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 DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
 CHARLTON H. BONHAM, Director



Public Comment
 Cachuma Project Revised Draft Order
 Deadline: 5/29/19 by 12 noon

May 29, 2019

Ms. Jeanine Townsend
 Clerk of the Board
 State Water Resources Control Board
 P.O. Box 100
 Sacramento, CA 95812-0100
commentletters@waterboards.ca.gov



Subject: California Department of Fish and Wildlife (CDFW) Comments on Revised Draft Order Amending the Bureau of Reclamation’s Water Rights Permits 11308 and 11310 for the Cachuma Project (Revised Draft Order)

Dear Ms. Townsend:

Enclosed are CDFW comments regarding the Revised Draft Order amending the Bureau of Reclamation’s (Bureau) Water Rights Permits 11308 and 11310 for the Cachuma Project (Revised Draft Order). CDFW appreciates this opportunity to comment on the Revised Draft Order and urges the State Water Resources Control Board (SWRCB) to adopt a Final Order amending the Bureau’s water rights permits for the Cachuma Project without further delay or additional evidentiary hearings at this time.

CDFW appreciates SWRCB incorporating several of our comments from our December 9, 2016 comment letter. The Revised Draft Order takes steps forward to improve protection of public trust resources in the Santa Ynez River. CDFW recommends that SWRCB incorporate the remaining CDFW comments in the Final Order. These additional revisions and clarifications of the terms are needed for the SWRCB to fully discharge its duty under the Public Trust Doctrine. CDFW’s comments to the Ordering Sections of the Revised Draft Order are attached as Attachment 1 to this letter.

As trustee for the state’s fish and wildlife resources, CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable population of such species. In that capacity, CDFW administers California Endangered Species Act (CESA) and other provisions of the California Fish and Game Code that afford protection to the state’s fish and wildlife resources.

It is CDFW’s goal and responsibility to protect and maintain viable populations of fish and wildlife resources throughout the state. Species and watershed protection, providing fishery access to headwater reaches, and providing adequate instream flows for all life stages of fishery resources are focal points of CDFW’s efforts to retain native populations of fish and wildlife.

The Revised Draft Order only requires flow supplementation in wet and above normal years. The wet and above normal year flows do not fulfill the SWRCB’s obligation under the Public Trust Doctrine or Fish and Game Code section 5937 to keep fish in good condition. CDFW recommends that the Revised Draft Order direct the release or bypass of water during below normal, dry, and critical years in accordance with the 2000 Biological Opinion or any revised

Biological Opinion that may be issued by National Marine Fisheries Service (NMFS). CDFW also recommends that Section 5.3.3.5. (pg. 89-90) include dry and normal rain years in the Revised Draft Order to avoid impacts to steelhead from lack of fish passage and access to habitat above Bradbury Dam.

The Revised Draft Order allows the Bureau to forego implementation of any tributary passage barrier and habitat restoration efforts and excused (Term 15.b. pg.133) the Bureau from implementing barrier fixes in tributaries below Bradbury Dam for steelhead passage that would conflict with the requirements in the 2000 NMFS Biological Opinion. CDFW's specific comments to the Revised Draft Order Term 15.b. (Pg. 133) are designed to require improvements in downstream tributaries.

As a result of extended drought and wildfires, steelhead in southern California have been severely impacted in the past 9 years. As stated in the FEIR, over-summering rearing habitat, water quality, the amount of physical space available, and passage opportunities are limiting factors for steelhead populations in the Santa Ynez River. (FEIR, Vol. II, p. 4.7-45, FEIR, Vol. III, Appendix C, 1999 Biological Assessment, p. 2-34; MU-226, p. 9.) Without access to habitat above Bradbury Dam, at a minimum, more habitat will need to be provided below Bradbury Dam to improve the steelhead population's condition. CDFW recommends that Term 15.c. require the implementation of habitat restoration projects identified in readily available public documents (i.e., Steelhead Migration Barrier Inventory and Recovery Opportunities for the Santa Ynez River, California 2004¹, Santa Ynez River Watershed Report Final Report: May, 2013²) within two years of the Final Order.

CDFW recommends that the SWRCB require the Bureau to restore passage upstream of Bradbury Dam to mitigate for steelhead population decline and impacts associated with inaccessible upstream steelhead habitat that can support essential life history functions to reduce extirpation in the Santa Ynez River watershed.

