



May 29, 2019

VIA ELECTRONIC MAIL ONLY

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
commentletters@waterboards.ca.gov

Re: COMMENT LETTER – Cachuma Project Draft Order
Dated March 27, 2019, Amending Water Right Permits 11308 and 11310

Dear Ms. Townsend:

This firm represents the City of Lompoc (Lompoc) in the above-referenced proceedings. In December of 2016, Lompoc submitted comments on the initial draft order in this matter. After review of the recently released revised draft order (Draft Order), Lompoc's comments from 2016 remain valid and were largely unaddressed. Lompoc is particularly concerned about potential impacts to the quantity/quality of Santa Ynez River recharge to the Santa Ynez River Valley Groundwater Basin (SY Basin) – impacts that are impossible to accurately analyze because the Draft Order suggests that water right and fishery water release protocol may change based on various follow-up studies. The Draft Order even suggests there may be a renegotiation of the ANA/BNA release rules. This uncertainty is unfortunate after a more than two-decade process to resolve the outstanding petitions. Lompoc urges the State Water Resources Control Board (Water Board) to adopt Alternative 3C, which offers an equitable and workable solution to the competing interests on the Santa Ynez River.

Following are Lompoc's comments on the Draft Order.

A. Alternative 3C Remains the Preferred Alternative

Lompoc is disappointed the Water Board chose Alternative 5C instead of 3C. As the Water Board is aware, Lompoc and most of the parties to this proceeding spent many years negotiating the Settlement Agreement that is the basis for Alternative 3C. Significant technical work went into the Settlement Agreement and Alternative 3C. The parties to the Settlement Agreement have, in key regards, diametrically opposed interests in when/how much water is released from Cachuma Reservoir (Cachuma). Yet, those parties were able to negotiate a complicated Settlement Agreement that involved compromises made for the sake of peace and ongoing cooperation. Those compromises and the terms of the Settlement

Agreement were made on the foundation of solid technical work that allowed all parties to understand the consequences of their decision.

In contrast, the multiple iterations of the Water Board's environmental review in support of the Draft Order have failed to analyze the water rights/quality impacts associated with Alternative 5C. Lompoc joins the Santa Ynez River Water Conservation District (SYRWCD) in emphasizing the critical importance of the "ANA" and "BNA" water credits. Those credits (BNA) are intended to honor Lompoc's senior water rights, and are crucial to meeting Lompoc's municipal water demand. The Water Board has simply failed to document and explain how 5C comports with the key water right terms of the Settlement Agreement, to the detriment of Lompoc and all parties in this matter.

The Settlement Agreement did and does offer the best opportunity to avoid a costly and protracted adjudication of regional water rights. It would be truly disappointing to have the Settlement Agreement unravel because the Water Board chose 5C over 3C – especially in light of the significant uncertainties described in the administrative record regarding the unknown benefits (if any) of the 5C water releases on fish.

B. The Administrative Record Lacks Credible Evidence That the 5C Fish Releases Will Actually Confer the Intended Benefits

Various parties, including Lompoc, have submitted comments on the Water Board's lack of analysis demonstrating benefits to fish species of interest from increased Cachuma releases. Lompoc does not intend to repeat those arguments, except to say that the Draft Order presents nothing new to support the claim that 5C fish releases will actually benefit steelhead or other species of concern. Of note, the 2016 draft order stated that the administrative record is incomplete and "does not allow the Board to make a final determination regarding the measures necessary to fully protect the steelhead" (2016 Draft Order, p. 81¹.) The new Draft Order revised this language (without redline) to say that there is an "incomplete hearing record" with regard to actions necessary to protect steelhead in the Santa Ynez river. Under these circumstances, it is inappropriate for the Water Board to adopt the increased fish flow regime of Alternative 5C.

