

# **SAN DIEGO RIVER CONSERVANCY ACT PUBLIC RESOURCES CODE, DIVISION 22.9**

## **Chapter 1. General Provisions and Definitions**

### **§ 32630. Short title**

This division shall be known, and may be cited, as the San Diego River Conservancy Act.

### **§ 32631. Legislative findings, declarations and intent**

(a) The San Diego River is a natural, historic, and recreational resource in the heart of San Diego. From its headwaters near the town of Julian in east San Diego County, it runs 52 miles through Mission Valley and the first settlement in California at Old Town San Diego before it empties into the Pacific Ocean at Ocean Beach. The river has been subjected to intense development in some parts; it runs through one of San Diego's most populated neighborhoods and is in need of restoration, conservation, and enhancement all along its length. The area presents excellent opportunities for recreation, scientific research, historic preservation of the first aqueduct in the United States, and educational and cultural activities, of value to California and the nation. Reestablishing the cultural and historic connections between the San Diego River, Old Town San Diego State Historic Park, the Military Presidio, and the Kumeyaay Nation will provide the public with the opportunity to appreciate the state's historic beginnings.

(b) Given the opportunities available, the state recognizes the importance of holding this land in trust to be preserved and enhanced for the enjoyment of present and future generations.

### **§ 32632. Definitions**

For the purposes of this division, the following terms have the following meanings:

(a) "Conservancy" means the San Diego River Conservancy established by this division.

(b) "Fund" means the San Diego River Conservancy Fund established pursuant to Section 32657.

(c) "Governing board" means the governing board of the conservancy.

(d) "Historic flumes" means both of the following:

(1) The Padre Dam flume built by Native Americans along the San Diego River to convey water from the Mission Dam to the Mission San Diego de Alcala in the early 1800s.

(2) The flume built by the San Diego Flume Company in the late 1880s to convey water from a diverting dam on the upper San Diego River to the eastern edge of the City of San Diego.

(e) "Local public agency" means a city, county, district, or joint powers agency.

(f) "Nonprofit organization" means a private, nonprofit organization that qualifies for exempt status under Section 501(c)(3) of the Internal Revenue Code,<sup>1</sup> as amended, and that has among its principal charitable purposes the preservation of land for scientific, historic, educational, recreational, scenic, or open-space opportunities, the protection of the natural environment, or preservation or enhancement of wildlife.

(g) "San Diego River area" or "area" means those lands located within the watershed of the San Diego River, from its headwaters near Julian to the Pacific Ocean at Dog Beach in San Diego.

(h) "Tribal nation" means a Kumeyaay Band that is a federally recognized tribe or a nonfederally recognized California Native American tribe that is on the contact list maintained by the Native American Heritage Commission. The Kumeyaay Band must be located within traditionally and culturally affiliated ancestral Kumeyaay territory within the County of San Diego.

## **Chapter 2. The San Diego River Conservancy**

### **§ 32633. Establishment within the Natural Resources Agency; purposes**

There is in the Natural Resources Agency, the San Diego River Conservancy, which is created for the following purposes:

(a) To acquire and manage public lands within the San Diego River area, and to provide recreational opportunities, open space, wildlife habitat and species restoration and protection, wetland protection and restoration, protection of historical and cultural resources, and protection, maintenance, and improvements of the quality of the waters in the San Diego River and its watershed, its tributaries, and historic flumes emanating from the river for all beneficial uses, lands for educational uses within the area, and natural floodwater conveyance.

(b) To provide for the public's enjoyment, and to enhance the recreational and educational experience and cultural and historic interpretation on public lands in the territory in a manner consistent with the protection of land and natural resources, as well as economic resources, in the area.

**§ 32634. Board membership; term of office; termination**

(a) The governing board of the conservancy shall consist of 16 voting members and two nonvoting members.

(b) The voting members of the board shall consist of the following:

(1) The Secretary of the Natural Resources Agency, or their designee.

(2) The Director of Finance, or their designee.

(3) The Director of Parks and Recreation, or their designee.

(4) The Director of Fish and Wildlife, or their designee.

(5) A representative of the Colorado Desert District of the Department of Parks and Recreation, or their designee.

