

TESTIMONY REGARDING SETTLEMENT AGREEMENT

by William Mills and Ali Shahroody

(Panel IV)

This testimony will summarize the provisions of the Settlement Agreement entered into by the Cachuma Member Units, the Santa Ynez River Water Conservation District and the City of Lompoc. Mr. Evans previously described the background which led to the negotiation and execution of this historic Settlement Agreement among the water users of the Santa Ynez River. As his testimony alluded to, one of the objectives of the parties to the Settlement Agreement was to resolve all outstanding water rights and water quality issues among them, including the issues listed in the September 25, 2000 and August 13, 2003 Hearing Notices as Issues 4 and 5.

This testimony will be provided in two parts. First, it will provide an overall description of each of the provisions of the Settlement Agreement, and specifically note the two areas where changes in Board Orders are necessary to implement the Settlement Agreement. The other items of the Settlement Agreement, which this testimony will describe, do not require action by the State Board to implement and can be carried out under existing State Board Orders or contractual commitments between the parties. Second this testimony will describe, in detail, the two instances where modification of existing State Board Orders is necessary to implement the Settlement Agreement. These areas are: (1) the determination and resolution of circumstances affecting the calculation of “below Narrows” account credits as required by Condition 5,

Paragraph 2.2.1, of WR89-18 and (2) the Technical Amendments set forth in Exhibit “C” of the Settlement Agreement.

I. OVERVIEW OF SETTLEMENT AGREEMENT PROVISIONS.

Attached to this testimony as Exhibit 220-A is a copy of the executed Settlement Agreement of December 17, 2002, between the Cachuma Conservation Release Board, Santa Ynez River Water Conservation District, Santa Ynez River Water Conservation District, Improvement District No. 1 and the City of Lompoc.

Again, we will briefly describe each of the provisions of the Settlement Agreement in the order and as identified by the paragraphs of the Settlement Agreement. We will defer a more complete discussion of the two items, namely, Paragraph 1.3 and 1.4, where actions of the State Board are necessary to implement the Settlement Agreement to the second part of this testimony. This general discussion, including items where action of the State Board is not required to implement the Settlement Agreement is provided so that the Board may fully understand how this comprehensive agreement resolves the outstanding disputes.

Paragraph 1.1 **Support of WR 89-18.**

The Settlement Agreement provides first that the parties agree releases pursuant to WR 89-18, as modified by the Settlement Agreement, will protect downstream water right holders and will not adversely affect water quality otherwise available downstream. Prior to the Settlement Agreement, the parties had come to a consensus that WR 89-18 adequately protected downstream water right holders with

respect to quantity, but the City of Lompoc in particular, had raised concerns as to whether the operation of the Cachuma Project degraded water quality (increased salinity). As a result of the Settlement Agreement, and in particular Paragraph 1.5 providing for deliveries of SWP water during releases, which will be described below, it is expected that water quality will be enhanced. With this assurance, and other considerations provided by the Agreement, the City of Lompoc acknowledges that, with these modifications, downstream water quality will be adequately protected.

Paragraph 1.2 **Conjunctive Operation With Fish Releases.**

The parties also agree that downstream water rights releases will be scheduled in accordance with the provisions of WR 89-18 (in particular Condition 5) in a manner to ensure that such releases in the future are similar to historic practices so that these releases can operate conjunctively with fish water releases required to meet target flows described in the NMFS Biological Opinion. In general, this provision calls for WR 89-18 water rights releases to be made on average 65 days per year over a ten-year period. Operation of this provision is illustrated by the chart attached hereto as Exhibit 220-B. In operating in this fashion, the water supply impact on the Cachuma Project caused by additional fish water releases is reduced from that which could occur absent the conjunctive operation. This provision is implemented within the limitations of existing State Board Orders and no action of the State Board is necessary - this is a contractual commitment between the parties.

Paragraph 1.3 **Conjunctive Operation of Below Narrows Account.**

This is one of the two items which will require action by the State Board to fully implement and will be discussed in a moment under the second part of this testimony.

Paragraph 1.4 **Technical Amendments to WR 89-18.**

Again, this is the second item which will require action of the State Board to implement and will be discussed under the second part of this testimony.

