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United States Department of the Interior

OFFICE OF THE SOLICITOR
Pacific Southwest Region
2800 Cottage Way
Room E-1712
Sacramento, California 95825-1890

IN REPLY
REFER TO:

January 4, 2000

Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95814
Attn:Katherine Mrowka

Re: Cachuma Project Hearings–Closing Brief

Dear Ms. Mrowka:

Enclosed are the original and 7 copies of the U.S. Bureau of Reclamation's Closing Argument for Phase 1 of the Cachuma Hearing, as well as a self addressed stamped envelope. I would appreciate it if you could return one date stamped copy of the document for our records.

Sincerely,

Kaylee Allen
Assistant Regional Solicitor

Enclosures

David Nawi, State Bar No. 039299
Kaylee Allen, State Bar No. 190379
Edmund Gee, State Bar No. 178627
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Attorneys for the United States

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In the Matter of: Hearing to Review the U.S. Bureau of Reclamation Water Right Permits 11308 and 11310 (Applications 11331 and 11332) To Determine Whether Any Modifications in Permit Terms and Conditions Are Necessary to Protect Public Trust Values and Downstream Water Rights On The Santa Ynez River Below Bradbury Dam (Cachuma Reservoir)And To Consider Change Petitions For Water Right Permits 11308 and 11310	U.S. BUREAU OF RECLAMATION'S CLOSING ARGUMENT: PHASE I

I. INTRODUCTION

The U. S. Bureau of Reclamation ("Reclamation") seeks to amend Water Right permits 11308 and 11310 to change the place and purposes of use for these permits. The permits pertain to the Cachuma Project located north of Santa Barbara on the Santa Ynez River. Water from this project is provided to the Carpenteria Valley Water District, Goleta Water District, City of Santa Barbara, Santa Ynez River Water Conservation District Improvement District Number 1 ("ID No.1) and Montecito Water District (collectively "Member Units") via a contract between Reclamation and the Santa Barbara County Water Agency.

The requested action is essentially an administrative one: Reclamation merely seeks to adjust the place of use to coincide with the Member Units service boundaries and to make the purposes of

use under each of the permits consistent. As demonstrated by evidence provided at the State Water Resources Control Board ("State Board") hearing, approving Reclamation's petitions for change in place and purpose of use under permits 11308 and 11310 will result in no change in operations or deliveries from the Cachuma Project. Thus, Reclamation urges the State Board to approve the petitions.

The second issue presented at the hearing was whether Reclamation has complied with Water Rights Order 94-5. Sufficient evidence was provided at the hearing to demonstrate that Reclamation has complied, or made a good faith effort of compliance, with each of the conditions set forth in Water Rights Order 94-5. For this reason, the State Board need not take any enforcement action against Reclamation.

II. STATEMENT OF FACTS

The Cachuma Project was authorized in 1948 and constructed by Reclamation beginning in 1950 and completed in 1956. (DOI-1b). The primary facility of the Project is Lake Cachuma, which is formed by Bradbury Dam on the Santa Ynez River. Water is conveyed to the South Coast by the Tecolote Tunnel and the South Coast Conduit. The Project was designed to provide a supplemental water supply for irrigation and municipal and industrial purposes. Principal features of the Project include five storage dams which form reservoirs with a total capacity of about 191,600 acre-feet, approximately 28 miles of pipelines, 7.5 miles of tunnels and over 100 miles of laterals. (DOI-1a:2)

Reclamation holds Water Right permits 11308 and 11310. The place of use specified on these permits is inconsistent with the Member Units' boundaries. Reclamation initially petitioned the State Board in 1983 for modifications to conform the Cachuma place of use under Permits 11308 and 11310 to the water service areas of the Member Units. That original petition has been modified several times. Under the August 1983 petition, as amended, Reclamation requests approval from the State Board to (1) conform the water right place of use boundary for Permits 11308 and 11310 to coincide with the legally defined service area boundaries of the Cachuma Project Member Units, and (2) consolidate the purposes of use under Permits 11308 and 11310 so that water under both permits can be used for the same purposes. (DOI-2b.)

