

Frequently Asked Questions (FAQs) for the Proposed Physical Solution

The largest municipal and agricultural water users in the Ventura River Watershed have participated in a collaborative partnership to release a proposed physical solution for the Watershed. The overarching goal for the physical solution is to improve the condition of the Steelhead fishery in the Ventura River Watershed, while at the same time protecting local water supplies.

Below are answers to FAQs related specifically to the proposed physical solution, which we've developed in an effort to break down the legal jargon. There are other general FAQs also available on this website.

Who are the negotiating parties proposing the physical solution?

At this time, the water users proposing the physical solution are the City of Ventura, Ventura River Water District, Meiners Oaks Water District, Taylor Ranch (Wood-Claeysens Foundation), Rancho Matilija Mutual Water Company and other agricultural interests. These water users also consulted with other interests in the Watershed for input on the physical solution.

What is a physical solution and what is the significance of this document being released?

A physical solution is a common-sense approach to solving complex water issues. It is a way for local parties to create an equitable approach to address existing problems — such as challenges faced by the Steelhead — without having to adjudicate water rights or determine water right priorities.

The physical solution that has been released by the negotiating parties is the proposed settlement agreement and management document for the Ventura River Watershed Litigation. If the court approves the document, it would be binding on all parcels that overlay the four groundwater basins in the Watershed, as well as all properties adjacent to the Ventura River or its tributaries (creeks, streams or drainage ditches that flow into it). The

physical solution is designed to settle the litigation by creating a locally controlled, Watershed-wide approach to balancing water needs with the health of the Steelhead fishery. Importantly, the physical solution does not determine water rights or affect existing water uses.

What does the proposed physical solution do for fish and the environment?

The experts for the proponents have concluded that the biggest challenge for the Steelhead is the lack of quality habitat and access to quality habitat in the Ventura River Watershed. This challenge is caused by physical changes that have been made to the Watershed, including the construction of Matilija Dam, the construction of the Casitas Robles Diversion, the scouring and exposure of the subsurface dam at Foster Park, construction of levees and other flood control facilities, and other large and small changes to the Watershed such as invasive plant and animal species. According to experts, these improvements to habitat and access to habitat are critical for improving conditions for the Steelhead.

This physical solution commits all water users to design, fund, construct, maintain and monitor habitat enhancements in the Watershed. The City of Ventura has already committed to two such measures at Foster Park — notching of the exposed portion of the subsurface dam, and

bouldering around an exposed water pipeline — that are both potential fish passage barriers. Other examples of habitat enhancement measures include:

- Removal of a fish passage barrier at the Fraser Street Road Crossing
- Gravel enhancement in Matilija Creek and North Fork Matilija Creek
- Boulder and large woody material augmentation in San Antonio Creek and in the Ventura River
- Arundo and other non-native plant removal
- Reduction of predator and non-native fish in the Watershed (bass and carp)
- Supporting other projects such as the removal of Matilija Dam, levee improvements and removal of other fish passage barriers

Regarding instream flows, the experts for the proponents have concluded that habitat enhancements coupled with maintaining historical flows are critical to the Steelhead. The experts have assessed historical flow conditions for the entire existing historical record and have concluded that historically the Steelhead were thriving at flow levels similar to current flows. Therefore, the experts believe that maintaining historical flows, coupled with the habitat enhancement projects, will — over time — improve the conditions for the Steelhead. The experts believe that a flow regime at Foster Park, described in this document, is more than sufficient to protect historical flows in that area. In addition, the physical solution will include a monitoring program that will generate additional information that may be used by water managers in the future to help manage flows.

Does this impact water rights in the Ventura River Watershed?

The physical solution does not determine water rights, priority or water allocations. It has no impact and imposes no changes on existing water users. It does require that water users report their water use.

How much does this cost?

The long-term costs of implementing the physical solution are expected to be approximately \$1,850,000 per year. This includes costs for: habitat enhancement projects, biological monitoring, hydrological monitoring, the Watershed Management Plan, administration, legal and contingency. While this is expensive, the City and other negotiating parties believe the physical solution provides good value for local water users and the public by protecting the Steelhead fishery while at the same time allowing water users to continue using water for human consumption, agriculture and the local economy.

