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BY FACSIMILE AND U.S. MAIL

Mr. Andrew Fecko
Division of Water Rights
State Water Resources Control Board
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Draft Environmental Impact Report for the Consideration of Modifications to the Bureau of Reclamation's Water Right Permits 11308 and 11310 SCH # 2003081074, Santa Barbara County

Dear Mr. Fecko:

The Department of Fish and Game (Department), has reviewed the above referenced Draft Environmental Impact Report (DEIR) for impacts to biological resources. The following statements and comments have been prepared pursuant to the Department's authority as Trustee Agency with jurisdiction over natural resources affected by the project (CEQA Guidelines §15386) and pursuant to our authority as a Responsible Agency (CEQA Guidelines §15381) over those aspects of the proposed project that come under the purview of the Fish and Game Code Section 1600 et seq. In addition we are incorporating, by reference, comments submitted to the Cachuma Operation & Maintenance Board, dated September 30, 2003 (attached) to address issues involving Alternatives 3B and 3C (Loss of Oak Woodland Resulting From Cachuma Lake Surcharging).

The proposed project consists of potential modifications to the U.S. Bureau of Reclamation's (Reclamation) water right permits for the Cachuma Project (Order WR 94-5) to provide appropriate protection of downstream water rights and public trust resources on the Santa Ynez River. The Cachuma Project provides water to Cachuma Project Member Units for irrigation, domestic, municipal and industrial uses. Member Units consist of the City of Santa Barbara, Goleta Water District, Montecito Water District, Carpinteria Valley Water District, and the Santa Ynez River Water Conservation District. Permit conditions require Reclamation to release enough water to satisfy downstream users with senior rights to surface water and to maintain percolation of water from the stream channel, and not reduce natural recharge of

groundwater from the Santa Ynez River. Potential adverse impacts from the project include, but are not limited to, the lost of oak woodland along the margin of Cachuma Lake, changes in riparian vegetation along the Santa Ynez River, and disruption of breeding bird behavior. Wildlife with the potential to be impacted by the project includes a long list of State and Federally listed and otherwise sensitive species of plants, animals, and communities, including the Federally Endangered southern steelhead (*Oncorhynchus mykiss*), the Federal and State Endangered southwestern willow flycatcher (*Empidonax traillii extimus*), the Federally Threatened and State Species of Special Concern California red-legged frog (*Rana aurora draytonii*), the State Species of Special Concern southwestern pond turtle (*Clemmys marmorata pallida*) and two-striped garter snake (*thamnophis hammondii*).

Project Scope

The DEIR describes public trust resources for this project on page 3-4 of the document. This description limits the scope of the project to those resources found only at Cachuma Lake or downstream of Bradbury Dam. The SWRCB clarified the scope of the Cachuma Project water right hearing by reiterating that key issue 4a asks what terms, conditions, or recommendations contained in the Biological Opinion, if any, should be incorporated into Reclamation's permits (Letter from Peter Silva to Cachuma Hearing Service List, dated May 29, 2003). Since the Biological Opinion includes a conservation recommendation that Reclamation study effective passage for steelhead to spawning and rearing habitat upstream of Bradbury Dam, the SWRCB declared that it will allow parties to present evidence concerning whether Reclamation's permits should be modified to address impacts of Cachuma Project operations to public trust resources above Bradbury Dam, including evidence concerning requirements that would apply above the dam.

Based on the migratory nature of Steelhead Trout (SH), and the life cycle and habitat requirements of other aquatic and riparian species within the Santa Ynez river drainages the Department feels the DEIR should expand the area of project impact to include all fish and wildlife resources affected by the project. This area of impact would include the upper portion of the watershed as well as the lake and below the dam to the mouth.

Furthermore, the SWRCB has not defined what constitutes protection of public trust resources. The Department requested this clarification at the Pre-hearing Conference on May 13, 2003, and the Hearing Officer stated that the SWRCB would do this. Without this clear definition, the DEIR lacks the basis for making any determination as to whether or not any of the alternatives meet the stated objective of protection of public trust resources.

Impacts to Southern Steelhead

Gibraltar Dam, completed in 1920, blocked access to much of the steelhead spawning habitat of the river and the Cachuma Project, including Bradbury Dam, completed in 1953, eliminated access to nearly all historic spawning and rearing habitat (McEwan and Jackson 1996). The remaining steelhead spawning and rearing habitat is reduced to approximately 10 miles of the mainstem Santa Ynez River and some habitat in tributaries below Bradbury Dam. Prior to the construction of Bradbury Dam both the U.S. Fish and Wildlife Service and the Department recommended that sufficient water be released below the dam to provide migration, spawning, and rearing flows for steelhead. In addition, trapping and holding facilities were recommended for salvage of adult steelhead migrating as far as the dam. However, these two recommendations were not included in the project because the water releases required to maintain a steelhead run would amount to about 33% of the firm yield and would impact the full allotments for domestic and irrigation purposes (CDFG 1975).

