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Via E-Mail driddle@waterboards.ca.gov

Ms. Diane Riddle
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

Re: Comments on July 2007 Revised Draft Environmental Impact Report for Consideration of Modifications to the United States Bureau of Reclamation's Water Right Permits 11308 and 11310 (Applications 11331 and 11332)

Dear Ms. Riddle:

Hatch & Parent submit this comment letter on behalf of the Santa Ynez River Water Conservation District, Improvement District No. 1, (ID No.1) with respect to the above referenced matter. Oh behalf of ID No.1, we appreciate the opportunity to provide its comments on the Revised Draft Environmental Impact Report (RDEIR), State Clearinghouse No. 1999051051 by the State Water Resources Control Board (State Board). In Addition to this letter, ID No. 1 and the Cachuma Conservation Release Board (CCRB) submitted a separate joint comment letter. A comment letter has also been submitted on the RDEIR by the Santa Ynez River Water Conservation District (SYRWCD) which ID No.1 joins SYRWCD in its comments submitted for consideration by the State Board.

ID No. 1's service area is located in the Santa Ynez River Watershed downstream of Cachuma Reservoir and Bradbury Dam, ID No. 1's primary function is to provide water service to its residential, municipal, commercial, industrial and agricultural customers with water supplies from both Lake Cachuma Project water and underflows from the Santa Ynez River downstream of Bradbury Dam, among other sources. Since the RDEIR considers modifications to United States Bureau of Reclamation's (Reclamation) Cachuma Project water right permits to protect public trust values and downstream water rights of the Santa Ynez River, ID No. 1 is uniquely situated and therefore concerned with and affected by the RDEIR.

In this regard, and given the interdependency of the Member Units on the Reclamation water right permits 11308 and 11310 (Applications 11331 and 11332) which are at issue and

affect ID No. 1's water supplies, below are additional comments submitted to ensure the State Board's ability to comply with the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et. Seq. "CEQA"), its Guidelines (Title 14, California Code of Regulations section 15000 et. Seq., the "CEQA Guidelines"), and applicable case law. More importantly, ID No.1 respectfully requests that the State Board acknowledge the Settlement Agreement to which the Member Units are parties and respect it through this process which is clearly in the public interest.

A review of the RDEIR discloses that it fails to adequately address the demonstrated impacts that the proposed alternatives water release regimes will have on ID No. 1 and others in all but Alternative 3C, to the extent it reflects the terms of the Settlement Agreement[1]. Alternative 3C is the only alternative which satisfies the purposes of the requested permits because it meets the public trust values and protects downstream water rights. Moreover, 3C is consistent with current operations, has fewer impacts on water supplies and provides substantially as much benefit to fish as the other alternatives. Given that the remainder of the alternatives fail to adequately address the public trust values and downstream water rights, including new Alternatives 5B and 5C, they are inadequate either because they fail to meet this intended purpose or do not contain the necessary data to assess their impacts.

Consequently, the 2007 RDEIR has both factual and legal flaws. For that reason, ID No.1 requests the State Board to either adopt Alternative 3C demonstrating its incorporation of the Settlement Agreement's technical amendments as set forth in Exhibit "C", or alternatively, clarify the proposed project is WR 89-18 as modified by the Settlement Agreement's technical amendments in Exhibit "C" as submitted by the Reclamation, and establish through the completion of the State Board's environmental review process its compliance with CEQA.

I. HISTORICAL BACKGROUND

A. ID NO.1 'S WATER SERVICE AREA

The SYRWCD formed ID No. 1 on January 5, 1960 under the Water Conservation Law of 1931, Division 21, Section 74000 et seq. of the California Water Code. Its purpose is to furnish potable domestic and irrigation water within its boundaries and for distributing the Cachuma Project entitlement water as set forth under contract with the Reclamation for receiving water from Lake Cachuma (Bradbury Dam).

The first Reclamation Water Service Contract was in 1954 for a minimum of 500 Acre-Feet-Per-Year (AFY) plus an additional 2,800 AFY to be delivered to ID No.1. The Reclamation Water Service Contract was later renewed in 1995 for 10.31% of the operational annual supply to be used on lands within the ID No.1's service area that encompasses

[1] The Settlement Agreement was presented to the State Board during the 2003 DEIR hearing.

approximately 10,850 acres. As a Cachuma Project Member Unit, the renewal contract for water service is with the Reclamation through the Santa Barbara Water Agency.

ID No.1 is located in the Santa Ynez Valley downstream of the Cachuma Project and has operated continuously since 1960. The water service area includes the towns of Santa Ynez, Los Olivos, and Ballard, the Santa Ynez Band of Mission Indians Reservation, the City of Solvang and lands owned by the Reclamation that are currently operated as the Lake Cachuma Park and Recreation Area under Santa Barbara County management. ID No.1 currently provides water to approximately 2,437 domestic accounts and 116 agricultural customer accounts and has a resident population of approximately 8,920 (excluding the City of Solvang population of 5,332 and the transient visitor population at the Lake Cachuma Park of 900,000 people annually)[2]. ID No.1 also supplies domestic water to the City of Solvang and the Lake Cachuma Park. It currently serves approximately 2,963 acre feet a year (AFY) of domestic water, and agricultural deliveries (including limited agriculture) of approximately 2,934 AFY (Water Year 2007 figures).

The City of Solvang (City) is included within the service area boundaries of the District and currently serves approximately 1,371 AFY. In addition to the City's own water sources, which include its rights to underflow from the Santa Ynez River, ID No.1 contracts to the City for State Project Water (SWP) and provides Cachuma Project Water, groundwater pumped from the Uplands Groundwater Basin, and river underflow water to the City through two meters on an as-needed or emergency basis. The City, in turn, provides water service to customers within its incorporated boundaries.

Besides the Cachuma Project source of supply, ID No. 1 currently has three remaining sources: 1) groundwater pumped from the Santa Ynez Uplands Groundwater Basin, which underlies the service area; 2) the rights to underflow of the Santa Ynez River, and, 3) SWP entitlement which the ID No.1 began receiving September 12, 1997.

In water year 2007, ID No.1 obtained 40% of the total supply as Cachuma Project/State Water exchange, 1% of its water supply directly diverted from the Cachuma Project, approximately 7% of its water from the SWP, and pumped approximately 27% of its water supplies from the Santa Ynez Uplands Groundwater Basin with approximately 25% from the Santa Ynez River alluvium. As a result, the Cachuma Project currently provides about 40% of the ID No.1's water supply but the proportionate percentage varies from year to year with up to 57% of the total water supply in past years.

B. CACHUMA PROJECT

The history of the water rights permits issued for the Cachuma Project involves an operational regime carefully developed among Reclamation, the Cachuma Project Members

[2] These statistics are based upon ID No.1's 2005 Urban Water Management Plan Update.

Units, downstream water rights holders, and other interested parties. In 1958, the State Board issued Water Right Decision 886 making Cachuma Project Permits 11308 and 11310 subject to certain criteria for determining when water could be stored and when it was released. The criteria provided that water flowing into Lake Cachuma could not be stored by Reclamation unless certain conditions existed in the Santa Ynez River and as measured at designated locations downstream from Bradbury Dam.

In 1973, a negotiated order, WR-73-37, was issued which modified prior decisions and permitted storage of all inflow, but provided periodic downstream releases through credits in an Above Narrows Account and a Below Narrows Account (under specific conditions). The order also provided for later releases if the downstream alluvium basins were not refilled by water originating below Bradbury Dam. As in the previous orders, the State Board also reserved jurisdiction and amended permit condition 7 which provided for extending the initial 15-year trial period until 1989 for refining Cachuma reservoir operating procedures.

Water Rights Order 89-18 made additional limited technical modifications to the criteria originally developed and set forth in WR 73-37. This was done for the purpose of addressing water rights concerns and called for a trigger for a so-called "Perc curve" to be developed by agreement among Reclamation, the Cachuma Member Units, and downstream water rights holders. WR 89-19 also called for the development of information concerning potential impacts of the Cachuma Project on public trust resources of the Santa Ynez River and directed State Board staff to develop and undertake a study plan for riparian vegetation along the margins of the Santa Ynez River below Bradbury Dam and prepare for and schedule a hearing on a complaint by the California Sport Fishing Protection Alliance concerning claimed project impacts on fishery resources downstream of Bradbury Dam.