The action requested under the 1983 petition, as amended, will modify the gross water right place of use for Permits 11308 and 11310 to include an additional 17,506 acres. These areas are currently within the authorized service area, but outside the water right place of use boundary for the Member Units as designated on Map B-1P-21, Sheets 1 and 2, for Permits 11308 and 11310, on file with the State Board. (State Board Staff Exhibits by Reference #1 and #2; also DOI-3c and DOI-3d.)

A second petition, filed in May, 1999, is also pending. Under the May, 1999 petition, Reclamation seeks to include 130 acres of the Dos Pueblos Golf Links Project site, as annexed into the boundary of the Goleta Water District, within the place of use under Permits 11308 and 11310. (DOI-2c.)

Water is delivered to the Member Units pursuant to a master contract between Reclamation and the Santa Barbara County Water Agency. (Exhibit DOI-1c). The Santa Barbara County Water Agency in turn has subcontracts with each of the Member Units. The Master Contract allows for delivery of the determined operational yield of the Project, on average 25,714 acre feet per year. Exhibit DOI-1d shows the annual deliveries to the Member Units from 1958-1998 reported in the Annual Report provided to the State Board by Reclamation. Water delivered to the Member Units by Reclamation is distributed within the Districts through an integrated system. Water from each of the sources supplying the Member Units are commingled within the integrated system.

Before these contractual obligations are satisfied, Reclamation must first satisfy its obligations under Water Rights Orders 89-18 and 94-5 and its obligations to the steelhead fishery pursuant to the Biological Opinion issued by the National Marine Fisheries Service on September 8, 2000. Downstream water right users and fishery obligations are, and must be, satisfied before water can be allocated to the Member Units. Thus, downstream releases are not determined by deliveries to the Member Units.

III. ARGUMENT

A. Approval of Reclamation's Petitions For Change in Place of Use Will Not Result in Any Change in Operation or Deliveries from the Cachuma Project

1.Evidence Presented At The Hearing Demonstrated No Change in Operations or Deliveries.

Reclamation presented substantial evidence at the hearing that approval of the petitions will

not result in any operational changes to the Cachuma Project. Mr. Jackson and Mr. Buelna both testified that operations would not change as a result of approval of the petitions. (Transcript: 37, 40.) No evidence was presented that contradicted these statements.

Moreover, Reclamation presented substantial evidence at the hearing that deliveries to the Member Units will not change as a result of these petitions being approved. Water supply is delivered to the Member Units pursuant to the master contract between the United States and the Santa Barbara County Water Agency. This contract provides for an average of 25,714 acre-feet of project yield to be made available to the Member Units. The supply made available to the Member Units under the terms of the contract is the project yield reduced by the quantity of water required to satisfy obligations pursuant to Federal law, State law and project water rights. (DOI-1c: 8.) Thus, the water deliveries to the Member Units are subordinate to the other obligations of the project.

As was demonstrated by the Member Units in evidence presented at the hearing, the demand in the existing place of use exceeds the supply provided from the Cachuma Project. (Transcript: 102-104.) Thus, no reduction in demand would result from the State Board denying Reclamation's petitions. Nor will approval of the petitions result in increased deliveries to the Member Units. The Member Units will continue to receive their contractual entitlement: the approval of the petitions will only allow that contractual amount to be used over an expanded area, consistent with the Member Units' water service area.

No evidence was presented to refute Reclamation's or the Member Unit's testimony regarding the effects which will result from approval of the petitions. In fact, no evidence was presented by any party advocating that the State Board deny Reclamation's petitions. The City of Lompoc, the protestant to Reclamation's petitions,[1] in their policy statement stated that "Lompoc's primary goal in both phases of this hearing is to ensure that the current operating regime is not altered..." (Transcript 18:12-14.)[2] Reclamation provided substantial evidence at the hearing to show

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[1] Reclamation's petition was protested by 6 parties. However, only Lompoc's petition was accepted by the State Board.

