

COUNTY OF SANTA BARBARA



STATE WATER RESOURCES
CONTROL BOARD

2003 OCT -7 PM 2:35

WATER RIGHTS
SACRAMENTO

October 6, 2003

Mr. Andrew Fecko
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

Re: Comments on Draft EIR for Modifications to Bureau of Reclamation Water Right Permits 11308 and 11310 (Cachuma Reservoir)

Dear Mr. Fecko:

This letter transmits comment from staff of the County of Santa Barbara (the "County") on the Draft Environmental Impact Report ("DEIR") prepared for the Consideration of Modifications to the U.S. Bureau of Reclamation's Water Right 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) (the "Cachuma Project Water Rights").

As participants in the Memorandum of Understanding for fish studies and implementation of the Plan, we appreciate the efforts of the Cachuma Member Units to protect and enhance fish resources in the lower Santa Ynez River. The County also understands and supports the three major public policies underlying the DEIR: 1) ensuring a reliable water supply; 2) protecting endangered species; and 3) protecting public recreation and related public trust resources at the lake and river. We understand the challenges faced by the involved public agencies in balancing the sometimes competing interests in these public policy areas. We also believe that local solutions, developed within broad state and federal policy direction, are most effective in achieving such balance and thus best serve the public interest. In light of this perspective, we have reviewed the DEIR and submit the following comments regarding that document and the State Water Board's pending review of the Water Right Permits.

In order to most effectively, fairly, and efficiently balance the interests affected by implementation of the Plan, the County recommends the State Water Board approve a phased surcharge of Lake Cachuma from 0.75 feet to 1.8 feet, ultimately reaching the full 3.0-foot surcharge as County Park facilities are modified. This phased alternative would avoid impacts to public recreation, minimize risk to water supply, and provide sufficient water to implement the Plan. This alternative would best achieve a balancing of the three major public interests affected

by implementation of the Plan. The County urges the State Water Board to clearly identify this phased surcharge as the preferred alternative in the Final EIR.

Interagency Coordination

Implementation of the Lower Santa Ynez River Fish Management Plan and Cachuma Project Biological Opinion for Southern Steelhead Trout (the "Plan") involves many agencies and affects a variety of competing public interests. The State Water Board must first approve modifications to the U.S. Bureau of Reclamation's (the "Bureau") Water Right Permits to allow the Bureau to modify water releases from Lake Cachuma in order to implement the Plan. The State Water Board's role in the determination of water rights is necessary to protect affected water rights and public trust resources. After such permits are secured, the Cachuma Operations and Maintenance Board ("COMB"), a joint powers authority that maintains and operates the Cachuma Project, will have responsibility for actual surcharge operations and implementation of the Plan. COMB and the Bureau cannot unilaterally implement the Plan unless and until they receive the State Water Board's explicit approval of the Bureau's Water Right Permits.

As the State Water Board is no doubt aware, the COMB and the Bureau have already prepared a separate environmental document analyzing the environmental impacts associated with implementation of the Plan. Despite the interrelation of the Plan and the Water Right Permits, COMB/Bureau and the State Water Board released two separate major environmental review documents, each analyzing activities that substantially overlap under the auspices of Plan implementation.¹ We believe public and affected agencies may therefore be frustrated in their attempts to participate fully in the environmental review of implementation of the Plan. This is a concern for two reasons: 1) public support is essential for implementation of major elements of the Plan, and 2) significant impacts to public recreation and biological resources will occur from the proposed modifications to the Permits.

In response to the Notice of Preparation released in October 2001, both the County and the State Water Board urged COMB to take action that would have led to a less confusing environmental review process. Specifically, the County urged preparation of the COMB/Bureau EIR/S to be done through a coordination committee, and the State Water Board urged COMB and the Bureau to abandon preparation of their separate DEIR/S and instead tier off the State Water Board's EIR, or at the very least delay release of the Plan DEIR/S until completion of the State's EIR was completed. (See Letter from Jennifer Briggs, Phillip M. Demery, and John Patton, County of Santa Barbara, to Kate Rees, COMB, dated November 8, 2001, attached hereto as Attachment A; and Letter from Edward C. Anton, State Water Board, to Kate Rees, COMB, dated November 9, 2001, attached hereto as Attachment B.) Although the State Water Board's EIR now states that "Reclamation and COMB are preparing a joint EIR/EIS for implementation of the Biological Opinion and Fish Management Plan non-flow related habitat enhancements for

¹ The State Water Board DEIR was released on August 8, 2003, and the DEIR/S prepared for the Plan was released by COMB and the Bureau on July 22, 2003.

those projects where there is sufficient information" (DEIR, at p. 4-4), the County concurs with the State Water Board's position as set forth in Attachment B.

Nevertheless, COMB and the Bureau proceeded to work independently of the County and the State Water Board, each of which qualify as lead and responsible agencies under CEQA and cooperating agencies under NEPA. (40 C.F.R. §§ 1501.6, 1508.5; *NEPA's Forty Most Asked Questions*, published by the CEQ, Nos. 14(a), (b), and (c); *Designation of Non-Federal Agencies to Be Cooperating Agencies in Implementing the Procedural Requirements of NEPA*, dated July 28, 1999; *Cooperating Agencies in Implementing the Procedural Requirements of NEPA*, dated January 30, 2002; Bureau of Reclamation NEPA Handbook, Public Review Draft (2000), at 3-11; Department of Interior NEPA Manual at 1.2(E), 1.5(A)(1); Pub. Res. Code § 21069; CEQA Guidelines § 15381.) The State Water Board's statements regarding the scope of the COMB/Bureau DEIR/S notwithstanding, the COMB/Bureau document discusses the impacts of releases for fish habitat enhancement and potential sources for this water, including reservoir surcharge. As a result, the scope of COMB and the Bureau's environmental analysis of the Plan overlaps with the State Water Board's DEIR, and the analysis in the COMB/Bureau DEIR/S is not consistent with the analysis and conclusions reached in the DEIR released by the State Water Board. County staff has had to spend considerable effort to compare the proposed activities and environmental impacts described in each document. While we recognize that State Water Board has acknowledged this problem and alerted COMB and the Bureau to their position, we wish to reiterate our concerns that this process undermines the public's ability to sort out the proposed actions, the agencies responsible, or the full panoply of the potential impacts of the Plan and the Permits so as to participate in the process in a meaningful and constructive manner. The County views interagency coordination as an essential element of optimizing public services, in general, and in particular, meeting the public policy challenges presented by the proposed project.

COMB and the Bureau assert that the County bears sole responsibility for relocating over \$12 million worth of recreational and water treatment facilities as a direct result of the implementation of the Plan, a feat which cannot be accomplished within the identified timeline for implementation of the Plan. As the State Water Board's DEIR recognizes, these impacts to the park facilities and public trust resources are direct and foreseeable significant impacts of Plan implementation and modification of the Water Rights Permits. If County must relocate its facilities as a direct and foreseeable result of approval of the Water Right Permits and implementation of the Plan, the environmental document prepared for those actions must be sufficient for the County to rely on when accomplishing its relocation activities. COMB and the Bureau do not recognize these impacts as significant, and do not analyze or discuss the feasible mitigation and alternatives available to avoid or reduce these significant impacts. (See Letter from Terri Maus-Nisich, Phillip M. Demery, and Valentin Alexeeff, County of Santa Barbara, to Kate Rees, COMB, and David Young, Bureau of Reclamation, dated September 29, 2003, attached hereto as Attachment C.) The County urges the State Water Board to appropriately consider these significant impacts, and the feasible mitigation or alternatives available to avoid such impacts, in making their determination on the Water Rights Permits.

Project Description and Impacts Analysis

Proposed Project

Although the DEIR describes the proposed project and each alternative, it is difficult to visualize the expanded lake surface that would result under any of the scenarios. Such a graphic representation in the DEIR would help the public, affected agencies, and the State Water Board evaluate potential impacts to resources at the lake. A map (such as a line superimposed on an aerial photograph) showing the present and future areas covered by the lake under each alternative would be useful to determine the extent of impacts and the potential for mitigation.

Any proposed surcharge alternative needs to include explicit limitations based on the County Water Agency's evaluation and Bureau concurrence of winter storm probability. (DEIR, at p. 4-10.) Both the Modified Winter Storm Operations and the current surcharge capability are based, in part, on evaluation by the Bureau's Technical Services Center in Denver, Colorado. The Bureau has concurred that surcharge may be done safely beginning April 15, effectively establishing a seasonal rule curve for Cachuma Reservoir. We suggest the State Water Board not modify this limitation without the concurrence of the Bureau, since Bradbury Dam is a federal facility and not subject to state Safety of Dams regulations.

Overview of Impact Assessment

The DEIR indicates that neither the proposed project nor any of the alternatives will have any impacts on visual resources, and excludes this issue area from analysis in the DEIR. Please confirm that these impacts were analyzed in the Initial Study prepared for the Water Right Permits and found not to be significant. If not, the DEIR should include a discussion of the potential impacts to the aesthetics of the shoreline of the lake resulting from changes in the level of the lake under the proposed project and many of the alternatives. The resulting removal or death of trees and other vegetation, or the presence of a wider span of barren foreshore or exposed lake-bed when water levels are low, may be seen from Highway 154 (a state-designated scenic highway), the vista point on Highway 154, the surface of the lake, or the two County parks. Simulated before and after photos taken from these public vantage points and related visual impacts discussion should be included in the EIR in order for the public, affected agencies, and the State Water Board to evaluate the potential visual impacts and impose appropriate mitigation.