In July of 1990, a consolidated hearing to consider all outstanding actions within the Santa Ynez River Watershed was commenced. Shortly thereafter, the hearing was recessed to allow the parties to work together to resolve public trust issues "outside of the hearing process." And, in 1993, Reclamation, the Cachuma Member Units, and many of the other interested parties including downstream water rights holders entered into two Memoranda of Understanding (MOU) for cooperation and research related to the protection of fish and fish habitat for the portion of the Santa Ynez River below Bradbury Dam.

Subsequently, in 1994, an additional MOU was executed for the purpose of completing the collection of data needed for the presentation of information on fisheries and fish habitat in the Santa Ynez River below Bradbury Dam. Parties to the 1994 MOU included the California Department of Fish and Game, the United States Fish and Wildlife Service, Reclamation, the Cachuma Member Units, the Santa Ynez River Water Conservation District, the Santa Barbara County Water Agency, and the City of Lompoc—virtually all of the agencies that have historically been involved in water rights and public trust issues concerning the Cachuma Project. The 1994 MOU recognized that a 3-5 year period was needed to collect necessary data related to outstanding downstream water rights and public trust issues and established a Fish

Reserve Account of water to be used for the maintenance of fish below Bradbury Dam pending completion of the necessary studies. While the parties concurred with the designation of water for fish maintenance and study, all of the interests, including the State Board, recognized significant issues remained to be resolved concerning the relationship between water released from Bradbury Dam for the protection of the public trust resources, impacts on the Project water supply and downstream water rights.

In Water Rights Order 94-5, the State Board provided for the 3-5 year study plan contemplated in the 1994 MOU. In doing so, the Board recognized the need for a consensus based operational regime that would protect the public trust resources and Project water supply as well as downstream water rights by agreement among the parties. Consistently, WR 94-5 provided for the results of the studies to be presented by the Permitee (Reclamation) to the State Board in a manner that would allow for additional environmental documentation, if any, be prepared by the Permitee (Reclamation) and considered by the State Board in development of changes to the conditions under Reclamation Permits 11308 and 11310 to allow for such consensus based solutions.

As a result, beginning in 1994, the parties to the 1994 MOU carried out the contemplated studies, and developed a consensus based fishery management plan that analyzed the need for and provided protection of rainbow trout/steelhead downstream of Bradbury Dam through a combination of water releases from the Dam and the construction of a system to release water to Hilton Creek (downstream of Bradbury Dam) and the removal of numerous passage barriers to steelhead on tributaries to the main stem river. By implementing their Fish Management Plan (FMP) for the Lower Santa Ynez River, the MOU parties created significant additional habitat for steelhead within the Santa Ynez River watershed, including its tributaries.

While the parties were preparing the FMP, in 1997 the National Marine Fishery Service (NMFS) listed the Southern California Evolutionarily Significant Unit (ESU) of steelhead as an endangered species under the federal Endangered Species Act. Preparation of the FMP was therefore coordinated with NMFS, resulting in a Biological Opinion (BO) that protected steelhead consistently with the terms of the FMP. In 1999, the FMP was formally presented to the State Board in 1999 incorporating a regime of releases from Bradbury Dam which has been identified as Alternative 3C in the RDEIR. The FMP (Alternative 3C) has served as the basis for discussions among the parties regarding the reconciliation of flows for the protection of downstream public trust resources with impacts to Project water supply, the protection of downstream water rights and water quality in Lompoc.

Adversarial proceedings have been ongoing for over 50 years to determine the appropriate level of releases to ensure the protection of downstream interests by the Cachuma Project. In WR 94-5, this Board ordered Lompoc and the Cachuma Member Units to submit information developed and conclusions reached during negotiations relating to the water quantity and quality concerns in the Lompoc plain. (WR 94-5, Finding No. 15, Order No. 3.(d).)

A compromise was memorialized in the "Settlement Agreement between Cachuma Conservation Release Board, Santa Ynez Water Conservation District, Santa Ynez Water Conservation District Improvement District No. 1, and the City of Lompoc, relating to Operation of the Cachuma Project," dated December 17, 2002 ("Settlement Agreement"). The Settlement Agreement reflects the first time that all parties –Reclamation, its Member Units and all downstream interests – are in agreement on a release mechanism that protects the downstream water right interests but which is also acceptable to the project users and Reclamation. More importantly it resolves not only water quantity, water quality and flood control issues, but includes the requirements of the BO and FMP for protection of public trust resources.

Because ID No. 1 endorses the Settlement Agreement and manages its water supplies pursuant to it, as well as the 2000 Lower Santa Ynez River Fish Management Plan ("Fish Management Plan" or "FMP"), which the Member Units and downstream interests are fully committed to carrying out, ID No.1 has accepted its operational constraints and the water supply impacts resulting from FMP and Settlement Agreement characterized as Alternative 3C.

II. THE STATE BOARD SHOULD CONSIDER THE SCOPE OF THE PERMITS TO REFLECT ALTERNATIVE 3C AND INCORPORATE THE SETTLEMENT AGREEMENT'S TECHNICAL AMENDMENTS TO 89-18

On March 21, 2003 Reclamation informed the State Board that the CCRB, SYRWCD, ID No. 1, and City of Lompoc had entered into the Settlement Agreement on December 17, 2002 resolving issues relating to downstream water rights. They also represented based upon the terms of the Settlement Agreement that the Cachuma Project could be operated to protect downstream water rights and public trust resources according to "Proposed Modifications to Order WR 73-37, as amended by Order WR 89-18, pertaining to Permits 11308 and 11310 (Applications 11331 and 11332)."

Extensive testimony was presented to the State Board during the hearings in support of the use of the Settlement Agreement and Reclamation's proposed modification of WR 89-18 as the project to be analyzed by the State Board.

Because the FMP and the Settlement Agreement were developed in a coordinated manner to maintain support and acceptance by their signatory parties, Reclamation noted in its letter of March 21, 2003, that the State Board has the authority pursuant to section 11415.60 of the Government Code to issue a decision recognizing the Settlement Agreement, including the technical amendments to WR 89-18, as the means for resolving the public trust and water rights issues identified as "key issues" in Phase 2 of the Cachuma Water Rights hearings.

Importantly, the Settlement Agreement includes releases from Bradbury Dam as described in Alternative 3C of the RDEIR. Furthermore, surcharging of the Cachuma Project by 3 feet to partially mitigate for the loss of water supply resulting from releases in accordance with

the Fish Management Plan, as recognized by Alternative 3C, has already been implemented. Through negotiation of the Settlement Agreement, the parties have also developed a detailed understanding of downstream water supply impacts and impacts to Project supplies. Those impacts, while adding to water management challenges for water users downstream of Bradbury Dam and in Santa Barbara County's south coast region, are at least understood and accepted by the Member Units.

Because the Settlement Agreement was prompted by said order of the State Board, Paragraph 5.1 provides for the State Board's approval of technical amendments to WR 89-18 as described in Paragraphs 1.2, 1.3 and 1.4 and Exhibit "C." Accordingly, only minor modifications to WR 89-18 are requested from the State Board to implement the Settlement Agreement which are as follows:

> 1) resolve the timing of when the lower percolation curve would be used in lieu of the upper percolation curve for calculation of Below Narrows Account (BNA) Credits[3]; and,
>
> 2) change observation and monitoring procedures necessitated to update the Order to be consistent with operational changes implemented since 1989 (see discussion of Ali Shahroody at MU Exhibit 220, p. 10-13; R.T. 211-212)

The above action is necessary because while most of the technical amendments have been voluntarily implemented by the parties, the Settlement Agreement allows for their possible termination if, following the completion of the hearing required by Order 94-5, the State Board "does not require that downstream water rights releases continue to be made consistent with WR 89-18, as modified by the Settlement Agreement, without material change." (See Paragraph 5.2).

