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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
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Long Beach, California 90802-4213

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Ms. Jane Farwell
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

Re: Second Revised Draft Environmental Impact Report (April 2011) – Consideration of Modifications to the U.S. Bureau of Reclamation’s Water Rights 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 (Cachuma Reservoir) (SCH#1999051051)

Dear Ms. Farwell:

NOAA’s National Marine Fisheries Service (NMFS) appreciates the opportunity to comment on the State Water Resources Control Board’s (State Water Board) Second Revised Draft Environmental Impact Report (2nd RDEIR). As previously expressed in letters dated September 21, 2010, and October 26, 2010, NMFS requests that the State Water Board not finalize this action pending release and incorporation of the new biological opinion for the operations and maintenance of the U.S. Bureau of Reclamation’s (Reclamation) Cachuma Project and the Southern California Steelhead Recovery Plan. The intent of this request is to ensure that the Final EIR adequately considers and characterizes the anticipated effects of the Cachuma Project on the environment. Further, as the State Water Board Hearing Officer noted in his determination granting NMFS’ request to participate as a party in Phase II of the Cachuma Project Hearing, “in light of [NMFS’] unique role as the agency that listed the Southern California steelhead ESU [now Distinct Population Segment (DPS)] as endangered, authored the Biological Opinion, and is responsible for preparing a recovery plan for the species,” NMFS’ participation will help the State Water Board “ensure that the record includes the evidence necessary for the [State Water Board] to properly evaluate impacts on fisheries consistent with the [State Water Board’s] public trust responsibilities”.¹

¹ Ruling by Peter Silva, State Water Board Hearing Officer, May 29, 2003.



The State Water Board's notice of release of the 2nd RDEIR for public review requests that reviewers limit their comments to Sections 4.3 and 6.0. NMFS provides the following general and specific comments and addresses the State Water Board's request under the heading for each type of comment.

General Comments

Because NMFS' biological opinion (dated September 8, 2000) is referenced in Sections 4.3 and 6.0, and it is an integral underpinning of those sections and throughout the 2nd RDEIR, NMFS' general comment that pertains to the biological opinion relates to Sections 4.3 and 6.0 as well as analysis throughout the 2nd RDEIR. In a similar manner, NMFS' general comments that pertain to the Southern California Steelhead Recovery Plan and NMFS' previous requests for studies to inform the State Water Board's analysis are relevant to the comparison of alternatives in Section 6.0 as well as analysis throughout the 2nd RDEIR. Each of these general comments is presented as follows.

Biological Opinion for the Cachuma Project.—The relevance of NMFS' biological opinion to the subject 2nd RDEIR is emphasized in the State Water Board's project description on page 1.0-2.

Development of revised release requirements and other conditions, if any, in the Reclamation water rights permits (Applications 11331 and 11332) for the Cachuma Project. These release requirements will take into consideration the National Marine Fisheries Service's Biological Opinion (emphasis added)...

In addition, the State Water Board describes each of the alternatives considered in the 2nd RDEIR in reference to operations considered under NMFS' September 2000 biological opinion (e.g., 2nd RDEIR at 3.0-7 to 3.0-9, 4.3-12, 4.3-14, 4.3-21, and 6.0-6 to 6.0-8). Moreover, the State Water Board describes the impacts to an important public trust resource, endangered Southern California steelhead (*Oncorhynchus mykiss*), in reference to NMFS' September 2000 biological opinion (e.g., 2nd RDEIR at 4.7-26 ("The requirements of the biological opinion represent the consensus of minimal flows needed in order to support the continued survival of *O. mykiss* in the Santa Ynez River") and 4.7-41 ("The flow levels used in the scoring system were based . . . on the flow levels that NMFS determined would result in no jeopardy to steelhead (NMFS, 2000)"), which is reflected in the comparison of alternatives in Section 6.0 (RDEIR at 6.0-2 and 6.0-7). Therefore, the formulation and evaluation of alternatives within the 2nd RDEIR are based on the presumption that the flow releases (i.e., magnitude, frequency, timing, rate of change, and duration) proposed by Reclamation and considered in the September 2000 biological opinion, continue to ensure that Reclamation's Cachuma Project is not likely to jeopardize the continued existence of endangered steelhead or result in the destruction or adverse modification of critical habitat, pursuant to Section 7 of the Federal Endangered Species Act (ESA). However, as supported by NMFS' administrative record and for reasons stated in NMFS' October 26, 2010, letter to the State Water Board, reinitiation of ESA formal consultation for the Cachuma Project, including a new biological opinion, is required (50 CFR § 402.16).