C. Lompoc, and the Other Parties With Water Rights/Quality Interests, Must Be Allowed to Participate in the Follow-Up Studies

The Draft Order provides that the Cachuma release regime may change in the future based on a series of studies mandated in Ordering Paragraphs 19-24. (Draft Order, pp. 138-142.) The Draft Order directs the Bureau of Reclamation to carry out those studies, but does not explicitly allow for participation in the study design or implementation by any of the other parties to these proceedings. Again, these studies are intended to inform potential changes in the Cachuma release regime and impact *all parties* with water rights/quality interests in Cachuma releases. **Lompoc requests the Water Board amend the Draft Order to allow**

¹ All references are to the March 27, 2019 redlined Draft Order.

active participation by Lompoc, and the other parties with demonstrated water right/quality interests in Cachuma releases, in the design and implementation of these studies – including and in particular any study to the adjustment of accounting methodologies for the ANA or BNA.

Lompoc has been an active participant in the Adaptive Management Committee (AMC), which works on Santa Ynez River fisheries issues. For many years, Lompoc has funded the work of fisheries biologist Paul Bratovich so that he may participate in the AMC. Then, as now, the reason that Lompoc has participated in the AMC is because of the potential for fisheries issues to impact the water supply/quality of recharge to the groundwater basin that is the sole source of Lompoc's municipal water supply. To the extent that the studies contemplated in the Draft Order may be used to alter the Cachuma release rules, Lompoc has a valid interest in participating in those studies. From a practical perspective, Lompoc's participation should result in study parameters and methods that are acceptable to Lompoc, and reduce the potential for future conflict over study outcomes.

D. Undisputed Evidence in the Administrative Record Demonstrates That Potential Use of Table 2 Flows to Satisfy Downstream Water Rights Has Been Proven Unworkable and Should Not Be Studied Further

Lompoc joins in the comments of the SYRWCD on this topic. The concept of Table 2 Flows satisfying downstream water rights has been squarely refuted by expert testimony. The necessity of the ANA and BNA accounts to satisfy senior downstream water rights has been thoroughly established and is a foundational element of the Settlement Agreement. Lompoc will initiate all proceedings necessary to protect its water rights if there is an attempt to eliminate, or otherwise inappropriately alter, the ANA/BNA and rely on Table 2 flows to satisfy Lompoc's senior water rights.

E. The Draft Order Should Be Amended to Require Further Process In the Event That Table 2 Flows are Deemed Detrimental to Fish

Ordering Paragraph 16 improperly delegates to the California Department of Fish and Wildlife the right to temporarily reduce or stop Cachuma releases, if deemed necessary to protect fish. (Draft Order, pp. 134-137.) This is totally unacceptable without involvement of all parties with water rights/quality interests in Cachuma releases. Any change in the releases set forth in Table 2, or anywhere else in the various permits and orders that govern Cachuma releases, should be considered in an open process, with information detailing the reasons for the change and an opportunity for the other parties to respond.

To be clear, Cachuma water right releases – not fish releases - provide the primary source of recharge to the groundwater basin that is the sole source of water supply for Lompoc. Any change in the release regimen, therefore, should be subject to a transparent process that involves all stakeholders. While Lompoc is sympathetic to the sixteen steelhead that reside the Santa Ynez River, it is totally inappropriate to delegate the authority to cease Cachuma releases without any further process or requirement to demonstrate the need to do

so. Through the Settlement Agreement, Lompoc has already offered significant compromises to the Cachuma Project Member Units for the benefit of both their Cachuma water supply and steelhead. Lompoc will not acquiesce to deviations from the agreed-upon release rules if they result in detrimental impacts to the water supply/quality of the Santa Ynez Valley groundwater basin.