(6) Five members of the public at large, three of whom shall be appointed by the Governor, one of whom shall be appointed by the Senate Committee on Rules, and one of whom shall be appointed by the Speaker of the Assembly.

(7) The Mayor of San Diego, or their designee.

(8) One member of the City Council of El Cajon, elected by a majority of the membership of the council.

(9) One member of the City Council of San Diego, elected by a majority of the membership of the council.

(10) One member of the Board of Supervisors of the County of San Diego, whose district includes the preponderance of the San Diego River watershed.

(11) One member of the Kumeyaay Diegueño Land Conservancy board of directors, elected by a majority of the membership of that board, or their designee.

(12) One member of the City Council of Santee, elected by a majority of the membership of the council.

(c) The two nonvoting members shall consist of the following:

(1) The Executive Director of the Wildlife Conservation Board, or their designee.

(2) A representative selected by the San Diego Regional Water Quality Control Board.

(d) Two of the three initial appointments by the Governor pursuant to paragraph (4) of subdivision (b) shall be for three-year terms and the third appointment shall be for a two-year term. All subsequent appointments shall be for four-year terms.

(e) A person shall not continue as a member of the governing board if that person ceases to hold the office that qualifies that person for membership. Upon the occurrence of those events, the person's membership on the governing board shall automatically terminate.

#### **§ 32635. Compensation; reimbursement for expenses**

The members of the conservancy that are not full-time public employees may be compensated for attendance at regular meetings of the conservancy at the rate of one hundred dollars (\$100) per regular meeting, not to exceed 12 regular meetings a year. All members of the conservancy may be reimbursed the actual amount of the reasonable and necessary expenditures incurred in attending meetings of the conservancy and carrying out the duties of their office.

#### **§ 32636. Chairperson and vice chairperson; term of office**

The governing board shall elect from its own members a chairperson and vice chairperson, whose terms of office shall be two years, and who may serve more than one term. In the event of a vacancy, a new chairperson or vice chairperson may be elected by the governing body before the expiration of the two-year term to fill out the remainder of that two-year term.

#### **§ 32637. Quorum**

(a) A majority of the total voting membership of the governing body shall constitute a quorum for the transaction of the business of the conservancy. If a quorum is present, a majority vote of the members present is sufficient to transact the business of the governing board.

#### **§ 32638. Rules and procedures**

The governing board shall adopt its own rules and procedures necessary to conduct its business.

### **Chapter 3. Powers and Duties**

#### **§ 32639. Offices and equipment; taxing and regulating authority denied**

The conservancy shall establish an office within the San Diego River watershed. The conservancy may rent or own real and personal property and equipment pursuant to applicable statutes and regulations. The conservancy shall not levy a tax or regulate land use.

### **§ 32640. Open meetings**

All meetings of the governing board are subject to the Bagley-Keene Open Meeting Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

### **§ 32641. Executive officer; qualifications and appointment; staffing**

The governing body shall determine the qualification of, and shall appoint, the executive officer of the conservancy and shall employ other necessary staff persons to execute the powers and duties of the conservancy in accordance with the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 1 of the Government Code).

### **§ 32642. Specific powers; decisionmaking process**

The conservancy may do any of the following to assist in the decisionmaking process for the purposes of this division:

- (a) Establish advisory boards, panels, or committees.
- (b) Engage in public outreach.

### **§ 32643. Specific powers; services**

The conservancy may do any of the following to provide necessary services:

- (a) Select and hire private consultants or contractors.
- (b) Enter into memorandums of understanding with state and local public agencies, and other entities and organizations.
- (c) Enter into a joint powers agreement pursuant to the Joint Exercise of Powers Act, as described in Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

### **§ 32644. Jurisdiction**

The jurisdiction of the conservancy is limited to the watershed of the San Diego River.

### **§ 32645. Real property or interests in real property**

The conservancy may take any of the following actions for the purposes of this division:

- (a) Select and acquire real property or interests in real property in the name of the state pursuant to the Property Acquisition Law (Part 11 (commencing with Section 15850) of

Division 3 of Title 2 of the Government Code). The conservancy may coordinate the acquisition with public agencies or partner organizations if the site is under immediate development pressure.

(b) Acquire interests in land by various means, including, but not limited to, land exchanges, easements, development rights, life estates, leases, and leaseback agreements.

