

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permits 11308 and 11310 Issued) Order: WR 94-5
pursuant to Applications 11331 and 11332; the)
United States Bureau of Reclamation; Permittee) Source: Santa Ynez River
)
_____) County: Santa Barbara

ORDER CONTINUING RESERVED JURISDICTION
AND ISSUING AMENDED PERMITS

FINDINGS BY THE BOARD:

1. Order paragraph 13 of Decision D-886, adopted February 28, 1958, reserved 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) required to satisfy downstream rights.
2. Following a Board hearing on January 26, 1973, Board Order WR 73-9 (February 15, 1973) continued the reserved jurisdiction in D-886 over Permits 11308 and 11310 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 provided for extending the initial 15-year trial period for refining Cachuma Reservoir operating procedures for an additional 15 years to July 5, 1988.
4. Board Order WR 78-10 (July 5, 1978) amended Condition 5.(1.4) of Permits 11308 and 11310 (as amended by Order WR 73-37), to change the method of measurement of water released from Cachuma Reservoir to satisfy downstream rights.
5. Board Order WR 88-2 (January 21, 1988) extended the date for hearing under Permit Condition 7 until July 1, 1989, and continued the Board's reserved jurisdiction for further order pursuant to Permit Condition 7 until December 31, 1989.
6. Board Order WR 89-18 (September 21, 1989):
 - (a) Under Permit Condition 7, extended the date for hearing until July 1, 1994 and extended the reserved jurisdiction until December 31, 1994;

- (b) amended condition 6(m) of the permits to extend and modify the riparian vegetation monitoring program in and along the margins of the Santa Ynez River below Bradbury Dam for at least an additional five years; and
 - (c) directed staff to promptly prepare for and schedule a hearing on the California Sportfishing Protection Alliance (CSPA) complaint as soon as the Board's calendar allowed.
7. A consolidated hearing to consider all outstanding actions within the Santa Ynez River watershed was commenced in July 1990. This hearing was recessed at the end of August 1990 to allow the parties to work together to resolve some of the technical concerns outside of the hearing process.
8. On December 20, 1990, Chairman W. Don Maughan wrote to the parties to explain that before the Board could act on the pending actions:
- (a) a cumulative environmental impact report must be prepared;
 - (b) a determination of the availability of unappropriated water must be made; and
 - (c) potential mitigation measures for the remnant steelhead fishery and for rare and endangered species and related habitats must be evaluated.
9. Sufficient information to complete the work identified in the December 20, 1990 letter is not available.
10. In 1993, some of the parties entered into two Memoranda of Understanding (MOU) for cooperation in research related to the protection of fish and fish habitat for the portion of the Santa Ynez River below Bradbury Dam. A report regarding this work has been prepared by the Technical Advisory Committee under the MOU's.
11. In 1994, a new Memorandum of Understanding (1994 MOU) was executed which acknowledges that three to five years may be needed to complete data collection and studies for presentation of information on fish and fish habitat for the portion of the Santa Ynez River below Bradbury Dam in order to jointly resolve some of the outstanding issues before the Board. As of the date of this Order, the parties to the 1994 MOU are the California Department of Fish and Game, the United States Fish and Wildlife Service, the Bureau of Reclamation, the Cachuma Conservation Release Board (the members of which are Carpinteria County Water District, the City of Santa Barbara, Goleta Water District, Montecito Water District, and Summerland County Water District), Santa Ynez River Water Conservation District - Improvement District No. 1, Santa Ynez River Water Conservation District, Santa Barbara County Water Agency, and the City of Lompoc.

The 1994 MOU, which will terminate on March 14, 1995, provides for the establishment of a Fish Reserve Account, consisting of an amount of water equivalent to the amount of water stored in the Cachuma Project above elevation 750 feet and any water captured by virtue of any modifications made to the flashboards of Bradbury Dam. Water in the Fish Reserve Account is to be used for the maintenance of fish below Bradbury Dam and to carry out necessary studies provided for in the study plan developed, all as provided in the 1994 MOU. In the event the Fish Reserve Account is insufficient for purposes of the 1994 MOU, the Bureau of Reclamation may make releases, as provided in the 1994 MOU, from the minimum pool of the Cachuma Project, up to an amount that shall not exceed 2,000 acre feet per year without further consultation with the parties to the 1994 MOU (as listed above).