F. The Final Order Should Mandate that Reclamation Restore the Cachuma Outlet Works to Their Original Configuration

Historically, Reclamation made lower flow (under 30 cfs) water rights releases via a penstock and butterfly valve on the 10-inch outlet from Bradbury Dam. In 2013, Reclamation replaced the 10-inch outlet with a “temporary” 4-inch outlet, and significantly reconfigured the infrastructure for delivery of high-quality State Water Project (SWP) water. The “temporary” outlet fix appears to still be operating. Lompoc and other parties remain significantly concerned that the reconfigured outlet works are not accurately measuring low flow, crucial water right releases. Moreover, the outlet works may not be compliant with the 2002 Settlement Agreement, which requires the “commingling of SWP water with WR 89-18 water rights releases in the outlet works of Bradbury Dam when downstream water rights releases are being made. Attached as Exhibit A please find a 2014 letter from ID 1 addressing this issue.

Lompoc respectfully requests that the Water Board add language to the final order in this matter to require Reclamation to restore the historic outlet works and continue commingling of SWP water with downstream water right releases.

G. Article X, Section 2 of the California Constitution Limits the Water Board’s Ever-Increasing Instream Flow Dedications to the Sixteen Remaining Steelhead

Article X, section 2 of the California Constitution is usually cited in support of arguments to limit otherwise beneficial uses of water. Along with language imposing a duty of reasonableness of use for California’s waters, Article X, section 2 also provides, “that the water resources of the State be put to beneficial use to the fullest extent of which they are capable” It appears that the Water Board’s ever-increasing efforts to re-allocate the Santa Ynez River’s flows to the sixteen remaining steelhead may be in conflict with the constitutional duty to make beneficial use of California’s waters “to the fullest extent.”

State Water Resources Control Board
Re: Comment Letter - Cachuma Project Draft Order
May 29, 2019
Page 5

In conclusion, Lompoc respectfully requests that the Water Board reconsider the decision to adopt Alternative 5C instead of 3C. Further, Lompoc urges the Water Board to disallow changes in Table 2 releases without additional process and participation by all parties with water rights/quality interests in Cachuma releases. The final order should allow Lompoc, and the other parties with water rights/quality interests in Cachuma releases, to actively participate in the design and implementation of any studies that may result in material changes to the Cachuma release rules. Finally, the final order should require Reclamation to restore the historic outlet works, which will allow for accurate measurement of low flow water right releases and facilitate commingling to SWP water with those releases.

Sincerely,



Nicholas A. Jacobs
Attorney

cc: Cachuma Project service list
NAJ:cer

EXHIBIT A



Ernest A. Conant, Partner

September 22, 2014

Via email: mjackson@usbr.gov

Michael Jackson, Area Manager
South-Central Area Office
Bureau of Reclamation
1243 "N" Street
Fresno, CA 93721-1813

Re: Modifications to Bradbury Dam Outlet Works

Dear Mr. Jackson:

The Santa Ynez River Water Conservation District (SYRWCD) and Santa Ynez Improvement District No. 1 (ID No. 1) appreciate the time and efforts your office has committed to the Cachuma Project, particularly, in light of the extreme drought conditions with which we are all dealing. However, SYRWCD and ID No. 1 provide this letter to formally apprise you of their concerns about the modifications to the Bradbury Dam outlet works made by the Bureau of Reclamation in connection with the Hilton Creek backup water delivery system. Specifically, modifications to the 10-inch outlet with butterfly valve have compromised the accuracy of low flow measurements for water right releases, which as described below, is inconsistent with State Water Resource Control Board (SWRCB) orders.

The technical information that follows in this letter and the attachments were provided by Ali Shahroody of Stetson Engineers, who as you know has been working with Cachuma Project issues for over 40 years.

As you know, SYRWCD releases water from the Above Narrows Account (ANA) stored in Cachuma Reservoir to replenish riparian groundwater basins along the Santa Ynez River between Bradbury Dam and the Lompoc Narrows as provided in the SWRCB Order WR 89-18. Water is also released from the Below Narrows Account (BNA) in combination with the ANA to replenish the groundwater basin in the Below Narrows area of the Lompoc Plain and at the same time replenish the riparian basins along the river in the above Narrows area. Generally, water rights releases made at the dam for these purposes vary from about 150 cfs to 5 cfs.

