



State Water Resources Control Board

VIA ELECTRONIC MAIL

April 5, 2012

To: Enclosed Cachuma Project Service List

CACHUMA PROJECT HEARING – APPLICATIONS 11331 AND 11332

On March 29 and 30, 2012, the State Water Resources Control Board (State Water Board) held a hearing to receive evidence relevant to the issue of whether to admit into the administrative record the Final Environmental Impact Report (FEIR) that has been prepared in connection with this proceeding. During the hearing, the parties were afforded the opportunity to cross-examine the State Water Board's consultants, who prepared the FEIR, concerning the factual content of the FEIR. In addition, two of the parties – the National Marine Fisheries Service and California Trout – presented rebuttal evidence concerning the validity of the FEIR. Finally, three of the parties – the Cachuma Conservation Release Board, the Santa Ynez River Water Conservation District, and the Santa Ynez River Water Conservation District, Improvement District No. 1 – presented surrebuttal evidence that was responsive to the rebuttal evidence presented.

In adjudicative proceedings before the State Water Board, evidence is admissible "if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs . . ." (Cal. Code of Regs., tit. 23, § 648, subd. (b); Gov. Code, § 11513, subd. (c).) Having considered the evidence presented at the hearing, I find that the FEIR meets this standard and should be admitted into the administrative record. The FEIR is hereby admitted into the administrative record, and the record is now closed. In reaching a decision on the merits in this proceeding, the State Water Board will evaluate the information contained in the FEIR, together with the testimony and other evidence concerning the validity of the factual content of the FEIR that was admitted into the record during the hearing on March 29 and 30, 2012, as part of the entire record before the State Water Board.

During the hearing, the consultants who prepared the FEIR proposed several corrections to the FEIR based on their review of the parties' rebuttal testimony. Before certifying the FEIR, the State Water Board plans to make those corrections, which are enclosed for the parties' information.

The parties will be notified and afforded an opportunity to comment before the State Water Board considers adopting a final decision in this proceeding. In the interim, if you have any questions about this letter or any other non-controversial procedural matter, please contact Dana Heinrich, Staff Attorney IV, at (916) 341-5188 or dheinrich@waterboards.ca.gov.

Sincerely,

Handwritten signature of Tam M. Doduc.

Tam M. Doduc
Hearing Officer

Enclosures

Cachuma Project Phase 2 Hearing
Final Service List
(updated 03/28/2012)

(Based on 01/05/2004 list, updated 07/26/2007, updated 06/08/2010, updated 01/20/2011, updated 05/13/2011, updated 07/29/2011, updated 01/05/2012, updated 01/30/2012), updated 03/28/2012