The DEIR also indicates that neither the proposed project nor any of the alternatives will have any impacts on land use, and also excludes this issue area from analysis in the DEIR. CEQA requires that a project identify and discuss inconsistencies with any relevant local or regional plans (CEQA Guidelines § 15125(d).) Again, please confirm that the Water Right Permits consistency with any relevant local or regional plans was analyzed in the Initial Study prepared for the proposed project and that the project conforms to County plans and policies. If not, the DEIR should include a discussion of the consistency of the project and the alternatives with the County's Comprehensive Plan, including that Plan's land use, conservation, safety,

agricultural, and scenic highway policies. A selection of some of these policies is provided in Attachment D. Please note that the Board of Supervisors adopted an Oak Tree Protection Program in April 2003. The requirements of that program are discussed in conjunction with impacts to oak trees, below.

Surcharge Water Levels

Providing a clear, consistent description of the proposed lake surcharge and shoreline impacts resulting from granting the Water Rights Permits and allowing for implementation of the Plan is the most critical aspect of the EIR analysis. Unfortunately, the identified surcharge level varies throughout the document. In Section 4.2 (Surface Water Hydrology), the DEIR acknowledges that the current maximum lake level of 750.75 feet would be exceeded 11% of the time (once every 3 years), and that the median number of consecutive months at or above a lake elevation of 750 feet is four (4) months, while the level under other alternatives varies from 9% to 16% and 3 to 5 months. (DEIR, at pp. 4-17, 4-18.) However, in Section 4.10 (Recreation), the DEIR states that the maximum lake level would be exceeded 11% of the time for a median of 4 months for all alternatives. (DEIR, at p. 4-141.) Further, in the Cultural Resources impacts analysis section, the DEIR recognizes that the area for potential effect could be 753 feet **plus an additional seven (7) feet** "that may occur during peaks in runoff during exceptionally high flow events." (DEIR, at p. 4-163.) Although the DEIR indicates flows above 753 would be anticipated to be short-term, even temporary flows of this height would have disastrous consequences for relocated County facilities. Indeed, in Section 4.10 of the DEIR, the analysis indicates that critical County facilities are expected to be relocated to 758 feet to accommodate a worst-case scenario of a 5-foot surcharge. (DEIR, at p. 4-142.) If instead surcharges up to 7 feet are anticipated, even only under short-term or exceptional conditions, such impacts to County facilities must be acknowledged and evaluated. The County must know at what elevation its relocated facilities should be designed, and the State Water Board must understand the exact implications of each alternative in order to make an informed decision about the environmental impacts of granting the Permits and allowing for implementation of the Plan.

Riparian and Lakeshore Vegetation

The DEIR recognizes that raising the level of the lake would essentially shift wetland habitats at the lake upslope. (DEIR, at p. 4-113.) However, the ability of wetlands to "migrate" landward as the surface of the lake expands is dependent on the gradient of the land. If the upslope land is similar to existing wetland areas, wetlands may migrate and occupy similar areas; but if the gradient increases (becomes steeper), there could be a net loss in wetland area. A map designating the existing lake coverage and extent of existing wetlands as well as the anticipated lake coverage under the proposed project and each alternative would help the public, affected agencies, and the State Water Board in assessing the extent of impacts to wetland habitat and appropriate mitigation.

The County agrees with and supports the DEIR conclusion that the impact to oak trees is a significant, unmitigable impact (Class I). (DEIR, at p. 4-115). However, the County believes

that additional feasible mitigation is available to further reduce the impacts to oak trees resulting from implementation of the proposed Plan or other plan alternatives. The County manages the Cachuma Lake Recreation Area pursuant to a contract with the Bureau, and the shore area surrounding the lake is under the management of the County. Therefore, the more protective criteria used by the County should be used to analyze and mitigate the project's significant impacts to oak trees to the maximum extent feasible.

On April 22, 2003 the Board of Supervisors adopted the Native Oak Tree Protection Program, comprised of policy amendments to the Comprehensive Plan and amendments to the Zoning and Grading ordinances, Standard Conditions and Mitigation Measures and Environmental Thresholds Manual. (See Attachment D.) The County's program distinguishes between coast live oak and deciduous oak trees due to the sensitivity of their populations to removals, treating the removal of a valley oak or blue oak as considerably more significant than removal of a coast live oak. Depending on the number of trees in relation to size of parcel, removal of deciduous oak trees by any means for a non-agricultural project may require a discretionary oak tree removal permit subject to review under CEQA. In addition, an oak tree management plan may be required. For coast live oaks, removal of 5 percent or more of an existing canopy may trigger a requirement for a management plan for a non-agricultural project.

The County considers a deciduous oak tree of 4 inches diameter at breast height ("DBH") or greater as a protected tree and would count its death as a tree removal. If this standard were applied to the proposed project reviewed in the DEIR, it is likely that a higher number of valley and blue oak trees would be removed by the project than currently indicated using a 6-inch DBH. The DEIR should reassess the oak tree impact analysis based upon the County's deciduous oak criteria and thresholds.

Further, the County does not concur that the impact to oak trees will be mitigated to a level of insignificance within a 10-year time frame. First, while the replanting and nurturing of replacement oak trees is a necessary mitigation measure, its ultimate success as a mitigation program is unknown and very long-term. Replanting trees should not be the first or only mitigation measure selected. The County's *Environmental Thresholds and Guidelines Manual* states: "The mitigation approach of replacing habitat loss is generally not a preferred approach because it always results in some habitat loss (either short-term or long-term), and because prospects for successful habitat replacement are problematic." (County's *Environmental Thresholds and Guidelines Manual*, at p. 6-11.) The project's proposed 10-year monitoring and replanting may not be adequate to ensure long-term replacement because of the slow maturation rates of oak trees. While avoidance (Alternative 3B) is considered the most environmentally superior approach, impacting only half as many oak trees as Alternatives 4A and B, the County recognizes this option is not the preferred surcharge alternative.

Nevertheless, the mitigation measures set forth in the DEIR proposing to replant at a 2:1 ratio for each tree impacted, and to monitor for 10 years, may not be adequate. Valley oak trees occupy a limited area within the County, have been substantially reduced in numbers and extent, and do not appear to be regenerating as successfully when compared to coast live oaks. In order

to ensure successful replacement of deciduous oaks, the trees must at a minimum reach an age of reproductive maturity. Deciduous oaks grow more slowly and bare acorns at a greater age than coast live oaks. Thus mitigation measures for the different oaks impacts need to be tailored to the species.

A higher replanting ratio is considered necessary for the deciduous oak species than for coast live oak trees in Santa Barbara County. Thus, the total number of replacement trees needed for this project should be higher to include a greater number of replacement plantings for the deciduous trees that will die over time from the surcharging. County replacement ratios (10:1 for coast live oaks; 15:1 for deciduous oaks) aim to achieve a 1:1 replacement of a tree at the age of reproductive maturity. Acorn production generally begins about age 30 for coast live oaks and even later for deciduous oaks. The proposed 2:1 replacement ratio is an attempt to mitigate the lower oak tree biomass present during the interval before the replacement oaks reach maturity. However, in the long term this ratio may not achieve successful replacement, as it does not adequately account for the many causes of mortality of saplings, particularly deciduous oak saplings between 10 years and reproductive age. Also, at the end of 10 years, even at 2:1, the young oak trees would not begin to compensate for the lost biomass to the ecosystem, or the lost habitat, shading and aesthetic contribution of the removed trees. To more adequately mitigate the loss of oak trees, replanting ratios need to be increased commensurate with the species to be removed.

Nurturing of existing deciduous oak tree seedlings is a feasible mitigation measure that should be considered along with replanting. Naturally, sprouting seedlings may have a better chance of surviving to reproductive maturity, and could improve the health and resiliency of existing deciduous oak savannas or woodlands. The overall valley oak population in Santa Barbara County is estimated at about a tenth of its pre-European size. Because their range is more limited here, off-site planting should also be considered in preparing a mitigation strategy. The DEIR vegetation map indicates that within the Cachuma Recreation Area, there appears to be numerous areas of oak woodland (and presumably, oak savanna) present. (DEIR, Appendix A, Figure 4-7.) Inclusion of additional sites and nurturing existing seedlings for deciduous oak replacement could help to alleviate the limited area available for replacement oak plantings. Alternative 3B is the only alternative that currently contains sufficient area to accommodate the necessary replantings, even at the proposed ratio of 3:1.

Finally, the DEIR should identify and utilize a long-term goal for replacing oak trees rather than presume that a 10-year planting and monitoring program will suffice to fully mitigate the trees lost. The DEIR states that prior tree loss from inundation has been observed over a 10 to 15 year period and loss as a result of wave splash could occur over 20 years. If monitoring is only conducted for 10 years, some tree loss will go undetected and no mitigation replanting would be provided. It would be better to do all the replanting immediately, in anticipation of loss, which would also shrink the temporal loss of biomass. Further, if the replanted trees are only tracked and replaced within a 10-year period, there is a high likelihood that many of them will not make it to reproductive maturity. As a result the original impact to oak trees will not have been sufficiently mitigated and the residual loss could be high.