[2] Lompoc went on to propose a permit condition be added to Reclamation's permits. Reclamation views the proposed condition as unacceptable and requests that no permit condition be added to Reclamation's permits.

that the current operating regime will not be changed if the petitions are approved. Thus, the protestant to this action has provided no basis to deny the petition.

B. Approval of Reclamation's Petition For Change in Purpose of Use Will Not Result in Any Change in Operation or Deliveries from the Cachuma Project

Reclamation's petition also seeks to change the Purpose of Use specified in Reclamation's permits. Currently, the authorized uses under permit 11308 are irrigation, salinity control, stock watering, domestic and incidental recreation. The authorized uses under permit 11310 are industrial, municipal and incidental recreation. Reclamation seeks to make the uses under each permit consistent with the other.[3] Reclamation provided evidence that this change in the purposes of use under the permits will not result in operational changes to the project. Nor will these changes result in changes in deliveries to the Member Units. No evidence was presented to refute Reclamation's testimony. Thus, on the evidence, there is no reason for the State Board to deny Reclamation's petition to change the purpose of use for permits 11308 and 11310.

C. Reclamation Has Complied with Water Rights Order 94-5

Mr. Jackson testified to Reclamation's compliance with Water Rights Order 94-5. His testimony was supported by the testimony of witnesses provided by the Member Units, namely, Jean Baldridge, Bill Mills and Chuck Evans and the written testimony of Steve Mack. The evidence provided by these witnesses was unrefuted.

1. Compliance with Condition 3 of Order WR 94-5

Order WR 94-5, issued on December 1, 1994, required Reclamation to conduct studies and investigations which had been previously required and not yet completed. This order mandated Reclamation to comply with a series of conditions in regards to Reclamation's permits for the Cachuma Project. Reclamation has complied, or made a good faith effort at compliance with each of the conditions set forth in Order WR 94-5.

Reclamation complied with Condition 3(a) of Order WR 94-5 by submitting the Final

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[3] Ms. Heffler-Scott testified that the uses under the two permits vary because at the time Reclamation filed its original applications on the Cachuma Project it was standard practice of the State Board's predecessor to request separate actions for different consumptive use purposes. (Transcript 50:15-19.)

combined Environmental Impact Statement/Environmental Impact Report for contract renewal to the State Board on December 12, 1995.

Reclamation complied with Condition 3(b) of Order WR 94-5 by submitting the Compilation report to the State Board on September 10, 1996. In addition, the Synthesis Report, which summarizes information collected from 1993 through 1996 on fishery resource and conditions on the river was submitted to the State Board. Finally, the Final Lower Santa Ynez River Fish Management Plan was prepared. (DOI-1f). Ms. Baldridge testified at length on the process initiated to comply with this condition.(Transcript:122-134.)

Reclamation complied with Condition 3(c) of Order WR 94-5 by submitting the Santa Ynez River Vegetation Monitoring Study to the State Board. The State Board acknowledged receipt of the Study by letter dated July 26, 2000.

Condition 3(d) required Reclamation to provide the State Board with information developed and conclusions reached , if any, during negotiations between the Cachuma Water Authority and the City of Lompoc. Although Reclamation has no direct knowledge of any information developed or conclusions concerning the discussions between the Member Units and the City of Lompoc, Mr. Evans did testify to meetings between the Member Units and Lompoc at the hearing. (Transcript:112-120.) Mr. Mack's written testimony also summarized these discussions. (Member Unit Exhibit 50.)

