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October 4, 2010

Charles L. Lindsay
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
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STATE WATER RESOURCES
CONTROL BOARD
10 OCT -6 PM 12: 03
DIV. OF WATER RIGHTS
SACRAMENTO

Re: Comments from the California Department of Fish and Game and the National Marine Fisheries Service on the Final Environmental Impact Report (FEIR) for the Cachuma Project

Dear Mr. Lindsay:

Background

This letter follows a letter to you from the Cachuma Conservation Release Board ("CCRB") and the Santa Ynez River Water Conservation District, Improvement District No. 1 ("ID #1") dated September 28, 2010. We incorporate the CCRB/ID #1 September 28th letter into the following comments, and occasionally refer to terms from that letter.

In addition to the concerns aptly addressed by the CCRB and ID #1, we wish to inform you of our further concerns regarding comments directed to the State Board from the California Department of Fish and Game ("Fish and Game" or "DFG") and the National Marine Fisheries Service ("NMFS") regarding the FEIR for the Cachuma Project.

Fish and Game and NMFS Comments

On September 21, 2010 and September 23, 2010, respectively, NMFS and Fish and Game wrote letters to the State Board expressing concern that the State Board will release the FEIR for the Cachuma Project without having fully considered new and pending information that has or may become available since the circulation of the 2007 DEIR. After the 2007 DEIR, NMFS released a Draft Recovery Plan (in 2009) that it asserts could be considered substantial new evidence that is not expected to be included in the FEIR. Both NMFS and DFG have recommended delaying the release of the FEIR

indefinitely until NMFS has completed its Final Recovery Plan and NMFS and the Bureau of Reclamation can conduct a reconsultation on the Cachuma Project and NMFS can complete a revised or new Biological Opinion. Additionally, Fish and Game has suggested a possible recirculation of the DEIR.

Santa Ynez River Water Conservation District Response

In addition to the comments set forth in the CCRB's and ID#1's September 28, 2010 letter, we would ask that the State Board further consider the following.

First, there is no evidence that the State Board has failed to consider all new information relevant to the Cachuma Project. In particular, with reference to the Draft Recovery Plan, NMFS's December 7, 2007 comment letter on the 2007 DEIR describes at length NMFS's recovery planning efforts, and suggests that the State Board be aware of and utilize such available technical information. There is no indication the State Board has failed to consider such efforts and neither NMFS nor DFG offer any evidence to the contrary. Notably, too, while NMFS now expresses concern about its pending Recovery Plan, its earlier letter to the Board also stated that "Recovery plans are guidance documents, not regulatory documents, and the implementation of actions identified in such plans are voluntary."

Case law further confirms that new information not included in the DEIR does not require recirculation of the DEIR, or preclude circulation of an FEIR unless certain standards are met. (*A Local and Regional Monitor v. City of Los Angeles* (1993) 12 Cal.App.4th 1773, 1803.) In particular, unless such new information is substantial to the point of requiring "major revisions" to an EIR, no subsequent EIR is necessary. (*Id.*) Section 15088.5 of the CEQA Guidelines confirms this standard. Neither NMFS nor Fish and Game have submitted any tangible evidence of new information that meets the standard. To the contrary, their requests for an indeterminate delay fail to provide any specifics regarding their claims of "new" or "pending" information. In this regard, indefinitely delaying an already lengthy environmental review process based on such conjecture runs contrary to one of the goals of CEQA, which is to bring finality to the environmental review process.

In their letter to you of September 28, 2010, CCRB and ID#1 appropriately noted that NMFS' assertions in its September 21st letter run contrary to statements contained in NMFS' prior briefing to the State Board on this matter. The statements are also contrary to NMFS' subsequent letter of December 7, 2007 to the State Board, in which NMFS asserted that its recovery plans are "separate and distinct" from the State Board's processes. (See Page 2, ¶ 3.) It is completely contradictory with that earlier claim for NMFS to now suggest that the State Board's processes are somehow dependent on the findings of a new NMFS Biological Opinion.

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Conclusion

In summary, and with all due respect, the comments of Fish and Game and NMFS are contradictory to their prior positions and are without foundation or merit. We urge the State Board to disregard them accordingly and to complete the FEIR pursuant to the schedule in your May 27, 2010 letter to Ms. Rees of the CCRB.

Thank you for your consideration.

Sincerely,

SANTA YNEZ RIVER WATER
CONSERVATION DISTRICT



Bruce A. Wales
General Manager

Copy: Service List (see attached)

**Cachuma Project Hearing
Phase-2 Hearing
Final Service List
(updated 06/08/2010)**

(Based on 01/05/2004 list, updated 07/26/2007)

The parties whose E-mail addresses are listed below agreed to accept electronic service, pursuant to the rules specified in the hearing notice.)	
<p>Cachuma Conservation Release Board Mr. Gregory K. Wilkinson Best, Best & Krieger, LLP 3750 University Avenue, Suite 400 Riverside, CA 92501 gkwilkinson@bbkklaw.com</p>	<p>City of Solvang Mr. Christopher L. Campbell Baker, Manock & Jensen 5260 N. Palm Avenue, Suite 421 Fresno, CA 93704 clc@bmj-law.com</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 gkwilkinson@bbkklaw.com</p>	<p>(updated 06/8/2010) City of Lompoc Ms. Sandra K. Dunn Somach, Simmons & Dunn 500 Capitol Mall Suite 1000 Sacramento, CA 95814 sdunn@somachlaw.com</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@edcnet.org</p>
The parties listed below DID NOT agreed to accept electronic service, pursuant to the rules specified in the 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>Santa Barbara County Parks Ms. Terri Maus-Nisich Director of Parks 610 Mission Canyon Road Santa Barbara, CA 93105 tmaus@co.santa-barbara.ca.us</p>
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