We recommend a formal oak tree resource management plan be prepared and adopted, which incorporates County's oak tree replacement standards and requirements. Otherwise, the ecosystem functions will not be fully mitigated and may result in the slow degeneration of the oak community and the habitat it provides.

Sensitive Aquatic and Terrestrial Wildlife

Attachment E to this letter contains a list of sensitive species that may inhabit the uplands or riparian corridor around Lake Cachuma and/or along the lower Santa Ynez River. Impacts to these species should be discussed in the DEIR. In particular, increasing the level of Lake Cachuma through surcharging could impact six sensitive grassland species. Grasslands, like wetlands, may not "migrate" out from the lake over time if suitable conditions are not available. Therefore, these habitats could be reduced by implementation of the Plan under one or more of the alternatives set forth the DEIR. The DEIR should also provide information about the use of oak trees by bald eagles or peregrine falcons for nesting, roosting, resting, or hunting, and the potential impacts to these species resulting from the loss of oak trees.

Recreation

The County appreciates and supports the DEIR's detailed analysis of the potential impacts of the proposed project and each alternative on the County's recreational facilities, and concurs with the conclusion of the DEIR that such impacts are significant and unmitigable unless the County is provided with sufficient time and obtains sufficient funding to relocate its facilities prior to surcharge of the lake.

Project Alternatives

The alternatives analysis identifies several "preferred" alternatives on a comparative basis. (DEIR, at p. 6-7.) The County believes the Final EIR should identify one additional scenario comprised of components from each of the existing alternatives. Such an alternative would consist of a phased implementation of surcharge from 0.75 feet (as analyzed under Alternative 3A) to 1.8 foot (as analyzed under Alternative 3B), and finally reaching the full 3.0 foot surcharge (as analyzed under Alternative 3C) as park facilities are modified. This phased alternative would avoid impacts to public recreation, minimize risk to water supply, and provide water to implement the biological opinion. This alternative would best achieve a balancing of the three major public policy issues affected by implementation of the Plan, and the Final EIR should identify such a phased surcharge as the preferred alternative.

A phased surcharge of Lake Cachuma would reduce or avoid the significant recreational impacts resulting from implementation of the Plan by allowing all agencies additional time to obtain sufficient financing and accomplish the physical relocation of over \$12 million worth of facilities, while still achieving the project's long-term objectives. This alternative would satisfy the short-term and long term needs of the steelhead trout and other aquatic species, avoid

significant recreation impacts, and pose minimum threat to water supply. The County urges the State Water Board to consider this feasible alternative, or condition the Water Right Permits so as to allow for implementation of the Plan with a phased surcharge that will avoid or significantly reduce the significant impacts of the Plan.

Other Comments

Cachuma Recreation Area, Page 2-2

The contract between the Bureau and the County regarding management of the Cachuma Recreation Area has been extended to January 2005. The north side of the lake is open to the public for limited equestrian trail riding. Also, the County Park does not include an outdoor roller rink (this revision should also be made in Section 4.10, Recreation, on page 4-137). County facilities also include the reservable yurt cabins, located in the County Park.

Public Trust Resources, Page 3-4

County concurs with the discussion in the DEIR that acknowledges recreational activities in and around Cachuma Lake as public trust resources the State Water Board is responsible for protecting.

Indirect Environmental Impacts of Water Supply Shortages, Page 4-40

Since the Member Units have discussed their drought contingency plans in state-required "Urban Water Management Plans," speculation as to what those measures might be is not appropriate in this discussion.

Impacts Attributable to Increased Groundwater Pumping, Page 4-40

We are unaware that geological conditions in the Santa Ynez watershed are conducive to the formation of "halogenated (organo-chlorated) compounds." Please provide a justification for this statement, or delete the reference from the Final EIR.

Riparian and Lakeshore Vegetation, Page 4-119

The DEIR incorrectly states that the County has a 50-year lease with the Bureau to manage the Cachuma Lake Recreation Area. In fact, the County's lease is currently subject to a two-year lease extension that expires in January 2005. As mentioned previously, this information should also be corrected in Section 2.1.4, Cachuma Recreation Area, on page 2-2.

Recreational Facilities and Uses, Pages 4-137 and 4-139

As previously indicated, the County Park does not include an outdoor roller rink. The description of County facilities should also include the reservable yurt cabins located at the Park.

The DEIR should also discuss equestrian access to the north shore from the Live Oak Campground. The proposed project or alternatives may make equestrian use of the north shore of the Recreation Area and recreational use along the river above the reservoir inaccessible, or exacerbate flooding of Paradise Road, the access road to recreational areas in the national forest.

Recreation Management, Page 4-139

The DEIR contains a discussion of the reserve funds being used for capital. This discussion should be revised to indicate that the County builds such reserve funds only when available, i.e., when the park is operating at a profit.

Downstream Areas, Page 4-141

The DEIR should be revised to clarify that the public used to traverse under the railroad tracks at Ocean Beach Park and along the river (on public tidelands) to access the ocean. Vandenburg Air Force Base owns the remaining land between the park and the ocean, and has now closed this access to the beach in order to protect snowy plover habitat at the river mouth.

The DEIR incorrectly identifies Santa Rosa Park as being located "along" the river. This discussion should be revised to clarify that the park is actually located further above and away from the riverbank.

Effect on County Park, Page 4-142

This discussion must be revised to reflect the latest Bureau evaluation, which concurs with the County Water Agency's recommendation that surcharge of Cachuma Reservoir not begin until April 15 due to the probability of winter storms.

This section contains an analysis identifying phased implementation of the surcharge as an alternative capable of avoiding one or more significant impacts. (DEIR, at p. 4-143.) As previously discussed, this phased implementation, when compared to other alternatives, is the most environmentally superior alternative. The Final EIR should explicitly identify such a phased surcharge based on modification of County Park facilities as the environmentally preferred alternative.

In addition, the DEIR contains no discussion of the potential impacts of any of the alternatives to Live Oak Park and other upstream recreational resources. It is possible that surcharging alone or coupled with spring runoff could make the equestrian trail inaccessible, or exacerbate flooding of Paradise Road, the access road to recreational areas in the national forest.

Mr. Andrew Fecko, State Water Resources Control Board

October 7, 2003

Page 11

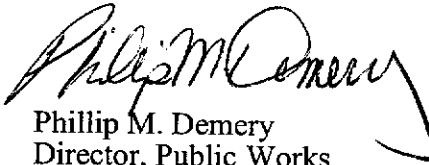
At a minimum, higher lake levels in the vicinity of Live Oak Park could change the ecology of the park's setting if not directly impact park facilities, thus impacting the public's recreational experience of plants and wildlife that inhabit the park or its surroundings. The DEIR should be revised to include a discussion of these potential impacts.

We appreciate this opportunity to offer our comments on the DEIR, and anticipate that the State Water Board will recognize and support the County's concerns as set forth herein regarding the impacts of the Water Right Permits on the public trust resources of Lake Cachuma.

Signed,



Terri Maus-Nisich
Director, Parks



Phillip M. Demery
Director, Public Works



Valentin Alexeeff
Director, Planning and Development

cc: Ms. Kate Rees, Cachuma Operations and Maintenance Board
Mr. David Young, Environmental Specialist, U.S. Bureau of Reclamation

Attachments

- A – November 8, 2001 Letter from County to COMB/Bureau regarding Notice of Preparation
- B – November 9, 2001 Letter from State Water Board to COMB/Bureau regarding Notice of Preparation
- C – Letter from County to COMB and Bureau commenting on DEIR/EIS
- D – Selected Policies, Santa Barbara County Comprehensive Plan
- E – Sensitive Species List

STATE WATER CONTROL BOARD
OCT 2001

2001 OCT - 7

DIR. OF WATER
SACRAMENTO



SANTA BARBARA COUNTY

November 8, 2001

REC'D
NOV 12 2001

Ms. Kate Rees
Cachuma Operations and Maintenance Board
3301 Laurel Canyon Road
Santa Barbara, CA 93105

RE: Notice of Preparation (NOP) of a Draft Environmental Report/Statement for Projects and Actions Associated with the Lower Santa Ynez River Fish Management Plan and Cachuma Project Biological Opinion, Santa Barbara County

Dear Ms. Rees,

County staff has reviewed the above Notice of Preparation. Inasmuch as three County Departments have distinct interests in the "proposed project", we are providing a single comment letter for your convenience. As a matter of process, County staff finds it difficult to understand why written comments are due to your agency prior to the public scoping meeting. Despite this concern, this letter provides you with a written response to the NOP which meets the 30 day deadline set in your letter dated October 8, 2001, and received by the County on October 10, 2001.

Based on our understanding of the "proposed project", we have identified three areas of concern:

1. Public recreation and the management of lands surrounding the reservoir,
2. Public safety, particularly stormwater rerouting below the reservoir, and
3. Adequate mitigation of impacts, particularly to oak trees and habitat.

Staff from the County Parks, Public Works and Planning & Development Departments have reviewed the NOP and prepared the following comments.