The parties whose email addresses are listed below agreed to accept electronic service, pursuant to the rules specified in the hearing notice.	
<p>Cachuma Conservation Release Board Mr. Kevin O'Brien Downey Brand LLP 621 Capitol Mall, Floor 18 Sacramento, CA 95814 kobrien@downeybrand.com bcougar@downeybrand.com</p> <p><i>updated 01/05/2012</i></p>	<p>City of Solvang Mr. Christopher L. Campbell Baker, Manock & Jensen 5260 N. Palm Avenue, Suite 421 Fresno, CA 93704 ccampbell@bakermanock.com</p> <p><i>updated 07/29/2011</i></p>
<p>Santa Ynez River Water Conservation District, Improvement District No. 1 Mr. Gregory K. Wilkinson Best, Best & Krieger, LLP 3750 University Avenue, Suite 400 Riverside, CA 92501 Gregory.Wilkinson@Bbklaw.com</p> <p><i>updated 01/30/2012</i></p>	<p>City of Lompoc Ms. Sandra K. Dunn Somach, Simmons & Dunn 500 Capitol Mall Suite 1000 Sacramento CA 95814 sdunn@somachlaw.com</p> <p><i>updated 06/08/2010)</i></p>
<p>Santa Ynez River Water Conservation District Mr. Ernest A. Conant Law Offices of Young Wooldridge 1800 – 30th Street, Fourth Floor Bakersfield, CA 93301 econant@youngwooldridge.com</p>	<p>California Trout, Inc. c/o Ms. Karen Kraus Environmental Defense Center 906 Garden Street Santa Barbara, CA 93101 kkraus@environmentaldefensecenter.org</p> <p><i>updated 03/28/2012</i></p>
The parties listed below did not originally agree to accept electronic service, pursuant to the rules specified by this hearing notice.	
<p>U.S Bureau of Reclamation Ms. Amy Aufdemberg 2800 Cottage Way, Room E-1712 Sacramento, CA 95825 Fax (916) 978-5694 AMY.AUFDEMBERGE@sol.doi.gov</p>	<p>Ms. Terri Maus-Nisich, Assistant CEO Santa Barbara County CEO's Office 105 E. Anapuma Street, 4th Floor Santa Barbara, CA 93101 tmaus@co.santa-barbara.ca.us</p> <p><i>updated 01/05/2012</i></p>
<p>Dan Hytrek NOAA Office of General Counsel Southwest Region 501 West Ocean Blvd., Suite 4470 Long Beach, CA 90802-4213 Dan.Hytrek@noaa.gov</p> <p><i>updated 05/13/2011</i></p>	<p>Department of Fish and Game Office of General Counsel Nancee Murray 1416 Ninth Street, 12th Floor Sacramento, CA 95814 Nmurray@dfg.ca.gov</p>

<p>County of Santa Barbara Mr. Dennis Marshall, County Counsel 105 E. Anapamu Street Santa Barbara, CA 93101 dmarshall@co.santa-barbara.ca.us</p>	
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ERRATA

April 5, 2012

**Final Environmental Impact Report
Volume I – Response to Comments
2.0 COMMENTS AND RESPONSES TO COMMENTS**

Changes located at:

- 8. National Oceanic and Atmospheric Administration/National Marine Fisheries Service dated May 27, 2011**

Response 8-1, page 2.0-62

Response 8-3, page 2.0-63

Response 8-4, page 2.0-64

Response 8-9, page 2.0-66

Response 8-15, pages 2.0-68 to 2.0-69

Attached pages replace the pages in the original document.

8. National Oceanic and Atmospheric Administration/National Marine Fisheries Service dated May 27, 2011

Response 8-1:

The comment states, as expressed in prior correspondence, NMFS is requesting that the SWRCB not finalize the EIR pending release and incorporation of the new Biological Opinion for operation and maintenance of the Cachuma Project and the Southern California Steelhead Recovery Plan.

The SWRCB understands that NMFS is in dialogue with the Reclamation and that the current Biological Opinion may be revisited. Further, the SWRCB is aware that NMFS has published a draft Southern California Steelhead Recovery Plan, and that sometime in the future they may finalize that plan.

The SWRCB does not concur that the completion of this EIR process should be deferred until finalization of the Southern California Steelhead Recovery Plan or the completion of the revised Biological Opinion. CEQA does not require an exhaustive study of a particular subject in order for an EIR to be informative to the decision making body. ~~As required by NMFS, t~~**he Cachuma Project will fully would be expected to comply with the provisions of a revised Biological Opinion just as the Project was required to operate in compliance has operated in compliance** with the September 2000 Biological Opinion. Further, the 2011 2nd Revised EIR reflects the draft Southern California Steelhead Recovery Plan. SWRCB may consider amending Reclamation's permits requiring compliance with any new or revised Biological Opinion, but Reclamation's responsibilities with regard to the terms contained in any Biological Opinion are not dependent upon those terms being incorporated into Reclamation's permits.

The operation of Bradbury Dam by the Cachuma Operations and Maintenance Board (COMB), who operates the Cachuma Project on behalf of Reclamation, is a separate action from the SWRCB's consideration of water rights. These actions have historically proceeded in parallel and undergone separate environmental reviews. The 2011 2nd RDEIR reflects the most current data available from COMB and others.

