



May 29, 2019

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Submitted via email to commentletters@waterboards.ca.gov, hard copy with original signatures to follow

Re: COMMENT LETTER–Cachuma Project Revised Draft Order

Dear Ms. Townsend:

The following comments are submitted by the Environmental Defense Center (“EDC”) on behalf of California Trout (“CalTrout”) urging the State Water Resources Control Board (“Board”) to adopt the Revised Draft Order amending Bureau of Reclamation (“Reclamation”) Permits 11308 and 11310 for the Cachuma Project (“Revised Draft Order”¹), with the exception of the proposed drought off-ramp conditions. CalTrout submits these comments with respect to the protection of fish and public trust resources in the Santa Ynez River. In this letter, we also reiterate some of our recommendations from our comments on the September 7, 2016 Draft Order (“2016 Draft Order”).

CalTrout is a non-profit river conservation organization with a substantial interest in the public trust resources of the Santa Ynez River, including the endangered southern California steelhead (“steelhead”). EDC is a non-profit, public interest law firm that protects and enhances the environment in Santa Barbara, Ventura, and San Luis Obispo Counties through education, advocacy, and legal action. EDC has represented CalTrout in these proceedings since 2000.

Since the construction of Bradbury Dam, the steelhead population in the Santa Ynez River has plummeted by over ninety-nine percent.² Before 1950, steelhead were abundant in the

¹ Citations to the Revised Draft Order are to the tracked changes version released by the Board on March 27, 2019.

² A History of Steelhead and Rainbow Trout (*Oncorhynchus mykiss*) in the Santa Ynez River Watershed, Santa Barbara County, California. Peter S. Alagona, Scott D. Cooper, Mark Capelli, Matthew Stoecker, and Peggy H. Beedle, December 2012.

Santa Ynez River, with an estimated population of 20,000 to 30,000 fish.³ The current estimated run size for the Santa Ynez River, combined with five other rivers and streams, is currently less than 200 fish,⁴ underscoring the species' continuing dire condition under current management efforts.

CalTrout's participation in these proceedings has focused on the protection of steelhead as a public trust resource. During the Board's 2003 Phase 2 Hearing, CalTrout submitted evidence regarding 1) what flow requirements are necessary to protect public trust resources; 2) what other measures are necessary to protect public trust resources; 3) how these measures will affect Reclamation and the Member Units; and 4) what water conservation measures could be implemented to minimize impacts. In our closing brief, we argued that in order to fulfill its public trust objectives, the Board should 1) implement the instream flow schedule identified in Alternative 3A2 of the 1995 Final Cachuma Project Contract Renewal Environmental Impact Statement/Environmental Impact Report ("Contract Renewal EIR/EIS") as modified to reduce flows during dry years ("CalTrout's Alternative 3A2 Modified"), along with a study to verify that these flows improve habitat and steelhead population; 2) require immediate commencement of a comprehensive study to evaluate the feasibility of passage around Bradbury Dam; and 3) require certain additional studies to evaluate what additional water could be made available through water conservation and modifications to the downstream water rights release schedule. In addition, we supported an adaptive management approach to implementation with measurable performance standards.⁵

On December 9, 2016, CalTrout submitted comments to the Board requesting that it revise and adopt its 2016 Draft Order amending Reclamation Permits 11308 and 11310 for the Cachuma Project along with the modified permits 11308 and 11310 ("Draft Amended Permits"), and certify the December 2011 Final Environmental Impact Report,⁶ which evaluates modifications to the Draft Amended Permits. In those comments, CalTrout applauded the Board's recognition of the need for habitat improvements for the critically imperiled remnant population of steelhead in the Santa Ynez River. We supported the fundamental approach of the 2016 Draft Order of requiring an improved flow regime with a study to determine the effects of flows and how flows can be conjunctively used with releases for downstream water users. We fully supported the need for a study of fish passage and additional studies to protect steelhead. We likewise agreed with the Board's conclusion that any impacts on water supply can be feasibly mitigated.

However, we requested certain revisions and clarifications of conditions that were needed to meet the Board's public trust objectives and to ensure the terms and conditions can be meaningfully implemented and enforced. Specifically, as an overarching matter, we requested that the Board 1) further improve flows for steelhead through the adoption of CalTrout's Alternative 3A2 Modified; 2) correct its Order consistent with its public trust responsibilities,

³ NOAA-6.

