

Jane Farwell - Cachuma Water Rights Permit FEIR

From: Sophia Bernal <sophia.bernal@noaa.gov>
To: <jfarwell@waterboards.ca.gov>
Date: 1/9/2012 12:18 PM
Subject: Cachuma Water Rights Permit FEIR
CC: Dan Hytek <dan.hytek@noaa.gov>, Darren Brumback <darren.brumback@noaa...>
Attachments: 9JAN2012_NMFS response to SWRCB Cachuma FEIR_DB.pdf

Hello Ms. Farewell,

Attached is NMFS response to Cachuma Water Rights FEIR. If you have any questions please contact Darren Brumback at (562) 980-4060 or email to Darren Brumback @ darren.brumback@noaa.gov

Thank you,

Sophia Bernal



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

January 9, 2012

In response refer to:
2012/00013:DB

Ms. Jane Farwell, Environmental Scientist
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Re: Notice of Availability: Final Environmental Impact Report on the Consideration of
Modifications to the U.S. Bureau of Reclamation's Water Rights Permits 11308 and 11310
(Applications 11331 and 11332) (Cachuma Project)

Dear Ms. Farwell:

NOAA's National Marine Fisheries Service (NMFS) is responding to the State Water Resources Control Board's (Board) Notice of Availability, dated December 8, 2011, for the subject Final Environmental Impact Report (FEIR). NMFS appreciates the opportunities that the Board has provided for input in these proceedings. Given the advanced stage in the subject proceedings and the very limited opportunity for additional input, NMFS objects to including the FEIR in the administrative record for the U.S. Bureau of Reclamation's (Reclamation) Cachuma Project for the reasons described below. Furthermore, NMFS would like to take the opportunity to make the following requests to the Board to consider if it adopts the FEIR and concludes these proceedings.

As NMFS previously requested in letters to the Board (dated September 21, 2010, October 26, 2010, and May 27, 2011), NMFS reiterates its request that the Board not finalize action on the subject permits until NMFS issues a new biological opinion regarding the effects of Reclamation's Cachuma Project operations on endangered Southern California steelhead (*Oncorhynchus mykiss*). In the Board's responses to NMFS' May 27, 2011, comments on the Second Revised Draft Environmental Impact Report for these proceedings, the Board recognized that reinitiation of formal consultation, including a new biological opinion, is required under the Endangered Species Act and NMFS' implementing regulations regarding the effects of Reclamation's Cachuma Project operations on endangered Southern California steelhead. NMFS described the relevance of this point based on the Board's reliance in the Environmental Impact Report on analysis and requirements in NMFS' 2000 biological opinion. The Board is relying on a biological opinion that is in the process of being revised. Therefore, NMFS makes this request and objects to including the FEIR in the administrative record for the Cachuma Project to ensure that the Board adequately considers and characterizes the effects of the Cachuma Project on endangered Southern California steelhead.

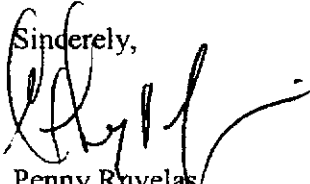


As we described above, NMFS' preference is that the Board not finalize action on the subject permits until NMFS issues a new biological opinion. However, if the Board proceeds to finalize action on the subject permits at this point, NMFS requests that the Board provide Reclamation's Cachuma Project with as much operational flexibility as possible to provide the timing, magnitude, duration, and rate of change of flows that may be necessary under a new biological opinion for Reclamation to ensure that Cachuma Project operations are not likely to jeopardize the continued existence of endangered Southern California steelhead or result in the destruction or adverse modification of critical habitat designated for these listed steelhead as well as comply with reasonable and prudent measures and terms and conditions that NMFS determines are necessary to minimize the impact of incidental take of these listed steelhead.

Additionally, in the Board's responses to NMFS' comments described above, the Board recognized that it may need to consider amending Reclamation's subject permits as necessary based on a new biological opinion for Reclamation's Cachuma Project. Therefore, if the Board proceeds to issue modified permits for the project at this point, NMFS requests that the Board include a specific provision for reopening and amending the permits as necessary based on a new biological opinion for Reclamation's Cachuma Project.

Finally, NMFS does not agree with some of the Board's statements and conclusions in its FEIR and the Board's responses to NMFS' comments on various drafts. Given the limited opportunity for review of the FEIR, NMFS is not providing a comprehensive list of areas where we do not agree with some of the Board's statements and conclusions in its FEIR and responses to NMFS' comments on various drafts, but NMFS is providing some general points that we believe are important for the record. For example, Table 2-4A of the FEIR implies that Reclamation has to date implemented the term and condition in NMFS' 2000 biological opinion that corresponds with reasonable and prudent measure number 6 (FEIR at 2.0-22). Reclamation and NMFS have disagreed on this point, and NMFS has commented that it will be more productive to move past that disagreement and focus on completing a new biological opinion. In addition, the Board generally equates compliance with requirements of NMFS' 2000 biological opinion regarding minimum flow with sufficient protection for steelhead in the Santa Ynez River (e.g., FEIR at 2.0-108, 2.0-112, 2.0-113, 2.0-692 to 693, and 4.7-26). However, as NMFS explained in its closing brief in the Board's Phase II hearing for the subject project, NMFS' obligations under the ESA, especially NMFS' conclusions in a biological opinion under the specific standards of Section 7 of the ESA regarding the effects of a Federal agency's proposed action on a listed species, are not the same as protections that may be necessary for similar resources under California state law (see NMFS' closing brief at 3-11).

Should you have a question regarding this letter, please contact Darren Brumback at (562) 980-4060.

Sincerely,

for Penny Ruvelas
Southern California Office Supervisor
for Protected Resources Division

cc: Michael Jackson, U.S. Bureau of Reclamation
Kate Rees, Cachuma Operations and Maintenance Board
Edmund Pert, CA Department of Fish and Game
Mary Larson, CA Department of Fish and Game
Roger Root, U.S. Fish and Wildlife Service
Cachuma Hearing Service and Mailing List
Administrative file: 151422SWR2010PR00316

Cachuma Project Phase 2 Hearing
Final Service List
(updated 07/29/2011)

(Based on 01/05/2004 list, updated 07/26/2007, updated 06/08/2010, updated 01/20/2011,
updated 05/13/2011, updated 07/29/2011)

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 tkuntz@downeybrand.com</p> <p><i>updated 01/20/2011</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. Gregory K. Wilkinson Best, Best & Krieger, LLP 3750 University Avenue, Suite 400 Riverside, CA 92501 gkwilkinson@bbklaw.com</p>	<p>City of Lompoc Ms. Sandra K. Dunn Somach, Simmons & Dunn 500 Capitol Mall Suite 1000 Sacramento CA 95814 sdunn@somachlaw.com</p> <p><i>updated 06/08/2010)</i></p>
<p>Santa Ynez River Water Conservation District Mr. Ernest A. Conant Law Offices of Young Wooldridge 1800 - 30th Street, Fourth Floor Bakersfield, CA 93301 econant@youngwooldridge.com</p>	<p>California Trout, Inc. c/o Ms. Karen Kraus Environmental Defense Center 906 Garden Street Santa Barbara, CA 93101 kkraus@edcnet.org</p>