General Dewatering Permit), or

other NPDES permit as necessary. With implementation of Mitigation Measures HYD-1a, HYD-1b, and HYD-1c, which require compliance with the NPDES General Construction Permit, implementation of appropriate BMPs to control erosion and sediment during construction and complying with the NPDES General Dewatering Permit or other appropriate NPDES permit, potential impacts would be reduced to less than significant.

Operation of Stone Lakes Managed Wetland

The EIR indicated that the suitability of recycled water for use at the Stone Lakes NWR was evaluated using the USFWS Rapid Assessment tool. The quality of the recycled water from the SRWTP was projected based on pilot treatment studies as Regional San is still in the process of upgrading treatment facilities at the plant. Prior to final agreements with USFWS to deliver recycled water to the Stone Lakes NWR, additional studies of the recycled water supply from the SRWTP's upgraded treatment facilities will be performed to demonstrate that water quality is acceptable for use. Regional San will be required to implement Mitigation Measure HYD-1d, which requires Regional San work with USFWS to ensure that Regional San's recycled water is of suitable quality before treated wastewater is provided for use at the Stone Lakes NWR.¹⁰ Further, this Order will also require Regional San to obtain any necessary NPDES permit from the Central Valley Regional Board covering the discharge of the treated wastewater to the Stone Lakes NWR. An NPDES permit will contain effluent limitations based in part on the beneficial uses of the receiving water. Therefore, any permit issued by the Central Valley Regional Board for the discharge of recycled water into the Stone Lakes NWR would be protective of fish and wildlife at the refuge.

Operation of Potential Recharge Area

Regional San's use of recycled water for direct groundwater recharge will require WDRs issued by the Central Valley Regional Board. The WDRs will require that Regional San's groundwater recharge activities comply with recycled water regulations as detailed in the California Code of Regulations, title 22, division 4, chapter 3. Operation of the Program and the direct groundwater recharge component's potential negative impacts to groundwater quality will be subject to Mitigation Measure HYD-1e, which requires that Regional San perform detailed analyses of groundwater impacts from the recharge area and diluent wells to comply with the State Water Board's anti-degradation policy regarding surface and groundwater quality in California (State Water Board Resolution No. 68-16).¹¹

¹⁰ Regional San EIR, p. 3.10-29

¹¹ Regional San EIR, pp. 3.10-29 through 3.10-32

Findings: This Order adopts Mitigation Measures HYD-1a, HYD-1b, HYD-1c, HYD-1d, and HYD-1e, and incorporates them as conditions pursuant to the MMRP attached to this Order. With the inclusion of the above mitigation measures, the potential for the project to violate water quality standards or waste discharge requirements, create substantial sources of polluted runoff, or otherwise substantially degrade water quality, would be reduced to a less than significant level.

ii. **Impact HYD-4 – Interfere with or require changes to CVP or SWP operations.**

The EIR indicates that the proposed project would result in reductions in flows in the Sacramento River at Freeport mostly amounting to less than one percent of the total river flow. As discussed in Impact BIO-4b, potential changes in Sacramento River flows were estimated using CalSim II by projecting changes in flows due to both the reduction in SRWTP discharges and increases in groundwater return flows to surface streamflow that are expected to result from operation of the Program. It was determined that the Program's potential impacts to Sacramento River flow vary depending on the water year type. As discussed above in the discussion on Impact BIO-4, SRWTP's reductions in wastewater discharge have the potential for more adverse impacts to the Sacramento River system during times when the Delta is in balanced conditions.

The EIR indicates that, although the Program will result in reduction in the SRWTP discharges which should be offset by groundwater returns to surface streamflow, there is still a potential that Program operations could require adjustments in CVP and SWP operations. Of main concern is the potential for reduction in Lake Shasta storage, which without operational adjustment could create thermal impacts in the Sacramento River downstream of CVP reservoirs. According to the EIR, a storage level in Lake Shasta below 2,400,000 af in the summer generally results in negative downstream temperature impacts in the Sacramento River. Therefore, Regional San has developed Mitigation Measure HYD-4 to reduce the temperature impact to less than significant. Specifically, in critically-dry years, when Shasta storage falls below 2,400,000 af, and based on consultation with Reclamation, DWR, and CDFW, Regional San could modify operations of the Program to require the SRWTP to discharge more treated wastewater to the Sacramento River.

Findings: This Order adopts Mitigation Measure HYD-4 and incorporates it as a condition pursuant to the MMRP attached to this Order. With the inclusion of Mitigation Measure HYD-4, the potential impacts to CVP storage in Shasta would be reduced to less than significant, because discharge reductions would be reduced in critical years as needed to ensure that adverse effects to the Sacramento River are avoided, and the potential for the Project to interfere with

or require changes to CVP or SWP operations would be reduced to a less than significant level. Mitigation Measure HYD-4 is also specifically included in this Order as a protest dismissal condition.

