

MEMBER UNITS EXHIBIT NUMBER 113

P11310
~~11332~~

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permits 11308 and
11310 Issued pursuant to Applications
11331 and 11332; The United States
Bureau of Reclamation, Permittee

Order: WR 88 -2

Source: Santa Ynez River

County: Santa Barbara

ORDER CONTINUING RESERVED JURISDICTION
AND AMENDING PERMITS

FINDINGS BY THE BOARD:

1) Order paragraph 13 of Decision D 886, adopted on February 28, 1958, reserved continuing jurisdiction over Permits 11308 and 11310 issued pursuant to Applications 11331 and 11332. Jurisdiction was reserved for 15 years or for such further time prior to issuance of license as the Board might determine upon notice and hearing to be reasonably necessary to determine the amounts, timing, and rates of release of water past Bradbury Dam (Cachuma Reservoir) which must be made in satisfaction of downstream rights.

2) Board Order WR 73-9 (February 15, 1973) continued the jurisdiction in the permits from February 28, 1973 until further order by the Board, such further order to be made not later than October 1, 1973.

3) Board Order WR 73-37 (July 5, 1973) amended Conditions 5, 6, and 7 of the permits. Amended Condition 7 of the permits provides for extending the initial 15-year trial period for refining Cachuma Reservoir operating procedures for an additional 15 years, thus extending the reservation of jurisdiction to July 5, 1988.

4) Permittee and Santa Ynez River Water Conservation District (District), whose boundaries include areas downstream of Cachuma Reservoir, have jointly reviewed operating procedures for Cachuma Reservoir to determine if the permit terms, as amended by Board Order WR 73-37, have actually resulted in the required releases of water for satisfaction of downstream rights.

5) Following discussions of alternatives, Permittee and District are in agreement that the Board should not commence a hearing until at least April or May of 1988. By letter dated November 30, 1987 Permittee petitioned the Board to extend the 15-year trial period and not hold a hearing on the matter until at least the second quarter of 1988 in order for Permittee and the District to resolve mutual concerns prior to a Board hearing.

6) The California Sportfishing Protection Alliance (Alliance) has complained against Permittee's operation of the project. The Alliance alleges that project construction and operation has severely impacted a pre-project run of steelhead trout in the Santa Ynez River and that such action constitutes a misuse of water within the meaning of Article X, Section 2, California Constitution.

7) It is reasonable and in the public interest to allow Permittee and District until July 1, 1988, to resolve mutual concerns prior to commencement of the required hearing upon which further order of the Board must be based. Such allowance will require continuing the period of time during which jurisdiction is reserved to adopt such further order. A nine-month continuance to analyze the hearing record and to prepare and adopt such further order is reasonable.

8) It is also reasonable and in the public interest that Permittee, prior to hearing, hold discussions with complainant Alliance, and other interested parties, in order to determine whether concerns relating to the subject of the complaint may be resolved.

NOW, THEREFORE, IT IS ORDERED THAT:

1) The reservation of jurisdiction in Condition 7 of the subject permits, as amended by Order WR 73-37, is continued to December 31, 1989.

2) The hearing required by said Condition 7 shall be commenced no later than July 1, 1989.

3) Between the effective date of this order and the commencement of said hearing, Permittee shall hold discussions with the Alliance and other parties interested in the subject matter of the Alliance's complaint, including but not limited to the California Department of Fish and Game, to resolve concerns identified in the complaint.

4) Subject permits shall be amended in accordance with this order.

CERTIFICATION

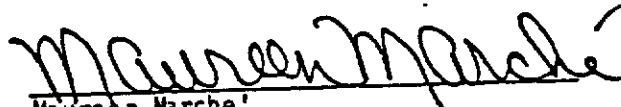
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on January 21, 1988.

Aye: W. Don Maughan
Eliseo M. Samaniego
Danny Walsh

No: None

Absent: Darlene E. Ruiz
Edwin H. Finster

Abstain: None


Maureen Marche
Administrative Assistant to the Board

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Santa Barbara County Project, California
CONTRACT BETWEEN THE UNITED STATES AND THE SANTA YNEZ RIVER WATER CONSERVATION DISTRICT

1. THIS CONTRACT, made this 7th day of October, 1949, in pursuance generally of the act of Congress approved June 17, 1902 (32 Stat. 358), and all acts of Congress amendatory thereof or supplementary thereto, all of which are commonly known and referred to as the Federal reclamation laws, between THE UNITED STATES OF AMERICA, hereinafter referred to as "the United States," represented by the officer executing this contract, and SANTA YNEZ RIVER WATER CONSERVATION DISTRICT, a political subdivision of the State of California, duly organized and existing pursuant to the laws thereof, with its principal place of business in the town of Solvang, County of Santa Barbara, State of California, hereinafter referred to as "the District",
WITNESSETH, THAT:

