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11
12 **STATE OF CALIFORNIA**
13 **STATE WATER RESOURCES CONTROL BOARD**
14

15 In the Matter of:

16 **NMFS OPPOSITION TO
17 MOTION TO STRIKE**

18
19 Hearing to Review the United States Bureau
20 of Reclamation Water Right Permits 11308
21 and 11310 (Applications 11331 and 11332) to
22 Determine Whether Any Modifications are
23 Necessary to Protect Public Trust Values and
24 Downstream Water Rights on the Santa Ynez
25 River Below Bradbury Dam (Cachuma
Reservoir)

I. INTRODUCTION

On March 2, 2012, the Santa Ynez River Water Conservation District, Improvement District No. 1, Cachuma Conservation Release Board, and Santa Ynez River Water Conservation District (collectively "Cachuma Water Agencies") filed with the State Water Resources Control Board (Board) a motion to strike rebuttal testimony (Motion to Strike) proposed to be presented to the Board by NMFS. NMFS hereby opposes the Cachuma Water Agencies' Motion to Strike.

1 **II. THE BOARD SHOULD NOT STRIKE AND EXCLUDE FROM THE RECORD**
2 **THE OUTLINES OFFERED BY NMFS, NOR SHOULD THE BOARD**
3 **PRECLUDE PRESENTATION OF THE TESTIMONY DESCRIBED THEREIN**

4 **A. Background**

5 On January 23, 2012, the Board issued a Notice of Public Hearing (Notice) in this matter.

6 The notice provides:

7 The purpose of this hearing is to assist the State Water Resources Control Board (State
8 Water Board or Board) in determining whether the Final Environmental Impact Report
9 for the Consideration of Modifications to U.S. Bureau of Reclamation's (Reclamation)
10 Water Right Permits 11308 and 11310 to Protect Public Trust Values and Downstream
Water Rights on the Santa Ynez River below Bradbury Dam (Final EIR) should be
entered into the administrative record for Phase 2 of the Cachuma hearing.

11 Under the heading "HEARING PARTICIPATION", the Notice provides the applicable
12 requirements for participation in the hearing and rebuttal witnesses. The Notice provides,
13 "Hearing participation is limited to those parties that previously participated in the hearing for
14 this matter." In addition, the Notice provides the following requirements directly applicable to
15 rebuttal evidence:
16

17 Rebuttal witnesses may be allowed but any rebuttal shall be limited to evidence that is
18 responsive to evidence presented in connection with the State Water Board's witnesses,
and it does not include evidence that should have been presented during the case-in-chief
19 of the party submitting rebuttal evidence. It also does not include repetitive evidence.
Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal
evidence.

20 Hearing parties intending to present rebuttal evidence shall identify their rebuttal
21 witnesses and prepare an outline of their testimony. In addition, this information, along
with evidence of the qualifications of each witness and a statement of service must be
22 **received** by the State Water Board, and served on each of the Cachuma hearing parties,
no later than **12 noon on Tuesday, February 28, 2012.**

23 Notice at 3.
24
25

1 In response to the Notice, on February 28, 2012, NMFS timely filed with the Board a
2 letter (NMFS Letter) identifying its rebuttal witnesses, with outlines of their testimony, evidence
3 of their qualifications, and a statement of service attached to the letter. The Cachuma Water
4 Agencies do not contest, nor would they have any grounds to contest, that NMFS was a party
5 that previously participated in the hearing for this matter and NMFS timely filed its letter and
6 supporting information in response to the Board's Notice. However, the Cachuma Water
7 Agencies' motion to strike the outlines of rebuttal witness testimony and the testimony described
8 therein is based on mischaracterizations of applicable requirements for the submission of the
9 outlines and mischaracterizations of the intent and contents of the outlines.

10
11 **B. NMFS Met All Applicable Requirements for Submission of the Outlines**

12 The Board's regulations for adjudicative proceedings provide requirements for
13 identification of witnesses and presubmission and presentation of testimony and exhibits. As
14 applicable to NMFS' proposed rebuttal witnesses, 23 California Code of Regulations (CCR) §
15 648.4 provides applicable procedural and substantive requirements, in relevant part:

16 * * *

17
18 (b) The hearing notice may require that all parties intending to present evidence at a
19 hearing shall submit the following information to the Board prior to the hearing: the name
20 of each witness whom the party intends to call at the hearing, the subject of each witness'
21 proposed testimony, the estimated time required by the witness to present direct
22 testimony, and the qualifications of each expert witness. The required information shall
23 be submitted in accordance with the procedure specified in the hearing notice.