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John Young 1913-2003 • Joseph Wooldridge 1913-1996 • A. Cameron Paulden 1927-1984

Typically, for replenishment of the above Narrows area, releases at Bradbury Dam are maintained at a rate below 30 cfs when the percolation rate to groundwater basins reaches a steady state condition. To recharge the ANA for the purpose of protecting senior downstream water rights as required by WR 73-37 and 89-18, low discharge rates from the outlet works at Bradbury Dam are maintained for a prolonged period of time. For demonstrative purposes, Figure 1 (attached) shows the release hydrograph at Bradbury Dam for the above Narrows recharge operation in 2002. The release commenced at a rate of about 100 cfs and was gradually reduced as the percolation rate reached a steady rate of approximately 15 cfs for a period of roughly 20 days. The operation was terminated by ramping down the release to about 5 cfs.

Historically, water rights releases of 30 cfs or less flowing through the penstock were released through the butterfly valve on the 10-inch outlet at Bradbury Dam. Those flows were measured by the Venturi meter on the 10-inch outlet as shown on Figure 2. Flows higher than 30 cfs are released through two 30-inch lines with cone jet valves (Figure 2). These higher flows are measured by a larger Venturi meter further upstream on the penstock. Consistent with the operating procedures and Cachuma Dam Technical Record of Design and Construction (1959), the rate of flow required for accurate measurements for the larger Venturi meter for the 30-inch outlets is about 30 cfs or higher.

When the delivery of the State Water Project (SWP) water through the outlet works to Cachuma Reservoir commenced, the Central Coast Water Authority (CCWA) installed an accuasonic measuring device on the penstock at Bradbury Dam (Figure 2). CCWA has used the accuasonic device to measure SWP deliveries, which are limited to about 24 cfs, to Cachuma Reservoir. However, for whatever reason, CCWA has opted to use its magmeter at the Santa Ynez Pumping Plant instead of the accuasonic at Bradbury Dam. At times, Reclamation has used the accuasonic to measure the release of Cachuma water through the penstock to the Santa Ynez River with the understanding that the device registers the flow rate as a negative value.

As a result of problems with the Hilton Creek Watering System (HCWS) in 2013, Reclamation indicated that a temporary emergency backup system for delivery of water from the outlet works to Hilton Creek was under consideration. Presently, water is delivered to the HCWS by pumps installed on a platform at Lake Cachuma. However, power blackouts and failures associated with the pumps have now prompted Reclamation to build a backup system.

SYRWCD and ID No. 1 have conveyed repeated enquiries to Reclamation about the review process for a backup water delivery system involving modification of the outlet works at Bradbury Dam. More than a year ago, on May 10, 2013, SYRWCD asked

Reclamation about the review process at the Cachuma Operations meeting held at the Cachuma County Park. At that time and subsequently, Reclamation responded that the emergency backup system for delivery of water from the outlet works to the Hilton Creek was in a conceptual state only and that the parties would be invited to review plans and be directly involved in the process at a later date. At a subsequent meeting in Fresno on November 25, 2013, Reclamation indicated any backup water delivery system involving modifications to the outlet works at Bradbury Dam would be temporary in nature and related to drought emergency conditions.

Based on schematic diagrams obtained from Reclamation, the recent temporary modifications to the 10-inch outlet at Bradbury Dam are shown on Figure 2 (inset), attached. Principally, the 10-inch outlet has been reduced to 4-inches in diameter. As a consequence, the discharge capacity of the outlet has been reduced to about 5 cfs. Additionally, the existing 10-inch outlet pipe has been modified to extend through a "T" joint for connection to a pipeline to be constructed along the top of the dam for delivery of water to the HCWS.