EXPLANATORY RECITALS

2. WHEREAS, the Bureau of Reclamation, of the United States Department of the Interior, has been duly authorized to construct and operate the Cachuma Unit of the Santa Barbara County Project, which unit will include Cachuma Dam and its diversion works, for the purpose of the conservation of water resources, which dam is to be located at or about N. 18° 00' E., 2600 feet from the Southwest corner of projected Section 19, T. 6N., R. 29W., S. B. D. & M., in the County of Santa Barbara, State of California, on the Santa Ynez River, and which dam will affect flows of the Santa Ynez River originating above the dam; and

3. WHEREAS, the District includes areas below the projected dam where water from sources above the dam have been historically and will be in the future reasonably and beneficially used, and in which areas all or part of the owners and possessors of the land and those interested

therein have rights to the use of surface and subsurface water originating above Cachuma Dam; and

4. WHEREAS, the District has filed with the Division of Water Resources, of the Department of Public Works, of the State of California, Applications No. 11254 and 11254 for the appropriation of unappropriated water of the Santa Ynez River, which applications are senior in time to similar applications filed by the United States; and

5. WHEREAS, other rights to water, inchoate or otherwise, exist in regard to uses of water both above and below Cachuma damsite, some of which rights are senior and some of which are junior to those of the parties hereto; and

6. WHEREAS, Section 5 of the Federal reclamation laws provides as follows:

"That nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof: PROVIDED, That the right to the use of water acquired under the provisions of this act shall be appurtenant to the land irrigated and beneficial use shall be the basis, the measure, and the limit of the right."

7. WHEREAS, the United States and the Santa Barbara County Water Agency, a political subdivision of the State of California, duly organized and existing under and pursuant to the laws thereof with its principal place of business in the city of Santa Barbara, State of California, hereinafter referred to as "the Agency," have heretofore approved as to form a proposed

contract for the purchase and sale of water from the Cachuma Unit; and

8. WHEREAS, it is desired to establish the ten-year term of this contract operating criteria the observance of which will not impair rights to the reasonable and beneficial use of water originating above Cachuma Dam; and

9. WHEREAS, it is desired to implement these provisions by the establishment of operating criteria to be followed during the period of ten years as herein-after provided and to provide for the protection of water rights, especially during the period of said contract between the United States and the Agency.

NOW, THEREFORE, IT IS AGREED:

10. A live stream, as the term is used in this contract, shall be deemed to exist in the Santa Ynez River whenever there is a visible stream of water flowing on the surface of the river at San Lucas Bridge, at the Mission Bridge near Solvang, at the U. S. Highway 101 Bridge near Buckhorn, at what is known as Santa Rosa damsite, which is near the east end of what is known as Santa Rosa Park, at Robinson's Bridge, near Lompoc, and there is a surface film in the river of not less than one cubic foot of water per second at the "H" Street Bridge, which is north of Lompoc.

At times when a live stream, as hereinabove defined, is not in existence, the United States shall not store or divert any part of the water then flowing into Cachuma Reservoir that would be required to maintain a live stream as hereinabove defined, or that would be conducive toward maintaining a live stream;

PROVIDED, HOWEVER, That the District will use all reasonable and due diligence for the protection of all existing water rights of the District and water users therein and to that end will take all proper and all reasonable measures to insure the continuation and protection of said rights, if necessary, that shall be reasonable for the protection of the public interest and will cooperate to the extent that is reasonable to be protected and

will do any and all things necessary and reasonable, if required, to aid in the complete performance of the terms of this contract and will not do anything that would interfere with or impede the performance of this contract and the attainment of the ends hereby sought.

12. Operations under this agreement shall begin concurrently with the time when Cachuma Reservoir shall be constructed to the point where by its operation there may be control of the flow of the Santa Ynez River, and shall be in effect only for a period of ten years.

13. In the interest of conservation of the Santa Ynez River flows for the reasonable, beneficial use of water and the protection of water rights as herein provided, the United States agrees to submit to the District, at least two years prior to expiration of the ten-year term, such data as shall then be available which will justify any proposed modification of said criteria, and the United States will, at the same time furnish to the District its proposed criteria for the operation of said Cachuma Reservoir after the expiration of said ten-year term. The United States agrees to consider any reasonable proposal of the District for modification of said criteria. In the event the parties hereto are unable to agree upon such future operations, then the parties shall retain unimpaired all rights and remedies provided by law.

14. The United States shall not be required to pass water through Cachuma Reservoir at any time, for the purposes of this contract, at a rate of flow in excess of the rate of inflow at such time.

15. Subject to agreement or the power of the United States of eminent domain, the following provisions shall apply during the time said contract between the United States and the Agency is effective:

(a) The water from the Santa Ynez River to be conserved, distributed, and used by means of the Cachuma Unit, shall be water obtained by means of dams in the Santa Ynez Mountain Range, and the water which, at the time of the construction thereof, by the

United States, or shall be available for appropriation under the laws of the State of California. All established water rights, whether such rights are presently fully developed or not, are hereby recognized and shall be preserved notwithstanding the execution of this contract or of any provision of this contract to the contrary, or any operation or use hereunder.