The Department's Steelhead Restoration and Management Plan for California (McEwan and Jackson 1996) affirms that the two most important long-term restoration recommendations for steelhead on the Santa Ynez River are: 1) a permanent flow regime from Bradbury Dam to restore the steelhead resource to a reasonable level and maintain it in good condition, and 2) to initiate a feasibility study for providing adult and juvenile passage around Bradbury Dam, followed by implementation of the recommendations accordingly. Nearly all historic spawning and rearing habitat is located upstream of Bradbury Dam, therefore blocked access is probably the most significant limiting factor for steelhead.

The pre-project mitigation recommendations and the 1996 restoration recommendations have not been adequately pursued and as a result steelhead in the Santa Ynez watershed have been nearly extirpated (CDFG 1975, McEwan and Jackson 1996). A consequence of this inaction and similar conditions in other southern California watersheds is the 1997 listing of southern steelhead as endangered under the federal Endangered Species Act (ESA). A result of this listing had been the development of the aforementioned Biological Opinion for the Cachuma Project and the definition of an ESU (Evolutionarily Significant Unit) for the species. The reference to the "ESU" should be deleted throughout the document since it refers to a distinct population segment that occurs over a much larger geographic area; not just the Santa Ynez River.

The effect of different downstream flow regimes under the various alternatives is described by Entrix (2000b) and is used in this DEIR. The reference for Entrix is not listed in the Reference section of the DEIR. This analysis uses a scoring system that assigns a higher score for flows that are more likely to provide more habitat and a lower score for flows that are likely to provide less habitat. The underlying assumption is that more habitat is better for steelhead. The DEIR should clarify how specific steelhead habitat attributes (e.g., water temperature, depth, velocity) would vary as a function of flow to demonstrate that steelhead and their habitat are

protected by the proposed flow regime. Otherwise, the assumption that more habitat is equivalent to better habitat is not supported. In addition, the analysis relies on the jeopardy standard used in the biological opinion.

The analysis for fish passage in the lower reach uses a criterion of 25 cfs at the Alisal Road Bridge. It states that this is sufficient flow to pass critical riffles between the dam and the lagoon 92% of the time. Therefore, for suitable access to mainstem and tributary spawning habitat, there must be a sufficient number of days with flow at the Alisal Road Bridge greater than or equal to 25 cfs. The NMFS Biological Opinion states that 25 cfs is a minimum flow for passage (at 8 feet of contiguous wetted channel and ½ foot of depth), but does not provide "water depth and width that produce good migration habitat" (NMFS 2000).

The number of passage days used in the analysis is 14. Reclamation proposed in its biological assessment to supplement storm flows to ensure that there are approximately 14 days for migration. The statement in the DEIR that "NMFS considered 14 days of passage in a particular year to be an adequate passage opportunity (NMFS 2000), and therefore this was given a score of 5 (Table 4-41)" is inaccurate. The conclusion NMFS made was based on Reclamation's modeling results which showed that supplemental flows to assist steelhead migration would be applied in approximately 24% of the years and would double the amount of normal years when 14 or more consecutive days of migration would be available. The 14 days of fish passage is not per year, but per storm event in a given year. The Biological Opinion stated that based on the limited information available, 14 days of consecutive migration availability is likely to significantly increase successful migration by steelhead compared to recent operating conditions. However, migration opportunity below the dam will continue to be reduced over the life of the project when compared to natural conditions associated with the larger historic steelhead population in the Santa Ynez River. Therefore, a flow of 25 cfs for 14 or more days per storm event should be considered a minimum criterion for fish passage and should be scored in the lower end of the range, not at the highest.

The Highway 154 reach was selected as the index location for spawning and rearing habitat. The spawning flows range from 0 cfs (score = 0) to >30 cfs (score = 5). NMFS concluded that supplemental flows for migration may increase spawning habitat, but because of a lack of data, NMFS could not conclude that spawning habitat could be increased or decreased. Regardless of NMFS findings, the DEIR concludes that the alternatives would result in beneficial impacts (Page 4-100). The relationship between flow and spawning habitat quantity and quality needs to be determined.

The minimum long-term flow used in the biological assessment and Biological Opinion is 2.5 cfs and this flow is given a score of 3, middle of the scoring range. The Biological Opinion

notes that flows between 0 and 2.5 cfs result in lethal dissolved oxygen levels and water temperatures. Therefore, as a minimum flow this should have been scored at the lowest end of the range.

The method of analysis and scoring system used in the DEIR is based on flow standards and location criteria that are scored too high given the information provided in the Biological Opinion. For the purpose of comparing the alternatives in the DEIR, the inflated results shouldn't make any difference (page 4-100 and 101). However, to determine whether or not any of the alternatives protect steelhead a comparison should be made between the proposed alternatives and pre-dam conditions.

Impacts to Riparian Zones and Southwestern Willow Flycatcher from Downstream Releases

Water releases from Cachuma Lake via Bradbury Dam to enhance fish passage in the Santa Ynez River are considered, on page 4-132 of the DEIR, a beneficial impact to aquatic and terrestrial wildlife between the dam and the Alisal Road Bridge in Solvang. The Department has reservations about the depiction of this impact as beneficial.