Paragraph 1.5 **Deliveries During Releases.**

As referred to above, this provision is a key component of resolving water quality concerns which the City of Lompoc had with respect to Cachuma Project operations. We will briefly describe it, although its implementation does not require any action of the State Board. Attached as Exhibit 220-C is an illustration of the “plumbing” at the terminus of the Santa Ynez Extension of the State Water Project Coastal Branch (SWP) and its interconnection with the Cachuma Project. As the Exhibit illustrates, the delivery of SWP supplies to the South Coast entities which have contracted for such supplies (namely, the City of Santa Barbara, Goleta Water District, Montecito Water District and Carpinteria Valley Water District) is facilitated by a pumping plant and pipeline delivering water into the outlet works of Bradbury Dam. The maximum design capacity of the facility is approximately 22 cfs.

When WR 89-18 water rights releases are not being made to downstream water right holders, SWP water is simply pumped into Cachuma Reservoir and then, through arrangements under an existing Warren Act Contract between the affected South Coast

parties and the Bureau of Reclamation, that water is delivered through the Tecolote Tunnel and other Cachuma Project facilities to the contracting parties.

When WR 89-18 water rights releases are being made for the downstream water right holders, because of the configuration of the “plumbing”, if SWP deliveries are being made at the same time, the resulting release is a mix of Santa Ynez River water and lower TDS SWP water. The NMFS Biological Opinion limits the amount of SWP water that can be “mixed” to no more than 50% of the release, thus providing the reference in this provision of the Settlement Agreement to the NMFS Biological Opinion. The objective of this provision of the Agreement is to schedule deliveries of the lower TDS SWP water at times when WR 89-18 water rights releases are being made, to thereby improve the water quality of releases to downstream water right holders and thus mitigate any water quality impairment that might be caused by the Project.

The facilities shown on Exhibit 220-C have been in place since 1996. This operational regime, with the mixing of SWP water in downstream water rights releases has been informally implemented since year 2000. The figure attached as Exhibit 220-D shows the improvement in water quality of WR 89-18 water rights releases which we expect to occur in the future through this coordination of deliveries of SWP water at the time when WR 89-18 water rights releases are being made. As noted at the outset, this is an important provision of the Settlement Agreement and can be implemented without any modification of existing State Board Orders.

Paragraph 1.6 **Subsequent Review of Conjunctive Operations.**

In paragraph 1.6 of the Settlement Agreement, the parties agree to review and evaluate various provisions of the Agreement after ten years of operation and, if there is substantial evidence that the objectives are not being met, then the Agreement may be revised by mutual consent of the parties with the concurrence of USBR and the State Board, if applicable. If Agreement cannot be reached, then the parties may request that the State Board review the matter in the manner provided by law - otherwise the parties have agreed not to revisit these issues with the State Board during this ten year period.

Paragraph 2. **Modified Winter Storm Operations.**

Through a Technical Memorandum dated February, 2002, the Bureau of Reclamation described its method of operating Bradbury Dam to attenuate peak flood flows. As previously noted in the testimony of Mr. Evans, this method of operation provides for early releases of storm waters and precautionary drawdowns in order to help protect life and property along the Santa Ynez River downstream of the Dam. Reclamation implemented modified winter storm operations in 1998 and 2001. Through the Settlement Agreement the parties agree to support the adoption and continued use of this operating methodology.

Paragraph 3. **Lompoc Withdrawal of Claims.**

As more fully described in the Settlement Agreement, Lompoc agrees to withdraw various claims, including its protest with respect to the Cachuma Project

change in place and purpose of use in connection with Phase 1 of these WR 94-5 hearings.

Paragraph 4. **Protection of Public Trust Resources.**

Very importantly, the parties to the Settlement Agreement also agree to mutually support the terms and conditions of NMFS' September 2000 Biological Opinion and the Fish Management Plan that will be subsequently described in the testimony of Chuck Hanson and Jean Baldrige, as the preferred operation of the Cachuma Project to address public trust resource issues.