(c) Accept and hold real property or an interest in real property that is acquired through acquisition, gift, exchange, donation, or dedication.

(d) Local public agencies shall retain exclusive authority over all zoning or land use regulations within their jurisdiction.

#### **§ 32646. Acquisition of public lands; right of first refusal; eminent domain power denied**

Notwithstanding any other provision of law, the conservancy has the first right of refusal to acquire any public lands that are suitable for park and open space within the conservancy's jurisdiction when those lands become available. The conservancy may not exercise the power of eminent domain.

#### **§ 32647. Agreements with other public agencies**

The conservancy may designate or enter into an agreement with any public agency to provide real estate services, and may assign authority to execute agreements for the acquisition or disposal of real property or interests in real property.

#### **§ 32648. Limitation upon options to purchase land or lesser interests**

Notwithstanding any other provision of law, the conservancy may not enter into an option to purchase land in fee simple or a lesser interest for an amount in excess of three hundred thousand dollars (\$300,000).

#### **§ 32649. Grants**

(a) The conservancy may award grants to any local public agency, state agency, joint powers agency, special district, tribal nation, and nonprofit organization consistent with the purposes of this division.

(b) A grant from the conservancy to an entity described in subdivision (a) for the acquisition of real property or an interest in real property is subject to all of the following conditions:

(1) The purchase price of any interest in land acquired may not exceed fair market value, as established by an appraisal that is approved by the conservancy.

(2) The conservancy shall approve the terms under which the interest in land is acquired.

(3) An interest in land acquired through the use of a grant may not be used as security for any debt to be incurred by the entity.

(4) A transfer of land acquired through the use of a grant is subject to the approval of the conservancy and the execution of an agreement between the conservancy and the transferee sufficient to protect the interest of the people of the state.

(5) The state shall have the right of entry and power of termination over any interest in real property acquired with state funds, and may exercise those rights if any material term or condition of the grant is violated.

(6) If the entity receiving the grant ceases to exist for any reason, the title to all interests in real property acquired with state funds shall immediately vest in the state, except that, prior to that termination, any other public agency or nonprofit organization may receive, upon approval by the conservancy, title to all or a portion of that interest, by recording a written acceptance of title and the conservancy's written approval with the county recorder's office of the county with jurisdiction over the property.

(7) If the terms and conditions of the grant are not met, the conservancy may seek repayment of moneys granted pursuant to that grant.

(c) Any deed or other instrument of conveyance evidencing the final acquisition of real property by an entity pursuant to this section shall be recorded with the county recorder's office in the county with jurisdiction over the property, and shall detail the state's right of entry and power of termination of any interest in the property.

#### **§ 32650. Agreements with other agencies and entities relating to property interests acquired under the division**

Notwithstanding any other provision of law, the conservancy may lease, rent, sell, exchange, or otherwise transfer any real property or interest in real property that is acquired under this division to a local public agency, state agency, federal agency, nonprofit organization, individual, corporate entity, or partnership for management purposes pursuant to terms and conditions approved by the conservancy. The conservancy may request the Director of General Services to undertake these actions on its behalf.

#### **§ 32651. Actions in promotion of division purposes**

The conservancy may take any of the following actions for the purposes of this division:

(a) Initiate, negotiate, and participate in agreements for the management of land under its ownership or control with a local public agency, state agency, federal agency,

nonprofit organization, tribal nation, individual, corporate entity, and partnership, and enter into any other agreement authorized by state or federal law.

(b) Improve, develop, and preserve lands for the purpose of protecting the natural, cultural, and historical resources, or otherwise meeting the purposes of this division. Those purposes include protecting environmental resources by preserving and enhancing the state's most valuable natural resources in the San Diego River area, including natural lands such as wetlands, watersheds, wildlife habitat, and other wildlands, recreation lands such as parks, trails, greenbelts, and other open-space lands, and landscapes with locally unique features and areas identified by the state as deserving special protection.

(c) Merge or split parcels, adjust boundary lines, or take similar actions as part of the acquisition of land, or as needed in order to facilitate the management of land under its ownership or control.

(d) Fix and collect fees for any service rendered by the conservancy. The amount of the fee may not exceed the reasonable cost of providing the service rendered by the conservancy.