NMFS expects Reclamation to submit a revised description of the proposed operations and maintenance of the Cachuma Project, including flow releases, and analyses of effects to endangered steelhead and designated critical habitat as required under 50 CFR § 402.14(c). As stated in NMFS' October 26, 2010, letter to the State Water Board, NMFS anticipated issuing a new biological opinion by December 2011, based on discussions with Reclamation. NMFS is presently coordinating with Reclamation to define a schedule for the reinitiated consultation, including development and submittal of required work products to support the process. Such work products include the annual monitoring data and summaries as required by the previous (September 2000) biological opinion. Although the 2nd RDEIR (page 2.0-21) indicates that such data and reports were submitted to NMFS in February 2010, the 2nd RDEIR is not accurate in this regard.

Accordingly, NMFS recommends that the State Water Board defer completion of the Final EIR until NMFS and Reclamation have completed reinitiated ESA Section 7 consultation for the operations and maintenance of the Cachuma Project and a new biological opinion has been issued. Should the State Water Board finalize the EIR before NMFS concludes reinitiated consultation and prepares the new biological opinion, NMFS would be concerned that the CEQA process, including the assessment of possible effects upon public trust resources, would not be adequately informed.

Southern California Steelhead Recovery Plan.—At the time of issuance of its September 2000 biological opinion, NMFS had not begun its recovery planning process for Southern California steelhead. That process was in early stages at the time of the initial Draft EIR for the Cachuma Project and related Cachuma water rights hearings. Since that time, NMFS has (1) developed and published a series of Technical Memoranda intended to provide the scientific foundation for recovery planning; (2) developed a draft recovery plan that has been subjected to scientific peer review, co-manager review, and public review; and, (3) is in the process of finalizing and publishing the recovery plan. The Southern California Steelhead Recovery Plan will identify a set of recovery goals and measurable objectives for both the species (i.e., the DPS) as a whole and individual watersheds such as the Santa Ynez River. This plan will also identify the types of recovery actions necessary to recover steelhead within individual watersheds, as well as the DPS as a whole. The Santa Ynez River is identified as one of a number of core steelhead populations that must be restored to viable levels to ensure recovery of the species. The goals and objectives, and the specific recovery actions for the Santa Ynez River identified in the draft recovery plan include measures beyond those identified in the September 2000 biological opinion, based on the additional information that has been developed since issuance of the subject biological opinion.

As NMFS explained in its October 26, 2010, letter to the State Water Board (as well as NMFS' December 7, 2007, and September 21, 2010, letters to the State Water Board), "NMFS believes the scientific information resulting from forthcoming ESA processes and products, [including] the Southern California Steelhead Recovery Plan (Recovery Plan) . . . , will provide meaningful scientific information that better informs the State Water Board's Final EIR." Accordingly, NMFS recommends that the State Water Board consider in the Final EIR the information described above that has been and is being developed in NMFS' recovery planning process and defer completion of the Final EIR until completion of the Recovery Plan.

NMFS' Previous Requests for Studies. —NMFS' October 7, 2003, letter recommended that the following “six studies be undertaken and incorporated into the Final EIR and the [State Water Board's] deliberations before making any final decision on the Public Trust interests in the steelhead resources of the Santa Ynez River.” NMFS reiterated its request for these studies in its February 16, 2004, Closing Brief in Phase II of the State Water Board's Cachuma Project Hearings. These studies do not appear to have been completed to date.

- Steelhead Spawning and Rearing Habitat Assessment
- Fish Passage Investigation for Bradbury Dam and Cachuma Reservoir
- Fish Flows to Support Migration, Spawning and Rearing above Bradbury Dam
- Channel Forming Flows in the Lower Mainstem Santa Ynez River
- Alternative Flow Regime for Lower Mainstem Santa Ynez River
- Watershed Analysis

Specific Comments

Although the State Water Board's notice of release of the 2nd RDEIR for public review requests that reviewers limit their comments to Sections 4.3 and 6.0, several other sections of the 2nd RDEIR warrant additional specific comments. Some of these specific comments overlap with NMFS' general comment above. In addition, one of these specific comments relates to a new section in the 2nd RDEIR related to climate change. NMFS requests that the State Water Board consider all of NMFS' specific comments on the 2nd RDEIR, which are presented as follows under the specific section numbers of the 2nd RDEIR.