It is anticipated that many of the projects called for in the physical solution will be funded through grants or other third-party contributions. However, the physical solution allows for an assessment process to fund any shortfall in public funding. The cost per party depends on that party's water usage and the total amount of water usage. Water usage will be analyzed every five years based on the previous five years in order to determine each party's financial obligation. The "de minimis" users described in the next FAQ would have no financial obligation. The current estimated total usage in the Ventura River Watershed (above the de minimis 5.0 acre feet per year) is 18,500 acre feet per year. Based on that usage, and without third-party funding, the maximum cost for each party to implement the physical solution would be approximately \$100 per acre foot.

In addition to anticipated grant funding, there will also be ways for parties to receive credit for voluntary in-kind efforts on their property or by pursuing other approved voluntary projects that help achieve the goals of the physical solution.

How does this impact people who pump or divert very little (or no) water from the Ventura River Watershed?

The physical solution creates a category for people who use very little water from the Watershed. This category is called "de minimis" and is set at people who pump or divert less than 5.0 acre feet per year. People who are de minimis users will only have to file proof of their de minimis use and will have no other direct obligations under the physical solution

— they do not need to financially contribute to the management measures.

What is the Management Plan?

The Management Plan (MP) will be the central governing document to implement the physical solution. The MP will be approved by a Management Committee (MC). It will be the main way for the parties to plan for and implement projects and for the court to assess compliance.

The parties will have 18 months after the entry of the physical solution to prepare and approve the MP. The MP must include the specific elements identified in the physical solution, such as the habitat enhancement measures and the flow regime at Foster Park. It will also include a monitoring, reporting and assessment program. The MP will be regularly assessed and will be comprehensively updated every 10 years.

It is important to know that while the MP is being prepared, the parties will also be taking immediate steps to implement the physical solution. The City will continue to implement the Foster Park flow regime and will construct the two passage barrier removal projects at Foster Park. The parties will also prioritize Arundo removal during this period. Finally, the parties will take steps to implement biological and hydrological monitoring that will play a long-term role in the MP.

What is the Management Committee?

The Management Committee (MC) will be primarily responsible for implementation of the physical solution. Under the current proposed document, the MC will be a five-member body consisting of the following technical staff: a representative from the City of Ventura, a representative from Casitas, a rotating member from Ventura River Water District and Meiners Oaks Water District, a rotating representative from the agricultural community, and a rotating representative of the two groundwater sustainability agencies (GSAs). The County and a non-governmental organization will have ex-officio (non-voting) seats.

The MC will manage the implementation of the physical solution. Key roles include:

- Approval and implementation of the MP
- Selection of the MP technical advisor (who will run the day-to-day operations of the MC)
- Adoption of rules and regulations to implement the physical solution
- Adoption of an annual budget to implement the physical solution
- Raising of funds to implement the physical solution
- Gathering of information about water production within the Watershed
- Assessment of future requests to install new water wells
- Updating the MP every 10 years
- Monitoring and reporting

How does the physical solution ensure compliance?

The physical solution will take time to work, and an improved Watershed will not happen overnight. Therefore, the parties must be given time to implement the physical solution and measure its success. The physical solution will have phases and will include specific compliance provisions for each phase so that the parties know what needs to be achieved to remain in compliance.

The physical solution will have three phases — the adoption phase, the implementation phase and the adaptive management phase. The adoption phase will be for an 18-month period at the beginning (after the physical solution is approved by the court and a judgment is entered), and will include immediate actions to improve the Watershed and adoption of the Management Plan (MP). The implementation phase will be for a 10-year period thereafter and will implement the MP. The adaptive management phase will be a series of repeating 10-year periods, each period based on an updated MP.

Within the implementation and adaptive management phases, there will be two main compliance metrics. First, the parties will need to perform the specific actions that are required of them in each phase. This includes the specific

provisions in the physical solution and the required actions in the MP for that phase. The parties may need to take additional actions as ordered by the court if there is an “excursion below baseline” — that is, if baseline conditions get worse.

The physical solution also recognizes that, despite the parties’ best efforts, actions may take place that are beyond their control but impact compliance. Therefore, all compliance is subject to a provision that recognizes that there are “uncontrollable” conditions such as floods, fires, earthquakes or drought that may render compliance impossible.

What is the role of the court after the physical solution is approved?

The court will retain jurisdiction to enforce the physical solution. The court’s authority will include the right to force the parties to perform specific actions required by the physical solution. It will also include the authority to order emergency measures in the event conditions worsen for the Steelhead fishery. In the event there are future unavoidable disputes over water rights, the court’s continuing jurisdiction would provide a forum for resolution of such disputes.

How does this relate to the Sustainable Groundwater Management Act (SGMA), and the existing Ojai Basin Groundwater Management Agency and the Upper Ventura River Groundwater Agency?