24 * * *

25 (e) Where any of the provisions of this section have not been complied with, the
presiding officer may refuse to admit the proposed testimony or the proposed exhibit into
evidence, and shall refuse to do so where there is a showing of prejudice to any party or
the Board. This rule may be modified where a party demonstrates that compliance would
create severe hardship.

1 (f) Rebuttal testimony generally will not be required to be submitted in writing, nor will
2 rebuttal testimony and exhibits be required to be submitted prior to the start of the
3 hearing.

4 As described above in Section II.A. (Background), the Board's Notice provides all requirements
5 applicable prior to the hearing related to identification of rebuttal witnesses, the subject of the
6 witness' proposed testimony, and the qualifications of each expert witness. *See* 23 CCR §
7 648.4(b).

8 **1. NMFS Met All Applicable Requirements for the Form of the
9 Outlines**

10 Specifically, the Board's Notice provides the following requirements regarding the form
11 of information that hearing parties intending to present rebuttal evidences were required to
12 submit to the Board: (1) "identify their rebuttal witnesses. . .", (2) "an outline of their testimony.
13 . . .", (3) "evidence of the qualifications of each witness. . ." and (4) "a statement of service. . .".

14 Notice at 3. NMFS' Letter in response to the Board's Notice identified the following rebuttal
15 witnesses: Peter Alagona, Darren Brumback, Penny Ruvelas, and Mark Capelli. NMFS Letter
16 at 1. Outlines of each witness' testimony were attached to NMFS' Letter. Cachuma Water

17 Agencies argue in their Motion to Strike that the outlines provide an insufficient level of
18 specificity. The Board's Notice requires only "an outline of their testimony". Notice at 3.

19 Neither the Board's rules nor the Notice provide any definition of an "outline" of the testimony.

20 However, NMFS clearly does not need to submit complete rebuttal testimony in writing or
21 exhibits before the hearing. *See* 23 CCR § 648.4(b), (f); *see also* Notice at 3. All of the outlines

22 for NMFS' witnesses are in an outline format and provide a summary of main points of each
23 witness' intended testimony; neither the Board's rules nor the Notice require any different format

24 or level of specificity. If NMFS were required to provide a greater level of specificity in its
25 outlines as argued by the Cachuma Water Agencies, the outlines would no longer be outlines.

The outlines would be the same or similar to complete rebuttal testimony in writing, which is not
required by the Board's regulations or Notice to be submitted prior to the hearing. Finally,

NMFS attached evidence of qualifications of each witness and a statement of service to NMFS'

1 Letter, and the Cachuma Water Agencies do not contest the evidence of qualifications or the
2 statement of service.

3
4 **2. NMFS Met All Applicable Requirements Related to the
Substance of the Outlines**

5 In addition, the Board's Notice provides the following requirements regarding the
6 substance of rebuttal evidence: (1) "is limited to evidence that is responsive to evidence
7 presented in connection with the State Water Board's witnesses," (2) "does not include evidence
8 that should have been presented during the case-in-chief of the party submitting rebuttal
9 evidence," and (3) "does not include repetitive evidence." Notice at 3.

10 These requirements relate specifically to the rebuttal evidence that will be allowed at the hearing,
11 not specifically to the contents of the outline. Nonetheless, NMFS provided sufficient summary
12 information in NMFS' Letter and the attached outlines to demonstrate at this point before the
13 hearing that the testimony of its witnesses is expected to meet these substantive requirements. If
14 the testimony of NMFS' witnesses deviates from these requirements at the hearing, any
15 interested party could presumably object at that time.

16 The Notice provides that the Board will call two witnesses "to authenticate the Final EIR
17 and to be available for cross examination." Notice at 2. In addition, the Notice provides, in
18 relevant part:

19 Due to the limited purpose for which these witnesses will be called and the fact that the
20 Final EIR is already publically available, the State Water Board will not prepare any
21 direct testimony in advance of those witnesses. Other parties may cross-examine the
22 State Water Board's witnesses on the Final EIR, the witnesses' oral testimony, and other
23 relevant matters not covered in the direct testimony. (Gov. Code, §11513, subd. (b))

24 Notice at 2.

25 Although NMFS does not have the direct testimony of the Board's witnesses to review prior to
the hearing, the Notice provides that the witnesses will be called to authenticate the Final EIR
and the witnesses will be open to cross examination on the Final EIR. Therefore, rebuttal

1 evidence that is responsive to the Final EIR should be responsive to evidence presented in
2 connection with the State Water Board's witnesses.

