

# Ventura River Watershed

## The Physical Solution — A Deeper Dive

### OVERVIEW

A group of local municipal and agricultural water users have negotiated a collaborative local solution (known as a “physical solution”) to protect the Ventura River Watershed and all those who rely on its water. The physical solution not only protects human use of water from the Watershed, but also protects the Southern California Steelhead and other species in the Watershed.

The proposed physical solution is now available for public review and can be read in its entirety at [venturariverwatershedadjudication.com](http://venturariverwatershedadjudication.com) or [venturariver.com](http://venturariver.com).

Below is an overview of the physical solution that will address these key areas:

- What is a physical solution?
- How did the need for a physical solution arise?
- What are the components of the proposed physical solution?
- What's next?

### What is a physical solution?

In short, a physical solution is a common-sense approach to solving complex water issues related to standards of reasonable and beneficial use of water.

Per the California Constitution, Article X, Section 2 (commonly referred to as the Reasonable Use Doctrine):

“It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent

of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or water course in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water.”

In layman’s terms, the Reasonable Use Doctrine recognizes how much our culture in the west relies on us to use water as effectively as possible and, with that in mind, prohibits unreasonable water use or waste. Every drop of water in the State should be put to beneficial use.

As a municipality, the City must ensure water is used reasonably to serve its citizens. Similarly, other municipal, agricultural and industrial users of water must use water reasonably and for beneficial uses. This is the fundamental principle of California water law as outlined in the Reasonable Use Doctrine.

When the reasonable use of water is challenged or questioned, the court can approve a physical solution — an equitable solution rooted in the Constitution that allows for the development of an enforceable, collaborative solution focused on maximizing reasonable use that meets the many needs that rely upon the water source.

## How did the need for a physical solution arise?

To understand why the physical solution is necessary, it's important to understand the Ventura River Watershed and its history.

The Ventura River Watershed is a unique system. The Watershed is very dependent on the weather and experiences periods of very high flows and very dry periods depending on how much it rains. The Watershed is also unique because, for many people, the Watershed is their sole source of water. In addition, the Watershed is home to many endangered and protected species that rely on water from the Watershed and that have adapted to the unique nature of the system. From time to time, the variability of the weather, coupled with the various human and non-human demands on the Watershed, create strains on the system.

In 2014, Santa Barbara Channelkeeper filed a lawsuit against the City and the State of California related to the balance between human and non-human use of the Watershed. Specifically, Channelkeeper asserted that the City's use of water from the Foster Park area of the Watershed violated the Reasonable Use Doctrine because the City's municipal use was harming the Southern California Steelhead. Ultimately, the Court of Appeal held that the reasonableness of the City's use had to be measured against all other users of the Watershed, and therefore allowed the City to bring into the lawsuit everyone currently extracting or who could extract water from the system in the future.

The physical solution is designed to settle these disputes by creating a locally controlled, Watershed-wide approach to balancing water needs with the health of the Steelhead.

## What are the components of the proposed physical solution?

After meeting with other municipal and agricultural water users in mediation sessions established to start a dialogue, the negotiating parties agreed to move forward with a collaborative approach: developing a locally controlled physical solution. Regular meetings began that included negotiating parties working together, and insight from experts on the Steelhead population and hydrology, to lay

out a framework to address the habitat needs of the Steelhead and ensure sufficient water for the fishery while balancing the protection of local use and need.

The proposed physical solution ...

- Avoids unreasonable injury to any water right holders and avoids the present need for a specific allocation of water among competing water right claims.
- Fairly and reasonably ensures native waters are made available for beneficial use among all water right holders.
- Optimizes the reasonable and beneficial use of waters in the Ventura River Watershed and avoids waste in accordance with Article X, Section 2 of the California Constitution.
- Establishes a comprehensive approach to maintaining the Southern California Steelhead fishery population in the Ventura River Watershed in Good Condition, consistent with the Constitutional mandate of reasonable and beneficial use and the public trust doctrine.
- Establishes a management structure to ensure implementation of the physical solution, providing certainty for future water resource administration.
- Facilitates water resource planning and sustainable water use.
- Furthers the mandates of the State Constitution and State water policy.
- Maintains continuing jurisdiction of the court to oversee the implementation of the physical solution and to resolve conflicts as they may arise among the parties to and persons bound by the physical solution. As such, the physical solution will provide for the long-term, comprehensive and efficient management of water in the Watershed in a manner not otherwise available under applicable law.

Based on the analysis and advice of the experts, the goal of the physical solution is to improve Steelhead habitat and access, and maintain historical flow. In order to do so, the solution has four main components: habitat, flow, governance and enforcement

## HABITAT

Expert analysis concludes that the flow in the Ventura River has remained relatively steady, meaning the Steelhead population were doing well at one point under the same flow conditions that exist today. Therefore, it is believed that the habitat and the access to the habitat have degraded over time as the result of human activity, which has negatively impacted the Steelhead population. Some examples of this human activity which has created barriers to access include the construction of the Matilija Dam, the Robles Diversion Facility and potential barriers at Foster Park, to name a few. Additionally, there are roads that cross the river, hard stabilization structures and levees as a result of the river being channelized to protect properties from water damage that impede access further.