As a result of the above-described modifications, the measurement of water rights releases at low flow rates (5-30 cfs) through the penstock has been compromised. As depicted on Figure 1, water rights releases from the ANA can persist at rates less than 30 cfs for a considerable number of days. Reclamation's actions are inconsistent with the requirements of the State Water Resources Control Board (SWRCB) Order 73-37, as amended by WR 89-18. Those Orders require the permittee (Reclamation) to provide the necessary devices to determine the amount, timing, and rate of releases of water into the natural channel of the Santa Ynez River below Bradbury Dam in order to fully comply with the provision of Condition No. 5 of the permit. According to Section 6 (g) of the Order, permittee shall provide:

Continuous records of outflow from Lake Cachuma, including flows through river outlets at Bradbury Dam, inflows and outflows through Tecolote Tunnel, and overflows at Bradbury Spillway. Instruments suitable for accurate measurement of small outflows shall be installed. (underline added)

Consistent with Bradbury Dam operating procedures, the Venturi meter on the 10-inch outlet has in the past been used for an accurate measurement of small outflows. However, the modifications to the outlet works made by Reclamation have rendered the 10-inch outlet inoperable for the measurement of low flows (5-30 cfs). Reclamation's actions are inconsistent with the requirements of Section 6 (g) of the SWRCB Order WR 73-37.

Michael Jackson, Area Manager
South-Central Area Office
Bureau of Reclamation
September 22, 2014
Page 4 of 4

Additionally, Reclamation's decision to use the accusonic measuring device in lieu of the Venturi meters at Bradbury Dam occurred without any opportunity for input from or discussion with SYRWCD and ID No. 1. Instead, the decision was made without discussion with the districts who need an accurate measurement of downstream water rights releases. The result is measurements of low flow as required by Section 6 (g) of the SWRCB Orders WR 73-37 and 89-18 have been compromised.

SYRWCD and ID No. 1 are concerned that Reclamation proceeded with its construction of the temporary backup water delivery system to the HCWS (involving the above-described modifications to the outlet works) without providing an opportunity for either district to review the plans and provide input on possible impacts to downstream water rights releases, despite the repeated inquiries. SYRWCD and ID No. 1 relied upon earlier representations that the backup water delivery system was in a "conceptual state" and would be a "temporary" emergency system, but because they were not provided the opportunity to review plans and provide input earlier, did not appreciate until recently that such modifications could adversely impact the accuracy of measurement of downstream water rights releases. More concerning, based on conference calls between Reclamation and SYRWCD on May 19 and July 7, 2014, and other discussions, it now appears there is some confusion as to whether the modification of 10-inch outlet described above will become part of a permanent modification of the HCWS and/or what the duration of the temporary modification of the 10-inch outlet will be.

SYRWCD and ID No. 1 consider this matter of utmost importance and request a meeting to discuss an appropriate resolution at your earliest opportunity. Please contact Bruce Wales or myself to arrange a meeting.

Sincerely,



Ernest A. Conant of Young Wooldridge, LLP,
General Counsel for SYRWCD

Enclosures

cc w/ enclosures:

Bruce Wales
Chris Dahlstrom
Greg Wilkinson, Esq.
Paeter Garcia, Esq,
Ali Shahroody