3 In addition, the Final EIR, which is the subject of the pending hearing, was not available
4 for the Board's Phase 2 Hearing in 2003. Therefore, in general, NMFS could not have submitted
5 rebuttal testimony responsive to the Final EIR in its case-in-chief during the Board's Phase 2
6 Hearing, and rebuttal testimony responsive to the Final EIR will not be repetitive of evidence
7 NMFS submitted in its case-in-chief at the Board's Phase 2 Hearing. Nonetheless, NMFS'
8 Letter and each of the outlines for NMFS' rebuttal witnesses provide summaries of the main
9 points of proposed testimony for each rebuttal witness that demonstrate at this point before the
10 hearing that the testimony is expected to meet the requirements that rebuttal testimony is
11 responsive to the Final EIR, does not include evidence that should have been presented during
12 NMFS' case-in-chief, and is not repetitive.

13 Alagona

14 The Final EIR provides that one of the project objectives is, in relevant part, "Protecting
15 public trust resources, including but not limited to steelhead . . . in the Santa Ynez River
16 downstream of Bradbury Dam . . ." Final EIR at 3.0-2. The Final EIR provides a few short
17 points regarding the historic abundance of *Oncorhynchus mykiss* in the Santa Ynez River system,
18 hatchery supplementation of *O. mykiss*, and the effects of hatchery supplementation on the
19 genetics of *O. mykiss* populations in the Santa Ynez River system. Final EIR at 4.7-4. Dr.
20 Alagona's outline provides a summary of a recent report related to these issues. Among other
21 things, Dr. Alagona's outline provides:

- 22 - I recently explored and documented the history, including public use, of the steelhead
23 resources of the Santa Ynez River system.
- 24 - This information can be used to assist the Board in understanding the historical
25 distribution and abundance of steelhead and the nature and scope of the public trust
interest in the Santa Ynez River system.

NMFS Rebuttal Witness, Alagona, Outline at 1

1 Therefore, Dr. Alagona's outline relates to the adequacy of the information in the Final EIR
2 responsive to the project objective quoted above. In addition, Dr. Alagona's outline includes a
3 summary of information from the report related to this recent analysis of historic distribution and
4 abundance of steelhead in the Santa Ynez River system, hatchery supplementation, and effects of
5 hatchery supplementation on the genetics of *O. mykiss* populations in the Santa Ynez River
6 system, all of which are responsive to issues that were addressed in the Final EIR to a limited
7 extent. Dr. Alagona's outline provides that he "recently explored and documented the history,
8 including public use, of the steelhead resources of the Santa Ynez River system." NMFS
9 Rebuttal Witness, Alagona, Outline at 1. NMFS' Letter provides how his testimony relates to a
10 2011 report referenced in the letter. NMFS Letter at 2. This 2011 report and testimony related
11 to it were not available to NMFS during its case-in-chief at the Board's Phase 2 Hearing in 2003.
12 In addition, this recent analysis may supplement, but is not repetitive of information in NMFS'
13 case-in-chief in 2003, and NMFS did not provide any outlines of testimony for the pending
14 hearing that substantially repeat information from Dr. Alagona's outline. Therefore, Dr.
15 Alagona's outline of proposed testimony meets all of the applicable requirements related to the
16 substance of the outlines. However, even though the Board's regulations and Notice do not
17 require it, NMFS would be willing to make the report Alagona et al. (2011), which is referenced
18 in NMFS' Letter, available to the other parties before the hearing if Dr. Alagona's testimony
19 regarding that report is not struck before the hearing.

