



Steven M. Torigiani, Partner

May 29, 2019



VIA EMAIL AND U.S. MAIL
commentletters@waterboards.ca.gov

Jeanine Townsend, Clerk to the Board
Executive Office
State Water Resources Control Board
Cal/EPA Headquarters
1001 I Street, 24th Floor
Sacramento, CA 95814

Re: **COMMENT LETTER – Cachuma Project Revised Draft Order
Amending Permits 11308 and 11310 (Applications 11331 and 11332) Held
by the United States Bureau of Reclamation for the Cachuma Project on the
Santa Ynez River in Santa Barbara County**

Dear Ms. Townsend:

I. Introduction

This firm represents the **Santa Ynez River Water Conservation District (“Parent District” or “SYRWCD”)**, and submits on behalf of the Parent District the following comments on the above-referenced Revised Draft Order and associated Final EIR dated December 2011 (“FEIR”) prepared by the State Water Resources Control Board (“SWRCB” or “State Water Board”), which would amend Permits 11308 and 11310 held by the United States Bureau of Reclamation (“Reclamation”) for the Cachuma Project.¹ SYRWCD appreciates the opportunity to comment on the Revised Draft Order, which makes revisions to the prior Draft Order (“2016 Draft Order”) circulated for public review and comment in 2016.

¹ SYRWCD previously submitted numerous comments, testimony, briefing, and related materials to the State Water Board and has participated in hearings and proceedings concerning the State Water Board’s consideration of modifications to Reclamation’s Water Right Permits 11308 and 11310 (Applications 11331 and 11332) to protect public trust values and downstream water rights on the Santa Ynez River below Bradbury Dam (the Cachuma Project). SYRWCD’s prior submittals, including without limitation its comments dated December 9, 2016 on the 2016 Draft Order, are incorporated into this comment letter by reference.

These comments focus on a few material revisions to the 2016 Draft Order, and request a few modifications to the Revised Draft Order as described below. In addition, incorporated herein by reference are Sections I, III, IV, V and VII of Improvement District No. 1's comments and Sections 5 and 8 of CCRB's comments on the Revised Draft Order.

Finalizing appropriate permit conditions for the amount and timing of releases past Bradbury Dam for the protection of downstream water rights has been an outstanding issue since 1958 (State Water Rights Board, Decision D 886). The issue of appropriate releases for the protection of downstream water rights and public trust resources has been the subject of several hearings, extensive evidence, multiple draft EIRs, a final EIR, and thousands of pages of briefing and comment letters extending over the course of nearly two decades. SYRWCD believes the State Water Board should make further appropriate modifications to the Revised Draft Order, consistent with these comments, and adopt a final order without undue delay. These proceedings have been protracted and the State Water Board should bring them to a close and adopt a final order.

SYRWCD and its constituents² are particularly interested in two important matters addressed in the Revised Draft Order. The first matter is the continued accumulation of downstream water rights water in the Above and Below Narrows accounts (ANA and BNA, respectively), which allows for the storage and release of that water from Bradbury Dam when the River is dry and water levels in groundwater basins have been lowered and are in need of replenishment, pursuant to Water Rights Order ("WR") 89-18 and consistent with the Technical Amendments³. The second matter is the 2002 Settlement Agreement that resolved significant disputes among the Cachuma Project Member Units and downstream interests regarding Cachuma Project operations and provided for conjunctive releases of stored water for downstream water rights and fish-flows downstream of Bradbury Dam.

SYRWCD supports that the Revised Draft Order continues the current water rights release criteria ordered by WR 73-37, as amended by WR 89-18, which have been in place for over 45 years and extensively studied. SYRWCD also supports that the Revised Draft Order continues to approve of the Settlement Agreement and adopts the Technical Amendments proposed by Reclamation.

Santa Ynez River flows, including water rights releases, are vital to SYRWCD's constituents downstream of Bradbury Dam. Such flows are even more important given

² SYRWCD's constituents include agricultural, municipal and other domestic water users, including residents within the cities of Lompoc and Buellton, as well as those within the boundaries of Improvement District No. 1, including the cities and communities of Santa Ynez, Solvang, Ballard, and Los Olivos.

