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## State Water Resources Control Board

### NOTICE OF OPPORTUNITY TO COMMENT

#### DRAFT ORDER DENYING UNITED STATES BUREAU OF RECLAMATION'S PETITION FOR RECONSIDERATION OF ORDER WR 2019-0148

**NOTICE IS HEREBY GIVEN THAT** the State Water Resources Control Board (State Water Board) will accept written comments on a draft order denying the US Bureau of Reclamation's (Reclamation) petition for reconsideration of Order WR 2019-0148, issued September 17, 2019. Adopted following a series of evidentiary hearings to evaluate change petitions submitted by Reclamation and determine whether additional terms and conditions were necessary to protect public trust resources, Order 2019-0148 updated Reclamation's water rights permits for the Cachuma Project in Santa Barbara County. Term 24(a) of the 2019 Order requires Reclamation to conduct a study to evaluate options for providing Southern California steelhead passage around Bradbury dam.

Following issuance of the Order, Reclamation filed a petition for reconsideration. In its petition, Reclamation contends that Term 24(a) is contrary to federal law because Reclamation lacks the authority to conduct the fish passage study without specific authorization from Congress and because Reclamation is prohibited from preparing a "feasibility report" without specific authorization by law. Further, Reclamation asserts that the 2019 Order improperly relies on a 2016 Draft Biological Opinion (2016 Draft BO) prepared by the National Marine Fisheries Service (NMFS), which was not part of the evidentiary record for the 2019 Order.

The draft reconsideration order denies Reclamation's petition for reconsideration, finding that Term 24(a) is a lawful permit term, that Reclamation does not lack authority to conduct the required passage study, and that Term 24(a) does not require Reclamation to engage in the preparation of a feasibility report. The draft order further determines that the Board referenced the NMFS 2016 Draft BO as an example of scientific information for Reclamation to consider, and that the Board did not rely on the 2016 Draft BO to support findings on contested issues of fact. Finally, the draft order directs Reclamation to complete the fish passage study required under Term 24(a) without further delay.

The State Water Board anticipates considering adoption of the draft order at its Board meeting tentatively scheduled for **Tuesday, May 7, 2024**. The Board will issue a public notice of this meeting at least ten days in advance.

## DOCUMENT AVAILABILITY

The draft order and information related to Order 2019-0148 is available at: [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/hearings/cachuma/](https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/cachuma/) Reclamation's petition for reconsideration is available upon request.

## SUBMISSION OF WRITTEN COMMENTS

Interested persons may submit written comments on the draft reconsideration order to the Clerk to the State Water Board. In order to be fully considered, any comment letters pertaining to the draft order **must be received no later than 12:00 PM (noon) on April 2, 2024**. Comment letters received after that deadline will not be accepted unless the State Water Board determines otherwise. Comment letters less than 15 megabytes should be submitted electronically (via e-mail) in PDF text format to Courtney Tyler, Clerk to the Board, at [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov). Letters may also be faxed to (916) 341-5620 or mailed/hand delivered to:

Courtney Tyler, Clerk to the Board  
State Water Resources Control Board  
P.O. Box 100,  
Sacramento, CA 95812-2000 (mail)

or

1001 I Street, 24<sup>th</sup> Floor,  
Sacramento, CA 95814 (hand delivery)

Please include in the subject line: **“Comment Letter: Cachuma Project Reconsideration Order.”**

During the pendency of this proceeding, there shall be no *ex parte* communications regarding substantive or controversial procedural matters with the scope of the proceeding between State Water Board members and any other participants. (Gov. Code, §§ 11430.10-11430.80.)

**Written comments must be served on the Service List of Parties to Exchange Information in this proceeding as indicated therein. Comments that do not include proof of service upon the service list will not be reviewed until the State Water Board has notified the parties. The Service List is available at:** [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/hearings/cachuma/docs/cachumaservicelist030824.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/cachuma/docs/cachumaservicelist030824.pdf)

Please direct any noncontroversial procedural questions about this notice to Penn Scoble via email at [penn.scoble@waterboards.ca.gov](mailto:penn.scoble@waterboards.ca.gov).

March 8, 2024

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Date

*Courtney Tyler*

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Courtney Tyler  
Clerk to the Board