Given the above reasons, the SWRCB does not believe there is adequate reason to delay the Cachuma Project EIR.

Response 8-2:

The comment states that NMFS will assist the State Water Board to ensure that the administrative record includes necessary evidence to properly evaluate project impacts on fisheries consistent with the public trust responsibilities of the State Water Board.

This comment is noted.

Response 8-3:

The comment suggests that NMFS's September 2000 Biological Opinion concerning the Southern California steelhead ESU will be taken into consideration in regulating water release requirements from the Cachuma Reservoir. The comment continues that, as supported by NMFS's administrative record and the October 26, 2010 correspondence, NMFS considers the September 2000 Biological Opinion insufficient for the Cachuma Project to not jeopardize the continued existence of the endangered steelhead in the Santa Ynez River. Therefore, re-initiation of formal consultation under the ESA is required. A new NMFS biological opinion was expected in December 2011; however, NMFS is currently coordinating with Reclamation to define a schedule for the reinitiated consultation including development and submittal of required work products to support the process. The comment recommends that completion of the EIR process be deferred until a new Biological Opinion can be completed.

The comment is noted.

The Southern California Steelhead Recovery Plan has not been finalized as of November 2011 and it is our understanding that NMFS has only recently begun formal consultation with Reclamation for a revised Biological Opinion. NMFS is correct that the statement on Page 2.0-21 concerning receipt of the Compliance Report from Reclamation in May 2010 is inaccurate. The latest Compliance Report, containing data for the years of 2003 through 2009, was completed in January 2011.

Based on the above information, the SWRCB does not concur that the completion of this EIR process should be deferred until finalization of the Southern California Steelhead Recovery Plan or the completion of the revised Biological Opinion. CEQA does not require an exhaustive study of a particular subject in order for an EIR to be informative to the decision making body. ~~As required by NMFS, the Cachuma Project will fully~~ would be expected to comply with the provisions of a revised Biological Opinion just as the project was required to operate in compliance ~~has operated in compliance~~ with the September 2000 Biological Opinion. SWRCB may consider amending Reclamation's permits requiring compliance with any new or revised Biological Opinion, but Reclamation's responsibilities with regard to the terms contained in any Biological Opinion are not dependent upon those terms being incorporated into Reclamation's permits.

Response 8-4:

The comment states that NMFS had not started the Southern California Steelhead recovery process when the 2000 Biological Opinion was issued. In addition, the comment states that NMFS has published several technical memoranda and developed a draft recovery plan subsequent to the preparation of the Biological Opinion. NMFS recommends that the State Water Board consider the additional documents mentioned above in the preparation of the 2011 2nd RDEIR.

Section 2.6 Draft Steelhead Recovery Plan of the 2011 2nd RDEIR summarizes in considerable detail the contents and objectives and the July 2009 Draft Southern California Steelhead Recovery Plan. In addition, this same section references two of the technical memoranda (NOAA-NMFS, SW Fisheries Center Technical Memo No 394, and NOAA-NMFS, SW Fisheries Center Technical Memo No 407) referred to in this comment.

The SWRCB does not concur that the completion of this EIR process should be deferred until finalization of the Southern California Steelhead Recovery Plan or the completion of the revised Biological Opinion. CEQA does not require an exhaustive study of a particular subject in order for an EIR to be informative to the decision making body. ~~As required by the NMFS, the Cachuma Project will fully~~ would be expected to comply with the provisions of a revised Biological Opinion just as the ~~Project was required to operate has operated~~ in compliance with the September 2000 Biological Opinion. SWRCB may consider amending Reclamation's permits requiring compliance with any new or revised Biological Opinion, but Reclamation's responsibilities with regard to the terms contained in any Biological Opinion are not dependent upon those terms being incorporated into Reclamation's permits.