Because the RDEIR fails to indicate whether the technical amendments of the Settlement Agreement are an element of the proposed project (2007 DEIR, p. 3-7 [Table 3-1].), even though Alternative 3C includes the required releases under the Settlement Agreement, the above action is requested to continue operations as they presently exist. Otherwise, if no action is taken as requested above, the RDEIR fails to adequately evaluate the negative environmental consequences (e.g., on water resources to downstream water right interests) without implementation of the Settlement Agreement's technical amendments. *Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 913-915 (EIR failed to evaluate negative environmental consequences of failure to approve the project, namely possible permanent reduction in water entitlements stemming from invoking article 18(b) of water supply contracts).)

[3] In 1989, the State Board requested the parties resolve the issue and return to the Board (see discussion of Ali Shahroody at MU Exhibit 220, p. 8-10; R.T. 208-211). This provision provides maximal credits for recharge on the Lompoc Plain in return for some additional drought protection for the Member Units.

III. ALTERNATIVE 3C IS THE ONLY VIABLE ALTERNATIVE UNDER THE EXISTING PERMIT APPLICATIONS

As mentioned above, ID No.1 is one of the five (5) public agencies comprising the Member Units of the Cachuma Project. As set forth more fully in the Member Units comment letter, the RDEIR's range of alternatives, except 3C, are fundamentally flawed as unreasonable and not meeting with the purpose of Reclamation's March 2003 permit applications. *Save San Francisco Bay Assn. v. San Francisco Bay Conservation etc. Com.* (1992) 10 Cal.App.4th 908.).

A. ALTERNATIVE 3C WITH THE TECHNICAL AMENDMENTS MOST ACCURATELY REFLECTS RECLAMATION'S PERMIT REQUEST AND IS CONSISTENT WITH THE TERMS OF THE SETTLEMENT AGREEMENT

The RDEIR should identify Alternative 3C, as supplemented by Reclamation's modifications to WR Order 89-18, incorporating the technical amendments of the Settlement Agreement in Exhibit "C" as the project and the preferred alternative. Alternative 3C incorporates the core elements of the Settlement Agreement, which were evaluated in the RDEIR, and represents the only "project" resembling what the Permitee (Reclamation) and other parties (the Cachuma Member Units and downstream water rights interests) have presented for the State Board's consideration.

Alternative 3C most completely mirrors what Reclamation (the Permitee) and other parties (the Cachuma Member Units and downstream water rights interests) have presented for the State Board's consideration. Specifically, the Settlement Agreement's proposed modifications to WR 89-18 settled a long-standing dispute between the parties and it was specifically developed to protect downstream water right interests in concert with releases from Bradbury Dam under the BO as provided in Alternative 3C for protection of public trust resources.

B. ALTERNATIVE 3C MOST CLEARLY REFLECTS CACHUMA PROJECT OPERATIONS

Although ID No. 1 is unable to fully endorse Alternative 3C because of its significant water supply impacts, it has learned to operate within the water supply impacts resulting from Alternative 3C and the agreed sharing of those impacts formed a basis of the formation of the existing Settlement Agreement. It is the one alternative that most clearly reflects Cachuma Project operations under existing water rights, the National Marine Fisheries Service ("NMFS") 2000 Biological Opinion ("Biological Opinion" or "BO"), the 2000 Lower Santa Ynez River Fish Management Plan ("Fish Management Plan" or "FMP"), and the December 2002 Cachuma Project Settlement Agreement ("Settlement Agreement") which the Member Units and downstream interests are fully committed to carrying out.

Under existing water rights set forth by WR Order 89-18, flow releases and other protective measures required by the BO and FMP, and through mechanisms provided by the Settlement Agreement, ID No. 1 and the Member Units have accepted the challenge to meet their water supply obligations, even during severe droughts. The core elements of this operating regime are contained in the flow releases described in Alternative 3C, which were carefully developed over many years using a peer-reviewed hydrologic model that underwent extensive study and refinements prior to its application to the release requirements specified by the BO and FMP. Perhaps of greatest importance is that the Member Units have already implemented the flow operations required by the BO, as set forth in Alternative 3C, which are additive to existing water right releases under WR Order 89-18. These operations have been highly successful in protecting steelhead as an important public trust resource downstream of Bradbury Dam. Indeed, the fisheries releases in Alternative 3C have resulted in increased steelhead/rainbow trout habitat and steelhead/rainbow trout population in the lower Santa Ynez River and its tributaries.

C. ALTERNATIVE 3C IS CONSISTENT WITH NMFS BIOLOGICAL OPINION FOR PROTECTION OF STEELHEAD

Alternative 3C is the only alternative which is consistent with the flow requirements and protective measures for steelhead as specified in the Biological Opinion prepared by NMFS. More importantly, as supplemented by Reclamation's modifications to WR 89-18, it is the only alternative that accomplishes the purposes set forth in the 1999 Notice of Preparation[4] (NOP) and WR Order 94-5 of providing protection for public trust resources and downstream water rights. Hence, many of the concerns raised by ID No. 1 in these comments can be ameliorated by the adoption of Alternative 3C as set forth herein.

As provided for in NMFS' BO, a key element of Reclamation's operation and maintenance of the Cachuma Project involves surcharging (increasing water levels) by 3.0 feet. (Biological Opinion, p. 6.) Indeed, many of the flow-related fish support measures established by the Biological Opinion derive from the use of surcharged water. (Id. at pp. 6-10.) When the Biological Opinion was prepared in year 2000, the 3.0 foot surcharge was proposed to be phased in over the succeeding five years and expected to be fully implemented by 2005. (Id. at p. 6.) As noted in the 2007 DEIR, however, Reclamation did not implement a 3.0-foot surcharge in 2005 due to alleged impacts to recreational facilities within the Cachuma County Park. (2007 DEIR, p. 2-13.) Instead, the Reclamation has implemented a 2.47-foot surcharge (it implemented a 3.0 foot surcharge in 2006 with the concurrence of the County of Santa Barbara)

[4] The NOP defined the project as follows: "Development of revised release requirements and other conditions, if any, in the Reclamation water right permits (Applications 11331 and 11332) for the Cachuma Project. These release requirements will take into consideration the [NMFS] Biological Opinion and draft [FMP] and other reports called for by Order 94-5. The revised release requirements are to provide appropriate public trust and downstream water rights protection. Protection of prior rights includes the maintenance of percolation of water from the stream channel as such percolation would occur from unregulated flow, in order that the operation of the project shall not reduce natural recharge of groundwater from the Santa Ynez River below Bradbury Dam." (05/14/1999 NOP, pp. 2-3)

and will permanently implement a 3.0 foot surcharge by 2009 pursuant to a Memorandum of Understanding between CCRB, SYRWCD, ID No. 1, and the County of Santa Barbara. (Id.) The environmental impacts of implementing the flow releases and other fish enhancement measures set forth in the BO and FMP were fully analyzed in the FMP/BO Environmental Impact Report/Environmental Impact Statement ("FMP/BO EIR/EIS") jointly prepared and certified by COMB and Reclamation pursuant to CEQA and NEPA.

The flow recommendations developed by NMFS assuming a 3.0 foot surcharge are based on the best available science and are designed to maintain existing habitat and provide adequate passage downstream of Bradbury Dam. (Statement of James A. Lecky; NOAA Exhibit No. 1, pp. 2-3, Cachuma Project Hearing, Phase 2.) Although NMFS has recommended further studies regarding issues such as habitat and long-term flow requirements in the Santa Ynez River (Id. at p. 2), NMFS has never: 1) proposed or recommended higher flow releases for fish and habitat protection than those developed through the 3.0 foot surcharge, as provided in the BO; or 2) advocated that such studies must be completed prior to the State Board's adoption of the EIR and modification of Reclamation's water right permits. (See Cachuma Project Hearing, Phase 2, Cross-Examination of NOAA Fisheries, November 12, 2003, p. 682.)

