GK/DKR

State of California – The Resources Agency ARNOLD SCHWARZENEGGER, *Governor*

DEPARTMENT OF FISH AND GAME
http://www.dfg.ca.gov
4949 Viewridge Avenue
San Diego, CA 92123
(858) 467-4201

September 26, 2007

Ms. Diane Riddle
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812
Fax No.: (916) 341-5400

Revised Draft Environmental Impact Report for the Consideration of Modifications to the Bureau of Reclamation's Water Right Permits 11308 and 11310 SCH # 1999061061, Santa Barbara County

Dear Ms. Riddle:

The Department of Fish and Game (Department), has reviewed the Revised Draft Environmental Impact Report (RDEIR) for impacts to biological resources. 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 loss 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*).

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(a)) 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 California Endangered Species Act (Fish and Game Code Section 2050 et seq.) and Fish and Game Code Section 1600 et seq. As trustee for the State's fish and wildlife resources, the Department has jurisdiction over the conservation, protection, and management

of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species.

3.2 Alternatives

The RDEIR describes five alternatives, without presenting any one alternative as the preferred project. Each of the alternatives presented would result in at least one significant, unmitigable impact (Class I). 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. While the Department appreciates the efforts of the Water Board to include an analysis of two new alternatives (5B and 5C) in the revised DEIR, the Board fell short in not considering all feasible and reasonable alternatives as required under CEQA Guidelines §15026.6 (a). Of particular concern is the lack of alternatives that examines the feasibility of fish passage past Bradbury Dam either as a stand alone alternative or in combination with one of the five alternatives outline in the RDEIR or as part of non-flow related alternatives. The Board has received numerous requests from the Department and other Resource Agencies in written communication regarding the 2003 DEIR as well as in written and oral testimony during the 2003 water rights hearing to include an alternative that examines the feasibility of fish passage in the RDEIR. An outline of a scientifically-based fish passage feasibility study is included in attachment 1. For this reason, the RDEIR does not contain a range of all reasonable alternatives that would satisfy the stated objective of protection of public trust resources.

4.0 Environmental Analysis of Alternatives (Flow-Related Actions)

Bradbury Dam is located approximately 46 miles from the ocean on a watershed that encompasses over 900 square miles. Due to its location, approximately 78% of the watershed is above the dam. This has a tremendous effect on the fluvial processes within the watershed. The document states on page 2-1 that siltation has reduced the original 204,674 acre feet (af) capacity Lake Cachuma. The document further goes on to state that estimates in 2000 place the capacity at 188,030 af (MNS, 2000). This illustrates that the natural movement of sediments has been interrupted by the presence of Bradbury Dam. The environmental analysis of the alternatives did not include an analysis of what effect if any the release of "hungry water", that is waters that are devoid of sediment, will have or has had on the downstream resources. The change in sediment budget due to capture of all but the finest materials by the dam, and the increased sediment transport capacity of sediment-free water released from the dam can have a detrimental effect on the stability of the channel, bank and associated riparian habitat. In turn destabilized banks result in increased erosion, loss of riparian cover and nesting habitat, and for the aquatic resources increased water temperatures and decrease in dissolved oxygen. The RDEIR needs to evaluate these potential impacts. It may be determined that the potential impacts are not avoidable and may have to be mitigated through implementation of a sediment management plan. This might include sediment removal from behind the dam and placement onto the spillway for transport during scheduled water releases or spill events.

The RDEIR also failed to examine the impact of water releases for irrigation and flood control releases under the alternative presented in the RDEIR. Rapid rates of increased and decreased flow and the associated changes in water surface elevation have destabilizing

impacts on bank conditions that have not been addressed. It may be necessary to establish ramping rates similar to those established for fishes for irrigation and flood control releases as mitigation for downstream impacts.

4.7.2. Potential Impacts of the Alternatives

New information prepared as part of the recovery planning process by the National Marine Fisheries Service (NMFS) during the past 5 years has not been incorporated into the RDEIR, which would enable the resources agencies and the public to better evaluate the alternatives and their potential impacts on O. mykiss. In particular the 2007 Federal Recovery Outline for the Distinct Population Segment of Southern California Coast Steelhead (NMFS 2007) identifies the need to protect the inland populations of the five core populations as well as reconnect them to the ocean. These two elements are essential to the recovery of the species in the Santa Ynez watershed. As this information was not included in the RDEIR, it is impossible to adequately assess the potential impact of the five alternatives or to evaluate other proposed actions.

Fish Migration (excerpt from the Department's 2003 comment letter)

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 RDEIR 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 method of analysis and scoring system used in the RDEIR is based on flow standards and location criteria that are scored too high given the information provided in the Biological Opinion. 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 in the RDEIR 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 RDEIR of downstream releases could be to "...increase the vigor and extent of wetland and riparian vegetation along the river, and indirectly benefit the associated aquatic and terrestrial wildlife, including sensitive species." 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 RDEIR 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. 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. An analysis of this issue in the RDEIR concluded "...it is not possible to accurately assess the magnitude of the impact of ongoing and future water rights releases..." The Department therefore recommends monitoring the effects of releases on SWF nesting along the Lower Santa Ynez River. This can be accomplished by conducting thorough SWF nest surveys annually and monitoring active nests on a weekly basis to determine impacts from downstream releases. The results should then be provided to an advisory committee consisting of the Department, the U.S. Fish and Wildlife Service, and Mr. Mark Holmgren. One method for avoiding possible negative impacts to nesting SWF would be to end water releases prior to May 20th of each year.

Impacts to Jurisdictional Drainages

The Department requires a Streambed Alteration Agreement (SAA), pursuant to Section 1600 et seq. of the Fish and Game Code, with the applicant prior to any direct or indirect impact to a lake or stream bed, bank or channel or associated riparian resources. The law requires any person, state or local governmental agency, or public utility to notify the Department before beginning an activity that could substantially modify a river, stream, or lake. The project as proposed includes impacts to streambeds within Department jurisdiction. An application for a Lake or Streambed Alteration Agreement (LSAA), under Section 1600 et seq., therefore will be required. You may call our San Diego office at (858) 636-3160 to initiate the 1600 process. You may also obtain a notification package online by visiting the Department's website at

http://www.dfg.ca.gov/1600/1600.html.

Thank you for this opportunity to provide comment. Questions regarding this letter and further coordination on these issues should be directed to Ms. Mary Larson, Senior Biologist Specialist, at (562) 342-7186 and Mr. Martin Potter, Environmental Scientist, at (805) 640-3677.

Sincerely,

Theresa A. Stewart
for Kevin Hunting
Acting Regional Manager
South Coast Region

References:

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.

National Marine Fisheries Service 2007. 2007 Federal Recovery Outline for the Distinct Population Segment of Southern California Coast Steelhead. September 2007.

Attachments

cc: Ms. Betty Courtney
Department of Fish and Game
Santa Clarita, California

Ms. Mary Larson
Department of Fish and Game
Los Alamitos

Mr. Martin Potter
Department of Fish and Game
Ojai, California

Ms. Natasha Lohmus
Department of Fish and Game
Santa Barbara, California

Mr. Scott Morgan
State Clearinghouse
Sacramento, California