³ DOI Exhibit 10 submitted by Reclamation at the 2003 hearings.

that the Santa Ynez River Watershed, and groundwater basins therein, were severely impacted by recent historic drought conditions, which were as bad as or worse than any other region in California. There is no reason to believe that such severe drought conditions with grossly diminished flows will not be repeated. SYRWCD successfully managed to provide its constituents with water rights releases during the recent drought consistent with Alternative 3C. However, that may not be the case during the next drought if Alternative 5C Table 2 flows are required in wet years (thereby leaving less water in storage for protection against a subsequent drought). The requirements of the Sustainable Groundwater Management Act, Water Code § 10720, et seq. (“SGMA”) to achieve the goal of groundwater sustainability make it all that much more important that there be sufficient releases at Bradbury Dam to replenish downstream groundwater basins and avoid water quality impacts to critical water supplies.⁴

II. Summary of the Parent District’s Position

First, for the above reason and the reasons extensively set forth in its prior comments, SYRWCD continues to support continued implementation of Alternative 3C. However, to the extent that the State Water Board adopts Alternative 5C, SYRWCD urges the Board to adopt a final order that is consistent the modifications requested in Sections III and IV below.

Second, SYRWCD requests deletion of condition 26.b.(6) of the Revised Draft Order. It requires as part of the instream flow study that Reclamation: “Evaluate whether the timing of releases made pursuant to Water Rights Order 89-18 should be revisited.” (Revised Draft Order, Attachment B, p. 142, Condition 24.b.(6).) Releases pursuant to WR 89-18 have been extensively studied and no further study is necessary or warranted.

Third, assuming further evaluation of water rights releases is ordered, given SYRWCD’s substantial involvement with the Cachuma Project, the water rights release regime (extensively discussed in prior comments and testimony), and its interest in the protection of downstream water rights, including the Settlement Agreement which settled long-standing disputes on the Santa Ynez River, the SYRWCD should be involved in any study and change that may affect downstream water rights releases, the ANA or BNA, or the Settlement Agreement.

Furthermore, if more studies regarding water rights releases are ordered, there should be an evaluation of whether and how Alternative 5C’s Table 2 releases adversely impact downstream water rights, including groundwater levels and water quality in the Lompoc Plain, and provide for adjustments that may be needed to avoid or minimize

⁴ Chronic lowering of groundwater and water quality impacts are two of the six “undesirable results” that must be avoided under SGMA. (Water Code § 10721(x)(1), (4).)

impacts to downstream water rights. This is important because unlike Alternative 3C, Alternative 5C has only been modeled and not implemented in real world conditions.

Finally, SYRWCD wishes to reiterate the importance that the State Water Board avoid taking action that undermines the 2002 Settlement Agreement, which among others things resolved significant litigation and claims, including the City of Lompoc's financial and water quality claims, and has kept peace on the Santa Ynez River since 2002.

III. Revision of WR 89-18 Should Not Be Further Evaluated and Condition 24.b.(6) Should Be Deleted

The Revised Draft Order proposes to add the following component to the instream flow study now set forth in amended permit condition 24.b.:

“(6) Evaluate whether the timing of releases made pursuant to Water Rights Order 89-18 should be revised.”

(Revised Draft Order, Attachment A, p. 141, Attachment B, p. 142.)

The issue of appropriate releases for protection of downstream water rights dates back to 1958 and has been studied for over 60 years, and WR 73-37, as amended by WR 89-18, has been in effect for over 45 years. The effort to study and evaluate downstream water rights releases has been extensive. The SYRWCD summarized evidence on this issue presented in the State Water Board's Cachuma Water Rights Phase II hearings in 2003. (See the Closing Brief of the SYRWCD, Section VI., pp. 10-16, and Cachuma Member Exhibit No. 264, SYRWCD Exhibits No. 7 and No. 8, incorporated herein by reference.) Also, Reclamation has already conducted the studies as required by the Reasonable & Prudent Measures 6 and 7 of the 2000 Biological Opinion which indicate the timing of the water rights releases do not need to be revised.

In light of the extensive study and success of WR 89-18, no further study is warranted. The goal of these 60 plus years of proceedings was to study and order final permit conditions setting forth the appropriate release criteria for protection of downstream water rights and public trust values. However, the Revised Draft Order continues the studies far into the future with no end in sight, and in effect indefinitely continues the uncertainty about the appropriate release criteria which will inevitably and unnecessarily lead to additional extensive and expensive proceedings before the State Water Board and a further depletion of limited public resources.