The California Department of Fish and Game ("DFG") previously supported the water release regime developed by NMFS. On September 30, 2003 it commented on the EIR/EIS regarding the Draft FMP/BO, stating:

> The Department supports the recommended management actions identified in the FMP and BO. While the actions identified in the DEIR are expected to produce positive benefits for steelhead in the lower Santa Ynez, the ongoing monitoring and adaptive management process outlined in the FMP and BO will refine these actions and progress should not end there. The Department sees the implementation of these management actions as a starting point with an expectation that there will be further studies of stream flows, passage barriers in the Santa Ynez watershed and exploration other habitat restoration actions that will further enhance the watershed and aid in the restoration of the steelhead population. (DFG, 10/30/2003, p.1.)

IV. THE RDEIR IMPACT ANALYSIS ON WATER SUPPLY SOURCES LACKS SUBSTANTIAL EVIDENCE

A. ID NO. 1'S OPERATIONS ARE LIMITED BASED UPON SUPPLY SOURCES WHICH ARE NOT ACCURATELY REFLECTED IN THE RDEIR

1. Cachuma Project Water

The Cachuma Project and Bradbury Dam is a source of supply and diversion point for the ID No.1. The amount of Cachuma Project water allocated is set forth in both the Water Service Contract (I75r-1802) and the applicable Member Unit Contract of which ID Non.1 is one of five member agencies. ID No.1 contractual share of Project entitlement is 10.31%. The project's available capacity is 27,908 acre feet with a safe yield of 24,800 acre feet per year. The annual operational yield with minimal shortages is 25,714 acre feet with ID No.1's delivery share totaling 2,651 acre feet. The actual amount is subject to reduction in any given year due to reservoir level conditions, climatic changes, public trust resource protection, water rights, reservoir siltation and environmental constraints. From this operational yield, the ID No.1 is committed to provide a maximum of 200 acre-feet per year to the Cachuma Park Recreation Area, which currently uses approximately 75 acre-feet per year.

ID No.1 exchanges its Cachuma Project water with the South Coast Member Units and other water purveyors, who hold State Project water entitlements, for treated State Project water pursuant to an agreement entered into on February 1, 1993. The exchange water eliminates ID No.1's need to treat the Cachuma Project water, which would otherwise require surface water treatment. In the event of an emergency and if needed, a direct diversion of water supplies from the Cachuma Project may be transported by a 30-inch pipeline now operated by the Central Coast Water Authority.

The total amount Cachuma Project water exchanged with South Coast entities for treated State Project water is the annual delivery yield, less the water sold to the County Park of 75 acre feet per year, being approximately 2,576 acre-feet per year. However, when the lake level drops to less than 100,000 AF, the operational yield is reduced by 20% and quantity to be exchanged is subsequently reduced to 2,060 afy. Based on requirements for fishery releases pursuant to the Lower Santa Ynez River Fish Management Plan and Biological Opinion, in 2007, an additional 1,364 AF of Project water was released downstream and used to maintain fisheries flows at the Alisal target point. Although this action was not anticipated, this equates to a reduction of ID No.1's operational yield of 140 AF in this year.

Consequently, limitations on water release requirements as part of Cachuma Project operations resulting from Alternatives 5B or 5C will further restrict and reduce ID No.1's Cachuma Project Water source, resulting in any additional water releases for the fishery purposes significantly affecting water supplies.

2. Santa Ynez River

ID No.1 holds appropriative water permits to the underflow of the Santa Ynez River[5]. In 1978, the State Board issued to ID No. 1 two appropriation permits for the diversion and use of 2,220 acre-feet per year (4 cfs) under Permit 17733 and 3,400 acre-feet per year (6 cfs) under Permit 17734. In addition, ID No.1 has the right to take 515 acre-feet per year (1.73 cfs) under License No. 10415. Furthermore, the City of Solvang, is entitled to receive under Permit 15878, 3,600 acre feet per year (5.0cfs).

Notwithstanding the ability to pump what is currently operational in the river underflow of 1,836 AFY, some of the wells in the river alluvium are subject to damage or destruction in the event of high river flows during flood periods when significant flood releases are being made from Bradbury Dam which is compounded by tributary flood flows. These conditions result in both short-term and long losses in operation.

For example, ID No'1's ability to take well water was affected as recently as March 2000, when the Santa Ynez River channel realigned its course at the 4.0 cfs well field during a flood event destroying ID No. 1's Wells 12 and 13 and damaging the interconnecting pipelines to the 4.0 cfs well field distribution system. Because of lower production rates from ID No. 1 Wells 17 and 18, (350 gpm and 225 gpm respectively), the highest annual production rate of 1,659 dropped to a monthly maximum production of 201 acre-feet in August of 2000. Subsequently in 2005, additional flooding occurred causing the river to change course and of the five original wells, the only operational well is Well 14 with the others either damaged or destroyed by this flood event. No water production from this well field has occurred since 2005 because repairs were required. Accordingly, of these 5 wells, none are currently operational due to flooding downstream of Bradbury Dam.

The 2005 storm events caused heavy rains and flooding that resulted in the Santa Ynez River mainstream channel to change, flowing directly over a portion of the 6.0cfs well field causing significant damage to wells and transmission facilities. This channel shift has caused a reduction in water supplies from the well field resulting from direct damage, thus removing some of the facilities from production or creating constraints in pumping due to the EPA's Surface Water Treatment Rule (SWTR). Of the original nine wells only six are currently operational reducing water supplies.

In addition to flood flows impacting pumping from the river wells, the ability to draw from wells may also be impacted by releases from Bradbury Dam under the RDEIR's Alternatives 5B and 5C, as well as by possible unknown regulations imposed by governmental regulators. ID No.1's ability of the District to maximize its use of these wells depends on controlled water rights releases from Cachuma to recharge the river alluvium when needed

[5] The Santa Ynez River Riparian Basin is recharged by water rights releases from Lake Cachuma in accordance with existing State Board requirements.

pursuant to State Board conditions and orders relating to the Cachuma permits.

Accordingly, ID No. 1 relies heavily on the periodic releases from the dam to maintain water availability to it's wells. The RDEIR's assumption that these impacts are "less than significant" is contrary to the evidence.

3. State Water Project

Under a Water Supply Agreement, ID No.1 has contracted for and is entitled to 2,000 acre feet per year of State Water Project (SWP) water. Of this, 1,500 acre feet is contractually obligated to the City of Solvang through a separate Water Supply Agreement and is delivered to a separate turnout. This water is used for partial elimination of groundwater overdraft and as a supplemental supply for system reliability.

Each year, the amount SWP water delivered is variable and subject to a number of factors that affect the water available for allocation to contracting entities. In 2007, only 60% of the entitlement was delivered. Accordingly, ID No.1 anticipates the 2008 water deliveries will be 32% of entitlement or 640 AF of the total 2000 AF entitlement[6].

Accordingly, the RDEIR's identified mitigation of offsetting any water supply impacts by increased deliveries from the State Water Project water is contrary to the evidence. To emphasize the infeasibility of this mitigation, on August 31, 2007, an order issued by the United States District Court in *Natural Resources Defense Council v. Kempthorne*, USDC No. 05-CV-1207-OWW, reduces SWP deliveries to ID No.1 by as much as 19% on the already reduced allocation. The *Kempthorne* ruling constitutes significant new information that requires re-analysis of the water supply impacts to the Member Units resulting from Alternatives 5B and 5C. (CEQA Guidelines § 15088.5.)

Table 16

Summary of Preliminary Estimated Reductions in State Water Project Deliveries

Natural Resources Defense Council v. Kempthorne, et al. (Case No. 05-CV-1207-OWW)

Total SWP Reductions	**Average**	**Dry**
Annual Delivery Reduction	200 – 680 taf	10-14 taf
Percent Delivery Reduction	5-17%	1-4%

Thus the RDEIR's mitigation measures are infeasible and unable to avoiding significant impacts on ID No. 1, including the City of Solvang. Pub. Res. Code §§21002, 21100; *Kings*

[6] Based upon water supply conditions currently in Northern California.