Water Rights Releases
to Santa Ynez River
June 17 - July 22, 2002

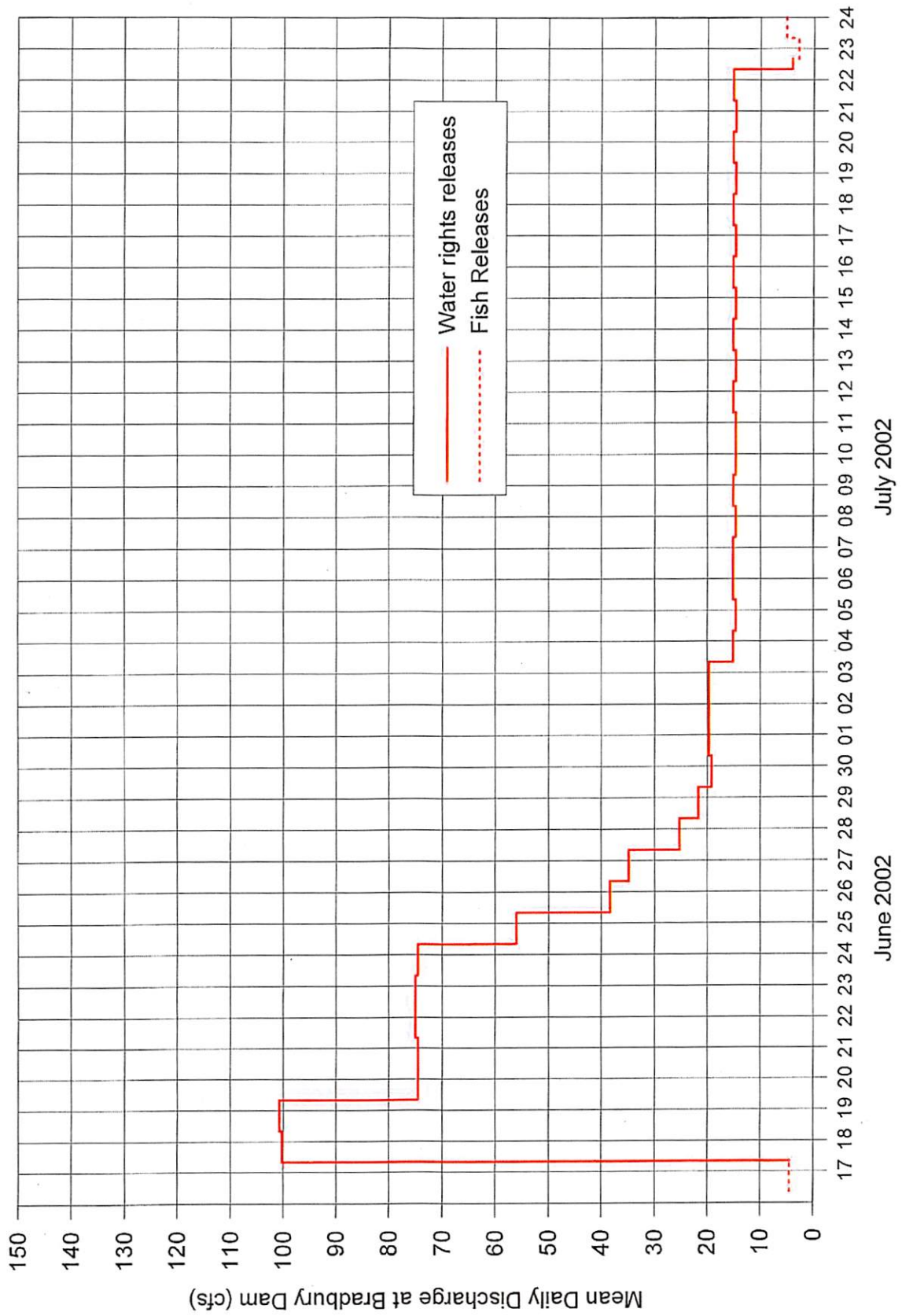
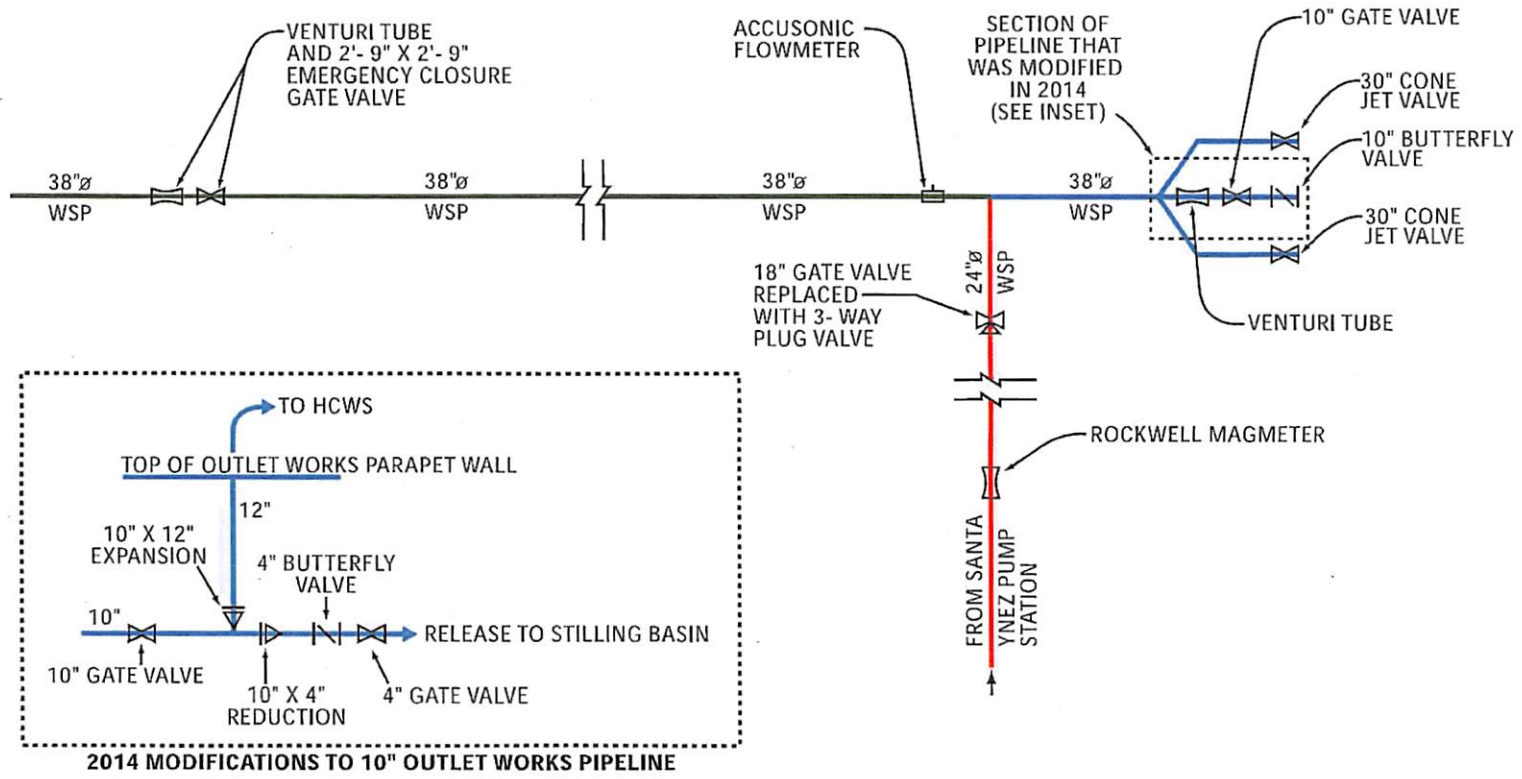