20 **Brumback**

21 Mr. Brumback's outline provides a list of examples from the Final EIR where the Final
22 EIR relies on NMFS' 2000 biological opinion for Reclamation's Cachuma Project as a basis for
23 the Final EIR alternatives and presumes compliance with terms and conditions of NMFS' 2000
24 biological opinion to protect the public trust resource of endangered steelhead. Rebuttal
25 Witness, Brumback, Outline at 1-2. In addition, Mr. Brumback outlines how the standards for
protection of endangered steelhead under Endangered Species Act (ESA) Section 7 in the
biological opinion are limited based on the terms of the statute and regulations. Rebuttal

1 Witness, Brumback, Outline at 2-3. Moreover, he outlines issues related to the status of NMFS'
2 2000 biological opinion, including reinitiation of consultation on the biological opinion.
3 Rebuttal Witness, Brumback, Outline at 3-4. He also outlines issues related to compliance with
4 the terms and conditions of NMFS' 2000 biological opinion. Rebuttal Witness, Brumback,
5 Outline at 3-4. These issues relate to the examples from the Final EIR in the beginning of his
6 outline and generally to the adequacy of the information in the Final EIR responsive to the
7 project objective of "Protecting public trust resources, including but not limited to steelhead . . .
8 in the Santa Ynez River downstream of Bradbury Dam" See Final EIR at 3.0-2. The Final
9 EIR and the examples therein were obviously developed after the Board's Phase 2 Hearing in
10 2003, and the information related to the status of NMFS' 2000 biological opinion and
11 compliance with the terms and conditions of NMFS' 2000 biological opinion occurred after the
12 Board's Phase 2 Hearing in 2003. Finally, because all of this information was developed after
13 the Board's Phase 2 Hearing in 2003, it is not repetitive of evidence presented there. In addition,
14 NMFS did not provide any outlines of testimony for the pending hearing that substantially repeat
15 information from Mr. Brumback's outline. Therefore, Mr. Brumback's outline of proposed
16 testimony meets all of the applicable requirements related to the substance of the outlines.

16 **Ruvelas**

17 Supplementary to Mr. Brumback's outline of specific issues regarding the status of
18 NMFS' 2000 biological opinion and compliance with its terms and conditions as described
19 above, Ms. Ruvelas outlines how, based on NMFS' recovery plan for Southern California
20 steelhead, a reinitiated consultation on NMFS' 2000 biological opinion may result in reasonable
21 and prudent alternatives and reasonable and prudent measures that differ from NMFS' 2000
22 biological opinion. Rebuttal Witness, Ruvelas, Outline at 1-2. Supplementary to Mr. Capelli's
23 outline of specific issues regarding NMFS' Draft and Final recovery plans as described below,
24 Ms. Ruvelas outlines generally how NMFS' Final recovery plan provides information relevant to
25 the Board's determination about public trust resources. Rebuttal Witness, Ruvelas, Outline at 2.
This information relates to the adequacy of the information in the Final EIR responsive to the

1 project objective of "Protecting public trust resources, including but not limited to steelhead . . .
2 in the Santa Ynez River downstream of Bradbury Dam" See Final EIR at 3.0-2. The
3 reinitiation of consultation on NMFS' 2000 biological opinion began after the Board's Phase 2
4 Hearing in 2003. In addition, as provided in Mr. Capelli's outline described below, NMFS'
5 recovery plan was developed after the Board's Phase 2 Hearing in 2003 and the Final recovery
6 plan was issued after the Board's Final EIR. As described above, Ms. Ruvelas' outline
7 supplements but does not substantially repeat information in other NMFS outlines. Therefore,
8 Ms. Ruvelas' outline of proposed testimony meets all of the applicable requirements related to
9 the substance of the outlines.

10 **Capelli**

11 Mr. Capelli's outline provides specific examples in the Final EIR where there are
12 discrepancies between the Final EIR and NMFS' Draft recovery plan for Southern California
13 steelhead, which the Final EIR cites and discusses. Rebuttal Witness, Capelli, Outline at 1. In
14 addition, he outlines differences between NMFS' Draft and Final recovery plan relevant to Santa
15 Ynez River public trust issues in the Final EIR. Rebuttal Witness, Capelli, Outline at 2.
16 Moreover, he outlines specific issues in the Draft and Final recovery plans related to the essential
17 role of the Santa Ynez River for recovery of Southern California steelhead, which were not
18 adequately described in the Final EIR. Rebuttal Witness, Capelli, Outline at 2. In summary, he
19 provides, "The Final Recovery Plan provides information and guidance relevant to the
20 conservation of the species, and for protecting the public trust interest in the steelhead resources
21 of the Santa Ynez River by providing a recovery strategy to ensure the long-term viability of
22 individual populations and the DPS as whole." Rebuttal Witness, Capelli, Outline at 2. This
23 information relates to the adequacy of the information in the Final EIR responsive to the project
24 objective of "Protecting public trust resources, including but not limited to steelhead . . . in the
25 Santa Ynez River downstream of Bradbury Dam" See Final EIR at 3.0-2. Mr. Capelli
outlines the timeline for development of NMFS' recovery plan, which summarizes that neither
the Draft nor the Final recovery plan were available for the Board's Phase 2 Hearing in 2003,