County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 727 (EIR was inadequate, in part, because is found groundwater impacts to be insignificant on the basis of a mitigation agreement that calls for purchases of replacement groundwater supplies without specifying whether water was available.)

4. Groundwater

Most of ID No.1 overlies a portion of the Santa Ynez Upland Groundwater Basin,. The Paso Robles Formation is the source of ID No. 1's upland groundwater, with possible well yields from several hundred to over 1,500 gallons per minute (g.p.m.).

ID No.1 is one of two public water purveyors in the Basin, the other being the City of Solvang. Only a small portion of the City of Solvang overlies the Santa Ynez Uplands Basin and has limited pumping capability.

Given its dependence on groundwater, ID No.1 commissioned studies of the basin which confirmed the existence of an overdraft condition since at least 1968 in both the basin as a whole and, more significantly, in the sub area underlying the ID No.1's boundaries and that no temporary surplus exists which is available for pumping. Such overdraft exists regardless of the inclusion of non-native, imported water return flow in the inflow calculations. Recent pumping basin-wide has been estimated to be as high as 17,300 AFY.

Although ID No. 1 historically operated eight wells in the Santa Ynez Uplands Groundwater Basin, only six wells are operational but have production limits. Thus, ID No.1's water production has been reduced by up to 39% of the original design for a variety of reasons, including lowering of groundwater levels.

Given the overall decrease in available water supplies, any reliance on using groundwater to mitigate any of the impacts discussed in the RDEIR, in particular 5B and 5C, is not feasible. *Kings County Farm Bureau,* 221 Cal.App.3d at 727.

5. Summary of ID No. 1's Supply Sources

The table below indicates the water supplies for the water year 2007. Dependent on the source of supply, water production from each source will vary depending on such factors including but not limited to hydrology, climate, ground water conditions, physical facilities and institutional and fiscal constraints. These alternative sources, to the extent they are available, are already fully committed and not available to mitigate additional flow releases contemplated by the RDEIR. In addition, ID No. 1 is committed to provide water to the City of Solvang based upon ID No. 1's existing sources which are expected to further reduce the amount of its sources of supply.

2007 Water Supply in Acre-Feet/Year	
Water Supply Sources	**2007**[7]
Purchased from Reclamation	2651
Delivery from DWR	420
Delivery from DWR for City of Solvang	900
Uplands Basin groundwater	1711
Transfers*	89
Exchanges	N/A
Recycled Water	N/A
Santa Ynez River Underflow	1532
Other	N/A
Note: City of Solvang/Dudley Ridge water repayment agreement one-year only	7303

B. ID NO. 1'S INCREASING WATER DEMANDS WILL NOT BE SERVED CONTRARY TO THE RDEIR'S CONCLUSIONS

The District encompasses an area of approximately 10,850 acres (including the City of Solvang's approximately 1,300 acres). Of this area, approximately 5,000 acres are residential (up to 5 acre parcels), 150 acres are commercial, 400 acres are used for parks, schools and cemeteries, 3,137 acres are agricultural, and 2,163 acres are either used for grazing or are unused or undeveloped. It is expected that the undeveloped land within its boundaries will continue to build-out with residential or ranchette housing including development in the City of Solvang. Additionally the continuing change of agricultural crop patterns from unused or grazing land to vineyards has caused a further increase in irrigation water demand.

In water year 2007, the ID No.1 total water demand is 7,268 AF inclusive of the City of Solvang. Of the total, 2,936 AF met the annual demand for Agriculture water use and 2,963 AF was used to supply domestic demand. In comparison to the prior water year, the total water demand has increased by 1,068 AF or 22 percent resulting from a number of factors including dry climatic conditions causing substantially increased agricultural use and moderate increase in residential water demand. In addition, change in crop patterns to vineyards has resulted in agriculture demand increasing over 29 percent from the prior year. Residential build-out was a contributing factor which increased by 16% as compared to the previous year. This trend is expected to continue with the demand for water supply continuing increase in the future. These annual and periodic fluctuations in water demands were not analyzed in the RDEIR.

[7] These statistics are based upon ID No.1's water production tables and DWR and Reclamation allocations.

C. RDEIR SIGNIFICANTLY UNDERSTATES THE IMPACTS ON ID NO. 1'S WATER SUPPLIES UNDER THE ALTERNATIVES

The water supply impacts shown in the RDEIR, Table 4-16 understate the actual impacts that would be experienced during both the critical drought year (1951) and critical 3-year drought period (1949-1951). In real-time planning for water supply during a prolonged drought period, water supply managers do not know if they are in the last year of drought. They have to plan as if the next year would be an additional dry year. It would be near-sighted to assume that future hydrologic conditions will occur only within the bounds of historical hydrology.

Table 4-16 of the RDEIR is based on the historical hydrology, with a perfect forecast, when the exact length of a drought period is already known and the Cachuma Project supply can be used in its entirety. In actual practice, however, water supply managers have to plan for water supply assuming the year following the worst historical drought period itself would be dry. Indeed, to not do so would amount to unacceptably negligent water management. With reserves set aside for an additional dry year following the worst year of the critical period, actual water supply shortages would be substantially greater than those shown in the RDEIR, Table 4-16. An estimate of the actual water supply shortages that will likely occur within the Cachuma Project service area under the alternatives considered in the RDEIR is shown below in Table 1. This table compares Cachuma Project supplies shown in Table 4-16 to what Cachuma Project supplies would be with reserves set aside during the critical drought period based on the Santa Ynez River Hydrology Model (SYRHM). Table 1 shows that in a critical drought year, shortages would range from 14,792 to 16,669 acre-feet for all alternatives, with the largest shortages occurring under Alternatives 5B and 5C. Table 4-16 of the RDEIR erroneously shows Cachuma Project shortages during the critical drought period would range from 9,808 to 12,506 acre-feet for all alternatives.

Third, the difference between the shortages in the Cachuma Project that Member Units are actually planning for and what the 2007 DEIR reports is even more significant than the water supply impacts illustrated in Table 1 indicate because the Member Units will be operating in a water shortage condition and not a water surplus condition as implied in the DEIR. Shortages of water from the Cachuma Project within the context of a regional water shortage condition are an extremely sensitive variable for Santa Barbara County water resources planning. Indeed, since the 2007 DEIR itself recognizes that Alternative 5B would have Class I impacts to water supply with a shortage level of 12,506 acre-feet (about 50 percent shortage from normal year supplies), the State Board's Final EIR should recognize that all of the potential alternatives have Class I cumulative impacts to water supply because their critical drought shortages would all be greater than 12,506 acre-feet, ranging from about 58 to 65 percent shortage based on 1951 drought year.

Consistently, the Final EIR must recognize that the water supply shortages are more dire than noted in the RDEIR with shortages ranging from 14,600 to 19,400 acre-feet during the critical drought period for all alternatives (Table 11), with the largest impacts being generated by Alternatives 5B and 5C. All of these alternatives have a Class I cumulative impact due to

significant reductions in water supply from the Cachuma Project, and it is unrealistic for the DEIR to contend otherwise

Potential mitigation of the increase in Cachuma Project shortages caused by the RDEIR's alternatives through increased ground-water pumping also requires a more comprehensive review of indirect impacts. For example, in "Water Resources of Southern California with Special Reference to the Drought of 1944-51" (USGS, 1957), the ground-water tables near the Member Units showed considerable decline as shown below in Figure 3. The indirect environmental impacts analysis from ground-water pumping during droughts, such as possible sea water intrusion, is insufficient in the RDEIR. Currently, the document provides no information or evaluation of local groundwater rights, overall short- and long-term supplies compared to local demand, or the likelihood of those additional supplies proving available in light of legal, technical or other limitations. (RDEIR, p. 4-30.) Instead, the analysis simply assumes that significant amounts of groundwater will be reliably and legally available to the Member Units, contrary to the requirements of *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova*, (2007) 40 Cal.4th 412. (RDEIR, Table 4-25b; Appendix F, Tables 19A-B.) This inadequate analysis results in a gross understatement of water supply impacts to the Member Units.