Reclamation complied with Condition 3(e) of Order WR 94-5 by submitting annual progress reports as required under Condition 6 of Permits 11308 and 11310. Those reports have been submitted from 1958 through 1998. The reports detail operational summaries, including Lake Cachuma surface elevations, daily inflow, weather data, water quality analyses of groundwater downstream and at the reservoir outflow into the Santa Ynez River below the dam; separate tables (Table 6) are included in those reports showing various elements analyzed including total dissolved solids (TDS), and groundwater monitoring within the Santa Ynez River Basin. Both Mr. Jackson and Mr. Mills testified as to studies that have been undertaken in compliance with this condition, including a water quality study, preparation of the Draft EIR and development of the Santa Ynez River hydrology model. (Transcript: 54-55 , 136-139.)

Condition 3(f) of Order WR 94-5 required Reclamation to produce any reports or other studies ordered by the Board. To date, the State Board has not ordered any reports or studies pursuant to this condition.

2. Compliance with Condition 4 of Order WR 94-5

Condition 4 of Order WR 94-5 required Reclamation to prepare a Draft EIR in connection with the State Board's consideration of modifications to Reclamation's permits in order to protect downstream water rights and public trust resources. The Draft EIR was to be delivered to the Board by July 31, 2000. Mr. Jackson testified as to Reclamation's good faith effort to comply with this condition. (Transcript: 55-56; DOI-1:10-11.)

In compliance with the condition, Reclamation retained Dr. John Gray of URS Greiner Woodward-Clyde to prepare the Draft EIR in early 1999. During this same time Reclamation had already initiated an extended section 7 consultation under the Endangered Species Act. Between June and December of 1999, background work on the Draft EIR was being completed, but in January 2000, the consultant informed Reclamation they were unable to begin any substantive work on the Draft EIR modeling without a final Biological Opinion. Reclamation immediately informed State Board staff of the delay expected in delivery of the Draft EIR.

The Final Biological Opinion was transmitted to Reclamation from the National Marine Fisheries Service on September 8, 2000. As a result of significant changes between the Biological Assessment and the Final Biological Opinion, additional time was needed to analyze the alternatives with new flow requirements mandated by the final Biological Opinion. The Draft EIR will be transmitted to the State Board as soon as the additional analysis can be completed.

IV. CONCLUSION

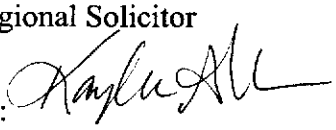
The unrefuted evidence presented at the hearing demonstrates that Reclamation's petitions for the change in place and purposes of use for permits 11308 and 11310 will not result in any operational changes or increased deliveries to the Member Units. The protestant to this action, the City of Lompoc, has not provided the State Board with any basis for denying Reclamation's petitions. Thus, the State Board should grant Reclamation's petitions to make the place of use consistent with the Member Units' service areas and the purposes of use in each permit identical.

Moreover, the State Board should not take any enforcement action against Reclamation because Reclamation presented substantial evidence of compliance, or good faith effort at compliance, with each of the conditions set forth in Order WR 94-5.

Dated: January 4, 2001

Respectfully submitted,

David Nawi
Regional Solicitor

By: 
Kaylee Allen
Assistant Regional Solicitor

PROOF OF SERVICE

Re: Bay-Delta Water Rights Hearing, Phase 1

I, Jolene M. Conaty, declare that I am over 18 years of age and not a party to the within action. I am employed in Sacramento County at 2800 Cottage Way, Room E-1712, Sacramento, CA 95825.

On January 4, 2001, following ordinary business practices, I placed for mailing at the office of the Regional Solicitor, U.S. Department of the Interior, located at the above address, a copy of a document entitled, U.S. Bureau of Reclamation's Closing Argument: Phase I, sealed in envelopes, with appropriate postage affixed, addressed to each of the persons and entities on the Bay Delta Water Rights Hearing Service List attached.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 4, 2001

Jolene M. Conaty

Attachment

CACHUMA HEARING SERVICE LIST

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