#### **§ 32652. Receipt of funds**

The conservancy may receive any gift, donation, subvention, grant, rent, royalty, and other financial aid and funds from any private or public source, or both.

#### **§ 32653. Actions in promotion of certain policies**

(a) The conservancy may develop and coordinate an integrated program of resource stewardship to manage the entire San Diego River Area in a manner that balances the recreational needs of the surrounding communities with strong protection of the area's natural resources.

(b) The conservancy shall establish policies and priorities within the San Diego River Area, and conduct any necessary planning activities in accordance with the purposes of this division.

(c) The conservancy shall establish priorities to be given to projects that create or enhance opportunities that provide recreation, aesthetic improvement, wildlife habitat, wetlands protection, water quality, and natural flood control in the San Diego River Area.

#### **§ 32654. Actions in promotion of policies in degraded areas**

(a) The conservancy, in consultation with other public agencies with appropriate jurisdiction and expertise, may do all of the following for any degraded area:



(1) Undertake site improvement projects.

(2) Regulate public access.

(3) Provide for restoration and rehabilitation.

(b) The conservancy may upgrade deteriorating facilities, and construct new facilities as needed for outdoor recreation, nature appreciation and interpretation, and natural resource protection.

### **§ 32655. Express and implied rights and powers**

The conservancy has, and may exercise, all rights and powers, expressed or implied, necessary to carry out the purposes of this division, except as otherwise provided.

### **§ 32656. Powers; sue and be sued**

The conservancy may sue and be sued.

#### **§ 32656.1. Report regarding conservancy projects; submission to Governor and Legislature; contents**

(a) On or before January 1, 2017, and on or before January 1 of every odd-numbered year thereafter, the conservancy shall prepare and submit to the Governor and the Legislature a report that includes all of the following:

(1) A description of, and the amount of money expended for, every project funded or undertaken by the conservancy, directly or by an entity under the direction of the conservancy, during the two years prior to the date of the report.

(2) A description of the progress made in accomplishing the purposes of this division during the two years prior to the date of the report.

(3) Recommendations regarding legislative action that may be necessary to provide funding or other resources to enable the conservancy to more effectively and efficiently carry out its mission, goals, and objectives.

(4) A summary of the program established in Chapter 4.5 (commencing with Section 32659).

(b) The report shall be submitted to the Legislature in the manner provided in Section 9795 of the Government Code.

## **Chapter 4. San Diego River Conservancy Fund**

### **§ 32657. Creation; funding**

The San Diego River Conservancy Fund is hereby created. Moneys in the fund shall be available, upon appropriation, for the purposes of this division.

### **§ 32658. Proceeds or income**

Proceeds or income from any lease, rental, sale, exchange, transfer of land, or interest in real property shall be deposited in the fund and shall be available for expenditure for the purposes of this division, upon appropriation by the Legislature.

## **Chapter 4.5. San Diego Rivers Watershed Consortium**

### **§ 32659. Legislative findings and declarations**

The Legislature finds and declares all of the following:

(a) The San Diego Rivers Watershed Consortium Program will establish advisory panels for the designated watersheds of the Otay River, the Sweetwater River, and part of the Tijuana River in southern San Diego County.

(b) The San Diego region is home to one of the fastest growing populations in the nation, which is expected to grow from its current 3,300,000 people to 4,000,000 people by 2050.

(c) Residents in the southern region of San Diego County do not all have direct access to green space and public lands. Park poor communities are highly concentrated south of the San Diego River watershed. One benefit of living in the San Diego region is year-round access to the outdoors and the ability to improve the health and well-being of the general public by improving public access to public lands.

(d) The watersheds of the Otay River, Sweetwater River, and Tijuana River are extraordinary natural resources of statewide significance that have been subject to intense development and are in need of conservation, restoration, protection, including protection of sensitive species, improved water quality, and improved overall health of the ecosystems of the individual watersheds.

(e) The establishment of the program will enable the state to bring together multiple stakeholders to assess the needs of each watershed's ecosystem and collaborate on watershedwide programs that conserve, restore, and protect natural, historical and cultural resources, wildlife, water quality, and natural floodwater conveyance, and that enhance the overall health of each watershed for beneficial uses, including public enjoyment of recreation and education.