12. The Bureau of Reclamation, the Cachuma Project Authority (CPA) (the members of which are Carpinteria County Water District, the City of Santa Barbara, Goleta Water District, Montecito Water District, Summerland County Water District, and Santa Ynez River Water Conservation District - Improvement District No. 1) (Cachuma Member Units), and the Santa Barbara County Water Agency also have begun work on an Environmental Impact Statement/Environmental Impact Report under NEPA\CEQA for renewal of Cachuma contracts which includes an analysis of the cumulative impacts of the Cachuma Project and measures to offset any impacts on downstream rights and public trust resources. However, this document is not intended to provide sufficient information to completely address all of the tasks identified in the December 20, 1990 letter.
13. The Bureau of Reclamation has requested that the Board's reserved jurisdiction be extended for an additional three years to allow additional hydrologic data to be collected. The City of Santa Barbara, the Cachuma Conservation Release Board, and the Santa Ynez River Water Conservation District - Improvement District #1 have concurred with this request. The Santa Ynez River Water Conservation District has written that it will not object to the extension. The Department of Fish and Game has indicated they would be agreeable to an extension as long as fishery studies are continued. Legal counsel for the City of Lompoc has submitted a letter opposing an extension unless the Bureau of Reclamation agrees to delay the contract renewal process for the Cachuma Project until the reserved jurisdiction matter has been resolved. The CSPA has objected to any postponement and has requested that the Board require immediate releases of water from Bradbury Dam to protect public trust resources. Legal counsel for the Santa Barbara Urban Creeks Council (UCC) has indicated that an extension of the Board's reserved jurisdiction to allow collection of additional data on impacts of the Cachuma Project on downstream water rights and public trust resources is acceptable provided that adequate interim protection for public trust resources are instituted. The UCC believes that all existing and contemplated studies and measures, including the 1994 MOU are inadequate.

14. The Bureau of Reclamation has agreed to include language in any Cachuma Project renewal contract that expressly provides that (i) the maximum quantity of Project water to be made available to the contractor (the Cachuma Member Units) is conditioned on the existing and future terms and conditions of the underlying Cachuma Project water rights permits, and (ii) additional studies requested by Board Staff relating to the impacts of the Cachuma Project will be conducted within the timelines provided in Order paragraph 3 hereof if either Permittee and the Cachuma Member Units have agreed to conduct such studies or such studies have been ordered by the Board to be conducted. The Bureau of Reclamation has stated it's intent to provide a letter to document this agreement by December 1, 1994. In addition, Permittee and the Cachuma Member Units have agreed to provide a quantity of water for downstream releases for fishery purposes as required in Order paragraph 5 hereof.

15. The Cachuma Project Authority and the City of Lompoc have agreed, by a contract dated September 30, 1993, and subsequently extended, "*to negotiate in good faith toward an agreement which addresses and resolves the City's water quantity and water quality concerns associated with the Cachuma Project's impacts, if any, on the Santa Ynez River, in the context of the overall water supply needs of the City and the CPA members.*" Subsequently, the board of directors of CPA elected to discharge CPA's obligations under the contract by and through the Cachuma Members units. As provided in the contract, technical and policy committees have been established, through which the parties continue to negotiate.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The reservation of jurisdiction in Condition 7 of the subject permits, as amended by Orders WR 73-9, WR 73-37, WR 88-2 and WR 89-18, is continued until such time as long-term permit conditions are set to protect downstream water right holders.

2. The hearing required by Condition 7 shall be commenced no later than December 1, 2000. The scope of the hearing shall include consideration of requirements to carry out Condition 4 of both permits, which addresses the continuing authority of the Board, as amended by Order WR 89-18. The Board may order said hearing to commence at an earlier date:
 - (i) upon a request by Permittee on the ground that all studies and other work required by paragraph 3 of this Order have been completed,

 - (ii) upon a Board determination that all studies and other work required by paragraph 3 of this Order have not been undertaken promptly, pursued with due diligence or completed in a timely fashion, in which event the hearing shall be conducted upon whatever evidence then exists and the Board shall not be required to grant any additional time extensions to complete studies or gather data; or

(iii) upon a determination by the Board that an earlier hearing is required for other reasons.

3. Not later than February 1, 2000, Permittee shall submit to the Board staff:

- (a) the final contract renewal EIS/EIR as identified in Finding No. 12;
- (b) the reports or data compilations resulting from the MOU's, including any extensions thereof, as identified in Findings No. 10 and 11 hereof;
- (c) a report on the riparian vegetation monitoring program in and along the margins of the Santa Ynez River below Bradbury Dam required by amended condition 6(m) of the subject permits as set forth in Finding No. 6(b) hereof;
- (d) information developed and conclusions reached, if any, during the negotiations among the Cachuma Member Units and the City of Lompoc according to the process described in Finding No. 15 hereof;
- (e) a study report, or compilation of other existing materials, which clearly describes the impacts, or lack thereof, of the Cachuma Project on downstream diverters as compared to conditions which would have existed in the absence of the Cachuma Project; and
- (f) any reports or any other study(s) requested by the Board staff and agreed to by the Permittee and the Members Units or ordered by the Board.