Therefore, condition 24.b.(6) of the Revised Draft Order should be deleted.

IV. Any Further Evaluation of Potential Revisions to WR 89-18 Should Involve the Parent District and include Evaluation of Revisions Needed to Avoid or Minimize Impacts on Downstream Water Rights

As explained in SYRWCD's 2016 Draft Order comments, under Alternative 5C, the average annual decrease in the amount of available water in the ANA for releases would be about 20 percent compared to baseline WR 89-18 conditions. This level of reduction in the ANA would impair the supply of water to replenish the downstream alluvial groundwater basins which in turn impacts the supply and quality of water that needs to be delivered for use by ID No. 1, the Cities of Lompoc, Solvang, Buellton, and the agricultural and other communities on the River.

However, the impacts of Alternative 5C on downstream water users are only projected and modeled. The actual impacts will not be known until Table 2 flows are implemented. Accordingly, while SYRWCD is against further study, if the issue of the adjustment or revision of the amount or timing of releases is going to be studied further, then the studies should also evaluate the actual adverse impacts of Table 2 flows to downstream water rights, including the ANA, BNA and downstream groundwater basins and water quality, and provide for appropriate mitigation. There is no reason why further studies for the benefit of steelhead, if required, should not also have corresponding studies to evaluate impacts to downstream water rights and users. Such reciprocity is consistent with the twin objectives of the proposed project and Revised Draft Order, that is to protect *both* public trust values and downstream water rights (including groundwater and water quality).⁵ It is also consistent with and likely a requirement incumbent upon the SWRCB under Water Code 10720 et seq. (SGMA).

Furthermore, if water rights release criteria are going to be further studied, then representatives of the downstream interests, including the SYRWCD (the Parent District) and others, should participate. SYRWCD has historically been involved in Cachuma Project proceedings before the State Water Board. SYRWCD is responsible for management and ordering of water rights releases in accordance with WR 73-37, as amended by WR 89-18. Moreover, SYRWCD participated in the prior hearings and has extensively commented on the SWRCB's prior 2003 DEIR, 2007 RDEIR, 2011 2nd RDEIR, FEIR and 2016 Draft Order for this matter.

As explained herein and in prior comments and testimony, in contrast to those likely to perform the instream flow study, e.g., biologists, SYRWCD and its consultant, Stetson Engineers, have the most experience regarding water rights releases including management and administration of the ANA and BNA. Accordingly, SYRWCD should be involved in preparation of any study of potential revisions or adjustments to the ANA, BNA and releases made pursuant to WR 89-18. This includes the studies required by proposed permit conditions 19 and 24 of the Revised Draft Order.

⁵ See also, *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 445-446 [rejecting argument that the public trust is antecedent to and thus limits all appropriative water rights]. Thus, public trust uses are not entitled to priority over downstream water rights.

V. The Supplemental Response to Comments Does Not Address The Issue of Alternative 5C's Impacts On ANA, Stranding of BNA Water and Drought Protection As Raised by the Parent District

Attachment C to the cover letter is a supplemental response to the SYRWCD's comments regarding the lack of analysis of Alternative 5C's impacts as a result of reduction or "clipping" of ANA credits. "Clipping" means there will be less water in storage for downstream water rights releases for drought protection. (See, e.g., SYRWCD Comments on 2016 Draft Order, dated December 9, 2016, p. 7.)

The supplemental response to comments does not adequately evaluate this issue or the associated impacts. This is not merely an accounting issue. Table 2 flows will result in reduction of real water stored in Cachuma Reservoir for the downstream rights to the detriment of downstream water users and their physical environment. Although modeling shows similar groundwater levels during droughts between Alternatives 3C and 5C, Alternative 5C would result in less water (ANA credits) in storage and strand BNA water needed for drought protection. The resulting impacts have not been adequately evaluated.

Moreover, the lack of adequate analysis of the potential impacts of Alternative 5C's Table 2 flows on downstream users is an additional reason why any further effort to evaluate water right releases pursuant to WR 89-18 should evaluate ways to avoid, minimize and otherwise mitigate the effects of Table 2 flows on downstream water rights, groundwater users and environmental resources, including groundwater basins, wells, and water quality below Bradbury Dam.