Response 8-5:

The comment references the earlier NMFS October 7, 2003 comment letter in which six steelhead studies are recommended to be undertaken by the SWRCB. The comment states that these studies do not appear to have been completed.

The information intended to be gathered by the six studies requested by NMFS, including steelhead spawning and rearing habitat assessment, fish passage for Bradbury Dam, fish flows to support migration above Bradbury Dam, watershed analysis, channel flows and alternative flow regimes for the lower Mainstem Santa Ynez River is essentially the same information that will be gathered through actions included in the Fish Management Plan. Results of the Fish Management Plan actions are contained in the Reclamation's Compliance Report as well as the Draft Southern California Steelhead Recover Plan and the technical memoranda produced by NMFS. The SWRCB has relied on the Santa Ynez River Adaptive Management Committee to independently undertake these specific studies.

Response 8-6:

The comment suggests that NMFS has commented on sections of the EIR rather than limiting its comments to just **Sections 4.3** and **6.0**. One of the specific comments relates to a new section in the 2011 2nd RDEIR related to climate change.

The comment is noted.

the Bradbury Dam appear to be historically descended from anadromous *O. mykiss*, despite extensive stocking with hatchery fish over the years. Thus, hatchery fish do not appear to have significantly interbred into the wild strain, potentially as a result of different life cycle patterns. Finally, the Draft Recovery Plan emphasizes restoring access to the approximately 40 river miles upstream of the barriers in the Santa Ynez River in order to promote ecological traits such as capacity to migrate long distances and withstand warmer temperatures. There are no project actions that affect upstream resources and no current plans to construct fish passage around these barriers; further analysis is not a part of the 2011 2nd RDEIR. No further discussion is needed.

Response 8-9:

The comment suggests that the alternatives discussed in **Section 4.7.2, Potential Impacts of the Alternatives** of the 2011 2nd RDEIR were based on the September 2000 Biological Opinion for the Cachuma Project, which requires re-initiation of consultation and issuance of a new biological opinion under the ESA. The comment also states that none of the alternatives are based on the series of fishery-related investigations previously recommended by NMFS in their October 7, 2003 comment letter. The comment expresses NMFS's concern that these alternatives may not adequately address possible effects to endangered Southern California steelhead.

The alternatives considered in the 2011 2nd RDEIR all incorporate the requirements of the September 2000 Biological Opinion, which is designed to protect the endangered Southern California steelhead. Consequently, the SWRCB is of the opinion that the public trust resource would **be protected experience improved conditions relative to the baseline** under the implementation of the proposed project.

Response 8-10:

The comment suggests that Chapter 4.12 Climate Change of the 2011 2nd RDEIR does not deal with specific impacts to steelhead or resident *O. mykiss*.

While there is no specific impact assessment of climate change on steelhead or resident *O. mykiss*, 2011 2nd RDEIR **Section 4.12.3.2, Impact Assessment** addresses in general the potential effects on Biodiversity and Habitat.⁹ Individual species and habitats will have very different responses to climate change. The SWRCB concurs with NMFS that the biological response to climate change will be complex and uncertain.

⁸ Nielsen, J. L. 1998. Molecular genetic population structure in steelhead/rainbow trout (*Oncorhynchus mykiss*) from the Santa Ynez River, 1994-1997. Final Technical Report submitted to ENTRIX, Walnut Creek, CA November 20, 1998. 32pp.

⁹ Association of Fish and Wildlife Agencies, Voluntary Guidance for States to Incorporate Climate Change into Wildlife Action Plans & Other Management Plans, September 2009. 7.

2000.”¹⁰ A task of CDFG to be undertaken as part of this program for the Santa Ynez River is to develop guidelines for maintaining instream flows to protect fisheries resources downstream of water diversions in Central Coast watersheds and to protest water right applications unless sufficient bypass flows are established that will maintain habitat conditions in streams, tributaries, and lagoons.