CDFW recommends updating Table A (pg. 25) to include foothill yellow-legged frog (*Rana boylei*) a species that was designated as a state candidate for listing on June 21, 2017³. During CESA candidacy, a species is afforded protections as a listed species and "take"⁴ is prohibited unless authorized by CDFW pursuant to Fish and Game Code section 2080.1, 2081, subdivision (a) or (b), 2089.6, or 2835, or by the Commission pursuant to Fish and Game Code section 2084.

Term 24 (c) should be amended to delete the element regarding beavers. Beavers have been a part of the Santa Ynez River ecosystem for the past 76 years (prior to construction of Bradbury Dam). Beaver dams have been shown to create holding habitat and benefit growths of salmonids. Additionally, beavers attenuate stream flows and provide instream complexity

¹ Stoecker, M.W. 2004. Steelhead Migration Barrier Inventory and Recovery Opportunities for the Santa Ynez River, Ca. <http://stoeckerecological.com/reports/SantaYnezReport.PDF>

² Block, H. and Francis, A. 2013. Pacific State Marine Fisheries Commission and California Department of Fish and Wildlife. Santa Ynez River Watershed Report: May 2013 https://www.waterboards.ca.gov/centralcoast/water_issues/programs/tmdl/docs/santa_ynez/nutrient_sy_watershed_report_may2013.pdf

³ California Department of Fish and Wildlife. Considerations for Conserving the Foothill Yellow-Legged Frog <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=157562&inline>

⁴ California Fish and Game Code. Pursuant to Fish and Game code section 86, "take" means hunt, pursue, catch, capture, or kill or attempt to hunt, pursue, catch, capture, or kill."

that is often missing in urban or agricultural areas. Studies regarding invasive fish species should be a priority for the Bureau, and beavers here are not an invasive species that require additional studies in the Revised Draft Order.

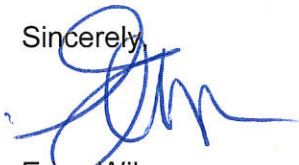
CDFW recommends that a detailed description of a consistent and repeatable monitoring methodology be included in the monitoring plan. The methodology should be able to accurately characterize instream and riparian habitats and distinguish between steelhead, rainbow trout, smolt, migrant fish, and resident fish. A steelhead monitoring, and adaptive management plan needs to assess the population status and trend for the Santa Ynez River steelhead population. The plan should follow the 2011 California Coastal Salmonid Population Monitoring Plan⁵ and provide data that will determine the viability of the steelhead population. The 2011 California Coastal Salmonid Population Monitoring Plan was based on Fish Bulletin 180³ and has identified appropriate sampling protocols that were developed by CDFW and NMFS which includes recent scientific studies that have not been identified in the 2000 Biological Opinion.

The Revised Draft Order states that there is no evidence of record that the City of Santa Barbara's desalination facility is in operation (pg. 86 and 114). The City of Santa Barbara's desalination facility has been in operation since 2017 and has a potential capacity of 10,000 acre-feet a year (AFY), but currently produces 3,125 AFY⁶. CDFW recommends that the SWRCB take official notice of the existence and operation of the City of Santa Barbara's desalination facility and that the final order reflect the desalination facility's 10,000 AFY capacity in the water supply and impacts analysis.

CDFW appreciates the opportunity to comment on the Revised Draft Order and acknowledges this important step the SWRCB is taking in adopting the long-awaited changes to the Bureau's permits to operate the Cachuma Project. CDFW looks forward to working with the Bureau, NMFS, the City of Santa Barbara, Goleta Water District, Montecito Water District, Carpinteria Valley Water District, and the Santa Ynez River Water Conservation District, Improvement District No. 1 (the Member Units), and the SWRCB as these parties go forward and implement the interim conditions in the Revised Draft Order, plan and conduct crucial studies contained in the Draft Order, and ultimately determine more permanent conditions for operation for the Cachuma Project that will achieve full public trust protection pursuant to Fish and Game Code section and the Public Trust Doctrine.

If you have questions regarding this letter and further coordination on these issues, please contact Mary Ngo at (562) 342-2140 and Mary.Ngo@wildlife.ca.gov.