4.7.1.1 Species Accounts – Steelhead/Rainbow Trout (*Oncorhynchus mykiss*)

In addition to citing the estimated annual run size of the steelhead population of the Santa Ynez River, the Final EIR should also note the steelhead and rainbow trout recreational fisheries associated with the Santa Ynez River. Historical records indicate there were large numbers of adult steelhead returning to the Santa Ynez River as recently as 1953 (when Bradbury Dam was completed), and the large number of returns supported a substantial recreational fishery. For example, the U.S. Fish and Wildlife Service reported² that in 1941, 4,375 anglers took 262,000 trout, including adult steelhead in Santa Barbara County, with the greatest number from the Santa Ynez River and the Sisquoc River (tributary to the Santa Maria).

4.7.1.3 Status of Fish Habitat

The discussion and related Table 4-36A (Stream River Miles and Percentage of Potential *O. mykiss* Habitat Quality Assessment) deal only with the Lower Santa Ynez River, and the relatively small (with the exception of Salsipuedes Creek) tributaries of the Lower Santa Ynez River watershed. Because the project for which the 2nd RDEIR has been prepared affects public trust resources, including fishery resources, above and below Bradbury Dam, this section of the

² U.S. Secretary of the Interior. 1948. Cachuma Unit of the Santa Barbara County Project, California. Letter from the Secretary of the Interior transmitting A Report and Finding on the Cachuma Unit of the Santa Barbara County Project, California. April 1, 1948.

2nd RDEIR should also address the status of the fish habitat above Bradbury Dam. NMFS has previously provided the State Water Board with a map of the potential steelhead spawning and rearing habitat within the Santa Ynez River watershed, along with an estimate of potential stream mileage above and below Bradbury Dam. This documentation indicates that only 29% of the potential steelhead spawning and rearing habitat exists below Bradbury Dam, while the remaining 71% exists above Bradbury Dam. It should be noted that the areas above Bradbury Dam generally provide higher quality habitat for spawning and year-round rearing, and are encompassed within the Los Padres National Forest, affording this habitat additional protection.

4.7.2 Potential Impacts of the Alternatives (Southern California Steelhead and Other Fishes)

As noted above in NMFS' general comments, these alternatives are based in whole or in part on the September 2000 biological opinion for Reclamation's Cachuma Project which requires reinitiation of consultation and issuance of a new biological opinion under the ESA. Furthermore, none of these alternatives are based upon the series of fishery related investigations NMFS previously recommended in its October 7, 2003, letter on the first Draft EIR or the February 16, 2004, Closing Brief in Phase II of the State Water Board's Cachuma Project Hearings. Therefore, NMFS is concerned that the alternatives presented in the 2nd RDEIR may not adequately address possible effects to endangered Southern California steelhead, or appropriately protect this public trust resource.

4.12 Climate Change

The 2nd RDEIR includes a new section addressing the potential impact of climate change that was not considered in earlier versions of the DEIR. However, other than a few general references to effects on streamflow and aquatic organisms in general, this section does not deal with specific impacts to steelhead or the resident form of *O. mykiss*. Projected climate change may affect *O. mykiss* in a variety of ways, varying in range and intensity, across various landscape scales and ecosystem types. The biological response is also complex, and as with many species, including Pacific anadromous salmonids, uncertain. While Southern California steelhead have evolved a suite of effective adaptations to a highly variable environment (including multiple paths for completing their life-cycle), the rapid rate of projected climate change presents another challenge to their persistence. This suggests several core principles for guiding the protection and management of Southern California steelhead populations:

- Widen opportunities for fish to be opportunistic (*i.e.*, exploit a variety of habitat types)
- Maximize the connectivity of habitat (*i.e.*, within and between habitats)
- Promote the capability of populations and metapopulations to evolve (*i.e.*, the ability of a population to evolve novel functions, through genetic change and natural selection, that help individual populations survive and reproduce)
- Maintain the management capacity to detect and respond effectively to ecosystem changes as they occur

The over-arching recovery strategy and viability criteria outlined in the draft Southern California Steelhead Recovery Plan apply these core principles to the current climate regime, and should be applied to the projected future climate regime. For the Santa Ynez River, the restoration of ecologically meaningful passage flows and the provision of access to the upstream spawning and rearing habitats, which exhibit both the most diverse and stable habitat conditions within the Santa Ynez River watershed, appears to represent the most effective means of addressing the potential adverse effects of climate change on the anadromous and resident forms of *O. mykiss* within the Santa Ynez River.