(f) The state has an interest in working with organizations to protect, enhance, and restore the natural, historical, cultural, educational, and recreational resources in rivers and watersheds located in the southern region of the County of San Diego.

(g) The intent of the program is to protect and preserve the health of the watershed for each river within the consortium including streams, rivers, wetlands, estuaries, and the diverse natural habitats that are home to plants and animals and that provide educational and recreational opportunities for the public to steward the region's globally unique and diverse plants and wildlife for future generations to enjoy.

### **§ 32659.1. Definitions**

The following terms have the following meanings:

(a) "Account" means the San Diego Rivers Watershed Consortium Program Account established in the San Diego River Conservancy Fund pursuant to subdivision (a) of Section 32659.8.

(b) "Consortium watershed area" means lands located within the watersheds of the Otay River, the Sweetwater River, and the parts of the Tijuana River within the state, from the headwaters of each river to the Pacific Ocean.

(c) "Program" means the San Diego Rivers Watershed Consortium Program established pursuant to this chapter.

### **§ 32659.2. Establishment and purpose of program**

The conservancy shall establish the San Diego Rivers Watershed Consortium Program to create advisory panels to work cooperatively with local public agencies and other entities to identify potential project funding, including grant funding, to be used to restore the consortium watershed area and to improve public access to public lands.

### **§ 32659.3. Advisory panel for each watershed; membership; compensation; terms; meetings; report**

(a) The conservancy shall create an advisory panel for each watershed to offer advice, expertise, support, or service to each watershed without compensation in accordance with the following requirements:

(1) The conservancy shall solicit the names of persons to serve as members of each panel from organizations and entities representing watersheds in the consortium watershed area, and those persons shall be appointed to serve on the panel representing the area in which the organization or entity is located.

(2) The members of the advisory panels shall serve on a voluntary basis and without reimbursement from the conservancy.

(3) Each member of an advisory panel shall serve for a two-year term.

(4) A member's service as a member of an advisory panel shall end at the time that person ceases to be employed by, or serve as a representative of, the appointing organization.

(5) Advisory panels shall meet at least twice each calendar year at one or more locations within the County of San Diego.

(6) Meetings of the advisory panels shall be open to the public and subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(b) In appointing members and facilitating the work of the advisory panels, the conservancy shall be subject to all laws, regulations, and general and specific plans of the legislative body of the city or county with geographic jurisdiction over the specified watershed areas.

(c) The conservancy shall prepare an annual report on the status of the meetings of the advisory panels, which shall be included in the executive officer of the conservancy's report to the governing board.

**§ 32659.4. Otay River Watershed Advisory Panel; Sweetwater River Watershed Advisory Panel; Tijuana River Watershed Advisory Panel; establishment; membership**

The conservancy shall establish the following advisory panels:

(a) The Otay River Watershed Advisory Panel, comprised of the following members:

(1) A conservancy board member or the member's designee.

(2) A representative of the City of Chula Vista, appointed by its city council.

(3) A representative of the City of Imperial Beach, appointed by its city council.

(4) A representative of the City of National City, appointed by its city council.

(5) A representative of the City of San Diego, appointed by its city council.

(6) A representative of the County of San Diego, appointed by the Board of Supervisors of the County of San Diego.

(7) A representative of the San Diego Regional Water Quality Control Board, appointed by that board.

(8) A representative of the Department of Parks and Recreation, appointed by the Director of Parks and Recreation.

(9) A representative of the Kumeyaay Diegueño Land Conservancy, appointed by that conservancy.

(10) A representative of a university or college in the San Diego area, appointed by the president of the university or college.

(11) A representative of the San Diego Unified Port District, appointed by the governing board of the port district.