The physical solution is designed to support and coordinate with existing efforts under the Sustainable Groundwater Management Act (SGMA).

The two existing groundwater sustainability agencies (GSAs) in the Ventura River Watershed are the Ojai Basin Groundwater Management Agency and the Upper Ventura River Groundwater Agency. The physical solution does not take away any of their authority. However, it is designed to address and solve one of the undesirable effects that the groundwater sustainability plans (GSPs) must address — impacts to interconnected surface waters. The GSAs will have the option of adopting the physical solution in order to meet that

requirement under SGMA, which should reduce future compliance costs for the GSAs.

The GSAs will have an alternating seat on the Management Committee (MC). The physical solution will also coordinate with monitoring efforts by the GSAs in order to enhance information and data gathering, while avoiding duplication of efforts and costs.

How does someone learn more, or what if someone has a concern about a provision in the proposed physical solution?

The negotiating parties’ 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 City and other negotiating parties can freely share information during these sessions without fear of it being used against them later in the event the proposed physical solution is not approved.

If parties have concerns about a particular provision in the proposed physical solution, their attorney can discuss with the negotiating parties’ attorneys to see if a change can be accommodated.

What if someone does not agree after the meet and confer period?

The proponents hope that as many parties as possible agree to sign on to, or at least not oppose, the physical solution. If someone wants to oppose the physical solution after the meet and confer period currently set to end on Oct. 30, they can seek the appropriate litigation avenues (including discovery) after that date. The City will respond to formal discovery requests and expert depositions for those who have chosen not to support the proposed solution, and ultimately, the proponents will ask the court to approve the physical solution. The current plan is to ask the court to consider approval of the document in 2021.

What if I am not yet a party or have not filed an answer, but do not oppose the proposed physical solution?

The City needs to be careful not to provide legal advice, and if you have questions you should consult with your own attorney.

If you are not opposed to the physical solution, but are not yet a party or have not filed an answer, you could choose to take no further action. If the physical solution is approved by the court, your property would be subject to its terms and the court's continued jurisdiction.

How is the City of Ventura addressing flow concerns at Foster Park, and will that impact the City's water customers?

Consistent with its settlement agreement with Santa Barbara Channelkeeper, the City of Ventura is agreeing to a water production regime for its facilities at Foster Park. The City will shut down most of its water production facilities at Foster Park when flows go below 4.0 cubic feet per second (CFS) and stop all production when flows go below 3.0 CFS. The City will also use its two new gauges at Foster Park (VR-1 and VR-2) to monitor the impacts, if any, its pumping has on flow in the Ventura River at these levels. Fishery and hydrology experts believe this regime is more than protective of the Steelhead and other instream uses in the Watershed.

Under this flow regime, the City believes that it will still be able to meet the needs of its water customers. When the City is not able to use water from the Ventura River, it will rely more heavily on its other sources, such as Casitas Municipal Water District water or water from other groundwater basins. There is also a provision that allows the City to suspend the flow regime in the event of an emergency, when replacement water is unavailable to meet the health and safety needs of customers.

What commitments is the City of Ventura making?

Through the physical solution, the City of Ventura is:

- Committing to a production regime at Foster

Park, described in the previous section, that ensures protection of the Steelhead and other instream uses.

- Addressing, as soon as possible, two potential fish passage barriers at Foster Park — notching of the exposed portion of the subsurface dam and bouldering around an exposed water pipeline.
- Participating in and contributing to the other long-term habitat enhancement measures and monitoring for the benefit of instream uses and the health of the Ventura River Watershed.

The City believes these actions are necessary for it to be able to keep using the Ventura River, an important source the City has been using for more than 100 years, to serve its customers. The City also believes this is a local, cooperative solution that avoids the need for long, expensive litigation over water rights.

Why do the proponents believe that the physical solution is the best path forward for the Watershed?

The Ventura River Watershed is a unique water system with unique problems. These problems are best addressed through a locally developed, comprehensive management plan. The physical solution is such a plan. It is based on specific local knowledge of the challenges and conditions in the Watershed. Without the physical solution, the river will be managed through litigation or by a flow regime imposed by the State of California. Unlike a plan developed through litigation or by the State, the proposed physical solution addresses challenges and conditions facing the Watershed in a way that is sensitive to local needs. It protects existing water usage while finally tackling head-on the problems faced by the Steelhead. The physical solution honors local control and existing local management efforts but also results in immediate action to address Watershed conditions. It is the best and fastest way to preserve the community's way of life and improve the conditions in the Watershed.