Paragraph 5. **Effective Date and Termination.**

The Agreement also provides that specific provisions, namely, Conjunctive Operation With Fish Releases, Conjunctive Operation of the Below Narrows Account, and the Technical Amendments will not become effective until the State Board issues an order confirming that downstream water right releases will continue to be made consistent with WR 89-18 as modified by the technical changes enumerated in Exhibit "C" (which we will describe in a moment) without any material change. The Agreement further provides that it can be terminated if the State Board does not issue such an order.

As noted at the outset, this summary has been provided to familiarize the State Board with the provisions of the Settlement Agreement. We now turn to a description of the two areas where action of the State Board is needed to implement the Agreement.

**II. SPECIFIC PROVISIONS OF SETTLEMENT AGREEMENT
REQUIRING MODIFICATION OF STATE BOARD ORDERS**

As alluded to above, there are two provisions of the Settlement Agreement which require approval of the State Board to be implemented. These provisions involve Conjunctive Operation of the Below Narrows Account and Technical Amendments to WR 89-18. The following testimony is responsive to the new Issue 6 of the State Board Notice as revised August 13, 2003.

Paragraph 1.3 **Conjunctive Operation of the Below Narrows Account.**

Related to the determination of Below Narrows Account (“BNA”) credits, Paragraph 2.2.1 of Condition 5 of WR 89-18 provides that, for a period of years, the parties are to make additional observations to permit more accurate calculations as to when percolation Curve B (the Lower Curve) should be used in lieu of Curve A (the Upper Curve) with respect to percolation rates in the Below Narrows area of the Santa Ynez River. The Curves are depicted in Attachment “E” to the Bureau’s Exhibit 1 of December 1, 1988. For convenient reference, a copy of that Attachment is appended hereto as Exhibit 220-E. According to WR 89-18, during the observation period, Curve A is to be used at all times. WR 89-18 further provides that, after an adequate observation period has ended, a party may seek amendment of the Order to establish the time and circumstances under which Curve B should be used.

For many years, a disagreement existed between the Member Units and Reclamation, on one hand, and the Santa Ynez River Water Conservation District and City of Lompoc on the other, as to the “trigger” or “triggers” to be used to switch from

“Curve A” to “Curve B” for determining BNA credits as provided in Condition 5 of WR 89-18.

As provided in Section 2.2.1 of Condition 5 of WR 89-18, the parties to the Settlement Agreement are hereby petitioning the State Board to make a permanent determination with respect to the use of the percolation Curves. Under the Settlement Agreement (Paragraph 1.3) the determination of BNA credits will continue to be made under Curve A (the Upper Curve) in all years. However, as more fully described in Exhibit B to the Settlement Agreement, at such time as accumulated flows of the Santa Ynez River at the Narrows exceed 50,000 acre-feet in a water year, the use of Curve B (the Lower Curve) is triggered. During the remainder of the water year, one-half of the difference between the credit which would accrue under the Upper Curve and the Lower Curve will accumulate in an Accumulated Drought Water Credit account for the benefit of the Cachuma Member Units, not to exceed 3200 acre-feet. Such Credit will be held within the BNA for use by the Cachuma Member Units when the level of Cachuma Lake falls below 100,000 acre-feet.

This compromise is viewed as a “win-win” solution - for the Lompoc Plain area, credits continue to be determined on the Upper Curve and therefore sufficient supplies are available for downstream users as compared to the supplies that would be available if Curve B were employed. On the other hand, the Cachuma Member Units are also able to accumulate, during high flow years, a portion of the BNA credit for use during very dry years when it is most needed by the Cachuma Member Units.