Sincerely,



Erinn Wilson
Environmental Program Manager

⁵ Adams, P.B., Boydston, L.B., Gallagher, S.P., Lacy, M.K., McDonald, T., Shaffer, K.E. 2011. California Coastal Salmonid Population Monitoring: Strategy, Design, and Methods. <https://www.calfish.org/ProgramsData/ConservationandManagement/CaliforniaCoastalMonitoring.aspx> and <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=30284>

⁶ City of Santa Barbara
<https://www.santabarbaraca.gov/gov/depts/pw/resources/system/sources/desalination/default.asp>

Jeanine Townsend
State Water Resources Control Board
May 29, 2019
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cc: Cachuma Project Evidentiary Hearings Service List (updated 03/26/2019)

ec: CDFW
Erinn Wilson, EPMI (Los Alamitos)
Randy Rodriguez, SES-Supervisory (Los Alamitos)
Mary Larson, SES-Supervisory (Los Alamitos)
Mary Ngo, SES-Specialist (Los Alamitos)
Nancee Murray, Attorney IV (Sacramento)

Section 11 of Revised Draft Order	Requested Revisions
15, Pg. 132	<p>The language should be revised to read:</p> <p>Except as otherwise provided in this term and in term 16 below, right holder shall operate and maintain the Cachuma Project and implement conservation measures including but not limited to those described in Revised Section 3 (Proposed Project) of the Biological Assessment for Cachuma Project Operations and the Lower Santa Ynez River, June 2000, and right holder shall comply with all of the Reasonable and Prudent Measures 5 and 7 through 13, set forth at page 68, and the Terms and Conditions, set forth at pages 70–78, in the National Marine Fisheries Service’s (NMFS) Biological Opinion: U.S. Bureau of Reclamation operation and maintenance of the Cachuma Project on the Lower Santa Ynez River in Santa Barbara County, California, September 2000 (2000 Biological Opinion). To prevent any conflicting requirements upon issuance of any new Biological Opinion, the State Water Board’s Executive Director (Executive Director) may modify this term upon request of right holder after receiving the approval of NMFS. Any modification to this term shall be made in accordance with section 780 of title 23 of the California Code of Regulations <u>and in compliance with any new Biological Opinion.</u></p>
15, Pg. 132-133	<p>Previous language should be added back into Term in the Revised Draft Order and should be updated to read:</p> <p><u>The State Water Board reserves authority to modify this term based on any modification to the 2000 Biological Opinion or any revised or subsequent Biological Opinion that may be issued by NMFS.</u></p>
15.c., Pg. 133	<p>The language should be revised to read:</p> <p>Right holder, <u>in coordination with NMFS and CDFW,</u> shall proceed with rescue efforts within a period necessary to prevent steelhead mortality following any flow interruption of the Hilton Creek Watering System. Right holder shall post all flow interruptions of the Hilton Creek Watering System and rescue efforts on a publicly accessible website. <u>Right holder shall begin implementation of habitat restoration projects identified in readily available public documents (i.e. Steelhead Migration Barrier Inventory and Recovery Opportunities for the Santa Ynez River, California 2004, Santa Ynez River Watershed Report Final Report: May, 2013) within two years of the order.</u></p>
16.b., Pg. 134	<p>New language should be added below Table 2:</p> <p><u>During Below Normal, Dry and Critical Years, right holder shall release or bypass water in accordance with the 2000 Biological Opinion, or any revised or subsequent Biological Opinion that may be issued by NMFS.</u></p>