ATTACHMENT A

Santa Barbara County Parks

Santa Barbara County Parks currently manages and operates the Cachuma Recreation Area under a lease agreement with the Bureau of Reclamation (Bureau). This lease is due to expire January 2003. As part of the process to enter into a new lease with the Bureau, a Resource Management Plan (RMP) must be completed by the Bureau. County Parks and the Bureau have initiated discussions regarding the development of the RMP that will include significant issue areas within the lease area. On November 7, 2001, County Parks and the Bureau met to discuss the initiation of the RMP process. Attached is a list of those issues to be developed within the RMP. Since the development of the RMP is a requirement, and since its scope is generally known, the proposed EIR/EIS under development by COMB must consider the development of the RMP within the cumulative analysis of the documents as a reasonably foreseeable project. In particular, elements of the proposed project or alternatives (such as changing operational parameters of the reservoir) which may affect existing uses or future management under the RMP, must receive evaluation. As the CEQA process focuses on the "preferred alternative", that alternative must receive sufficient evaluation to achieve full and fair disclosure of potential future impacts relative to public recreation.

Santa Barbara County Public Works Department, Water Resources Division

The Water Resources Division includes Flood Control District and the County Water Agency, dependant special districts with responsibility for public safety and water supply planning at a regional level. Based on our interest in these issues, we believe the following issues need to be addressed:

1. Potential increase in risk of damage during high flow due to greater debris loading from accelerated vegetation growth from low flow releases.
2. Increased sedimentation (and reduced reservoir life) due to changes in operations,
3. Dam safety risks due to changes in operations, and
4. Potential limitations on winter storm operations.

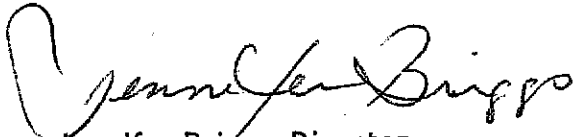
Evaluation of these issue areas need to be based on all available information and tools including 1) FC River model, 2) Santa Ynez River Hydrology Model, 3) various evaluations by Reclamation of dam safety and 3) surveys of vegetation and growth patterns downstream.

Santa Barbara County Planning & Development


Refer to the attached summary of thresholds, policies, and standards in place for significant impacts to oak woodlands. The EIR / EIS should address similar thresholds and mitigations.

Finally, given the scope of our concerns and the experience of County staff, we strongly suggest forming a working group (or technical advisory committee) to assure the range of our concerns are addressed efficiently and adequately within the proposed documents.

Sincerely,



Jennifer Briggs, Director
Santa Barbara County Parks



Phillip M. Demery, Director
Santa Barbara County Public Works



John Patton, Director
Santa Barbara County Planning & Development

ENC.

Cc: Bureau of Reclamation

ISSUES TO CONSIDER FOR CACHUMA RMP

BIOLOGICAL

- Grazing leases
- Sensitive biological and environmental protection areas
- Fish habitat enhancements; shoreline and lake
- Biological surveys, flora and fauna
- Enhanced fish stocking programs
- MTBE issues

FACILITIES

- Areas for expanded camping opportunities
- Evaluation and inventory of present facilities and establishment of time-line usefulness/replacement to identify funding priorities and co-operative funding mechanisms to address the areas identified.
- Establish criteria for determining carrying capacity of recreation area prior to detrimental adverse affects.

CONCESSIONS

- Evaluation of current concessionaire practices and operations
- Consider new concession opportunities and locations
- Establish guidelines for leases and agreements pursuant to Federal standards.

RECREATION

- Explain the administrative authority and hierarchy for allowing other recreational opportunities on the lake.
- Body contact
 - Description of current regulations prohibiting it and what and why is it prohibited.
 - What is regulatory and administrative policy and procedure for allowing body contact.
 - What are the water quality and treatment issues that would have to be modified to allow it?
- Other boating alternatives such as canoes and kayaks.
- Expanded hiking, mountain bike, equestrian trail opportunities.

ADMINISTRATIVE

- Identify administrative oversight responsibilities and by what agencies.
- Identify best administrative options which allow Cachuma to maintain financial recovery of all revenues for its operation and capital improvement funding.

SANTA BARBARA COUNTY PLANNING & DEVELOPMENT
PROPOSED OAK PROTECTION THRESHOLDS, STANDARD MITIGATION MEASURES

The County's adopted significance criteria for impacts to oak woodlands are both quantitative and qualitative. For the former, the Thresholds Manual identifies removal of ten percent (calculated by number of trees or canopy) of oak coverage on site as a significant impact. Qualitative considerations however, specifically change in habitat value, can take precedence over the ten percent figure based on:

- a. Habitat fragmentation
- b. Removal of understory
- c. Alteration to drainage patterns
- d. Disruption of the canopy
- e. Removal of a significant number of trees that would cause a break in the canopy or disruption in animal movement in and through the woodland

Native specimen trees, regardless of size, are potentially significant, and rare native trees, which are very low in number or isolated in distribution (such as Island Oak) may be particularly significant. This significance evaluation is done on a case-by-case basis and considers tree size, numbers, location, relationship to habitat, etc. Specimen trees are defined as mature trees that are healthy and structurally sound and have grown into the natural stature particular to the species.

Planning and Development typically requires a Tree Protection and Replacement Program for projects involving oak removal. Components of the program generally include replacement at appropriate ratios for trees damaged or removed, conditions for grading and construction around oaks, and maintenance of planted and protected trees.

In addition to these adopted guidelines, Planning and Development's proposed Oak Protection Program is awaiting Board of Supervisors consideration this winter (the Planning Commission has recommended approval of the Program after a series of public hearings that concluded in July). In addition to new policies and development standards, the proposed Program contains the following tree replacement criteria:

- Replacement ratios: 10:1 for live oaks, 15:1 for deciduous oaks
- Acorns/stock must be locally sourced, from the same watershed if possible
- Replacement oaks must be planted with minimum 20-foot spacing and must be protected against grazing if necessary, damaging ground disturbance, excessive compaction or irrigation within the dripline. If individual cattle exclosures are used, the protective fencing must be removed after ten years or upgraded to avoid constricting the growth of the trees
- Naturally sprouted valley oaks, if protected and maintained as above, can be counted as mitigation trees.

Adopted recommendations in the County's Conservation Element and proposed policies and regulations in the proposed Oak Protection Program give special consideration to valley oaks and valley oak savanna/woodland because these trees and their associated habitat types are the most threatened and most diminished by historical removal for agriculture and urban development.

When restoration of oak habitat is required beyond simply planting oak trees, establishment of native woodland shrubs and bushes is needed to create the multi-tiered habitat structure used by oak woodland animal species. Such restoration could be part in the context of an oak management plan, which would be required under the proposed program when more than 50 oaks are removed, and/or as part of mitigation for a discretionary-level oak removal permit.



Winston H. Hickox
Secretary for
Environmental
Protection

State Water Resources Control Board

Division of Water Rights

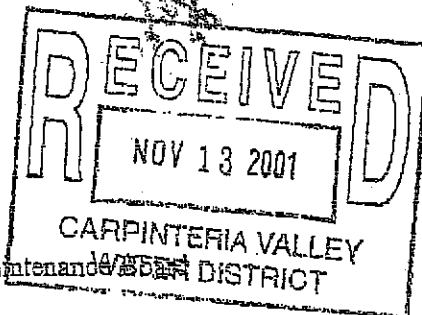
1001 I Street, 14th Floor • Sacramento, California 95814 • (916) 341-5363
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 341-5400 • Web Site Address: <http://www.waterrights.ca.gov>



Gray Davis
Governor

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web site at <http://www.swrcb.ca.gov>.

NOV - 9 2001



In Response Reply to:
360:NW:A011331, A011332

Ms. Kate Rees
Cachuma Operation and Maintenance Board
3301 Laurel Canyon Road
Santa Barbara, CA 93105

Dear Ms. Rees:

NOTICE OF PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT/STATEMENT FOR ACTIONS ASSOCIATED WITH THE CACHUMA PROJECT BIOLOGICAL OPINION AND LOWER SANTA YNEZ RIVER FISH MANAGEMENT PLAN

This letter responds to the Cachuma Operation and Maintenance Board's (COMB) October 8, 2001 Notice of Preparation of a joint Environmental Impact Report/Statement (EIR/EIS) to be prepared in conjunction with the United States Bureau of Reclamation (USBR). As described in the Notice of Preparation, the EIR/EIS would evaluate the requirements of the National Marine Fisheries Service's (NMFS) September, 2000 Biological Opinion, which are imposed on the USBR's operation of the Cachuma Project in order to minimize take of steelhead trout. The EIR/EIS would also evaluate the management actions and projects included in the October, 2000 Fish Management Plan prepared by the Santa Ynez River Technical Advisory Committee, which incorporates the requirements of the Biological Opinion. Specifically, the EIR/EIS would evaluate the flow release requirements required by the Biological Opinion, surcharging Cachuma Reservoir by 3.0 feet, and various fish habitat enhancement measures.

State Water Resources Control Board (SWRCB) staff have concerns about COMB's and the USBR's proposal because the scope of the proposed EIR/EIS would overlap with the scope of the EIR that is being prepared by the SWRCB in connection with the water rights proceeding currently pending before the SWRCB. As you know, the project under consideration by the SWRCB is whether any modifications to the USBR's water right permits for the Cachuma Project are necessary to protect public trust resources, including steelhead, and downstream water rights.