The RDEIR also improperly assumes desalination will comprise a portion of the Member Units' water supplies during critical drought periods. (RDEIR, pp. 4-23; 4-24; 4-27; 4-29.) While desalinated water is assumed to be available to the City of Santa Barbara, the analysis concedes that necessary National Pollutant Discharge Elimination System permits are not currently in place to produce such water and no discussion is provided regarding the likelihood of those permits being obtained. (RDEIR, p. 4-31.) The 2007 DEIR fails to analyze whether the desalination facility is currently operable and whether existing infrastructure exists to deliver desalinated water within the City or to other Member Units. Because of ID No.1's geographical location and the absence of infrastructure and inter-connection with the south coast, desalination water supplies are not viable or feasible. Nor does the RDEIR address the time within which such facilities and delivery capabilities would be available, if in fact they could be, to make desalinated water exist as a feasible mitigation measure to offset water supply shortages. As a result, water supply impacts are substantially understated, in part because desalination is not a viable option for ID No.1.

Notwithstanding whether there are surplus's or shortfalls amongst ID No.1 and other Member Units, the RDEIR improperly concludes the Member Units could transfer or exchange water. See RDEIR, Page 4-24 stating even though shortages will be experienced by MWD, GWD and ID No.1, they could buy from CVWD and City of Santa Barbara. This fundamentally ignores the fact that there are no physical facilities to deliver water to ID No. 1 from either CVWD or City of Santa Barbara, whether groundwater or desalination water.

D. THE RDEIR DOES NOT ADEQUATELY ANALYZE OR CONSIDER THE AFFECT OF UNEXPECTED HYDROLOGICAL CONDITIONS ON WATER RELEASE REGIMES

The Biological Opinion and Lower Santa Ynez River Fish Management Plan (collectively referred to as the BO/FMP) established a management goal of maintaining target flows in the mainstream and in lower Hilton Creek, which would provide year-long habitat in the Santa Ynez River below Bradbury Dam, through a combination of water releases from Cachuma Reservoir and tributary flows. The final BO/FMP also provided operations to improve passage flows by supplementing storm flows. When the BO and FMP were finalized in September and October 2000, respectively, the interim BO/FMP operations commenced (EIR Alternative 2). With the additional surcharge and spills of January 2005, the long-term BO/FMP operations (EIR Alternative 3C) commenced after the spill stopped on May 23, 2005. The long-term BO/FMP operations for habitat flows are shown in Table 1.

Table 1

FINAL PHASE MAINSTREAM SANTA YNEZ RIVER REARING TARGET FLOWS

IN BIOLOGICAL OPINION AND FISH MANAGEMENT PLAN

Lake Cachuma Storage	**Reservoir Spill**	**Target Flow**	**Target Site**
> 120,000 AF	Spill > 20,000 AF	10 cfs	Highway 154 Bridge
> 120,000 AF	Spill > 20,000 AF	1.5 cfs*	Alisal Road Bridge
> 120,000 AF	Spill <20,000 AF or No Spill	5 cfs	Highway 154 Bridge
< 120,000 AF	No Spill	2.5 cfs	Highway 154 Bridge
>30,000 AF	Spill < 20,000 AF or No Spill	1.5 cfs*	Alisal Road Bridge**
<30,000 AF	No Spill	Periodic Release; ≤30AF per month	Stilling Basin and Long Pool

**When rainbow trout/steelhead are present in the Alisal Reach.*

***This target will be met in the year immediately following a >20,000 AF spill year.*

Source: Lower Santa Ynez River Fish Management Plan, October 2, 2000, pg. 3-9.

In years when Cachuma Reservoir spills 20,000 acre-feet or more, a target flow of 10 cfs will be maintained at the Highway 154 Bridge with releases up to 10 cfs (designated capacity) from Hilton Creek supplemental watering system. The Reclamation shall also provide a target flow of 1.5 cfs at Alisal Road Bridge during spill years with greater than 20,000 acre-feet of spill and the first year after such spill years if steelhead trout are present. In years when Cachuma Reservoir does not spill or spills less than 20,000 acre-feet, the Highway 154 target flow will be determined based on reservoir storage: 5.0 cfs when storage is greater than 120,000 acre-feet and 2.5 cfs when storage is less than 120,000 acre-feet. Periodic releases to refresh the Stilling Basin and Long Pool will be made when storage is less than 30,000 acre-feet. In addition, the BO requires a 2 cfs minimum flow in Hilton Creek once a pump is installed as a part of the terms and conditions to implement Reasonable and Prudent Measure No. 2.

In addition, to releases for habitat as listed in Table 1, under the final BO/FMP, the Fish Passage Account will be allocated 3,200 acre-feet in years when the reservoir surcharges to 3.0 feet (9,200 acre-feet). If the reservoir surcharges to less than 3.0 feet, the Fish Passage Account will be credited any surcharge amount in excess of a 1.8-foot surcharge, up to 3,200 acre-feet. Water will be released to facilitate passage beginning in the year following a surcharge year, and in subsequent years until the account has been depleted. The account will not be subject to evaporation and seepage losses, and can be carried over to subsequent years. However, the account is reset when the reservoir spills (surcharges). Likewise, 500 acre-feet is allowed to the Adaptive Management Account in years when the reservoir surcharges 3.0 feet. The account will not be subject to evaporation and seepage losses, can be carried over to subsequent years, and will be reset when the reservoir spills (surcharges). The account will be used at the discretion of the Adaptive Management Committee (AMC) to benefit steelhead and its habitat as determined by the committee.

1. Summary of Measured Releases for Fish During 2005-2007 Under Alternative 3C

Table 2 shows the release made for fish to date (2005-2007) under the Final BO/FMP (Alternative 3C) by month.

Table 2
Releases for Fish under Final BO/FMP To-Date (2005-2007)