VI. The Settlement Agreement Is Important to Maintaining Peace on the River and Should Not Be Undermined

SYRWCD is a party to the 2002 Settlement Agreement, which settled long-standing disputes concerning operation of the Cachuma Project on downstream water rights and water quality, including damage claims and litigation. (Revised Draft Order, Attachment A, pp. 16, 99-108, Attachment B, Appendix 2, p. 7 .)

The Settlement Agreement also provides procedures for conjunctive operation of water rights releases with fish releases and includes the establishment of Accumulated Drought Water Credits for Member Units. (Settlement Agreement, ¶ 1.2, Ex. "A.") The parties to the Settlement Agreement also agreed to advocate for a SWRCB Order to operate the Cachuma Project according to WR 89-18, modified as provided in the Settlement Agreement. (Settlement Agreement, ¶ 1.1.) The modifications to Reclamation's permits were submitted by Reclamation and described by Ms. Struebing (R.T. 218-220; DOI Exhibit 10) and are described as Technical Amendments to WR 89-18 in Exhibit "C" to the Settlement Agreement.

SYRWCD is supportive of the Revised Draft Order's finding "that Reclamation should operate the Cachuma Project pursuant to the new accounting, monitoring, and operating procedures set forth in the Settlement Agreement, and [that] the Permits should be amended as proposed by Reclamation and agreed to by the parties to the agreement." (Attachment A, p. 108.)

The Revised Draft Order also provides: "This order updates condition 7 to reserve authority to make any changes to the release requirements for downstream water rights that may be necessary based on any changes to the Settlement Agreement." (*Ibid.*) In as much as any changes to the Settlement Agreement may be informed by evaluation of whether revisions or adjustments, if any, to the ANA or BNA are appropriate, then this is another reason why SYRWCD must be involved in any study and evaluation related to potential revision or adjustment to the ANA or BNA.

Finally, while SYRWCD appreciates that the Revised Draft Order is crafted to allow for potential changes to the Settlement Agreement to be incorporated into permit conditions, SYRWCD stresses the importance of not undermining the Settlement Agreement or the security it has provided by keeping peace on the Santa Ynez River and, among other benefits, avoiding litigation of significant damage and other claims of the City of Lompoc. While these proceedings have been protracted, they would have been more so if litigation had not been avoided.

VII. Conclusion

SYRWCD appreciates the opportunity to comment on the Revised Draft Order. As explained above and in prior comments, SYRWCD believes Alternative 3C best protects downstream water rights and public trust resources.

However, assuming the State Water Board disagrees and adopts Alternative 5C, SYRWCD requests deletion of the new requirement in condition 24.b.(6) that there be an evaluation of whether the timing of WR 89-19 releases should be revised. That issue has already been extensively studied over the course of several decades.

Alternatively, if the final order requires an evaluation of whether timing of water rights releases or the ANA or BNA should be revised or adjusted, then that study should include evaluation and provide for appropriate mitigation to avoid or minimize impacts to downstream water rights. In addition, SYRWCD desires to and should be involved in any such study given that the SYRWCD and its consulting engineer, Stetson Engineers, have long-standing involvement and experience with the Cachuma Project, particularly the management and implementation of the current, detailed downstream water rights release regime described in WR 89-18. **Thus, SYRWCD once again respectfully requests that SYRWCD be allowed to participate and have a say in any study or proposed change that may affect downstream water rights or supplies (including any adjustments or revisions to the ANA or BNA).**

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In conclusion, the SYRWCD appreciates the effort that the State Water Board and its staff have invested in the difficult process of striking the appropriate balance between releases needed to protect both downstream water rights and public trust values, including steelhead. Alternative 3C is the alternative that best strikes that balance. SYRWCD also supports the Revised Draft Order's adoption of the minor modifications to WR 89-18 presented by Reclamation in the Technical Amendments to Exhibit "C" to the Settlement Agreement.

Whether the State Water Board adopts a final order continuing implementation of Alternative 3C or implements Alternative 5C, SYRWCD urges the Board to finally adopt an order and bring these decades long proceeds to a close in the near future.

Once again, thank you for the opportunity to submit comments on this very important project, including the Revised Draft Order and FEIR.

Respectfully submitted,

THE LAW OFFICES OF YOUNG
WOOLDRIDGE, LLP



Steven M. Torigiani

cc: Parties to Cachuma Project Service List
(https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/cachuma/docs/cachumaservlst_032619corr.pdf)

Cachuma Project Evidentiary Hearing

UPDATED SERVICE LIST

(March 26, 2019)

Corrected for typographical errors

The parties whose email addresses are listed below agreed to accept electronic service, pursuant to the rules specified in the hearing notice.