FIGURE 1

LAKE CACHUMA



Base diagram by USBR.



BRADBURY DAM OUTLET WORKS SCHEMATIC DIAGRAM

FIGURE 2

Cachuma Project Evidentiary Hearing

UPDATED SERVICE LIST

(March 26, 2019)

Corrected for typographical errors

The parties whose email addresses are listed below agreed to accept electronic service, pursuant to the rules specified in the hearing notice.

<p>Cachuma Conservation Release Board Mr. Kevin O'Brien Downey Brand LLP 621 Capitol Mall, Floor 18 Sacramento, CA 95814 kobrien@downeybrand.com nbigley@downeybrand.com pcantle@ccrb-board.org</p> <p><i>updated 02/25/2019</i></p>	<p>City of Solvang Mr. Christopher L. Campbell Baker, Manock & Jensen 5260 N. Palm Avenue, Suite 421 Fresno, CA 93704 ccampbell@bakermanock.com</p> <p><i>updated 07/29/2011</i></p>
<p>Santa Ynez River Water Conservation District, Improvement District No. 1 Mr. Paeter Garcia 3622 Sagunto St. Santa Ynez, CA 93460 pgarcia@syrwd.org</p> <p>Mr. Steve M. Anderson Best Best & Krieger LLP 3390 University Avenue, 5th Floor Riverside, CA 92501 steve.anderson@bbklaw.com</p> <p><i>updated 03/09/2018</i></p>	<p>City of Lompoc Mr. Nicholas A. Jacobs Somach, Simmons & Dunn 500 Capitol Mall Suite 1000 Sacramento CA 95814 njacobs@somachlaw.com</p> <p><i>updated 01/06/2014</i></p>
<p>Santa Ynez River Water Conservation District Mr. Steven M. Torigiani Law Offices of Young Wooldridge, LLP 1800 30th Street, 4th Floor Bakersfield, CA 93301 storigiani@youngwooldridge.com</p> <p><i>updated 02/26/19</i></p>	<p>California Trout, Inc. Ms. Linda Krop Ms. Maggie Hall Ms. Tara Messing Environmental Defense Center 906 Garden Street Santa Barbara, CA 93101 lkrop@environmentaldefensecenter.org mhall@environmentaldefensecenter.org tmessing@environmentaldefensecenter.org</p> <p><i>updated 03/08/2018</i></p>

Cachuma Project Evidentiary Hearing

UPDATED SERVICE LIST

(March 26, 2019)

Corrected for typographical errors

The parties whose email addresses are listed below agreed to accept electronic service, pursuant to the rules specified in the hearing notice.

<p>County of Santa Barbara Mr. Michael C. Ghizzoni, County Counsel Ms. Johannah Hartley, Deputy 105 E. Anapamu Street Santa Barbara, CA 93101 jhartley@co.santa-barbara.ca.us</p> <p><i>updated 03/09/2018</i></p>	<p>U.S Bureau of Reclamation Ms. Amy Aufdemberge 2800 Cottage Way, Room E-1712 Sacramento, CA 95825 Fax (916) 978-5694 AMY.AUFDEMBERGE@sol.doi.gov</p> <p><i>updated 08/12/16</i></p>
<p>California Department of Fish and Wildlife Ms. Nancee Murray Senior Staff Counsel 1416 Ninth Street, 12th Floor Sacramento, CA 95814 Nancee.Murray@wildlife.ca.gov</p> <p><i>updated 08/15/2016</i></p>	<p>Bureau of Reclamation, Mid-Pacific Region Mr. Michael Jackson Area Manager South-Central California Area Office 1243 N Street Fresno, CA 93721-1813 mjackson@usbr.gov</p>
<p>Montecito Water District Mr. Robert E. Donlan Ellison, Schneider & Harris L.L.P. 2600 Capitol Avenue, Suite 400 Sacramento, CA 95816 red@eslawfirm.com</p>	<p>Santa Barbara County CEO's Office Ms. Terri Maus-Nisich, Assistant CEO 105 E. Anapuma Street, 4th Floor Santa Barbara, CA 93101 tmaus@co.santa-barbara.ca.us</p> <p><i>updated 09/07/2016</i></p>

The parties listed below did not agree to accept electronic service, pursuant to the rules specified by this hearing notice.

<p>NOAA Office of General Counsel Southwest Region Mr. Dan Hytrek 501 West Ocean Blvd., Suite 4470 Long Beach, CA 90802-4213 Dan.Hytrek@noaa.gov</p> <p><i>updated 05/13/2011</i></p>	
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