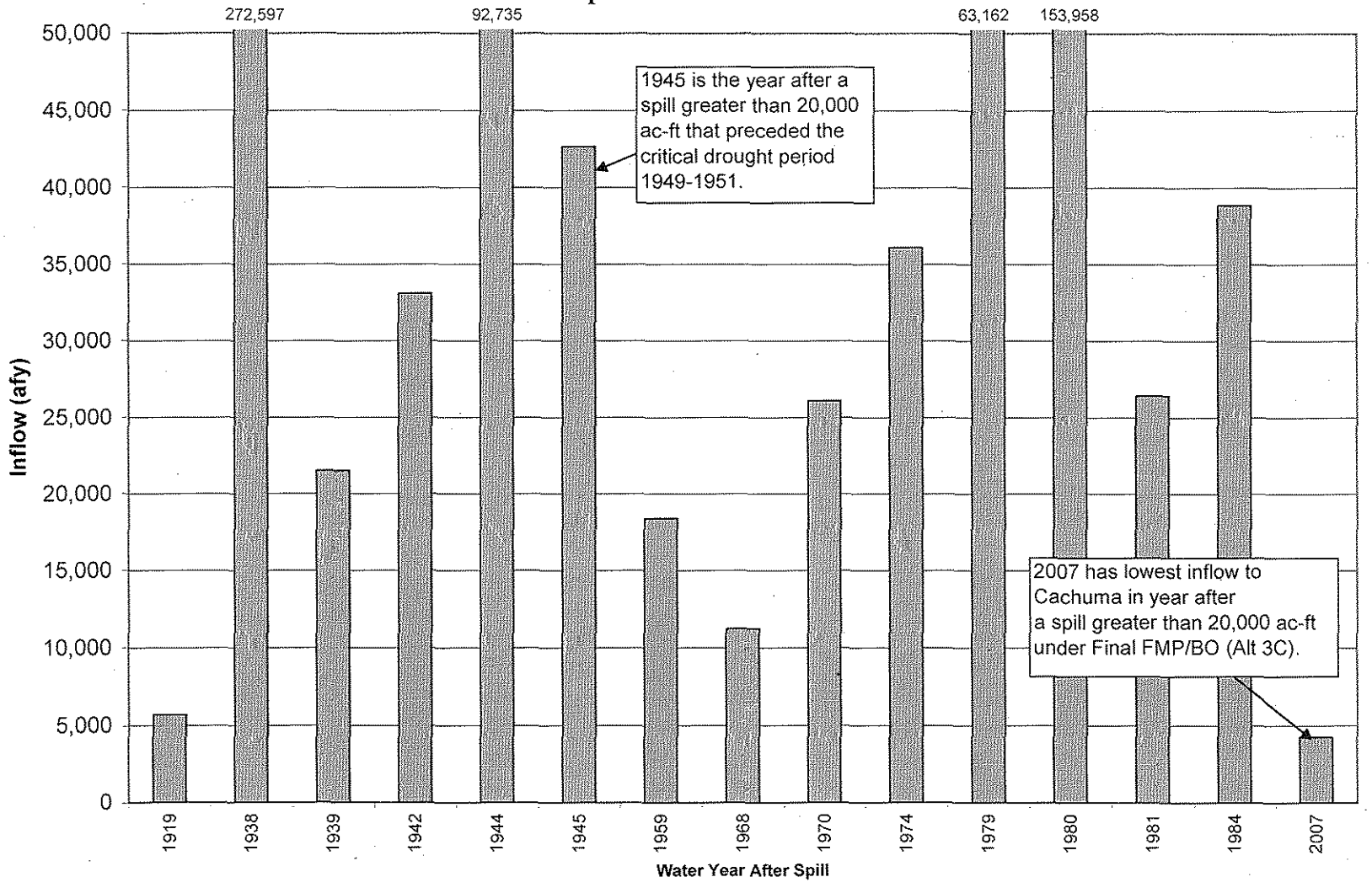
Month-Year	Releases for Fish (acre-feet)	Comments
May-05	156	Spill totaling 260,078 af ends on May 23. Final BO/FMP targets go into effect.
Jun-05	586	
Jul-05	614	
Aug-05	681	
Sep-05	588	
Total	**2,625**	
Oct-05	613	
Nov-05	400	
Dec-05	362	
Jan-06	356	
Feb-06	317	
Mar-06	2,190	First passage releases made to supplement storm hydrograph.
Apr-06	488	Passage releases occurred before two spill events during month.
May-06	0	
Jun-06	503	Spill totaling 62,869 af ends on June 5.
Jul-06	620	
Aug-06	613	
Sep-06	596	
Total	**7,057**	
Oct-06	409	
Nov-06	354	
Dec-06	360	
Jan-07	352	
Feb-07	328	
Mar-07	373	
Apr-07	393	
May-07	455	There is difficulty in meeting 1.5 cfs target at Alisal due to dry conditions and beaver dams.
Jun-07	1,104	Adaptive Management Account might be debited to deal with beaver dams.
Jul-07	803	Water rights releases begin July 23.
Aug-07	0	
Sep-07	0	
Total	**4,931**	

Water year 2007 is the year following the spill year (2006) and it also requires maintaining 1.5 cfs at Alisal Bridge. During the summer of 2007, there was a difficulty in meeting the target flow of 1.5 cfs at Alisal Bridge which resulted in making significantly higher releases than expected from June 23 to July 23, 2007. The amount of water releases for fish to maintain a flow 1.5 cfs at Alisal Bridge was about 1,420 acre-feet during this period. This is about 825 acre-feet more than the maximum expected release rate of 10 cfs (590 acre-feet for 30 days) under Alternative 3C. In other words, the Cachuma Project yield under Alternative 3C (Table 4-16 RDEIR) would be reduced by about 825 acre-feet.

2. Water Supply Impacts of Alternatives 3C and 5C

A year like 2007 was not predicted in the model analysis, which poses a risk to actual future water supplies from the Cachuma Project under the Final BO/FMP operations (Alternative 3C). The year 2007 is the driest year on record following a spill greater than 20,000 acre-feet as shown in Figure 1. Figure 1 compares the year 2007 runoff to the annual runoff in years following spills greater than 20,000 acre-feet within the base period (1918-1993) used in the SYRHM for the analysis of Alternative 3C. As of August 31, 2007, the cumulative annual runoff into Cachuma Reservoir starting from October 1, 2006 was only 4,262 acre-feet.

Figure 1. Cachuma Lake Inflows for Years Following Spills of Greater than 20,000 AF Under Alternative 3C (1918-1993) Compared with Year 2007



The current impact of releases for fish since the cessation of spills from Cachuma Reservoir in 2006 is shown in Table 3. Table 3 reflects that in about one (1) year the entire surcharge water of 9,200 acre-feet has been used or dedicated to an account. In other words, the surcharge water, after deductions for Fish Passage Account and Adaptive Management Account, has been exhausted in about one year. This water is supposed to maintain habitat in Hilton Creek, stilling basin, and the main stem of Santa Ynez River between Bradbury Dam and Highway 154 Bridge until the occurrence of next spill. With the exhaustion of the surcharge water, releases for the maintenance of the fish (outside of the water rights releases) will come directly from the Project water supply from here out until the reservoir surcharges again.

Table 3

Summary of Surcharge Water Used from Spill Event in 2006 To Maintain Habitat for Fish in Santa Ynez River (acre-feet)

	Releases for Fish	Cumulative Releases	Amount of Surcharge Water (5,500 af)[a] Remaining
Jun-06	503	503	4,997
Jul-06	620	1,123	4,377
Aug-06	613	1,736	3,764
Sep-06	596	2,332	3,169
Oct-06	409	2,741	2,759
Nov-06	354	3,094	2,406
Dec-06	360	3,455	2,046
Jan-07	352	3,807	1,693
Feb-07	328	4,135	1,365
Mar-07	373	4,508	992
Apr-07	393	4,901	599
May-07	455	5,356	144
Jun-07	1,104	6,460	-960
Jul-07	803	7,263	-1,763 [b]

a) 9,200 (total surcharge) – 3,200 (Fish Passage Account) – 500 (Adaptive Management Account) = 5,500 (habitat maintenance)

b) A portion or all of the Adaptive Management Account water may be used, subject to approval by AMC, to offset a portion of the unexpected release amounts for habitat maintenance in 2007.

Table 3 indicates that the Project water supply has already been shorted by about 1,800 acre-feet under Alternative 3C. If 2007 is the first year of the five year drought period (1947-1951), the Project has to make releases from storage (outside of water rights releases) to maintain fish habitat in the remaining four years. This may result in significantly additional impacts to water supply under Alternative 3C than predicted in the RDEIR.

The above analysis demonstrates the additional impacts associated with Alternative 3C due to the unexpected hydrologic condition in 2007. This impact would be compounded if Alternative 5C were in effect. After the cessation of spills in early June 2006, the target flows at Alisal Bridge would have been approximately 19 cfs (average) for June and 10 cfs in July, August, and September under Alternative 5C rather than 1.5 cfs under the BO/FMP (Alternative 3C) for the same period. That means, significantly more water has to be released from Cachuma Reservoir under Alternative 5C compared to Alternative 3C. This difference in meeting the target flows at Alisal Bridge would result in additional impacts to the Project water supply.

Given the above, the RDEIR should acknowledge the Settlement Agreement, adopt the proposed modifications to WR Order 89-18 submitted by Reclamation and expressly recognize that such core modifications have been addressed and analyzed under Alternative 3C as part of the DEIR process.

It is respectfully requested that the State Board order contain provisions incorporating Reclamation's proposed modifications to WR 89-18, acknowledging the Settlement Agreement, and requiring compliance with the terms and conditions of the Biological Opinion and FMP, including surcharge releases and other fish protective measures of the Biological Opinion.

