

Jane Farwell - Response Ltr Re: NOAA's National Marine Fisheries Service Letter and Objections

From: SYRWD - Mary Martone <mmartone@syrwd.org>
To: JFarwell@waterboards.ca.gov
Date: 1/20/2012 2:49 PM
Subject: Response Ltr Re: NOAA's National Marine Fisheries Service Letter and Objections
CC: bwales@syrwcd.com; bradV@cityofsolvang.com; krees@ccrb-board.org; dmarsh...
Attachments: Ltr re NOAA Obj. 01202010.pdf

Ms. Farwell,

Attached please find a letter re: NOAA's National Marine Fisheries Service Letter and Objection – Cachuma Project Final Environmental Impact Report.

An original will follow via the US Postal Service.

Please confirm your receipt.

Thank you,

Mary Martone <<...>>

Administrative Manager

Santa Ynez River Water Conservation District, ID#1

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CACHUMA CONSERVATION RELEASE BOARD

629 State Street, Suite 244
Santa Barbara, California 93101

-AND-

SANTA YNEZ RIVER WATER CONSERVATION DISTRICT

P.O. Box 719 – 3669 Sagunto Street, Suite 108
Santa Ynez, California 93460

-AND-

**SANTA YNEZ RIVER WATER CONSERVATION DISTRICT,
IMPROVEMENT DISTRICT NO. 1**

P.O. Box 157 – 3622 Sagunto Street
Santa Ynez, California 93460

January 20, 2012

VIA U.S. MAIL & EMAIL

Jane Farwell, Environmental Scientist
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
jfarwell@waterboards.ca.gov

Re: NOAA's National Marine Fisheries Service Letter and Objections –
Cachuma Project Final Environmental Impact Report

Dear Ms. Farwell:

The Cachuma Conservation Release Board (“CCRB”), Santa Ynez River Water Conservation District (“SYRWCD”) and Santa Ynez River Water Conservation District, Improvement District No. 1 (“I.D. No. 1”) (hereinafter, collectively, the “Water Users”) are in receipt of a comment letter provided to the State Water Resources Control Board (“SWRCB” or “Board”) regarding its December 2011 Final Environmental Impact Report on the Cachuma Project (“FEIR”) by NOAA's National Marine Fisheries Service (“NMFS”) dated January 9, 2012. By this letter, the Water Users address certain procedural issues raised in the NMFS comments. This letter supplements our letter of January 13, 2012, as we had not received NMFS’s letter as of that date.

Ms. Jane Farwell
January 20, 2012
Page 2

In summary, NMFS states:

1. It objects to incorporating the FEIR into the administrative record of the Cachuma Project hearing and requests the SWRCB to delay completion of the action on the Cachuma Project until after a new Biological Opinion that is the subject of ongoing reconsultation between the Bureau of Reclamation ("Reclamation") and NMFS is completed;
2. NMFS requests that the SWRCB include in its action a specific provision for reopening and amending the SWRCB Cachuma permits as necessary based on NMFS' new Biological Opinion;
3. NMFS requests that if the SWRCB takes action on the project, that it provide as much operational flexibility as possible to provide the timing, magnitude, duration and rate of change of flows that may be necessary under the new Biological Opinion; and
4. It disagrees with some of the statements and conclusions in the FEIR.

Regarding these comments we note as follows (identified as listed above):

1. As NMFS notes it has previously requested that the Board delay this process, which CCRB and I.D. No. 1 responded to in detail by letter of September 28, 2010, and SYRWCD responded to by letter of October 4, 2010. Following that exchange of correspondence (including similar correspondence from others) the Board staff indicated it would proceed, which is confirmed in Response 8-1 of the FEIR (Page 2.0-62, Vol. 1). Please recall that the State Board solicited additional funds from the Member Units to fund the Board's efforts to complete the FEIR, and the Member Units advanced considerable public funds with the understanding the process would be timely completed. For the reasons cited in our prior correspondence and as confirmed in the FEIR, there is no merit for such a requested delay in completing the FEIR and associated water rights process and it would be a waste of scarce public funds to delay the process and start over—the Board staff made its final decision on this process issue and we need to move forward.
2. This matter is addressed at Response 8-1 (page 2.0-62, Vol. 1) of the FEIR, and elsewhere in the document, the response in part being "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."
3. It would be totally inappropriate in a decision by the Board to provide "operational flexibility" with respect to flows to accommodate some unknown requirement of a potential new or revised Biological Opinion, the terms of which may not be known for several years. The Board's obligation is to make a decision based on the evidence before it today and there is no evidence to justify unknown "operational flexibility". As noted above, if there was an inconsistency between some yet unknown change in the Biological

Ms. Jane Farwell
January 20, 2012
Page 3

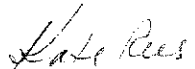
Opinion and a term of a Board water rights decision, NMFS could petition the Board to "re-open" any applicable permit term.

4. That of course is the role of the hearing that will be held, whereby through cross examination and potential rebuttal evidence, NMFS can seek to correct statements and conclusions in the FEIR. We note, however, such cross examination and potential rebuttal evidence must be limited as described in our letter of January 13, 2012.

We appreciate your consideration of these additional comments supplementing our letter of January 13, 2012.

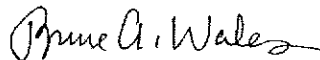
Sincerely,

CACHUMA CONSERVATION RELEASE BOARD



Kate Rees
General Manager

*SANTA YNEZ RIVER WATER
CONSERVATION DISTRICT*



Bruce A. Wales
General Manager

*SANTA YNEZ RIVER WATER CONSERVATION
DISTRICT, IMPROVEMENT DISTRICT NO. 1*



Chris Dahlstrom
General Manager

copy: Cachuma Project Hearing, Phase-2 Hearing Final Service List
United States Bureau of Reclamation

Ms. Jane Farwell
January 20, 2012
Page 4

CCRB, Board of Directors
City of Solvang
City of Buellton
City of Lompoc
SYRWCD, Board of Directors
SYRWCD I.D. No. 1, Board of Trustees
Ernest A. Conant, District Counsel to SYRWCD
Gregory K. Wilkinson, Special Water Rights Counsel to I.D. No. 1
Kevin M. O'Brien, General Counsel to CCRB