(b) Neither the District nor any owners of established water rights therein shall be required to deliver or transfer to the United States, the Agency, the Cachuma Unit, or to any person or entity entitled to water therefrom any water or water rights to which said District or said owners of water rights, are entitled under its or their established water rights.

(c) The United States hereby recognizes and agrees not to take, restrict, impair, or interfere with any or all of said presently established rights to water for present use and future development based upon such rights.

(d) The United States covenants and agrees that it will not assert or claim that it or any person or entity to whom it may furnish water has acquired as against the District or any person therein or the owner of any right to water senior to such as may be or have been acquired by the United States any prior right or claim to water by reason of the operation of said dam or the diversion of water therefrom, or thereby, or shall assert that such operation or diversion of water is, may be, or has been, adverse, hostile, or of any nature against said District, the owner of any right to water senior to such as may be or have been acquired by the United States, or any person or entity therein or the owner of any right to water senior to such as may be or have been acquired by the United States.

therein shall at all times have and continue to have the same rights to the water or any portion thereof of the Santa Ynez River or underground sources of supply fed, replenished or supported by said River to which they would legally be entitled in the absence of this agreement and in the absence of said Cachuma Unit.

(e) The District on its own behalf and on the behalf of those for whom this contract is made recognizes the rights of the United States particularly those under Applications No. 11331, 11332, and 11333, filed with the Division of Water Resources of the State of California for the appropriation, storage and diversion of unappropriated water in accordance with the laws of the State of California.

16. The United States agrees to install, operate, and maintain such equipment and make such computations, as may be necessary to record hydrological conditions, as follows:

(a) A continuous record of reservoir water surface elevations.

(b) A continuous precipitation record near Cachuma Dam, and at one or more other points near Cachuma Reservoir.

(c) Evaporation records (at least daily) near Cachuma Dam and at one or more other points near Cachuma Reservoir.

(d) Continuous gage records, and adequate stream gauging, and suitable measuring structures to determine runoff inflows to Cachuma Reservoir from Santa Ynez River, Santa Cruz Creek, and Cachuma Creek.

(e) Continuous records of outflow from Cachuma Reservoir, including flow through flow outlets at Cachuma Dam, spillways through Teoclate Tunnel, and flow over Cachuma spillway. Suitable gaging or accurate measurement of spill outlets will be provided.

(f) The United States shall install and maintain a gage on the flow of the Santa Ynez River at the mouth of the river to determine the flow of the river into the ocean.

fect of Teocote Tunnel on the discharge of such springs.

17. Authorized representatives of the parties hereto shall have access at all reasonable times to such equipment, and during office hours to records and computations pertaining thereto, and, upon reasonable request, shall be furnished copies of such records and computations.

EFFECT OF WAIVER OF BREACH

18. The waiver of a breach of any of the provisions of this contract shall not be deemed to be a waiver of any other provisions hereof or of a subsequent breach of such provisions.

RESPONSIBILITY FOR INTERRUPTION

19. In the event the performance, in whole or in part, of the obligations of the respective parties under this contract is hindered, interrupted or prevented by war, strikes, lockouts, fires, act of God, or by other similar or different acts of civil or military authorities, or by any cause beyond the control of the respective parties hereto, whether similar to the causes herein specified or not, such obligations of the respective parties under this contract shall be suspended to the extent and for the time that performance thereof is prevented or affected by such hindrance, interruption or prevention, but due diligence shall be observed by the respective parties hereto, so far as lies in their power, in performing their respective obligations under this contract.

OFFICIALS NOT TO BENEFIT

20. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share in part of this contract or in any benefits that may arise herefrom, but this restriction shall not be construed to prevent either contract if he is a member of or delegate to Congress or company for the purpose of this contract.

THE PARTIES AND THEIR SUCCESSORS ARE BOUND

21. The obligations of the parties hereto shall be binding upon the successors of the parties hereto.

IN WITNESS WHEREOF, the parties hereto, by their respective officers thereunto duly authorized, have duly executed these presents on the day and year first hereinabove written.

THE UNITED STATES OF AMERICA

By PHIL DICKINSON
Acting Regional Director.

SANTA YNEZ RIVER WATER CONSERVATION DISTRICT

By ROBERT HIBBITE
President

ARDEN T. JENSEN, Secretary

APPROVED AS TO LEGAL FORM AND SUFFICIENCY

JOHN K. DENNETT
Acting Regional Counsel
(SEAL)

State of California)

County of Santa Barbara) ss.

On this 17th day of October, 1949, before me, Christine B. Jensen, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared ROBERT HIBBITE, known to me to be the President and ARDEN T. JENSEN, known to me to be the Secretary of the Santa Ynez River Water Conservation District, the Water Conservation District that executed the within instrument, known to me to be the persons who executed the within instrument, on behalf of the Water Conservation District therein named, and acknowledged to me that said Water Conservation District executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year in this certificate first above written.

CHRISTINE B. JENSEN (SEAL)

Notary Public in and for said County of Santa Barbara, State of California.

My commission expires on _____

1949.