This solution proposes that the remedy is to address these barriers to access and improve the habitat. These actions include:

- Removing Steelhead access barriers in the Watershed, including at Foster Park and in San Antonio Creek
- Improving habitat throughout the Watershed, thereby creating places for the Steelhead to spawn, rear and develop before they leave for the ocean
- Creating safe harbors for the Steelhead population — which would include the strategic placement of boulders, etc., to provide safe pooling areas in which the population can safely congregate
- Creating programs that reduce non-native species and fish populations that are preying upon the Steelhead population or harming their habitat
- Developing ongoing monitoring of the Steelhead, hydrology and water quality as it relates to the Steelhead population

Through these actions, experts believe the Steelhead will improve over time and return to “Good Condition” which means they’re sustainable and healthy on an individual and population level and that the ecosystem is healthy.

## FLOW

Experts believe that a key part of this solution is to maintain historical flows and to commit to flow regimes that ensure there’s enough water in the river for the Steelhead population to thrive and survive, based on historical flow patterns. It is not recommended to suddenly change flow, as water cannot simply be created. The solution proposes ongoing collaboration to align with small and large water users in different areas of the river to monitor flow.

To help maintain flow in critical areas of concern, the City will continue to implement a flow regime that it has negotiated with Channelkeeper. Specifically, the City will use less water at Foster Park when flows reach 4 cubic feet per second (CFS) and stop all production when flows reach 3 CFS. Based on expert advice, this flow regime will more than protect historical flows that are critical to the Steelhead.

Other areas of the Watershed will seek to maintain historical flows through voluntary efforts or future management activities.

It has been observed that in the past, the Steelhead population was more abundant than it is today. Experts believe that the abundance was not representative of a healthy fishery, but one created for appearance, after fish were planted into the river. The goal of the physical solution is to return the Steelhead to the healthy and sustainable population level that existed in the past independent of the significant fish stocking that previously occurred.

## GOVERNANCE

The physical solution is a three-phased solution that includes an adoption phase, an implementation phase and an adaptive management plan phase.

### Adoption Phase

After the physical solution is entered, a Management Committee will be established with representation from the negotiating parties and groundwater sustainability agencies that will be charged with implementing the physical solution in adherence to the court-approved solution. Given that the committee is not a separate public entity,

the court will have oversight of the committee and can remove members it deems are acting in self-interest.

The first action of the committee will be to create a 10-year Management Plan that addresses all of the details and implementation/execution of the components as proposed in the solution. Specifically, the long-term management will account for the specific needs of the fishery, variable hydrology of the region, periods of low and very low precipitation, and the condition and quality of the habitat during the life cycle of the fishery, including the specific habitat requirements pertinent to that life cycle. In this way, the solution ensures the viability of the fishery through a series of coordinated management actions under a Management Plan.

In addition, to quickly create “on the ground” improvements to the watershed, the parties will take specific actions. For example, the City will remove two barriers at Foster Park that may impede Steelhead passage at low flows. The City will continue to implement the flow regime at Foster Park. Additionally, the parties will also fund Arundo removal activities and engage in early

### **Implementation Phase**

The implementation phase is a 10-year period of the agreed upon Management Plan. During this phase, the committee will initiate and oversee the implementation of specific projects designed to improve the habitat in the Watershed. Such projects include additional Steelhead access improvement projects, the creation of new spawning habitats for the Steelhead, the creation of new places for the Steelhead to rear and develop, the removal of non-native species, and significant Steelhead, hydrology and water quality monitoring.

The committee will be responsible for providing annual, regular reporting presented to the court and public to outline the efforts and progress. Additionally, the committee will be responsible for monitoring water users and reviewing requests for new water permits in order to make recommendations as to whether the request is consistent with reasonable use standards and the physical solution.

### **Adaptive Management Plan Phase**

After 10 years, the progress will be assessed, and if significant improvement has not been achieved from the starting “Baseline Condition,” a second 10-year phase will be implemented, and so on, until sustainability and “Good Condition” are achieved.

## **ENFORCEMENT**

Enforcement is a critical piece in ensuring the success of this solution, as it will allow for a local approach that is meaningfully enforceable. A court-binding agreement provides a sense of stability, accountability and certainty for all parties involved. Because of the court’s oversight, the physical solution and Management Plan will be implemented. By implementing the physical solution and Management Plan, the parties will be in compliance. In this way, the commitments of the parties are known and real, and compliance is measurable. All the parties know what they need to do to succeed.

### **What’s Next?**

After the proposed physical solution is made available to the public on Sept. 15, 2020, experts will be confidentially available on a weekly basis between Sept. 15 and Oct. 30 to meet with those who would like to better understand the solution and its components. In order to participate in these discussions, parties will be asked to sign a meet and confer agreement. This ensures the negotiating parties can freely share information during these sessions without fear of it being used against them later in the case in the event the proposed Physical Solution is not approved.

Oct. 30, 2020 is the current deadline to file a response related to this settlement agreement.

After the court deadline, the negotiating parties will respond to formal discovery requests and expert depositions for those who have chosen not to support the proposed solution, and ultimately, appear in court in 2021 to outline why they believe the court has a duty to consider this equitable solution.