⁴ NOAA-6.

⁵ CalTrout Closing Brief, p. 1-2.

⁶ Including errata issued April 5, 2012.

which extend *above* Bradbury Dam in addition to *below* the Dam; and 3) make specific modifications and clarifications to the operative Order language, as described in our comment letter.

With the release of the Revised Draft Order, the Board has adopted many of these proposals and made further revisions that only bolster the goal of ensuring the protection of steelhead as a public trust resource. We therefore generally support the Revised Draft Order and request that the Board adopt it at the upcoming hearing. However, the proposed drought off-ramp conditions would undermine protections for steelhead and the very purpose of the Board's Order, and therefore must be rejected. Moreover, the Board did not adopt all of the requested changes from CalTrout's 2016 comments. We urge the Board to address these changes in finalizing the Order. It is critical that beneficial terms in the Revised Draft Order be implemented as soon as possible and thus we do not propose that the Board recirculate another draft.

The below comments address specific changes in the Revised Draft Order, the proposed drought off-ramp conditions, and additional points previously identified in CalTrout's 2016 comments.

I. The Revised Draft Order Provides Necessary Conditions on Reclamation's Permits.

The Revised Draft Order correctly concludes that it is "necessary to protect and improve the critical condition of the remnant Santa Ynez River watershed steelhead population." (Revised Draft Order at 2–3) CalTrout applauds the Board for its recognition of the ample evidence in the record that existing protections are inadequate to protect the species as a public trust resource, and the need to craft terms and conditions designed to meet public trust objectives. The proposed revisions strengthen protections for steelhead and will help clarify implementation of its terms.

A. The Revised Draft Order Includes Ample Support for the Proposed Conditions.

We support the Revised Draft Order's background section with its many references to the record evidencing the dire condition of steelhead and support for needed management changes, as detailed below.

First, we support the changes related to Bradbury Dam and the importance of *above*-dam habitat. As the Revised Draft Order recognizes, the construction and operation of Bradbury Dam is a "critical limiting factor in providing sufficient habitat" for steelhead because it "limits access to habitat above the dam and limits through flow modifications the amount and quality of habitat below the dam." (Revised Draft Order at 89) To this end, we support new language in the Revised Draft Order discussing the significant impact of the operation of Bradbury Dam substantially reducing the amount and quality of habitat available to steelhead. (Revised Draft Order at 48–50, 59); the added language that underscores the importance of "connectivity" of

river habitats and the importance of steelhead migration (Revised Draft at 26, 45, 141); and the new language that identifies the critical importance of “restoring passage around Bradbury Dam” where “the majority of the historic spawning and rearing habitat occurred and still persists” (Revised Draft Order at 68, 59–61). Lastly, the revisions appropriately address protecting the public trust in the Santa Ynez River *above* the dam, in addition to that *below* the dam. For example, the Revised Draft Order states that “71 percent of the potential steelhead spawning and rearing habitat is upstream of Bradbury Dam with 43 miles of habitat in the main-stem river and 248 miles of habitat in the tributaries.” (Revised Draft Order at 59, 50) This change is in line with the Board’s responsibility to remedy the impact of a water diversion on a public trust use or interest (e.g., recreational fishery) whether or not the impact is above or below the diversion,⁷ and to keep steelhead in good condition, in consideration of the species on a *population level*.

Second, we support the Revised Draft Order’s added references to the National Marine Fisheries Service’s (“NMFS”) Southern California Steelhead Recovery Plan (“Recovery Plan”). The Recovery Plan includes more current scientific information necessary to guide Reclamation in its requirement to keep steelhead and other native species in good condition pursuant to Fish and Game Code Section 5937 and to protect public trust resources. (Revised Draft Order at 35, 36, 50, 55, 94, and 140) In addition, future updates to the Recovery Plan and/or 5 year status reviews can help inform current scientific information in protecting steelhead as a public trust resource.