Permittee shall submit to the Chief of the Division of Water Rights (Division Chief) by March 31, 1995 an approximate schedule of development for items (a) through (e) above. Permittee shall also submit written reports to the Division Chief regarding the progress of all studies and/or work underway every six (6) months beginning July 1, 1995.

4. Not later than March 1, 2000, the Division Chief shall determine what, if any, additional environmental documentation is required for Board compliance, as lead agency, with the California Environmental Quality Act (CEQA) in connection with the Board's determination if any modification of the subject permits shall be necessary and appropriate to provide for down stream water rights and public trust resources affected by the project. Any such additional environmental documentation shall be prepared by the Permittee and a draft shall be submitted to the Division Chief not later than July 31, 2000. The nature and scope of the draft environmental documentation shall be as agreed to by the Division Chief and Permittee or as ordered by the Board. Board staff shall hold at least one public meeting by March 31, 1995 to assist in determining the proper scope of any additional reports or studies as provided in paragraph 2(f) above and any additional CEQA documentation as required by this paragraph.

- (d) Permittee's obligation to continue releases pursuant to subparagraph 5(b) shall cease six months after the date when a complaint is filed with the Board pursuant to subparagraph 5(c) unless (i) the Board, after a hearing on the issue whether releases should continue pending the Board's consideration of and decision on the complaint, and based on the entire record of that hearing, determines that releases in the manner and in quantities provided in subparagraph 5(b) should continue, or (ii) the Cachuma Member Units have agreed to such continuation.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of any order duly and regularly adopted at a meeting of the State Water Resources Control Board held on November 17, 1994.

AYE: John Caffrey
 James M. Stubchaer
 Marc Del Piero
 Mary Jane Forster
 John W. Brown



Maureen Marché
Administrative Assistant to the Board



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Permittee shall submit to the Chief of the Division of Water Rights (Division Chief) by March 31, 1995 an approximate schedule of development for items (a) through (e) above. Permittee shall also submit written reports to the Division Chief regarding the progress of all studies and/or work underway every six (6) months beginning July 1, 1995.

4. Not later than March 1, 2000, the Division Chief shall determine what, if any, additional environmental documentation is required for Board compliance, as lead agency, with the California Environmental Quality Act (CEQA) in connection with the Board's determination if any modification of the subject permits shall be necessary and appropriate to provide for down stream water rights and public trust resources affected by the project. Any such additional environmental documentation shall be prepared by the Permittee and a draft shall be submitted to the Division Chief not later than July 31, 2000. The nature and scope of the draft environmental documentation shall be as agreed to by the Division Chief and Permittee or as ordered by the Board. Board staff shall hold at least one public meeting by March 31, 1995 to assist in determining the proper scope of any additional reports or studies as provided in paragraph 2(f) above and any additional CEQA documentation as required by this paragraph.

5. Commencing January 1, 1995 and continuing until further order of the Board following the hearing required by paragraph 2 of this Order, in order to maintain fish existing below Bradbury Dam and to accommodate the studies required by paragraph 3 of this Order;

- (a) Permittee shall make releases from the Cachuma Project according to the terms of the 1994 MOU referenced in Finding No. 11 hereof, including any extension or modification thereof.
- (b) If the 1994 MOU is not extended or modified, Permittee shall continue to make releases from the Cachuma Project to maintain fish and to accommodate fishery studies in a manner and in quantities consistent with those releases provided for in the 1994 MOU, or the then most recent extension or modification thereof. Those releases shall be made by Permittee after consultation with the Department of Fish and Game, the U.S. Fish and Wildlife Service, the Cachuma Members Units, the Santa Ynez River Water Conservation District, the City of Lompoc, and the Division Chief. Any modifications of the MOU affecting provisions of this Order shall become effective only upon a 30-day review by the Division Chief provided the Division Chief does not object to the modifications.
- (c) The Board may commence the hearing required by paragraph 2 hereof if it receives a justifiable complaint from any interested party concerning releases made by Permittee pursuant to subparagraph 5(b).

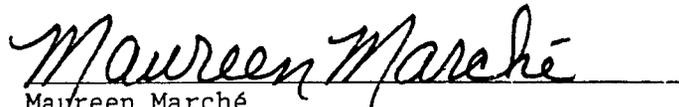


- (d) Permittee's obligation to continue releases pursuant to subparagraph 5(b) shall cease six months after the date when a complaint is filed with the Board pursuant to subparagraph 5(c) unless (i) the Board, after a hearing on the issue whether releases should continue pending the Board's consideration of and decision on the complaint, and based on the entire record of that hearing, determines that releases in the manner and in quantities provided in subparagraph 5(b) should continue, or (ii) the Cachuma Member Units have agreed to such continuation.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of any order duly and regularly adopted at a meeting of the State Water Resources Control Board held on November 17, 1994.

AYE: John Caffrey
 James M. Stubchaer
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Maureen Marché
Administrative Assistant to the Board