As the Notice of Preparation recognizes, the SWRCB will prepare an EIR for the SWRCB's use in the water rights proceeding. The SWRCB expects to release its Draft EIR for public review and comment in the near future. Phase 2 of the water right proceeding is likely to be scheduled in the middle of next year, and we anticipate that the SWRCB will adopt a decision within approximately six months after the close of the hearing.

ATTACHMENT B

Ms. Kate Rees

2

NOV - 9 2001

Although the Notice of Preparation recognizes that the SWRCB will prepare an EIR, it confuses the scope of the SWRCB's EIR. The Notice of Preparation states that the SWRCB's EIR will focus on "water rights releases," while the proposed EIR/EIS would focus on "fish releases." In point of fact, however, the alternative release requirements that will be analyzed in the SWRCB's EIR are based on the fish release requirements set forth in the Biological Opinion. In addition, the Notice of Preparation incorrectly states that the SWRCB's EIR will not consider fish enhancement projects on Hilton Creek, or other tributary enhancement, passage impediment removal, or mainstem habitat enhancement projects. To the contrary, the SWRCB's EIR will evaluate other fish enhancement measures identified in the Biological Opinion and Fish Management Plan, including the Hilton Creek projects and other habitat enhancement projects on tributaries and the mainstem, although these additional measures may be evaluated on a programmatic level.

In view of the significant overlap between the SWRCB's EIR and the proposed EIR/EIS, and the fact that the SWRCB is moving forward with the preparation of its EIR, COMB and the USBR should defer preparation of any necessary environmental documentation for actions required by the Biological Opinion or identified in the Fish Management Plan until after the SWRCB has adopted a decision and certified its EIR. Probably the most significant problem with COMB's and the USBR's proposal to proceed with the preparation of the EIR/EIS is that the SWRCB, not COMB, is the appropriate lead agency under the California Environmental Quality Act (CEQA) for purposes of considering whether the flow release requirements contained in the USBR's water right permits should be modified.

In addition, preparation of the proposed EIR/EIS before the SWRCB's process is complete would be premature because the range of possible actions that may be taken to protect public trust resources, including steelhead, could change depending on evidence presented during the SWRCB's hearing. For example, it is possible that the SWRCB will consider revised flow release requirements that are materially outside the scope of alternatives that COMB and the USBR, as well as the SWRCB, presently propose to evaluate. Evidence could also be presented regarding fish enhancement measures other than those identified in the Biological Opinion and the Fish Management Plan.

Before certifying a final EIR and adopting a water right decision, the SWRCB will make any revisions necessary to ensure that the final EIR is adequate for consideration of any flow release requirements or fish enhancement measures included in the SWRCB's decision. If COMB and the USBR prepare the proposed EIR/EIS before the SWRCB certifies a final EIR, the EIR/EIS is likely to be inadequate because it fails to adequately address the flow requirements that will apply, or fails to address some of the fish enhancement measures to be implemented, unless the EIR/EIS is modified to incorporate any revisions made in the SWRCB's EIR. At best, preparation of the proposed EIR/EIS before the SWRCB certifies its final EIR would be a needless cost and duplication of effort. These problems could be avoided if COMB and the USBR defer immediate preparation of the EIR/EIS and tier off of the SWRCB's EIR.

Ms. Kate Rees

3

NOV - 9 2001

It does not appear that deferring the preparation of any necessary environmental documentation for approximately one year will cause the USBR to miss any deadlines set forth in the Biological Opinion. The Biological Opinion does not require that any action be completed until 2005. The Biological Opinion contemplates that the 3.0 foot surcharge of Cachuma Reservoir is "likely to occur" sometime in 2005, but requires only that the USBR reinitiate consultation if the surcharge is not achieved by some unspecified date. The USBR must also reinitiate consultation if specified tributary passage impediment and barrier fixes are not completed by 2005. The Biological Opinion states that the USBR intends to complete these measures by 2008 at the latest.

For the reasons set forth above, SWRCB staff urge COMB and the USBR to defer preparation of a joint EIR/EIS until after the SWRCB has certified its EIR, which should take place by early 2003. If COMB and the USBR decide to prepare the EIR/EIS notwithstanding the above considerations, the joint EIR/EIS should include an alternative that is substantially similar to the SWRCB's Alternative 3A, which assumes that the 3.0 foot surcharge is not completed, and the flow release requirements that otherwise would be required under the Biological Opinion if a 3.0 foot surcharge is completed will be met using the existing storage capacity of the Cachuma Project.

If you have any questions about this letter please contact Mr. Jim Canaday, Senior Environmental Scientist at (916) 341-5308, or Ms. Dana Differding, Staff Counsel at (916) 341-5188.

Sincerely,



Edward C. Anton, Chief
Division of Water Rights

cc: State Clearinghouse
P.O. Box 3044
Sacramento CA 95812-3044

Santa Inez Mailing List

Post-It* Fax Note	7671	Date	11/13/01	# of pages	3
To	CIVICK	From	CARRLES		
Co./Dept.		Co.			
Phone #		Phone #			
Fax #	569-5825	Fax #			

COUNTY OF SANTA BARBARA



STATE WATER RESOURCES
DIVISION
SEP 29 7 54 AM '03
SANTA BARBARA, CA
93105-2017

September 29, 2003

Ms. Kate Rees
Cachuma Operations and Maintenance Board
3301 Laurel Canyon Road
Santa Barbara, CA 93105-2017

Mr. David Young, Environmental Specialist
U.S. Bureau of Reclamation
1243 N Street
Fresno, CA 93721-1813

Re: Comments on Draft EIR/S, Lower Santa Ynez Fish Management Plan

Dear Ms. Rees and Mr. Young:

This letter transmits comment from staff of the County of Santa Barbara on the Draft Environmental Impact Report/Environmental Impact Statement ("DEIR/S") prepared for the Lower Santa Ynez River Fish Management Plan and Cachuma Project Biological Opinion for Southern Steelhead Trout (the "Plan"). As participants in the Memorandum of Understanding for fish studies and implementation of the Plan, we appreciate the efforts of the Cachuma Member Units to protect and enhance fish resources in the lower Santa Ynez River. However, we have concerns regarding the DEIR/S, and submit that the DEIR/S prepared for the Plan does not comply with the requirements of the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA"). This letter summarizes our most significant concerns; the enclosed Attachment A details our specific comments. Please provide us with written responses to the comments contained both in this cover letter and in the accompanying Attachment A.

We appreciate that the Cachuma Operations and Maintenance Board ("COMB") and the Bureau of Reclamation (the "Bureau") have worked together to prepare the environmental analysis of the Plan. However, we believe the public and affected agencies may be frustrated in their attempts to participate fully in the environmental review of implementation of the Plan due to inadequate interagency coordination. This is a concern for two reasons: 1) public support is essential for implementation of major elements of the Plan, and 2) significant impacts to public recreation and biological resources will occur from implementation of certain Plan activities.

ATTACHMENT C

Specifically, two major environmental review documents have been released virtually simultaneously by separate lead agencies, each analyzing activities that substantially overlap under the auspices of Plan implementation.¹ County staff has had to spend considerable effort to compare the proposed activities described in each document, and submits that the proposed activities by each agency are not clearly delineated nor the environmental effects consistently described. Therefore, we question whether the public is able to sort out the proposed actions, the agencies responsible, or the full panoply of the potential impacts of the Plan so as to participate in the process in a meaningful and constructive manner.

In response to the Notice of Preparation released in October 2001, both the County and the State Water Resources Control Board ("State Water Board," the lead agency for preparation of the EIR for the Cachuma Project Water Rights, including public trust fish resources) urged COMB to take action which would have led to a less confusing environmental review process. The County urged preparation of the EIR/S be done through a coordination committee (as was done successfully for the EIR/S for Cachuma Contract Renewal). The State Water Board urged COMB to abandon preparation of the DEIR/S and instead tier off the State Water Board's EIR, or at the very least delay release of the Plan DEIR/S until completion of the State's EIR was completed. (See DEIR/S, Appendix D, Letter from Jennifer Briggs, Phillip M. Demery, and John Patton, County of Santa Barbara, to Kate Rees, COMB, dated November 8, 2001; and Letter from Edward C. Anton, State Water Board, to Kate Rees, COMB, dated November 9, 2001.) Nevertheless, as demonstrated in the EIR/S, COMB and the Bureau did not heed these requests and proceeded to work independently of these qualified responsible and cooperating agencies. As a result of the lack of sufficient interagency coordination, the Plan DEIR/S is not consistent with the DEIR released by the State Water Board, fails to adequately analyze and mitigate a number of significant environmental impacts, and does not adequately evaluate alternatives capable of reducing or avoiding significant adverse environmental impacts. Furthermore, while there is no doubt that the Bureau is appropriately acting as the lead agency for purposes of NEPA in preparing the DEIR/S, neither the agency role of State Water Board nor of the County was appropriately identified for purposes of CEQA or NEPA.