Third, we support the background language related to the adequacy and monitoring of in-stream flows. The Revised Draft Order now includes language which appropriately highlights fishery biologist Bill Trush’s testimony concluding that the “flows implemented under the 2000 Biological Opinion are not adequate to result in a viable steelhead population.” (Revised Draft Order at 66) The Revised Draft Order now cites to Trush, who concludes that “given the implementation of the 2000 Biological Opinion for 16 years without any measurable increase in the adult steelhead population, the 2000 Biological Opinion would not by itself be sufficient to protect steelhead as a public resource.” (*Id.*) We also support new language in the Revised Draft Order addressing the methods for gauging flows and maintaining a continuous daily record of flows at Highway 154. (Revised Draft Order at 31)

Fourth, we support the Revised Draft Order’s new language concerning the significant problems with exotic fish in the Santa Ynez River. These exotic fish are repeatedly introduced into the River as a result of the current operations of the Cachuma Project, significantly harming public trust resources in the River. (Revised Draft Order at 51, 97, 142–43)

Fifth, we support the Revised Draft Order’s new references to the work of the Pacific Institute, entered into the record by EDC and CalTrout, which identified an additional 5,000–7,000 acre feet (“AF”) per year of water that can be conserved utilizing existing, cost-effective water efficiency technologies, substantially lessening any potential water supply impacts of the Project. (Revised Draft Order at 82)

⁷ *Nat’l Audubon Soc’y v. Superior Court* (1983) 33 Cal. 3d 419, 446.

Finally, the Revised Draft Order importantly provides that the “Santa Ynez River, including Lake Cachuma and tributaries (including Hilton Creek), will have a beneficial use designation of Fish and Wildlife Conservation.” (Revised Draft Order at 89 fn. 57, 129)

All of these changes are appropriate because they will help ensure the protection of steelhead as a public trust resource and are designed to restore the species to good condition.

B. The Revised Draft Order’s Conditions Are Appropriately Modified to Protect Steelhead.

The Revised Draft Order contains revisions that will help implement the Board’s public trust and other state law mandates by providing for significant habitat improvements for steelhead. We address some of these conditions in order below.

Condition 15: Table 1 Flows

We support the clarification related to “total water stored” in the reservoir. (Revised Draft Order at 133) The Biological Opinion (“BiOp”) was ambiguous on this point; it did not define water stored as “total” or “project” water, leading to confusion about when different target flows apply. The new language in the Revised Draft Order clarifies this point.

We also support the Revised Draft Order’s revisions to Condition 15 which require timely “rescue efforts” as well as posting of all Hilton Creek flow interruptions on a public website. (Revised Draft Order at 135) In addition, we support the Revised Draft Order’s language which requires posting of any flow reductions, related harms, and timing of reductions on a public website. (*Id.*)

Condition 16: Table 2 Flows

We support the new language that provides for the posting on a “publicly available website the determination by CDFW and NMFS that flows will be modified,” including the reasoning and expected duration of modification. (Revised Draft Order at 135)

In addition, the revision deleting language at page 136 is essential to ensuring a meaningful Order and we fully support this change. This Condition as previously drafted would have allowed California Department of Fish and Wildlife (“CDFW”), NMFS *or Member Units alone* to demonstrate to the Executive Director that flows “will not benefit the fishery or are likely to harm the fishery” (Revised Draft Order at 136), which could result in a *long-term* modification of the requirement to meet Table 2 flows. This provision was inappropriate because it undermined the evidentiary, public, proceedings through which the Board determined that Alternative 5C flows are likely to benefit steelhead and are feasible; would allow for long-term or permanent modifications with no safeguards to ensure that the Table 2 flows will ever be restored; and would allow Member Units alone to invoke this process to change Table 2 Flows,

even though the expert wildlife agencies CDFW and NMFS possess the appropriate expertise to make this showing. Therefore, it is critical that this provision remain excluded from the Order.

Condition 17: Consultation with CDFW and NMFS

We support the additional requirement that Reclamation consult with CDFW and NMFS “[f]or all draft and final plans, studies, and reports required by this Order” and the corresponding timelines for this process. (Revised Draft Order at 137) We also support the important requirement that Reclamation meet with CDFW and NMFS annually. (*Id.* at 138) This consultation with the expert wildlife agencies will help ensure appropriate management of steelhead.

Conditions 20, 21, and 22: Study Plan

We support the requirement to post all reports on a public website and to “develop and submit a final report within a year after completion that summarizes all of the findings of the above reports and identifies specific measures that could be implemented to achieve good condition” of steelhead. (Revised Draft Order at 140)

We also support the new language in Condition 20 requiring that the study plan identify proposed deadlines for completing “draft reports of the findings of the studies for review and comment by CDFW and NMFS.” (Revised Draft Order at 139)

Condition 24: Other Studies to Ensure Good Condition

We support modifications to Conditions 24 and 25 with respect to the scope, nature, and methods of studies required in the Revised Draft Order. These studies, including the fish passage study, are essential to the Order. The modifications serve to clarify Reclamation’s corresponding responsibilities on these critical studies.