24. The State Water Board has considered Regional San's Program EIR and MMRP in deciding whether to approve the petition. Pursuant to CEQA, and based on Regional San's MMRP, the State Water Board prepared a MMRP which includes the mitigation measures described above in Paragraph 23 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 in the MMRP and described in Paragraph 23 of this Order, avoids or significantly minimizes all of the significant impacts under the State Water Board's purview to a less than significant level. There is no evidence that approval of the wastewater change petition, with Regional San implementing mitigation measures from both the EIR MMRP and the State Water Board's MMRP to minimize impacts to biological resources and hydrology and water quality resources, will have adverse impacts on the environment. The State Water Board will issue a NOD within five days of the date of this Order.
25. In addition to any obligation the State Water Board may have under CEQA, the State Water Board has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.) With the inclusion of protest dismissal terms, standard terms and conditions, and mitigation measures identified in the EIR and attached in the MMRP, the changes 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.
26. 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 California Department of Fish and Wildlife (CDFW), the United States Bureau of Reclamation (Reclamation), Westlands Water District (Westlands), and San Luis Delta Mendota Water Authority (SLDWMA), and Mr. Richard Morat are dismissed.
2. Sacramento Regional County Sanitation District's (Regional San or Petitioner) Sacramento Regional Wastewater Treatment Plant (SRWTP) discharges treated wastewater effluent into the Sacramento River tributary to the Sacramento-San Joaquin Delta in Sacramento County. The point of discharge into the Sacramento River is located

as follows: California Coordinate System, NAD 83, Zone 2, North 1,927,612 feet, and East 6,704,855 feet, being within SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 13, T7N, R4E, MDB&M.

3. Regional San is authorized to reduce its treated wastewater discharge into the Sacramento River by reclaiming up to 50,000 acre-feet annually (afa) (at a rate of up to 108 cubic feet per second (cfs); or 70 million gallons per day (mgd), average recycled water delivery rate, calculated across a 7-day running-average period, and not to exceed a maximum of 6,427 acre-feet/month) to the South Sacramento County Agriculture & Habitat Lands Recycled Water Program (Program) for irrigation and fish and wildlife enhancement purposes pursuant to the conditions of this Order. When operational challenges halt delivery of recycled water, the recycled water delivery rate shall be calculated across a 14-day running average until 7 days after recycled water delivery resumes. Regional San shall provide notice to Reclamation and the Deputy Director of the Division of Water Rights when such operational challenges are present, and the 14-day running average shall go into effect as of that notice date.
4. The places of use and purposes of use of the reclaimed wastewater for the Program, as shown on Regional San's August 2016 and May 2019 maps on file with the Division, are generally described as follows: 1) irrigation use and fish and wildlife enhancement on approximately 16,560 acres in Sacramento County within T5-6N, R5-6E, MDB&M; 2) fish and wildlife enhancement on approximately 400 acres within the Stone Lakes National Wildlife Refuge within Sections 25 and 36, T6N, R4E, MDB&M; and 3) direct groundwater recharge on approximately 560 acres within the 16,560 irrigated acres providing fish and wildlife enhancement use along the Cosumnes River approximately located within the river reach as follows: a) Upstream Point – California Coordinate System, NAD83, Zone 2, North 1,916,684 feet and East 6,774,385 feet, being within NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 31, T7N, R7E, MDB&M; and b) Downstream Point – California , NAD83, Zone 2, North 1,849,015 feet and East 6,709,368 feet, being within NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 36, T5N, R4E, MDB&M, as shown on the May 2019 map accompanying the petition.

No water may be used for the purposes described in 2) and 3) in the paragraph above pursuant to this Order until Petitioner has satisfied the requirements of the California Environmental Quality Act pertaining to any pipelines, recharge basins, or other facilities necessary to achieve those purposes of use.

5. These changes do not authorize any act which results in the taking of a threatened, endangered, or candidate species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & Game Code, §§ 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 to 1544). If a "take" will result from any act authorized under this Order, the Petitioner shall obtain authorization for an incidental take prior to construction or operation of the project. Petitioner shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this Order.

6. In consultation with CDFW, Regional San will develop and implement a monitoring and reporting plan consistent with Regional San's technical memorandum "*Approach for Groundwater and Riparian Forest Monitoring and Reporting*," dated March 23, 2018. The monitoring and reporting plan will be developed in coordination with existing and planned groundwater monitoring, and any future modifications to the plan shall be done in consultation with CDFW. The monitoring and reporting plan, as well as any future modifications to the plan, shall be submitted to the Division of Water Rights. Monitoring for the South County Ag Program will continue for at least 30 years from implementation of the Project. Monitoring reports will be provided to CDFW's North Central Region Office and the Division.