At the very least, COMB and the Bureau should have involved the County in the preparation of the DEIR/S for the Plan. The Council on Environmental Quality (CEQ) Regulations urge federal agencies to identify qualified local agencies who may by agreement become cooperating agencies in the preparation of an EIS for a federal action. (40 C.F.R. §§ 1501.6, 1508.5.) Designation as a cooperating agency allows an agency with jurisdiction by law over all or part of the proposed action, or has special expertise with respect to the environmental impacts expected to result from an action, to participate fully in the environmental review process. (*Id.*; *NEPA's Forty Most Asked Questions*, published by the CEQ, Nos. 14(a), (b), and (c).) In addition, the CEQ has repeatedly issued memoranda urging federal lead agencies to invite or accept requests from local agencies to participate in the NEPA process as cooperating agencies, a policy acknowledged by the Bureau. (See *Designation of Non-Federal*

¹ The DEIR/S for the Plan was released on July 22, 2003, and the Cachuma Project Water Rights DEIR was released by the State Water Resources Control Board ("State Water Board") in August 2003.

Ms. Kate Rees, Cachuma Operations and Maintenance Board
Mr. David Young, Bureau of Reclamation
September 29, 2003
Page 3

Agencies to Be Cooperating Agencies in Implementing the Procedural Requirements of NEPA, dated July 28, 1999; *Cooperating Agencies in Implementing the Procedural Requirements of NEPA*, dated January 30, 2002; Bureau of Reclamation NEPA Handbook, Public Review Draft (2000), at 3-11.) The Department of Interior NEPA Manual explicitly provides that it is the policy of the Department to "consult, coordinate, and cooperate with other Federal agencies and State, local, and Indian tribal governments . . . concerning the environmental effects of [Department plans or programs] on their jurisdictions or interests." (Manual, at 1.2(E), 1.5(A)(1).) Likewise, CEQA outlines the required participation of "responsible agencies" in the environmental review process. CEQA defines "responsible agency" as a public agency, other than the lead agency, which has responsibility for carrying out or approving a project. (Pub. Res. Code § 21069; CEQA Guidelines § 15381.) These agencies are subject to lead agency decisions and must generally rely on the environmental analysis completed by the lead agency.

On November 8, 2001, the County submitted a letter in response to the Notice of Preparation for the DEIR/S. That letter urged COMB and the Bureau to form a working group or technical advisory committee to assure the County's concerns were addressed efficiently and adequately. Nevertheless, the DEIR/S erroneously states "[t]here are is [sic] only one CEQA responsible agency (Caltrans) associated with the [Plan] projects that would have a role in implementing one of the [Plan] projects independent of Reclamation or COMB." (DEIR/S Section 1.3.3, at p. 1-6.) Despite the fact that COMB and the Bureau assert that the County must relocate over \$12 million worth of recreational and water treatment facilities as a direct result of the implementation of the Plan, a feat which cannot be accomplished within the identified timeline for implementation of the Plan, the County was not invited to participate as either a responsible agency or a cooperating agency by COMB or the Bureau, and no working group or advisory committee was ever created for coordinating review of the environmental impacts resulting from the Plan.

As a result, the County's concerns were not adequately addressed in the DEIR/S. Such inadequacies preclude informed decision-making and public participation, thereby thwarting the statutory goals of CEQA and NEPA. (See San Joaquin Raptor/Wildlife Reserve Center v. County of Stanislaus (1994) 27 Cal.App.4th 714, 718; Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 712; Kleppe v. Sierra Club, 427 U.S. 390 (1976); City of Davis v. Coleman, 521 F.2d 661 (9th Cir. 1974). In particular, surcharging the lake would inundate critical County Park facilities (such as sewer facilities) rendering the park unusable for significant but undisclosed periods of time, and possibly polluting the lake with sewage. The DEIR/S neither discussed in detail the length of time these facilities would be inundated nor acknowledged that the loss of recreation opportunities would be significant. The DEIR/S also fails to fully discuss the impacts that would result if the full 3.0-foot surcharge would occur before completion of park facility modifications; no mention is made of potential pollution of the reservoir or its effect on the Member Units water supply. The DEIR/S minimizes the irretrievable loss of the County's intensely used local and regional recreational facilities at Lake Cachuma, and fails to provide any analysis whatsoever regarding the economic impacts of park

Ms. Kate Rees, Cachuma Operations and Maintenance Board
Mr. David Young, Bureau of Reclamation
September 29, 2003
Page 4

closure on regional and local communities. Such a socio-economic analysis is specifically required by the CEQ Regulations. (40 C.F.R. 1508.8.)

These impacts to the park facilities are direct significant impacts of the proposed action, and feasible mitigation was not imposed as required in the DEIR/S. Instead, the DEIR/S concludes (without analysis) that relocation of County facilities is the responsibility of the County, and includes such activity in the related projects list for far less specific analysis as "cumulative impacts." The need for the County to move or modify its facilities is a direct, foreseeable consequence of the Plan, and the DEIR/S must therefore fully analyze the environmental impacts associated with those activities. (Bozung v. Local Agency Formation Commission (1975) 13 Cal.3d 263, 283-84; 40 C.F.R. § 1508.27(b)(7); Thomas v. Peterson, 753 F.2d 754 (9th Circ. 1985).) As written, the DEIR/S analysis obfuscates the impacts of the proposed action and shifts responsibility for an essential element of the October 2000 Biological Opinion onto the County. Because the EIR/S contains an inadequate analysis of the Plan's impacts on County facilities at Lake Cachuma, the County, as a responsible agency, will be required to prepare further environmental analysis to analyze the impacts of relocating those facilities, a direct and foreseeable impact resulting from implementation of the Plan.

The DEIR/S also fails to adequately address or mitigate the Plan's inconsistency with the County's Comprehensive Plan policies, the significant loss of hundreds of oak trees around the lake, or the impacts on sensitive species resulting from implementation of the Plan. Specifically, the DEIR/S fails to acknowledge or utilize the County's standard significance thresholds or mitigation requirements for oak tree impacts, despite the fact that the County provided this information to COMB in response to the Notice of Preparation. Because the DEIR/S fails to properly disclose or analyze these impacts, COMB, the Bureau, and the public are precluded from determining the appropriate mitigation for the Plan or whether the identified mitigation is sufficient to lessen the impacts of the Plan. (Napa Citizens for Honest Gov't. v. Napa County (2001) 91 Cal.App.4th 342, 374.)

Finally, CEQA requires that an EIR describe a reasonable range of alternatives to the proposed project that would feasibly attain most of the project's basic objectives while reducing or avoiding any of its significant effects. (CEQA Guidelines § 15126.6(a); Laurel Heights Improvement Ass'n. v. Regents of Univ. of Cal. (1988) 47 Cal.3d 376.) Likewise, the CEQ characterizes the alternatives analysis as "the heart of the environmental impact statement." (40 C.F.R. § 1502.14.) The EIS must "rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated." (Id.) The alternatives analysis under NEPA must include reasonable alternatives not within the jurisdiction of the lead agency, and all appropriate mitigation measures not already included in the proposed action or alternatives. (Id.)

A temporary or incremental surcharge of Lake Cachuma would reduce or avoid the significant recreational impacts of the proposed Plan by allowing the County additional time to obtain sufficient financing and accomplish the physical relocation of over \$12 million worth of

facilities, while still achieving the project's long-term objectives. Likewise, a combination of the components set forth in the analyzed alternatives, such as combining the 1.8-foot surcharge with a lower target flow at Highway 154 (for forgoing "passage flows"), could reduce impacts on water supply with a minimum reduction in rearing targets, further reducing the biological and recreational impacts of the Plan. Such alternatives would satisfy the short-term and long term needs of the steelhead trout and other aquatic species, avoid significant recreation impacts, and pose minimum threat to short term water supply. Nevertheless, the DEIR/S does not analyze such surcharge alternatives. Indeed, the DEIR/S provides inadequate explanation for what alternatives were considered and rejected from further analysis during the scoping process, or why the feasible alternatives suggested above were not considered. The County urges COMB and the Bureau to take the time necessary to analyze the feasibility of such alternatives. While this may delay the Bureau's self-imposed 2005 surcharge deadline, the County would be given sufficient time to work cooperatively to secure funds and accomplish necessary relocation activities in order to accommodate the Plan's long-term goals without damage or loss to its recreation facilities. The Bureau's own NEPA Handbook specifically encourages such assistance:

"Another problem may stem from the desire of some within Reclamation to move rapidly forward on an action that appears beneficial without taking the time to initiate and emphasize timely preparation of NEPA documents as required. It is important to use NEPA as a tool to assist those responsible for making the best decisions possible, not just as a procedural "hoop" that must be jumped through." (NEPA Handbook, at 11-2, 11-3.)

Under these circumstances, both CEQA and NEPA required that the environmental document be prepared with the involvement of all affected agencies, including COMB, the Bureau, the State Water Board, and the County. The failure to prepare such an integrated document has resulted in the following legal inadequacies:

- Failure to consult with qualifying responsible and coordinating agencies;
- Failure to fully and adequately explain the relationship between and analyze the impacts resulting from all components of Plan implementation, including those to be conducted by other responsible and coordinating agencies;
- Failure to identify thresholds of significance, and to explain omission of thresholds used by responsible and coordinating agencies;
- Failure to adequately identify, analyze, and mitigate the direct, foreseeable environmental impacts of Plan implementation, including biological and recreational impacts, and those impacts resulting from required relocation of County park facilities;

Ms. Kate Rees, Cachuma Operations and Maintenance Board
Mr. David Young, Bureau of Reclamation
September 29, 2003
Page 6

- Failure to identify and analyze feasible alternatives to Plan implementation that would avoid or substantially reduce the significant impacts of the Plan.