Specifically, it is appropriate to require studies to be informed by “current scientific information” on steelhead, including the 2012 Recovery Plan. (Revised Draft Order at 140) CalTrout supports the requirement to report on the results of the fish passage study within 24 months of the date of the Order—which is a critical change from the previous Draft Order which would have left Reclamation with the discretion to create a deadline. (*Id.* at 141) In addition, future updates to the Recovery Plan and/or 5 year status reviews likewise will constitute current scientific information to be used to protect steelhead as a public trust resource.

Another important change to this section is the deletion of the ability to “defer the remaining studies pending completion of the passage study.” (Revised Draft Order at 121–22) This optional delay could have meant that important studies in the rest of the Order might never occur. While fish passage is incredibly important and has been a focus of CalTrout throughout the proceedings, the additional studies address aspects separate from fish passage that may be necessary to protect the species as a public trust resource, even if passage is successful, and thus

must not be delayed.

We likewise support the broader scope of the instream flow study which must look at not only flows but “conditions” necessary to keep the watershed in good condition. This assessment of change in stream habitat complexity in relation to flow conditions and steelhead life cycle stages must be included in the Order. We therefore support the Revised Draft Order’s requirement that the study must include “both flow and non-flow measures” and focus on: 1) each stage of the steelhead life cycle and evaluating “needed frequency, duration, timing, and rate of change of flows for protection of steelhead and other native species;” 2) hydrologic connectivity and “opportunities for movement between the habitats;” and 3) “instream or streamside habitat restoration and the potential effects” on habitat in relation to flow. (Revised Draft Order at 141–42) These additions are critical to ensuring protection of public trust resources in the Santa Ynez River system.

We support the modified language at Condition 24(c) concerning studying the effects of predation and nonnative species on steelhead, and particularly requiring that the studies must evaluate the effect of flows, including Table 2 flows, “on supporting habitat conditions that reduce predation and the proliferation of nonnative species, as well as reasonable measures to prevent the introduction or reintroduction of invasive species.” (Revised Draft Order at 142) This condition is important to addressing the negative impacts from nonnative species on steelhead, as explained in the Revised Draft Order background language. (Revised Draft Order at 97) We similarly support these revisions which adopt a broader focus of addressing predation and other nonnative species, not just the presence of exotic species. (*Id.*; *see also* Revised Draft Order at 51, 58)

Conditions 25, 26, and 27: Monitoring and Reporting

With respect to the conditions related to monitoring and reporting, we support the addition that instream flow records must be available daily on a public website “on as close to a real-time basis as feasible” and that the monitoring program must include “consideration of other existing monitoring programs.” (Revised Draft Order at 143) Finally, we support the requirement that “all supporting data” in addition to reports must be submitted to the Deputy Director and posted on a public website. (*Id.*) These provisions will help prevent delay in the submittal of this important data and promote transparency and public access to this information.

Condition 29: Modification of the Order

We support the Board’s reservation of its continuing authority to modify the Order in conformity with any future BiOp. However, this provision should be revised to clarify that the Board may not weaken the Order to be consistent with a BiOp, in the event that a future BiOp is less protective of steelhead. This is necessary to ensure the Order provides for protection of steelhead in good condition and as a public trust resource, while a BiOp is designed pursuant to a separate standard of avoiding jeopardizing the continued existence of the species.⁸

⁸ 16 U.S.C. § 1536 (a)(2).

Condition 30: Notice Regarding Violations

We support the public posting of any notification that the right holder anticipates a violation of the Order. (Revised Draft Order at 144)

Conditions 31 and 32: Compliance with Other Laws

We support the new language on requirements to comply with the Endangered Species Act (“ESA”) and California Environmental Quality Act (“CEQA”). (Revised Draft Order at 144–45)

Conditions 12 and 34: Reducing Water Demand

We support the new language regarding reducing water demand, with one suggested revision. Condition 34 requires Reclamation to modify its 1996 contract with the Santa Barbara County Water Agency, if necessary, to require the Member Units to implement their water demand management measures contained in their Urban Water Management Plans (“UWMPs”). (Revised Draft Order at 146) The Revised Draft Order importantly provides for oversight of this process by requiring the submittal of annual status reports “describing efforts to negotiate a new contract” and reserving authority to amend Reclamation’s permits to “achieve water use reductions comparable to the Member Units’ water demand management measures” while also delegating “that authority to the Deputy Director.” (*Id.* at 145) In addition, it requires submittal of annual status reports describing efforts “to make new water supplies and conserved water available to the Member Units.” (*Id.* at 145–46) These revisions will help ensure that the intent of the Condition is met and water supply impacts are minimized.