Adaptive management of the riparian forest monitoring within South County Ag Program will be implemented on a five-year cycle through at least the first 30 years of the Program, to review and respond to available data from the previous years of implementation (water application), maintenance, and monitoring, and to incorporate new technologies and lessons learned into subsequent implementation, monitoring, maintenance, and performance tracking. Periodic review of implementation and performance progress will allow for course correction with respect to the ongoing implementation milestones and obligations, should any be needed.

7. Until the groundwater recharge threshold criteria specified below is exceeded, Regional San shall meet the following restrictions for irrigation season recycled water deliveries and total annual recycled water deliveries under the Program:

Restrictions on recycled water deliveries during the irrigation season (April - October):

During Shasta Critical water years (as defined in the Sacramento River Settlement Contracts), irrigation season (April 1 - October 31) recycled water deliveries under the Program shall not exceed 16,250 acre-feet (af) in such years.

During dry or critically dry water years (as defined in the Sacramento Valley 40-30-30 Index, but not Shasta Critical years), irrigation season (April 1 - October 31) recycled water deliveries under the Program shall not exceed 24,375 af in such years.

During all other water year types, there will be no irrigation season restrictions to recycled water deliveries under the Program.

Restrictions on total annual recycled water deliveries:

During any Shasta Critical water year and during the first 10 years (estimated period of project buildout) of Program operation, total annual recycled water deliveries under the Program shall not exceed 25,000 afa in such years.

During dry or critically dry water years (as defined in the Sacramento Valley 40-30-30 Index, but not Shasta Critical years), and during the first 10 years of Program operation, total annual recycled water deliveries under the Program shall not exceed 37,500 afa in such years.

During Shasta Critical years, and dry or critically dry years, and 10 years after commencement of Program operation, total annual recycled water deliveries under the Program shall not exceed 50,000 afa.

During all other water year types there will be no total annual restrictions to recycled water deliveries under the Program.

Threshold Criteria

Net groundwater recharge and 50 percent demonstrated return of flows to surface water shall serve as the criteria to determine when the above-stated restrictions on recycled water deliveries are no longer required. Net groundwater recharge is defined as the cumulative amount of recycled water delivered by the Program, minus the water extracted through formal banking agreements with Regional San.

Upon exceedance of 400,000 af of net groundwater recharge, the most accepted available regional integrated groundwater model at that time will be run to compare with and without project conditions. The model's simulation period shall be extended to the end of the most recent water year. To validate the increase in groundwater elevations and the benefits accruing to the streams, Regional San will use this regional integrated groundwater and surface water model to confirm that at least 50 percent, volumetrically, of annual recycled water deliveries is estimated to return to surface water. Modeling will include incorporation of Program area groundwater elevation data and streamflow gauge data available at that time, and a comparison to simulated without Program project conditions. Regional San will extend the model simulation period every other year at the end of the most recent water year. After each extension, the model shall be validated based upon a comparison of observed and simulated groundwater elevations and surface flows and recalibrated when necessary. Once the 50 percent point is reached, the restrictions on recycled water deliveries shall be discontinued. The simulation modeling shall continue until the 50 percent stream return benefits are shown, on an annual running average basis, for three consecutive two-year periods.

The model, including input and output files shall be provided to Reclamation, Westlands, and SLDMWA (hereinafter referred to collectively as the Water Agency Protestants) upon request. Regional San and the Water Agency Protestants will meet and confer in good faith to validate modeling results.

In the event that the modeling does not validate the increase in groundwater elevations and corresponding 50 percent stream return benefits, the above restrictions on recycled water deliveries shall remain in effect pending the results of additional validation modeling.

Once the three consecutive biennial model simulations confirm the 50 percent stream return benefits, the restrictions on recycled water deliveries shall permanently cease. Regional San shall perform the simulation modeling two years after such cessation of restrictions, and every five years thereafter, to confirm that the 50 percent stream return benefits remain present. If such simulation modeling does not validate that the 50 percent stream return benefits remain present, then Regional San and the Water Agency Protestants shall meet and confer in good faith to discuss potential measures that could be voluntarily undertaken by Regional San to increase returns of recycled water deliveries to surface water, including the reinstatement of the above restrictions on recycled water deliveries.