<p>16.g., Pg. 135</p>	<p>A new paragraph should be added as Term 16.g. and should read as follows:</p> <p><u>If after 6 years after implementation of Table 1 and Table 2 the steelhead population has not reached the minimum requirements outlined below, the Board will reopen Permits 11308 and 11310 to determine what alternative flow releases are necessary to comply with the Public Trust Doctrine and Fish and Game Code 5937.</u></p> <p><u>For the six-year period:</u></p> <ol style="list-style-type: none"> 1) <u>With less than three wet or above average water year types (and when the lagoon is open/passable), the average returning adult spawners must be nine and the average number of out-migrating smolts must be at least 12,000.</u> 2) <u>With three or greater wet or above average water year types (and when the lagoon is open/passable), the average returning adult spawners must be at least fifteen and the average number of out-migrating smolts must be at least 18,000.</u>
<p>17, Pg. 136-137</p>	<p>Three new paragraphs should be added after Term 17.1 to read as follows:</p> <p><u>At the first of these consultation meeting, the right holder, CDFW and NMFS shall create a detailed study plan schedule. There are multiple components to the study plan schedule that will require individual studies resulting in data necessary to evaluate fish in good condition.</u></p> <p><u>After consultation with CDFW and NMFS, the right holder must submit a study plan schedule to the Deputy Director within 120 business days from the date of this Order.</u></p> <p><u>All studies and reports described in this Order, unless specifically noted otherwise, must be completed within 3 years from the date of this Order.</u></p>
<p>17.(5), Pg. 136-137</p>	<p>The language should be revised to read:</p> <p><u>In addition to the regular ongoing meetings, right holder shall establish a Biological Advisory Committee (BAC) composed of the right holder, CDFW, NMFS and USFWS and shall hold an annual meeting during each year that studies described in this Order are being conducted. The function of the BAC will be to advise the right holder on the studies and on implementation of the monitoring program. The annual meeting will be held in July, unless a different date is mutually agreed upon in writing. At the annual meeting, right holder must present data collected in the previous year and report progress on each study identified in the approved study plan and compliance with this Order. Each meeting also shall consist of reviewing all steelhead and habitat monitoring data collected in the previous twelve-month period, the summary analysis and trend for all previous year data collections as well as discussing the upcoming year's monitoring studies. Additional meetings shall be scheduled based upon the need to evaluate new information.</u></p>
<p>24.b.(2),</p>	<p>The language should be revised to read:</p>

Pg. 140	Assess the flow conditions necessary to ensure hydrologic connectivity and opportunities for movement between the habitats needed by each stage of the steelhead life cycle, including tributary access, and appropriate channel morphology and sediment transfer, <u>including, but not limited to, stream bank stability, channel incision rates, and perched tributaries</u> that will provide sufficient habitat to keep steelhead in good condition;
24.b.(3), Pg. 140	Term 24.b.(3) should be deleted. A number of studies have already been completed to assess the habitat which has identified needed instream enhancements. The Revised Draft Order should require coordination with CDFW and NMFS and refer to the following studies for implementation: Steelhead Migration Barrier Inventory and Recovery Opportunities for the Santa Ynez River, California (2004) and Santa Ynez River Watershed Report Final Report: May, 2013.
24.b.(4), Pg. 140	The language should be revised to read: Evaluate water quality issues that may impact steelhead including, but not limited to, elevated temperatures, low dissolved oxygen, <u>nutrient loading</u> , and sediment transport and potential measures to address these issues;
24.b.(1) to 24.b.(6), Pg. 140-141	A new subparagraph should be added in Term 24.b to read as follows: <u>Evaluate channel incision (including effects on tributary access) due to the impoundment of sediment behind Bradbury Dam, as well as the direct and indirect effects on channel morphology, fish and wildlife, and appropriate beneficial uses. The evaluation shall include a recommendation and timeline to remediate direct and indirect impacts from the impoundment of sediment behind Bradbury Dam, as well as potential operational changes to facilitate sediment movement through or around the dam, and improve or sustain water quality levels.</u>
24.c., Pg. 141	The third sentence should be deleted as follows: Study and evaluate the effects of predation, particularly by piscivorous (fish-eating) fish, and nonnative species on steelhead in the Santa Ynez River, and measures that could be implemented to reduce the impacts of those species on steelhead in the river. The study shall specifically evaluate the effects of flows, including but not limited to Table 2 Flows, on supporting habitat conditions that reduce predation and the proliferation of nonnative <u>fish</u> species, as well as reasonable measures to prevent the introduction or reintroduction of invasive <u>fish</u> species. In addition, the study shall determine the effects of beaver dams on passage opportunities and distribution of steelhead and measures that could be implemented to reduce any impacts on steelhead in the river from beavers.
26, Pg. 141	The language should be revised to read:

	<p>Right holder shall implement the monitoring program described in the 2000 Revised Biological Assessment <u>or any revised or subsequent Biological Opinion that may be issued by NMFS</u> with consideration of other existing monitoring programs including the California Coastal Salmonid Monitoring Plan <u>to develop at least one life cycle monitoring station to evaluate steelhead and their habitat within the lower Santa Ynez River. This includes biweekly redd (nest) surveys for steelhead during the winter spawning season as well as the development of a steelhead movement study during summer and fall. A passive integrated transponder (PIT) tag study must also be done to assess freshwater productivity. Smolt production must be evaluated by mark – recapture at the weir traps. The monitoring program shall be implemented regardless of which flow requirements are in effect.</u> The Deputy Director may amend the monitoring requirements to require additional monitoring or refine existing requirements.</p>
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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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