1 and NMFS' Final recovery plan was issued after the Board's Final EIR. Rebuttal Witness,
2 Capelli, Outline at 1. As described above, Mr. Capelli's outline supplements but does not
3 substantially repeat information in other NMFS outlines. Therefore, Mr. Capelli's outline of
4 proposed testimony sufficiently meets all of the applicable requirements related to the substance
5 of the outlines.

6 **C. The Cachuma Water Agencies' Motion to Strike is Based on**
7 **Mischaracterization of Applicable Requirements for the Submission of the**
8 **Outlines and Mischaracterizations of the Intent and Contents of the Outlines**

9 In their Motion to Strike, the Cachuma Water Agencies mischaracterize the purpose of
10 the requirement in the Board's Notice to submit an outline of the testimony of each rebuttal
11 witness and NMFS' intent in submitting the outlines. The Motion to Strike provides, in relevant
12 part:

13 The purpose of the requirement was to avoid surprise and to provide interested parties—
14 including presumably, the State Board staff and consultants—the opportunity to
15 understand the proposed testimony and be able to adequately respond. The testimony
16 'outlines' offered by NMFS . . . are a blatant attempt to avoid both the letter and intent of
17 the Board's advance notice requirement.

18 Motion to Strike at 2.

19 In addition, the Motion to Strike makes cursory conclusions about the contents of the outlines,
20 argues that "the 'outlines' are manifestly intended to frustrate. . ." the preparation of other parties
21 to the forthcoming hearing, and argues that the outlines are inconsistent with the requirements of
22 the Board's Notice, the Board's administrative regulations, Government Code Section 11513,
23 "long-settled California case law. . .", and "would effectively deny the Cachuma Water Agencies
24 due process of law." Motion to Strike at 2-4. The Cachuma Water Agencies do not provide any
25 evidence to support their completely baseless arguments that NMFS' outlines are a "blatant
attempt to avoid the letter and intent of the Board's" Notice requirement and "are manifestly
intended to frustrate" the preparation of other parties to the hearing. *See* Motion to Strike at 2, 3.
The Cachuma Water Agencies' arguments regarding inconsistency of the outlines with various

1 requirements boil down to a policy statement in the Board's regulations: "It is the policy of the
2 State and Regional Boards to discourage the introduction of surprise testimony and exhibits." 23
3 CCR § 648.4(a); *see, e.g.*, Motion to Strike at 4. However, the Motion to Strike completely
4 ignores the applicable procedural and substantive requirements of the Board's regulations at 23
5 CCR § 648.4(b) and (f), which implement this policy statement. As described in Section II.B.
6 above, NMFS met all applicable requirements related to the form and substance of the outlines,
7 and it is unnecessary to repeat that description here in response to the Cachuma Water Agencies
8 specific, inaccurate arguments about each outline.

9 Finally, the Cachuma Water Agencies attempt to strike any evidence of the Final
10 Recovery Plan or the reconsultation process underway between NMFS and the U.S. Bureau of
11 Reclamation regarding the effects of the Cachuma project on endangered steelhead arguing, "the
12 mere finalizing of a recovery plan and an ongoing consultation process with NMFS does not
13 suddenly give rise to rebuttal evidence and any justification for delaying further the acceptance
14 of the FEIR into evidence." Motion to Strike at 7. However, the information in NMFS' outlines
15 and proposed rebuttal testimony does not rest on the mere actions of finalizing a recovery plan
16 and an ongoing consultation process, as the Cachuma Water Agencies argue. Motion to Strike at
17 7. NMFS' outlines summarize how these actions relate to the adequacy of specific information
18 and conclusions in the Final EIR. As described above, Mr. Capelli's outline provides specific
19 examples in the Final EIR where there are discrepancies between the Final EIR and NMFS'
20 Draft recovery plan for Southern California steelhead, which the Final EIR cites and discusses.
21 Rebuttal Witness, Capelli, Outline at 1. In addition, he outlines differences between NMFS'
22 Draft and Final recovery plan relevant to Santa Ynez River public trust issues in the Final EIR.
23 Rebuttal Witness, Capelli, Outline at 2. Moreover, he outlines specific issues in the Draft and
24 Final recovery plan related to the essential role of the Santa Ynez River for recovery of Southern
25 California steelhead, which were not adequately described in the Final EIR and relate to the
adequacy of the information in the Final EIR responsive to the project objective of "Protecting
public trust resources, including but not limited to steelhead . . . in the Santa Ynez River