In order to rectify these deficiencies, the County urges COMB and the Bureau to:

- Identify the agency roles of the State Water Board and the County in the DEIR/S;
- Work cooperatively with the State Water Board and the County to ensure that the DEIR/S is an adequate, consistent document for the purposes of environmental review by responsible and cooperating agencies;
- Revise the DEIR/S to include an adequate analysis of the recreational and biological impacts of the Project, and of the impacts resulting from the required relocation of County park facilities, and recirculate the revised document for further public review and comment as required by CEQA and NEPA;
- Examine the feasible mitigation measures and Plan alternatives set forth in this letter and accompanying attachments that will achieve the long-term goals of the Plan, allow County to obtain the funding and time necessary to accomplish the necessary modifications to its facilities, and avoid or substantially reduce the significant impacts of Plan implementation.

We were informed that on September 15, 2003, COMB adopted a Notice of Exemption for the Radial Gate Maintenance and Minor Modification Project. We have been advised by COMB that the contract for this project includes the maintenance of the Bradbury Dam radial gates as well as the fabrication and installation of the Flash Boards, the necessary physical modification to the dam that will allow for surcharge of Lake Cachuma. While we question whether preparation and adoption of a separate environmental document for this integral component of Plan implementation was appropriate, and whether an exemption is adequate for this physical modification to the dam, COMB has assured us in writing that the installation of the Flash Boards will not occur until the Plan EIR/S has been certified by COMB and the Bureau, and the Bureau has made a final operational decision to surcharge the reservoir pursuant to that certified document.

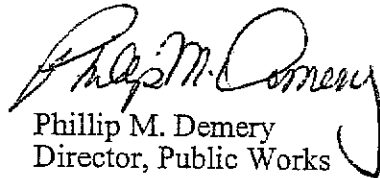
Ms. Kate Rees, Cachuma Operations and Maintenance Board
Mr. David Young, Bureau of Reclamation
September 29, 2003
Page 7

Once again, we offer to work directly with COMB and the Bureau in development of an EIR/S that contains a full and fair disclosure of the environmental impacts of the Plan.

Signed,



Terry Maus-Nisich
Director, Parks



Phillip M. Demery
Director, Public Works



Valentin Alexeeff
Director, Planning and Development

cc: Mr. Andrew Fecko, Division of Water Rights, State Water Resources Control Board

Attachments

- A - Detailed County of Santa Barbara Staff Comments
- B - Selected Policies, Santa Barbara County Comprehensive Plan
- C - Sensitive Species List
- D - Letter from County Counsel to Bureau of Reclamation, dated August 27, 2002

ATTACHMENT A

COUNTY OF SANTA BARBARA STAFF COMMENTS

**DEIR/S FISH MANAGEMENT PLAN AND BIOLOGICAL OPINION
FOR LAKE CACHUMA**

Purpose and Need, Section 1.2, Page 1-2

As a result of the purpose and need statement, the document fails to provide a balanced discussion of three legitimate public policy interests: reliable water supply, protection of endangered species, and public recreation. Thus the DEIR/S fails to provide a full and fair discussion of the Plan and its potential environmental effects.

The "purpose and need" statement of the DEIR/S attempts to establish that the project (implementation of the Plan) ". . . would not affect yield on the project in any meaningful way." (DEIR/S, Section 1.2.1, at p. 1-2.) This assertion of absolute terms is inappropriate in a programmatic environmental document for a Plan that focuses on the recovery of an endangered species. Indeed, the Plan (Santa Ynez River Technical Advisory Committee, 2000) itself contains no such statement. As discussed below, limiting the project objectives through the "purpose and need" statement significantly and inappropriately reduces the scope of the DEIR/S analysis of alternatives and calls into question the objectivity of the entire document.

We note in passing that most large water supply projects which have historically affected public trust (or endangered species) resources, such as fish, have mitigated these effects in part with reallocation of existing supplies. This outcome is not unexpected. We also recognize that there may be alternatives that result in no loss of water supply. But the lead agencies should not attempt to avoid loss of supply through an inappropriate reduction in scope of this DEIR/S.

Specifically, the DEIR/S asserts that to be consistent with the stated purpose and need, water for Plan purposes could only come from reservoir surcharge (DEIR/S, Section 10.1.3, Table 10-2). In actuality, water for Plan purposes could be allocated from the reservoir as "future year" allocations. The potential Cachuma Project shortages that could result are summarized in Table 10-8. (DEIR/S, Section 10.3.1.3, at p. 10-13.) However, the allocation of reservoir supply is, in effect, "reset" each time the reservoir spills. Thus, if short term allocation of reservoir yield for Plan purposes occurred (during modification of Park facilities, for example), such allocation would only affect yield of the reservoir if substantial inflow to the reservoir failed to occur in the 2-4 years immediately after park modifications are complete. This is because "shortages" in Cachuma supply are only taken as the reservoir storage falls below a stipulated storage toward the end of multi-year droughts, such as the planned "critical period." Since the Member Units have carefully crafted water supply decisions to emphasize the reliability

of Cachuma supply, the probability of shortages in any year is low. As a matter of Member Unit Policy, the entire shortage could be deferred until the 6th year of the critical period, further reducing probability of actual impacts. The impacts of these shortages on Cachuma Project yield are shown in Table 10-8, and are cast as "long term" and "Class 1" (pages 10-17 through 10-19 and page 10-23). As discussed below, there is an alternative capable of avoiding these impacts or substantially reducing their significance.

Despite the assertion "the State Water Project is not considered an alternative supplemental water supply under this alternative" (DEIR/S, Section 10.3.1.3, at p. 10-18), an existing analysis of the current water supply picture suggests State Water Project supplies are fully utilized only in a long-term context. (Santa Barbara County Water Agency, 2002.) Since none of the Member Units are currently utilizing their full State Water Project entitlement, increased deliveries could make up any potential near-term shortfall due to reduced surcharge. Specifically, an analysis of the cost of the alternative of phasing in surcharge (cost of augmenting Cachuma Project supplies with increased state water purchases) until completion of parks facility modification compared to closure of park facilities due to 3.0 foot surcharge until completion of parks facility modification (the proposed project) was not provided in the EIR/S. A full comparison of this feasible "phase-in" alternative to the "proposed project" (specifically a comparison of both direct and indirect costs as well as an analysis of risk) must be part of the EIR/S.

Reservoir Surcharging, Sections 2.5 and 10.3.2

The DEIR/EIS states that a 3.0-foot surcharge would impact 91 acres around the perimeter of the lake, extending laterally as far upland as 25 feet. No map of this expanded lake surface is provided. Therefore it is not possible to determine what areas of the lake's shoreline might be most impacted. The Bureau should provide such a map to assist reviewers to assess the level of impacts to adjoining or upstream land uses such as county parks and recreational trails, visual resources, archaeological resources, and to vegetation and wildlife habitat.

In conjunction with this, there is no discussion at all on visual impacts. While increasing the level of the lake may be considered by some to have no impact on views or only a beneficial one, the lack of discussion and evidence such as simulated before and after photos taken from public vantage points, such as Highway 246 (a state-designated scenic highway), the vista point on Hwy 246, and the two county parks, leaves the question of visual impacts unresolved.

In addition, the DEIR/S inexplicably dismisses an interim surcharge alternative at 1.8 feet. The 1.8 surcharge, or potentially a two-phased approach to the "full" (3.0 foot) surcharge, was noted as an alternative within the Biological Opinion prepared by the National Marine Fisheries Service ("NMFS"). This option is not, however, fully explored as an alternative within the DEIRS. A 3.0-foot surcharge would create a direct and immediate significant and unmitigable impact on critical public health and safety facilities at the lake, County recreational facilities, and biological resources. A

comprehensive analysis of an interim 1.8-foot surcharge should be conducted to analyze whether the 1.8-foot surcharge, implemented until the critical lake facilities are modified, would avoid significant adverse impacts to public recreation and public health and safety.

Since there would be a direct impact to public recreation due to implementation of the 3.0-foot surcharge, the 1.8-foot surcharge must be evaluated as a feasible alternative. In particular, implementing the 1.8-foot surcharge on an interim basis would avoid impacts to critical park facilities during park facilities modification (mitigation) while providing water for downstream releases for fish management purposes. This phased approach would effectively address the overall goal of the biological opinion.

Modified Storm Operations, Section 3.2.6, Page 3-9

The analysis should be revised to acknowledge that the Modified Storm Operations program was developed by County Water Agency and Flood Control District staff, and relies on the County "alert" automated rain gage system as well as the County "FCRiver" flood forecast model. All aspects of the program have been reviewed and accepted by the Bureau's Technical Services Center in Denver Colorado.

Status of Water Rights Permits, Section 3.3, Page 3-12

The DEIR/S acknowledges that the State Water Board will evaluate (and implement) "measures to provide the necessary and appropriate protection of...public trust resources..."