However—rather than simply reserving the authority to modify Reclamation’s permits if it does not achieve a modified contract by December 31, 2020, the order should *require* revision of Reclamation’s permits to achieve comparable water use reductions.

We likewise support the additional language in new Condition 12 that, “[u]rban water suppliers must comply with the Urban Water Management Planning Act (Wat Code, § 10610 et seq.)” This revision will help ensure water is conserved and will substantially lessen and mitigate any possible water supply impacts. (Revised Draft Order at 131)

C. The CEQA Findings Are Appropriately Revised to Address Mitigation of Water Supply Impacts.

We support the new language in the Revised Draft Order with respect to the CEQA Findings. The Findings state that “[c]hanges or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.”⁹ Support for this Finding includes: 1) the Board’s authority to adopt

⁹ CEQA Guidelines § 15091(a)(1).

emergency conservation regulations in the future; and 2) the statement that the Board will require Reclamation to require the Member Units to implement the water demand management measures identified as part of the water shortage contingency analyses in their UWMPs, to address potential water supply impacts. (Revised Draft Order at 118–19)

The Revised Draft Order provides clarification on how the second finding above will be implemented by reserving the Deputy Director’s authority to modify Reclamation’s permits to achieve comparable water use reductions to the Member Units’ water demand management measures” and explicitly delegates that authority to the Deputy Director. (Revised Draft Order at 118–19) This same approach is incorporated into the operative language of the Order at Condition 34. As noted above, however, in order to make this Finding, Condition 34 must *require* permit modifications, rather than simply reserve jurisdiction to make those modifications. With these revisions, the Board will have demonstrated with substantial evidence that this Condition would avoid or substantially lessen potentially significant impacts to water supply.

D. The Statement of Overriding Considerations Was Appropriately Revised to Clarify the Benefits of Alternative 5C.

We support the Revised Draft Order’s additional language clarifying the CEQA Statement of Overriding Considerations, and the Order’s ongoing conclusion that “the benefits of Alternative 5C outweigh any significant and unavoidable environmental impacts attributable to water supply shortages that may result from this action.” (Revised Draft Order at 123) Specifically, we support the revisions citing to the evidence supporting the importance of “juvenile rearing habitat” and explaining how Alternative 5C is likely to provide such habitat. (*Id.*) This section focuses on the need for changes in order to promote “good condition”—however, it should also note that such changes are necessary to protect steelhead as a public trust resource.

Numerous other public benefits of Alternative 5C override any potential adverse impacts of Alternative 5C. Additional overriding considerations include benefits to other common and uncommon species living in and near the River, benefits to water quality in the River and estuary (e.g., dissolved oxygen), recreational benefits enjoyed by people who recreate in and along the River (e.g., swimming, canoeing, birding, hiking, photography, etc.), and aesthetic benefits.

E. The Mitigation, Monitoring, and Reporting Program Was Revised to Ensure Proper Mitigation of Potential Water Supply Impacts.

The Board relies on the new Condition 34 requirement that Reclamation will require the Member Units to implement the water demand management measures identified as part of the urban water shortage contingency analysis contained in their UWMPs. (Revised Draft Order at 124) The Revised Draft Order includes new language that will help ensure that potential impacts are avoided or substantially lessened. Specifically, the Revised Draft Order now explains that if

Reclamation does not succeed in amending its contract, its permits can be further amended to “achieve comparable water use reductions” and that Reclamation is required to provide “annual status updates on conservation efforts” (Revised Draft Order at 124). However, as noted above, the Board should *require* such amendment rather than simply reserve the right to amend. The Revised Draft Order also contains a new revision that explains Reclamation’s legal requirement to comply with state law with respect to this provision. (*Id.* at fn. 68) With these revisions, the Board will have demonstrated that mitigation measures are fully enforceable in accordance with CEQA Guidelines section 15126.4(a)(2).