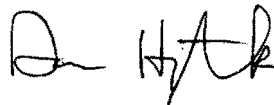
1 downstream of Bradbury Dam” See Final EIR at 3.0-2. Mr. Capelli outlines the timeline
2 for development of NMFS’ recovery plan, which summarizes how neither the Draft nor the Final
3 recovery plan were available for the Board’s Phase 2 Hearing in 2003, and NMFS’ Final
4 recovery plan was not available before the Board’s issuance of its Final EIR. Rebuttal Witness,
5 Capelli, Outline at 1. Mr. Brumback’s outline provides a list of examples from the Final EIR
6 where the Final EIR relies on NMFS’ 2000 biological opinion for Reclamation’s Cachuma
7 Project as a basis for the FEIR alternatives and presumes compliance with terms and conditions
8 of NMFS’ 2000 biological opinion to protect the public trust resource of endangered steelhead.
9 Rebuttal Witness, Brumback, Outline at 1-2. In addition, Mr. Brumback outlines how the
10 standards for protection of endangered steelhead under ESA Section 7 in the biological opinion
11 are limited based on the terms of the statute and regulations. Rebuttal Witness, Brumback,
12 Outline at 2-3. Moreover, he outlines issues related to the status of NMFS’ 2000 biological
13 opinion, including reinitiation of consultation on the biological opinion. These issues relate to
14 the adequacy of the information in the Final EIR responsive to the project objective of
15 “Protecting public trust resources, including but not limited to steelhead . . . in the Santa Ynez
16 River downstream of Bradbury Dam . . .” given the Final EIR’s specific reliance on NMFS’
17 2000 biological opinion and characterizations of compliance with the terms and conditions of the
18 biological opinion. See Final EIR at 3.0-2 and examples from the Final EIR in Rebuttal Witness,
19 Brumback, Outline at 1-2. Supplementary to these other outlines, Ms. Ruvelas outlines how,
20 based on NMFS’ recovery plan for Southern California steelhead, a reinitiated consultation on
21 NMFS’ 2000 biological opinion may result in reasonable and prudent alternatives and reasonable
22 and prudent measures that differ from NMFS’ 2000 biological opinion. Rebuttal Witness,
23 Ruvelas, Outline at 1-2. Once again, this information relates to the adequacy of the information
24 in the Final EIR responsive to the project objective of “Protecting public trust resources,
25 including but not limited to steelhead . . . in the Santa Ynez River downstream of Bradbury Dam
. . .” given the Final EIR’s specific reliance on NMFS’ 2000 biological opinion. Therefore, these
outlines are not limited to the “mere finalizing of a recovery plan and an ongoing consultation

1 process with NMFS” as rebuttal evidence on the Final EIR, as the Cachuma Water Agencies
2 argue. The outlines provide sufficient and accurate summaries to demonstrate at this point
3 before the hearing how specific aspects of the Final recovery plan and information on
4 compliance with, and reinitiation of consultation on, NMFS’ 2000 biological opinion are
5 responsive to the accuracy of specific statements in the Final EIR and the adequacy of
6 information related to project objectives described therein.

7 **III. CONCLUSION**

8 NMFS met all applicable requirements in the Board’s regulations and Notice related to
9 the form and substance of the outlines of rebuttal witness testimony that NMFS submitted in
10 response to the Board’s Notice. Cachuma Water Agencies’ Motion to Strike the outlines of
11 rebuttal witness testimony and the testimony described therein is based on mischaracterizations
12 of applicable requirements for the submission of the outlines and mischaracterizations of the
13 intent and contents of the outlines. Therefore, the Board should deny the Cachuma Water
14 Agencies’ Motion to Strike.

15 Respectfully submitted,

16 

17 _____
18 Dan Hytrek
19 National Oceanic and Atmospheric Administration
20 General Counsel Office, Southwest Section
21 Representing the National Marine Fisheries
22 Service

23 Dated: March 7, 2012