As mentioned above, pursuant to the Settlement Agreement and as contemplated by Paragraph 2.2.1 of Condition 5 of WR 89-18, the parties to the Settlement Agreement are jointly seeking amendment of the Board Orders. The specific change requested in the WR 89-18 is to delete Paragraph 2.2.1 and Attachment “F” of the USBR’s Exhibit 1 and modify the second Paragraph of Appendix “E” of the Bureau’s Exhibit 1 to provide that: “Curve B will not be used for purposes of calculating the BNA credits.” Then, a new Paragraph 2.5.1 of Condition 5 and a new Attachment “F” are recommended to be added to WR 89-18 to provide as follows: “Notwithstanding Paragraph 2.5, ‘below Narrows’ account water in Lake Cachuma up to the Accumulated Drought Water Credit (ADWC) shall be made available to Cachuma Member Units when and so long as the Lake Cachuma storage level remains below 100,000 acre-feet in accordance with the ‘Procedures for Conjunctive Operation of Below Narrows Account’ depicted on Attachment F of USBR Exhibit 1, dated February 1, 2003.”

These changes to the Board’s Orders WR 73-37 as modified by WR 89-18 are shown on Enclosure 1 provided by the Bureau of Reclamation under its letter of March 21, 2003, which is USBR Exhibit DOI-10.

Paragraph 1.4 **Technical Amendments to WR 89-18.**

The Technical Amendments to WR 89-18 are proposed to update existing Orders to be consistent with changed conditions since the Board last examined this matter. These Technical Amendments are set forth in Exhibit “C” to the Settlement

Agreement and are shown, as mentioned a moment ago, at the Bureau's Enclosure 1, which is provided in Exhibit DOI-10. The Technical Amendments fit in three parts, identified in Exhibit "C" to the Settlement Agreement as Technical Amendment Nos. 1, 2, and 3.

The first amendment addresses the fact that, since 1993, water has been released from Lake Cachuma for the purpose of studying and maintaining fish habitat in the upper part of the Santa Ynez River, downstream of Bradbury Dam. As a result of these releases, a flow condition has been created in the Santa Ynez River at the San Lucas Bridge (that is, Highway 154 Bridge). In light of this new Condition of regular flow releases, and in consideration of Paragraph 1.4 of Condition 5 of WR 89-18, which requires in stream observations as part of the process of determining ANA credits, the Bureau, in 1993, started making livestream observations near the Highway 154 crossing on San Lucas Creek, rather than the prescribed San Lucas Bridge on the River. San Lucas Creek is the main tributary to the Santa Ynez River immediately upstream of the San Lucas Bridge (Highway 154 Crossing) and is considered by the parties to be the appropriate location to make the livestream observations required by Paragraph 1.4 of WR 89-18 in light of the fish water releases now regularly being made. Similarly, when there is a livestream condition through the Lompoc Narrows and fish water releases are being made, the flow measured at the Narrows Gage is adjusted for determining the livestream condition at Floradale Avenue as provided in the revised Attachment "H" of the USBR's Exhibit 1, dated February 1, 2003. The parties to the Settlement Agreement consider this to be the proper application of Paragraph 1.4 of Condition 5 of

WR 89-18 and have agreed to these amendments to WR 89-18, which are shown on Enclosure 2 in USBR Exhibit DOI-10.

Additionally, since the State Board last visited this subject in 1989, additional flow measurement and water quality measurement devices have been installed and maintained by the USGS. To reflect these additional measurement devices, the parties request that these additional measurement devices be recognized through an updating of Condition 6 of WR 89-18. These proposed changes again are shown on Enclosure 1 in USBR Exhibit DOI-10, which shows the addition of water quality measurement points at the Narrows and at Mission Bridge in Solvang, along with a new measurement station at San Lucas Creek. Also, ongoing measurement of SWP water into Cachuma Reservoir is recognized.

Finally, the Technical Amendment described in Exhibit "C" as Technical Amendment No. 2, is the amendment, previously described, to implement the Conjunctive Operation of the Below Narrows Account.

In summary, the provisions of the Settlement Agreement can be fully implemented without additional changes to State Board Orders except to provide for the Technical Amendments described above. These changes generally provide for:

- (1) an alternative measurement location for livestream determination at San Lucas Bridge (Highway 154) in light of fish water releases that are routinely made and present at that location and have been since 1993,
- (2) recognition of additional measurements being carried out with respect to water flows and quality, and

(3) implementation of the conjunctive operation of the Below Narrows Account and carrying out the directive of Paragraph 2.2.1 of WR 89-18 with respect to determining the application of Curve A and Curve B in determining the Below Narrows Account credits.