II. The Drought Off-Ramp Alternatives Must be Rejected.

The proposed drought off-ramp alternatives would harm steelhead, violate the Public Trust Doctrine, and fail to maintain steelhead in good condition as required by law. (Revised Draft Order at Attachment D) As discussed below, these alternatives would undermine the very purposes of the Order and must be rejected in their entirety.

As an initial matter, these alternatives are not needed to mitigate impacts under CEQA because the Board has already found that any potential water supply impacts are substantially mitigated by conservation and alternative measures cited in the Revised Draft Order. Moreover, these new changes would harm steelhead and result in a new significant environmental impact or in a substantial increase in the severity of an impact, thus necessitating recirculation of the Environmental Impact Report.¹⁰ This would result in further costly delays that would exacerbate the harm to steelhead in the Santa Ynez River.

Most importantly, the Board should not entertain these alternatives because they would fail to satisfy the Board’s public trust objectives and duty to keep steelhead in good condition, as explained below:

Alternative 1

Alternative 1 would allow Reclamation to request a temporary change in the definition of “Above Normal” Water Year from a minimum of 33,707 AF (measured as inflow to Cachuma) to a minimum of 70,000 AF of inflow for Above Normal Water Years immediately following a Qualifying Drought Event (“QDE”) as defined. (Revised Draft Order at Attachment D) The following chart demonstrates the effect on water year classification, and hence water releases, that would result under this alternative:

<u>Water Year Classes Index (Cachuma Res. Inflow)</u>	
Wet	> 117,842
Above Normal	≤ 117,842 > 33,707 <u>70,000</u>
Below Normal	33,707 < or = <u>70,000</u> > 15,366
Dry	≤ 15,366 > 4,550
Critical	≤ 4,550

¹⁰ See CEQA Guidelines § 15088.5.

In essence, it could take an above-average year slightly drier than 2018 to 2019 (e.g., <70,000 AF of inflow compared to 92,995 AF of inflow in 2018/2019)¹¹ following a year in which the reservoir was below 30,000 AF in storage and treat it as a *below*-normal year so that steelhead would not get the benefits of Table 2 flows in most rainy years following a QDE. It would have the effect of forcing steelhead to survive an additional drought year. Instead, steelhead would be stuck with the inadequate 2000 BiOp flows during years when the reservoir storage goes from <30,000 AF to upwards of 45,000–100,000 AF. These are the very years when steelhead require adequate flows because, coming out of drought conditions (<30,000), the steelhead population will be depressed due to lack of rainfall in preceding years and will require adequate flows to rebuild their population to avoid extirpation and achieve good condition.

Alternative 2

Alternative 2 is identical to Alternative 1 except that no request would be required, and the temporary change would automatically occur, substantially increasing the number of years when the 2000 BiOp flows would be implemented, and proportionately reducing the number of years Table 2 flows would be implemented. (Revised Draft Order at Attachment D)

Both of these alternatives must be rejected because they would fail to protect steelhead as a public trust resource. These off-ramp alternatives would substantially increase the number of years when the 2000 BiOp would control flows and correspondingly reduce the number of years when the Table 2 flows would be implemented. However, as the Revised Draft Order explains in detail, the 2000 BiOp flows have been shown to be inadequate to protect steelhead and comply with the Public Trust Doctrine or Fish and Game Code.

Moreover, the off-ramp alternatives would deprive steelhead of necessary flows in years they need them the most. Above normal years following droughts are exactly when steelhead run, and thus it is during these wet years following droughts that Reclamation most needs to implement Table 2. This is critical for steelhead to recover as a population from the effects of drought, and to be maintained in good condition.

In fact, the consequences of these alternatives would only be intensified by climate change. In a future with climate change bringing more extreme weather and drought patterns, the occurrence of above normal years following QDEs will become more and more common. This means that the 2000 BiOp flows would become more and more common and that Table 2 Flows would become less and less common.

Therefore, both alternatives must be rejected.

¹¹ Santa Barbara County Rainfall Report, *available here*
<https://www.countyofsb.org/uploadedFiles/pwd/Content/Water/Documents/rainfallreport.pdf>

III. The Board Should Adopt Additional Revisions Necessary to Protect Steelhead.

CalTrout incorporates its comments on the 2016 Draft Order herein by reference. To the extent any of our previous concerns have not been addressed by these revisions, we request additional revisions be adopted as part of the final Order. The below discussion highlights changes to the 2016 Draft Order that CalTrout sought but which were not made, and which remain significant issues.