4.13 Relationship to Other Plans

4.13.1.1 Bureau of Reclamation – Cachuma Lake Resource Management Plan

The 2nd RDEIR indicates that the fish-stocking program for Cachuma Lake will comply with the requirements of the NMFS Recovery Plan Outline for Southern California Coast Steelhead, and the subsequent Recovery Plan. Neither the Recovery Plan Outline (2007) nor the Draft Recovery Plan are regulatory documents, and neither of these documents provide detailed guidance on fish-stocking practices. However, the Draft Recovery Plan identifies the stocking of non-native fishes (including non-indigenous hatchery reared *O. mykiss*) in coastal watersheds as a potential threat to native steelhead and related resident *O. mykiss*; this threat stems from potential competition and transmission of diseases. Non-native trout that are stocked above dams, such as Bradbury Dam, which present an impassable barrier to upstream migrating fish, can nevertheless pass downstream during periods when the reservoir is spilling, or in some cases when water is released. As a result, the fish-stocking program for Cachuma Lake has the potential to introduce non-native fishes into currently anadromous waters, as well as mix non-native fishes with residualized steelhead existing in tributaries to Cachuma Lake.

4.13.2.1 California Department of Fish and Game

The 2nd RDEIR does not discuss the Steelhead Restoration and Management Plan for California (1996). This plan emphasizes the importance of the steelhead fishery of the Santa Ynez River and included the following statements relevant to the proposed action:

- *DFG will seek a permanent flow regime from Bradbury Dam to restore the steelhead resource to a reasonable level and maintain it in good condition. This includes adequate streamflows for adult and juvenile migration, and mainstem spawning and rearing habitat. USBR recontracting, and [State Water Board] continued jurisdiction hearings ... may present good opportunities to rectify past actions which have resulted in the near extirpation of the Santa Ynez River steelhead and diminishment of public trust resources. ... steelhead runs have been nearly eliminated by water development and actions to restore this public trust resource need to be implemented.*
- *The feasibility of providing adult and juvenile passage around Bradbury Dam should be investigated and implemented accordingly. Nearly all historic spawning and rearing habitat is located upstream of Bradbury Dam ...*

Additionally, the 2nd RDEIR made no reference to the California Fish and Game Code sections, which are relevant to the Consideration of Modifications to the U.S. Bureau of Reclamation's Water Rights 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. Although NMFS does not presume to speak for the California Department of Fish and Game on this subject, NMFS believes that these sections include, but are not limited to, California Fish and Game Codes 5937 (release of water below a dam to maintain fish in good condition), 1601-1603 (diversion or obstruction of natural flows), and 6900-6903.5 (Salmon, Steelhead Trout, and Anadromous Fisheries Program Act).

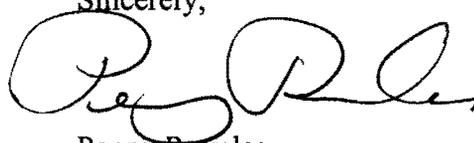
6.3. Environmentally Superior Alternative

The conclusions regarding the environmentally superior alternative are based on the critical assumption that the September 2000 biological opinion provides a level of protection adequate to protect the public trust interests in the Santa Ynez River steelhead resources. As previously discussed in the general comments, the September 2000 biological opinion is currently subject to reinitiated consultation, and the Southern California Steelhead Recovery Plan process is not complete yet. Both of these processes will provide information that the State Water Board should consider in the Final EIR to protect the public trust interests in the Santa Ynez River steelhead resources.

In summary, NMFS believes that the State Water Board should address all of the issues identified in this letter before the Final EIR is entered into the record for the State Water Board's Consideration of Modifications to the U.S. Bureau of Reclamation's Water Rights 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 (Cachuma Reservoir).

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

Sincerely,



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
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Administrative file: 151422SWR2010PR00316

Cachuma Project Phase 2 Hearing
Final Service List
(updated 05/13/2011)

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

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

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

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