E. THE RDEIR ALTERNATIVES ANALYSIS FAILS TO ACCOUNT FOR AN ALMOST 20% DECREASE IN DOWNSTREAM RELEASES TO ID NO. 1 FROM THE ABOVE NARROWS ACCOUNT, WHICH IS 1/3 GREATER IMPACT THAN ALTERNATIVE 3C

Water rights releases are made to replenish the Santa Ynez River alluvial groundwater basin between Bradbury Dam and Lompoc Narrows. ID No. 1 including the City relies on replenishments provided to the alluvial groundwater basin by water rights releases from the Above Narrows Account (ANA). Additionally, water stored in Lake Cachuma under the ANA is the source of drought water supply for water users, such as ID No.1 and the City, downstream of Bradbury Dam. The amount of credits accrued to the ANA is crucial in the management of water supply for the water right holders in the Above Narrows area. Water rights releases from the ANA are impacted by the proposed alternatives when compared to the WR 89-18 operations (Alternative 1).

The average annual amounts of releases from the ANA for Alternatives 1, 2, 3C and 5C are shown below. The average annual reductions in the ANA releases under these alternatives are compared to Alternative 1. The average annual reduction in the downstream water rights releases (ANA) under Alternatives 3C would be 13 percent. Under Alternative 5C, the reduction in the releases from the ANA would be 19 percent. In other words, the average annual decrease in the amount of available water in the ANA for releases would be about 20 percent under Alternative 5C. This level of reduction in the ANA would impair the supply of water to replenish the downstream alluvial groundwater basin which in turn impacts the supply of water to ID No. 1 and the City.

Average Annual Impacts on Releases from Above Narrows Account

1918-1993, SYRHM
(ACRE-FEET)

	Alt 1: WR 89-18	Alt 2: Interim BO Operations	Alt 3C: BO with 3' Surcharge	Alt 5C: "3A2"/BO and 3' Surcharge
ANA Releases	4,559	4,237	3,949	3,690
Difference in ANA Releases	---	-321	-610	-869
Percent Reduction in ANA Releases	---	-7%	-13%	-19%

Importantly, the supply of water from the Santa Ynez River alluvial groundwater basin for ID No. 1 would be adversely affected during the drought periods with the above reductions in the ANA credits. The reduction in the amount of ANA water would affect the drought water supply for the downstream water right holders during the prolonged drought periods under Alternative 3C. The reduction in the availability of drought water supply is further compounded under Alternative 5C with the reduction of about 20 percent in the ANA release compared to the WR 89-18 operations.

V. THE RDEIR LACKS SUBSTANTIAL EVIDENCE TO SUPPORT ITS FINDING OF AN IMPACT ON RECREATION IN LAKE CACHUMA COUNTY PARK.

Lake Cachuma County Park is located on Reclamation land, is operated by the Santa Barbara County and within the ID No.1 water service area. ID No.1 provides water supply to the Park facilities. In the 2003 DEIR process, Santa Barbara County provided testimony that when Lake Cachuma was surcharged in accordance with the Fish Management Plan, the County Park facilities would be inundated by the surcharge up to 753.0 feet. Notwithstanding this, in 2005, when the lake elevation actually reached 753.18 feet, an engineering survey concluded those facilities were not impacted by surcharge. In an abundance of caution, the Member Units installed a gabion basket barrier at the water treatment plant in response to the County's concerns about alleged wave run-up. Since the gabion basket barrier was installed, and as the RDEIR now reflects is considered a permanent mitigation, there is not basis for the conclusion of any impacts at 753 feet on the water treatment plant or other facilities from wave run-up or inundation during surcharge periods. In support of such, no further concerns have been raised.

Despite the RDEIR acknowledging that the "impacts" to the water treatment plant from inundation and wave run-up have been mitigated by the gabion basket barrier, it states the County has acquired partial funding and plans to move the water treatment plant. This fails to

acknowledge that since 2002, Reclamation and County Parks have been working on modernization of all recreation facilities at the County Park, including the water treatment plant and wastewater plan in connection with "modernization" of all recreation facilities at the reservoir. These facilities will be analyzed as disclosed during 2002 public meetings in a Resource Management Plan/EIS for activities at the reservoir. Given there are no impacts, it is unnecessary to account for moving the water treatment plant.

The RDEIR states that under Alternatives 3C, 4B and 5C, that surcharging the reservoir to 3.0 feet would require relocation of the boat launch ramp at Cachuma County Park. RDEIR, page ES-9. This finding is obviated by the County's independent proceeding wherein it issued a mitigated negative declaration to replace the three (3) existing boat launch ramps with one new ramp to add to the efficiency of the facility serving boaters and in compliance with accessibility requirements of the American's with Disabilities Act (ADA) Guidelines for Recreation Facilities. The County was the lead agency and found that the construction impact was potentially significant and implemented mitigation measures during construction. This included a finding that specific and cumulative impacts would not be considerable.

Specifically, it states:

> The proposed relocation of the Cachuma Lake Facilities due to surcharging was analyzed as a cumulative project on a programmatic level in the EIS/EIR for the Cachuma Operation and Maintenance Board and the Bureau of Reclamation's Lower Santa Ynez River Fish Management Plan and Cachuma project."
>
> . . .
>
> The Project is consistent with the goals and objectives of the Cachuma Operation and Maintenance Board and the Bureau of Reclamation's Lower Santa Ynez River Fish Management Plan and Cachuma Project."

In conjunction with such, the County proceeded with the construction and relocation of the Boat Launch ramp in September 2007. It is anticipated that construction will be complete by January 2008. Regardless, the RDEIR's conclusion of a Class II impact based on safety is unfounded demonstrated by the County's compliance with the ADA.

Accordingly, the RDEIR is inconsistent and the mitigation measure R-1 is inappropriate.

VI. THE RDEIR'S CLASSIFICATION OF THE OAK TREE IMPACT AS SIGNIFICANT WITH AN UNMITIGABLE IMPACT LACKS SUBSTANTIAL EVIDENCE

The RDEIR identifies the loss of oak trees due to surcharge required by the Biological Opinion is identified as a significant, unmitigable impact (Class I). (RDEIR, p. 4-77.) Not only is there no substantial evidence to support this finding, similarly there is no substantial evidence that any of the alternatives may feasibly avoid or lessen that impact. As set forth in more detail in the Member Units' comments [See Also Member Units Comments, SECTION VI.C.] oak tree impacts have been mitigated to a level of insignificance and therefore should reflect a Class II impact [significant environmental impact that can be mitigated].

More importantly, the impacts of the surcharge on oak trees were evaluated in the joint Environmental Impact Report/Environmental Impact Statement for the Lower Santa Ynez River Fish Management Plan and Cachuma Project Biological Opinion ("FMP/BO EIS/EIR"). The FMP/BO EIS/EIR resulted in the implementation of a comprehensive Oak Tree Restoration Program, which the FMP/BO EIS/EIR found mitigated oak tree impacts to a level of insignificance (Class II). The State Board should and is authorized by CEQA to consider the oak tree mitigation and no significant impact findings in the FMP/BO EIS/EIR. (CEQA Guidelines § 15153(a).) Based upon the FMP/BO EIS/EIR, there is no basis for the RDEIR's conclusion that implementation of the BO will result in any significant, unmitigable impacts on oak trees. Moreover, there is no substantial evidence in the RDEIR that project impacts on oak trees are not mitigated to a level of insignificance through continued implementation of the ongoing Oak Tree Restoration Program, as the FMP/BO EIS/EIR concluded.

VII. CONCLUSION

For the reasons discussed in this letter, ID No.1 believes the 2007 RDEIR can be corrected and requests that the State Board adopt Alternative 3C with modifications to WR 89-18 as provided in the technical amendments contained in Exhibit "C" to the Settlement Agreement. Alternative 3C is the only alternative that, in accordance with WR 94-5 and prior State Board orders, resolves both outstanding water quantity and quality issues among the Member Units and downstream water right interests while protecting public trust resources.

Should you have any questions or desire any additional information or clarification, please feel to contact us. Thank you for your consideration of these comments on behalf of ID No.1..

Sincerely,

Gary M. Kvistad
For HATCH & PARENT
A Law Corporation

GMK:dcd
Enclosures

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