8. Regional San shall comply with mitigation measure HYD-4 Coordinate Operations with Reclamation, the Water Agency Protestants, Department of Water Resources, CDFW, and other Relevant Resource Agencies, as set forth in the Final Environmental Impact Report for the Project. HYD-4 as included in the Mitigation and Monitoring Program reads as follows:

To minimize potential thermal impacts to the Sacramento River downstream of Lake Shasta during critically dry years due to losses of cold water storage from reduced treated wastewater discharges, SRCSD shall work with the Bureau of Reclamation and other relevant resource agencies to make appropriate operational changes in recycled water use and timing of discharge reductions in the spring months when the cold water pool in Shasta is critical. In critically dry years when storage in Lake Shasta falls below 2,400,000 af in April, SRCSD will coordinate with Central Valley Operations staff to reduce deliveries of recycled water to farmers in April and May if needed to avoid thermal impacts to the Sacramento River below Lake Shasta, as determined by the Sacramento River Temperature Model being utilized by Reclamation in the given year.

In addition, until the restrictions on recycled water deliveries referenced above in Condition 7 permanently cease, when storage in Lake Shasta falls below 2,000,000 af on September 1 of a given year, Regional San shall reduce deliveries of recycled water for direct agricultural irrigation to a maximum of 2,000 af per month for the months of February through March of the immediately succeeding year. This additional limitation on deliveries of recycled water will no longer be in effect once storage in Lake Shasta exceeds 2,400,000 af in any year.

9. Regional San is responsible for compliance with any applicable waste discharge or water recycling requirements issued by the Regional Water Board or the State Water Board.
10. Regional San shall obtain all necessary permits for the discharge of treated wastewater into the Stone Lakes NWR prior to delivering treated wastewater to the Stone Lakes NWR for fish and wildlife enhancement.
11. Regional San shall obtain all necessary federal (including Clean Water Act section 404), state, and local agency permits and approvals required by other agencies (including lake or streambed alteration agreements with CDFW [Fish & Game Code, section 1600, et seq.]), prior to construction and operation of the Project. Copies of such permits and approvals shall be forwarded to the Deputy Director for Water Rights prior to initiation of construction and operation of the Project.
12. The CEQA findings specified in paragraphs 23 and 24 above are hereby adopted.
13. This Order incorporates the mitigation terms of the final EIR specified in paragraph 23 above and in the Mitigation and Monitoring Reporting Program, which is attached hereto as Attachment 1 to this Order. Regional San shall implement the measures to mitigate significant impacts to biological and water resources, and recreation, and conduct the required reporting and monitoring of those measures. The State Water Board reserves continuing authority 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 project as a result of additional CEQA review or otherwise.
14. The State Water Board is currently in the process of updating the Bay-Delta Plan that could establish new and modified Delta tributary inflow and cold-water habitat and Delta outflow objectives. Subject to appropriate procedures, including notice to interested parties and opportunity for a hearing as required by statute, regulation, or constitutional due process, the timing and quantity of the reduction in Regional San's treated wastewater discharge into the Sacramento River approved by this Order may be modified to implement existing or revised water quality and flow objectives included in the Bay-Delta Plan.
15. The State Water Board reserves continuing authority in the public interest to implement and amend this Order for conformity with requirements that may be established for the Sacramento River and Sacramento-San Joaquin Delta in the future, including but not limited to any future revisions to the Bay-Delta Plan and its associated program of implementation, and in the event of unforeseen adverse impacts to fish and wildlife resources and other instream beneficial uses. Modifications to this Order shall only be made after notice and opportunity for a hearing as required by statute, regulation, or constitutional due process.

16. Subject to appropriate procedures, as may be negotiated by Petitioner and the State Water Board during negotiation of a future contract for the administration of public benefits under WSIP, the State Water Board reserves continuing authority in the public interest to implement and amend this Order for conformity with contracts for the administration of public benefits entered into by Regional San pursuant to chapter 8 of division 26.7 of the Water Code.
17. Regional San shall file an annual report with the Deputy Director for Water Rights by April 30 of each year that includes at minimum the following information for the previous calendar year:
- average daily treated wastewater discharge rate into the Sacramento River from the SRWTP (in cfs);
 - maximum daily recycled water delivery rate (in cfs) to the Program for each of the following: a) irrigation uses during the growing season (April through October); b) fish and wildlife enhancement uses during the non-growing season (November through March); c) discharge to Stone Lakes NWR; and d) direct groundwater recharge;
 - 7-day running average recycled water delivery rates in cfs and mgd, and monthly total recycled water deliveries (in acre-feet) (and the 14-day running average values during any periods the 14-day provision was in effect the previous year);
 - monthly total recycled water deliveries (in acre-feet);
 - a summary of monitoring programs conducted for CDFW in compliance with Condition No. 6 of this Order;
 - a summary of recycled water delivery restrictions and mitigation measures enacted in concurrence with Reclamation, DWR, and CDFW, in compliance with Condition Nos. 7 and 8 of this Order; and
 - a summary of groundwater modeling results conducted pursuant to Condition No. 7 of this Order.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

*Erik Ekdahl, Deputy Director
Division of Water Rights*

Dated: SEPT 10 2019

Attachment 1: Mitigation and Monitoring Reporting Program for WW0092