Response 8-14:

The comment references 2nd RDEIR **Section 4.13.2.1, California Department of Fish and Game (CDFG)**, stating that there is no reference to the California Fish and Game Code sections which are relevant to the State Water Board proposed project. The comment identifies section 5937 “release of water below a dam to maintain fish in good condition, sections 1601-1603 “diversion or obstruction of natural flows” and sections 6900-6903.5 “Salmon, Steelhead Trout and Anadromous Fisheries Program Act.”

The SWRCB fully intends to comply with all state provisions including those mentioned in the comment. Fish and Game Code section 5937 requires the owner of a dam to allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, to allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam. This is one of the objectives of the Cachuma Project, therefore, compliance with Fish and Game Code Section 5937 is a component of the project. Sections 6900-6903.5 are known as the Salmon, Steelhead Trout, and Anadromous Fisheries Program Act (Act). This Act describes that the protection of the naturally spawning salmon and steelhead must be accomplished primarily through the improvement of stream habitat. The improvement of stream habitat is a project objective of the Cachuma Project. Sections 1601-1603 references the need for an agreement with the CDFG before any diversion or obstruction may be placed within stream course. However, there have been no violations of this statute for the Cachuma Project.

Response 8-15:

The comment questions whether an environmentally superior alternative can be selected when the 2000 Biological Opinion is being subjected to reinitiated consultation between NMFS and Reclamation and the Southern California Steelhead Recovery Plan has yet to be completed. The comment concludes that the SWRCB will benefit in its efforts to protect the public trust resources from the renewed consultation and the final Recovery Plan information.

The SWRCB agrees that the updated information that will come from the reinitiated consultation and the finalization of the Recovery Plan would be helpful in planning for future actions to protect the public trust resources. Indeed, the SWRCB **could amend the permits to reflect will follow Reclamation in**

¹⁰ California Department of Fish and Game, Steelhead Restoration and Management Plan for California, February 1996, page iii.

~~adopting~~ the requirements of a revised Biological Opinion. However, the SWRCB does not need to obtain that additional information to complete the current CEQA process because the 2000 Biological Opinion is the guiding principle from which the project objections and alternatives are derived. While the 2000 Biological Opinion may not incorporate all possible actions for the protection of steelhead, the requirements of that document have provided and continue to provide protection that did not exist prior to the proposed action.

The 2011 2nd RDEIR (see **Section 6.3**) identifies Alternative 3C and Alternative 4B as the environmentally superior alternatives as they have the fewest significant impacts. These alternatives would not result in any significant and unavoidable impacts (Class I) to water supply but would result in temporary significant and unavoidable (Class I) impacts to oak trees. The 2011 2nd RDEIR also notes that although Alternative 4B would have slightly more beneficial impacts, it would require the import of SWP water, which would require an agreement between the City and DWR, would have impacts related to steelhead, and would require construction of a pipeline and outlet works to discharge SWP water into the Santa Ynez River.

The 2011 2nd RDEIR states that Alternatives 3B, 5B, and 5C would result in significant and unavoidable (Class I) impacts to water supply that could not be mitigated as well as significant impacts (Class I and Class II) to oak trees and, therefore, would not be the environmentally superior alternative.

As Alternative 3C is the No Project Alternative, Alternative 4B would be the environmentally superior alternative as the *State CEQA Guidelines*¹¹ require that another alternative other than the No Project Alternative be identified among the other alternatives if the No Project Alternative is environmentally superior. However, Alternative 4B would require additional measures beyond those that can be considered at this time and may have additional potentially significant (either Class I or II) impacts related to the construction of a pipeline and outlet works, and to steelhead smolts imprinting on SWP water. Therefore, although identified as the environmentally superior alternative, Alternative 4B is not considered a feasible alternative and should not be considered.

¹¹ California Code of Regulations, Title 14, Division 6, Chapter 3, *California Environmental Quality Act Guidelines*, Section 15126.6(e)(2).