(b) The Sweetwater River Watershed Advisory Panel, comprised of the following members:

- (1) A conservancy board member or the member's designee.
- (2) A representative of the City of La Mesa, appointed by its city council.
- (3) A representative of the City of Lemon Grove, appointed by its city council.
- (4) A representative of the City of Chula Vista, appointed by its city council.
- (5) A representative of the City of San Diego, appointed by its city council.
- (6) A representative of the County of San Diego, appointed by the Board of Supervisors of the County of San Diego.
- (7) A representative of the San Diego Regional Water Quality Control Board, appointed by that board.
- (8) A representative of the Department of Parks and Recreation, appointed by the Director of Parks and Recreation.
- (9) A representative of the Kumeyaay Diegueño Land Conservancy, appointed by the governing board of that conservancy.
- (10) A representative of a university or college in the San Diego area, appointed by the president of the university or college.
- (11) A representative of the San Diego Unified Port District, appointed by the governing board of the port district.
- (12) A representative of the City of National City, appointed by its city council.
- (13) A representative of the Sweetwater Authority, appointed by the authority.

(c) The Tijuana River Watershed Advisory Panel, comprised of the following members:

- (1) A conservancy board member, or the member's designee.
- (2) A representative of the City of Imperial Beach, appointed by its city council.
- (3) A representative of the City of San Diego, appointed by its city council.
- (4) A representative of the County of San Diego, appointed by the Board of Supervisors of San Diego County.
- (5) A representative of the San Diego Regional Water Quality Control Board, appointed by that board.
- (6) A representative of the Department of Parks and Recreation, appointed by the Director of Parks and Recreation.
- (7) A representative of the Kumeyaay Diegueño Land Conservancy, appointed by that conservancy.
- (8) A representative of a university or college in the San Diego area, appointed by the president of the university or college.
- (9) A representative of the San Diego Unified Port District, appointed by the governing board of the port district.

#### **§ 32659.5. Strategic plans; contents**

The advisory panels appointed pursuant to Section 32659.4 shall each prepare a strategic plan containing all of the following:

- (a) A system for prioritizing each designated river watershed that shall give priority to watershedwide projects that create and expand opportunities to protect, enhance, and

restore the natural, historical, cultural, educational, and recreational resources of the watershed.

(b) A summary of the policies and priorities for each river watershed.

(c) A description of each watershed identifying underused, existing public open spaces, trails, and other facilities, and recommendations of ways to provide better public use and enjoyment in the designated areas.

(d) A plan for implementing the program in conformance with all related general and specific plans and zoning regulations of the local and regional municipalities within each watershed.

#### **§ 32659.6. Implementation of program**

The conservancy may do all of the following in implementing the program:

(a) Undertake site improvement projects within the consortium watershed area.

(b) Provide for public access within the consortium watershed area.

(c) Provide for restoration and rehabilitation within the consortium watershed area.

(d) Undertake projects directly and award grants to public agencies, Native American Indian tribes, nonprofit organizations, and joint powers authorities to help achieve the intent of the program.

(e) Upgrade deteriorating facilities and construct new facilities as needed for outdoor recreation, natural education and interpretation, and resource protection within the consortium watershed area.

(f) Provide assistance to each advisory panel established pursuant to this chapter.

#### **§ 32659.7. Prohibited actions**

Notwithstanding any other law, the conservancy shall not take any of the following actions:

(a) Exercise the power of eminent domain.

(b) Manage, regulate, or control the use of any land owned or leased by another public agency, except as provided pursuant to a written agreement with that public agency.

(c) Levy a tax.

(d) Take any action that interferes with, conflicts with, impedes, adversely impacts, or prevents the planning and implementation of projects and programs contained in adopted local or community plans.

#### **§ 32659.8. San Diego Rivers Watershed Consortium Program Account**

(a) The San Diego Rivers Watershed Consortium Program Account is hereby created in the San Diego River Conservancy Fund. Moneys in the account shall accrue interest and be available, upon appropriation by the Legislature, to the conservancy for expenditure for the purposes of this chapter.

(b)(1) All funds received pursuant to this chapter shall be deposited in the account.

(2) The conservancy may apply for and accept grants, gifts, donations, subventions, rent, royalties, and other assistance from public and private sources on behalf of the program.

(3) The conservancy may also accept goods or services contributed to it by a public agency, private entity, or person and, upon receipt, may use the goods or services, for program purposes.

#### **§ 32659.9. Administration of funds for program**

The conservancy shall administer funds appropriated to it for the program and may expend those funds for grants, goods, services, control and removal of invasive species, capital improvements, support of the program's operations, and to carry out the program's intent and purpose.