<p>Cachuma Conservation Release Board Mr. Kevin O'Brien Downey Brand LLP 621 Capitol Mall, Floor 18 Sacramento, CA 95814 kobrien@downeybrand.com nbigley@downeybrand.com pcantle@ccrb-board.org</p> <p><i>updated 02/25/2019</i></p>	<p>City of Solvang Mr. Christopher L. Campbell Baker, Manock & Jensen 5260 N. Palm Avenue, Suite 421 Fresno, CA 93704 ccampbell@bakermanock.com</p> <p><i>updated 07/29/2011</i></p>
<p>Santa Ynez River Water Conservation District, Improvement District No. 1 Mr. Paeter Garcia 3622 Sagunto St. Santa Ynez, CA 93460 pgarcia@syrwd.org</p> <p>Mr. Steve M. Anderson Best Best & Krieger LLP 3390 University Avenue, 5th Floor Riverside, CA 92501 steve.anderson@bbklaw.com</p> <p><i>updated 03/09/2018</i></p>	<p>City of Lompoc Mr. Nicholas A. Jacobs Somach, Simmons & Dunn 500 Capitol Mall Suite 1000 Sacramento CA 95814 njacobs@somachlaw.com</p> <p><i>updated 01/06/2014</i></p>
<p>Santa Ynez River Water Conservation District Mr. Steven M. Torigiani Law Offices of Young Wooldridge, LLP 1800 30th Street, 4th Floor Bakersfield, CA 93301 storigiani@youngwooldridge.com</p> <p><i>updated 02/26/19</i></p>	<p>California Trout, Inc. Ms. Linda Krop Ms. Maggie Hall Ms. Tara Messing Environmental Defense Center 906 Garden Street Santa Barbara, CA 93101 lkrop@environmentaldefensecenter.org mhall@environmentaldefensecenter.org tmessing@environmentaldefensecenter.org</p> <p><i>updated 03/08/2018</i></p>

Cachuma Project Evidentiary Hearing

UPDATED SERVICE LIST

(March 26, 2019)

Corrected for typographical errors

The parties whose email addresses are listed below agreed to accept electronic service, pursuant to the rules specified in the hearing notice.

<p>County of Santa Barbara Mr. Michael C. Ghizzoni, County Counsel Ms. Johannah Hartley, Deputy 105 E. Anapamu Street Santa Barbara, CA 93101 jhartley@co.santa-barbara.ca.us</p> <p><i>updated 03/09/2018</i></p>	<p>U.S Bureau of Reclamation Ms. Amy Aufdemberge 2800 Cottage Way, Room E-1712 Sacramento, CA 95825 Fax (916) 978-5694 AMY.AUFDEMBERGE@sol.doi.gov</p> <p><i>updated 08/12/16</i></p>
<p>California Department of Fish and Wildlife Ms. Nancee Murray Senior Staff Counsel 1416 Ninth Street, 12th Floor Sacramento, CA 95814 Nancee.Murray@wildlife.ca.gov</p> <p><i>updated 08/15/2016</i></p>	<p>Bureau of Reclamation, Mid-Pacific Region Mr. Michael Jackson Area Manager South-Central California Area Office 1243 N Street Fresno, CA 93721-1813 mjackson@usbr.gov</p>
<p>Montecito Water District Mr. Robert E. Donlan Ellison, Schneider & Harris L.L.P. 2600 Capitol Avenue, Suite 400 Sacramento, CA 95816 red@eslawfirm.com</p>	<p>Santa Barbara County CEO's Office Ms. Terri Maus-Nisich, Assistant CEO 105 E. Anapuma Street, 4th Floor Santa Barbara, CA 93101 tmaus@co.santa-barbara.ca.us</p> <p><i>updated 09/07/2016</i></p>

The parties listed below did not agree to accept electronic service, pursuant to the rules specified by this hearing notice.

<p>NOAA Office of General Counsel Southwest Region Mr. Dan Hytrek 501 West Ocean Blvd., Suite 4470 Long Beach, CA 90802-4213 Dan.Hytrek@noaa.gov</p> <p><i>updated 05/13/2011</i></p>	
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