CalTrout Alternative 3A2 Modified

The Revised Draft Order would require implementation of Alternative 5C. However, Alternative 5C would increase flows in only 40% of the year types (wet and above average) and would implement the inadequate 2000 BiOp flows in 60% of the year types (below average, dry, and critical, but not above average or wet). By comparison, Alternative 3A2 would increase flows in 80% of the year types while implementing the 2000 BiOp flows in the driest 20% of year types. The 2000 BiOp flows have proven inadequate to protect steelhead as a public trust resource over nearly two decades. Continuing to implement these deficient flows in 60% of the year types as proposed under the Revised Draft Order would not protect steelhead as a public trust resource.

Therefore, we request that the Board adopt CalTrout's Alternative 3A2 modified, as explained in our comments on the 2016 Draft Order. This flow regime is best designed to keep steelhead in good condition and to protect Santa Ynez River public trust resources.

Table 1 Flows / 2000 BiOp Flows

Condition 15 of the Revised Draft Order requires Reclamation to operate and maintain the Cachuma Project in accordance with the description of the proposed action in the 2000 Biological Assessment and sets forth Table 1 to help achieve this. (Revised Draft Order at 132-33) However, Table 1 flows are inconsistent with and lesser than the 2000 BiOp flows for Alisal Bridge and would not maintain steelhead in good condition or protect steelhead as a public trust resource. Table 1 of the Revised Draft Order still requires 1.5 cfs flow at Alisal Bridge only when (a) there was a spill exceeding 20,000 AF *the prior year*, and (b) steelhead are present in the Alisal reach. (Revised Draft Order at 133) However, the 2000 BiOp requires 1.5 cfs at Alisal Bridge both the year after a spill exceeding 20,000 AF if steelhead are present, *and the year of a spill exceeding 20,000 AF* if steelhead are present. Given this unintended inconsistency between the Revised Draft Order Table 1 flows and the 2000 BiOp flows, CalTrout requests that, prior to adoption, the Board clarify that Revised Draft Order Table 1 requires 1.5 cfs flow at Alisal Bridge both during the years following spills exceeding 20,000 AF when steelhead are present, and *during years in which spills exceed 20,000 AF* and steelhead are present. Absent the 1.5 cfs flow rate in the years of spills exceeding 20,000 AF, there will be inadequate flows to rear young fish, and steelhead will not be protected or kept in good condition.

Conjunctive Use of WRO-89-18 Water Rights Releases

Condition 19(5) of the Revised Draft Order was modified to require Reclamation to confer with interested parties regarding the above Narrows and/or below Narrows accounts. (Revised Draft Order at 139) However, this study and the study outlined in Term 24(b)(6) must also include an analysis of timing Water Rights Order 89-18 (“WRO 89-18”) water rights releases according to a schedule that benefits, instead of harms, steelhead. CalTrout believes that the water rights releases could concurrently recharge aquifers and benefit steelhead if they were made according to more of a natural river hydrograph (i.e., higher in spring and early summer and tapering off over fall, instead of large pulses during the middle of the dry season). The Board should require studies of using WRO 89-18 water releases conjunctively to concurrently keep steelhead in good condition and benefit the species as a public trust resource.

Similarly, the Revised Draft Order requires evaluation of changing the timing of WRO 89-18’s water rights releases. (Revised Draft Order Term 142, Condition 24(b)(6)) However, this condition should clarify that the evaluation will include an assessment of the timing of the WRO 89-18 releases and whether those releases can be made during times when steelhead would benefit. Specifically, this condition should state: “Evaluate whether the timing of releases made pursuant to WRO 89-18 should be revised to utilize that water in a way that protects steelhead.”

We request that the Board modify the Revised Draft Order in light of these comments and issue a final Order.

IV. Conclusion

For the above stated reasons, we urge the Board to adopt its Revised Draft Order, excluding the proposed drought off-ramp conditions and considering the additional recommendations set forth above, in order to protect the critically imperiled population of steelhead in the Santa Ynez River. Thank you for considering our comments on this matter.

Sincerely,



Margaret M. Hall
Staff Attorney



Brian Trautwein
Environmental Analyst/Watershed Program
Coordinator

cc: Cachuma Project Evidentiary Hearings Service List (updated 03/26/2019)

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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