One benefit identified in the DEIR of downstream releases could be to "...increase the vigor and extent of wetland and riparian vegetation along the river to Alisal Bridge." The Santa Barbara County Flood Control District (SBCFCD) implements a Routine Maintenance Plan which includes the Santa Ynez River and the removal or reduction of riparian vegetation in areas where it constitutes a threat of flooding. Any increase in vigor and extent of riparian vegetation in the Santa Ynez River above Alisal Bridge may therefore lead to initiation or intensification of riparian vegetation management by SBCFCD. This would constitute a foreseeable indirect effect of the proposed project as defined in CEQA Guidelines §15064(d), and as such should receive analysis in the DEIR to determine if the effect would be adverse.

Southwestern willow flycatchers (SWF) are known to nest in areas along the Lower Santa Ynez River which have potential to be affected by the proposed project. As stated on page 4-133 of the DEIR, "Releases from the ANA and BNA to recharge downstream groundwater basins have the potential to adversely affect willow flycatcher nesting." SWF sometimes build nests in vegetation growing directly over the river channel, sometimes as close as 0.5-1m above the surface of the water. A rise in water levels as little as 0.5m could therefore result in the destruction of occupied SWF nests. Although the DEIR does not anticipate an increase in flows along the reaches of river where SWF are known to nest, it was not clear to us how proposed releases might combine with natural flows to produce a rise in river water levels which could impact nesting SWF. An analysis of this issue should be included in the Sensitive Wildlife Species section of the DEIR. One method for avoiding possible negative impacts to nesting SWF would be to end water releases prior to May 20th of each year.

Streambed Alteration Permitting

This project will require issuance of a Streambed Alteration Agreement (SAA), under Section 1600, et seq. of the California Fish and Game Code prior to commencing work. You may call our South Coast Regional office at (858) 636-3160 to initiate the 1600 process. You may also obtain a Notification package for an SAA online by visiting the Department's website at http://www.dfg.ca.gov/1600/1600.html. The Department emphasizes that in order to protect sensitive resources, substantial revisions to the proposed project may be required in the SAA.

Proposed Alternatives

The DEIR, rather than describing one project and presenting alternatives, describes seven alternatives, without presenting any one alternative as the preferred project. Each alternative would result in at least one significant, unmitigable impact (Class I). The environmentally superior alternative, Alternative 3A, has the fewest environmental impacts, and the fewest Class I impacts. CEQA Guidelines §15021(a)(2) establishes a duty for public agencies to not approve a project if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects the project would have on the environment.

However, the DEIR limits the range of alternatives to those that address downstream water rights and public trust resources on the Santa Ynez River downstream of Bradbury Dam (Page 3-1). It does not include any alternatives that take into consideration the upstream public trust resources and none of the alternatives take into consideration the recommendations contained in the Biological Opinion and Fish Management Plan (FMP) for evaluation of fish passage at Bradbury Dam. The DEIR does not contain a range of reasonable alternatives that would satisfy the stated objective of protection of public trust resources.

All of the alternatives go no further than the flow related measures contained in the Biological Opinion. The jeopardy standard used in an ESA Section 7 consultation is not necessarily equivalent to the SWRCB responsibility to protect public trust resources. Jeopardy is defined as any action that would appreciably reduce the likelihood of both the survival and recovery of a listed species in the wild by reducing species reproduction, number or distribution (50 CFR § 402.02). The impacts of the alternatives on surface water hydrology are based on "target flows." The comparisons between the alternatives are based on the frequency of occurrence assuming these target flows are achieved. The DEIR should make this distinction clear.

The DEIR should include a comparison of the predicted surface water hydrology (using SYRHM) under Alternative 2 (current conditions) to actual surface water hydrology since September 2000 when the Biological Opinion was issued. This illustrates the value of the Santa

Ynez River Hydrologic Model (SYRHM) and the potential differences between predicted and actual hydrology. Providing this information would assist the SWRCB and trustee agencies in determining whether or not the protection of public trust resources is likely to occur under the various alternatives

Thank you for this opportunity to provide comment. Should you have questions regarding this letter, please contact Ms. Mary Larson, Senior Biologist Specialist, at (562) 342-7186 for steelhead issues, and Mr. Martin Potter, Environmental Scientist at (805) 640-3677 for all other issues.

Sincerely,

C. F. Raysbrook
Regional Manager

Attachment

cc: MPotter; MWehtje; NLohmus; MCardenas; Mary Larson; Scott Morgan-SCH; Larry Week-NAFWB; Katie Perry-NAFWB; Harllee Branch-Gen'l Counsel office; CFR-Chron [redacted]

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References:

California Department of Fish and Game. 1975. An assessment of federal water projects adversely affecting California's salmon and steelhead resources. Report. Series mandated by the Calif. State Legislature under Senate Concurrent Resolution No. 64. Rpt. No. 4, Cachuma Project. 4pp.

McEwan, D. and T. A. Jackson. 1996. Steelhead Restoration and Management Plan for California. California Department of Fish and Game.

National Marine Fisheries Service 2000. Biological Opinion issued to the U. S. Bureau of Reclamation for operation and maintenance of the Cachuma Project on the Santa Ynez River in Santa Barbara County, California. Dated September 11, 2000.