However, the discussion fails to appropriately describe the relationship of potential State Water Board action(s) relating to the Plan, such as stipulation of any release regime or approval of increased reservoir elevation for water supply for fish. In particular, any State Water Board discretion to modify any of the proposed activities of the Plan must be discussed. If the State Water Board may take such action, then it should act first and by definition, is the lead agency for the environmental review of the Plan. (CEQA Guidelines § 15051(c); Citizens Task Force on Sohio v. Board of Harbor Comm'rs. (1979) 23 Cal.3d 812.) In addition, if the State Water Board may combine fish releases and "water rights" releases in their decision/action, it would appear to have greater responsibility over approving implementation of the Plan than COMB, thus another reason that the State Water Board is the appropriate lead agency.

This uncertainty over the role of each agency involved in implementation of the Plan is at the heart of concerns about assuring effective public and agency participation. If separate environmental review documents for the Plan will be certified by both COMB/Bureau and the State Water Board, the "project/proposed action" described in each environmental document must be more clear and the responsibilities of the various agencies involved clarified. At the very least, the EIR/S should explain why neither the

County nor the State Water Board was identified as a responsible agency under CEQA or included in the environmental review process as a cooperating agency under NEPA.

Impact Analysis and Significance Thresholds, Section 4.4.2, Page 4-4

The DEIR/S provides a list of significance thresholds purportedly obtained from Public Resources Code section 21088 and CEQA Guidelines sections 15064, 15065, and Appendix G.

It is unclear what thresholds have been gleaned from Public Resources Code section 21088, which merely provides that the Secretary of the Resources Agency shall provide for timely distribution of the CEQA Guidelines and any amendments thereto. CEQA Guidelines sections 15064 and 15065 do not contain thresholds of significance, but only set forth the legal requirements for evaluating the significance of an environmental impact and identify certain circumstances when an impact must be deemed significant. Likewise, Appendix G, from which the DEIR/S "thresholds" have been duplicated verbatim, does not provide standards for determining whether impacts are significant, but merely directs agencies to answer whether, for each of the impact areas, a potential impact is considered significant. However, the DEIR/S fails to actually set forth the standard by which the determination of significance for each impact area was made.

By contrast, the County of Santa Barbara has formally adopted CEQA Thresholds of Significance, entitled the *Environmental Thresholds and Guidelines Manual*. These thresholds are widely used, including for projects in the Recreation Area, are more specific than the "thresholds" contained in the DEIR/S, and have been adopted as the equivalent of regulation or policy by the Board of Supervisors. Nowhere in the DEIR/S is the County's thresholds mentioned, much less used as a standard for helping COMB and the Bureau determine whether a particular impact is considered significant. This is particularly disturbing in the case of those impacts that will occur to or on County facilities or resources. The DEIR/S must identify what standards are being used, provide a justification as to why the County thresholds are not utilized, and explain whether those standards are more or less specific than the County's thresholds, and whether they are more or less protective of the environment, etc.

It should also be noted that no threshold is provided for economic impacts, even though temporary and/or long-term closure of the park could have significant socio-economic impacts on the region and local communities.

Environmental Analysis – Direct Impacts of Reservoir Surcharging, Section 6.0

The DEIR/S does not address policy and plan consistency of the proposal. CEQA requires that a project identify and discuss inconsistencies with any relevant local or regional plans (CEQA Guidelines § 15125(d).) NEPA also requires discussion of the proposed project's consistency with local plans, policies or other controls and considers any inconsistencies as environmental effects. (40 C.F.R. 1502.16(c); 1506.2(d).)

Without inclusion of this discussion, the document is inadequate under CEQA and NEPA.

The County's Comprehensive Plan policies that should be reviewed in conjunction with the proposed project include, but are not limited to: Land Use Element; Conservation Element including both supplements for Groundwater and Oak Tree Protection in Inland Rural Areas; Seismic Safety and Safety Element; Agricultural Element and the Scenic Highways Element. A selection of some of the most critical policies is provided in an Attachment B.

Impacts to Lakeshore Oak Trees, Section 6.4.3

Estimate of Oak Tree Loss (Page 6-18)

In response to the Notice of Preparation released in October 2001, the County provided COMB and the Bureau with a summary of the County's adopted and proposed revised thresholds, policies, and standards for significant impacts to oak woodlands, and urged that the DEIR/S utilize these standards for analysis and mitigation of impacts to oak trees resulting from implementation of the Plan. Nevertheless, the DEIR/S does not incorporate or even refer to these standards. Like the other impact areas discussed in the DEIR/S, no thresholds are provided for determining the significance of loss of oak trees resulting from implementation of the Plan.

On April 22, 2003 the Board of Supervisors adopted the Native Oak Tree Protection Program, comprised of policy amendments to the Comprehensive Plan and amendments to the Zoning and Grading ordinances, Standard Conditions and Mitigation Measures and Environmental Thresholds Manual. (Relevant policies and other requirements are included in Attachment B to these comments.) The County's program distinguishes between coast live oak and deciduous oak trees, based on the sensitivity of their populations to removals. The DEIR/S does not distinguish between deciduous oak trees and coast live oak trees in discussing either impacts or mitigation. County policies and regulations treat the removal of a valley oak or blue oak as considerably more significant than removal of a coast live oak. The removal of 12 or more deciduous oak trees by any means for a non-agricultural project requires a discretionary oak tree removal permit subject to review under CEQA. In addition, an oak tree management plan may be required. For coast live oaks, removal of 5 percent of canopy can trigger a requirement for a management plan for a non-agricultural project, unless a discretionary permit is required, in which case the County's threshold of 10 percent of trees on site applies.

The County considers a deciduous oak tree of 4 inches diameter at breast height ("DBH") or greater as a protected tree and would count its death as a tree removal. If this standard were applied to the proposed project, it is likely that a higher number of valley and blue oak trees would be removed by the project than currently indicated using a 6-

inch DBH. The DEIR/S should reassess the impact analysis and classification in Section 6.4.3 based upon the County's deciduous oak criteria and thresholds.

In any event, the loss of 452 oak trees (or 472 trees, because it is not clear whether the 20 oak trees that will be lost in the County Park are included in this total estimate of lost trees) is a significant number of trees to be affected when compared to other recent projects involving oak tree removal, and should be considered a Class I impact. (DEIR/S, at p. 6-19.) Furthermore, these oak trees, both coast live and deciduous, are located in an area of high aesthetic quality and visible to a large number of people that use Lake Cachuma; they contribute to the high quality habitat surrounding the lake that is home to numerous sensitive indigenous species. Thus, their loss will have secondary impacts to wildlife habitat and the quality of the recreational experience at Lake Cachuma.

The County concurs with the DEIR/S that removal of oak trees at Lake Cachuma is a significant impact, but does not concur that the impact will be mitigated to a level of insignificance. While the replanting and nurturing of replacement oak trees is a necessary mitigation measure, its ultimate success as a mitigation program is unknown and very long-term. Replanting trees should not be the first or only mitigation measure selected. The County's *Environmental Thresholds and Guidelines Manual* states: "The mitigation approach of replacing habitat loss is generally not a preferred approach because it always results in some habitat loss (either short-term or long-term), and because prospects for successful habitat replacement are problematic." (ETGM, p. 6-11.) The project's proposed 10-year monitoring and replanting time frame further reduces the likelihood of adequate replacement occurring in the long-term because of the slow maturation rates of oak trees. Avoidance is considered the most environmentally superior approach, but there is no evidence that the Bureau ever considered this alternative. (See discussion of alternatives below.) Therefore, the removal of oak trees, in particular the removal of 40 deciduous oak trees, should be considered a Class I impact.

Oak Tree Restoration Program (Page 6-19)

The mitigation measures proposing to replant at a 2:1 ratio for each tree impacted and monitor for 10 years are inadequate. Valley oak trees occupy a limited area within the County, have been substantially reduced in numbers and extent, and do not appear to be regenerating as successfully when compared to coast live oaks. In order to ensure successful replacement of deciduous oaks, the trees must at a minimum reach an age of reproductive maturity. Deciduous oaks grow more slowly and bare acorns at a greater age than coast live oaks. Thus mitigation measures for the different oaks impacts need to be tailored to the species.

A higher replanting ratio is considered necessary for the deciduous oak species than for coast live oak trees in Santa Barbara County. Thus, the total number of replacement trees needed for this project should be higher to include a greater number of replacement plantings for the deciduous trees that will die over time from the surcharging. County replacement ratios (10:1 for coast live oaks; 15:1 for deciduous

oaks) aim to achieve a 1:1 replacement of a tree at the age of reproductive maturity. Acorn production generally begins about age 30 for coast live oaks and even later for deciduous oaks. The Bureau is proposing a 2:1 replacement ratio in an attempt to mitigate the lower oak tree biomass present during the interval before the replacement oaks reach maturity. However, in the long term this ratio will not achieve replacement as it does not adequately account for the many causes of mortality of saplings, particularly deciduous oak saplings between 10 years and reproductive age. Also, at the end of 10 years, even at 2:1, the young oak trees would not begin to compensate for the lost biomass to the ecosystem, or the lost habitat, shading and aesthetic contribution of the removed trees. To more adequately mitigate the loss of oak trees, replanting ratios need to be increased commensurate with the species to be removed.

Nurturing of existing deciduous oak tree seedlings is a feasible mitigation measure that should be considered along with replanting. Naturally, sprouting seedlings may have a better chance of surviving to reproductive maturity, and could improve the health and resiliency of existing deciduous oak savannas or woodlands. The overall valley oak population in Santa Barbara County is estimated at about a tenth of its pre-European size. Because their range is more limited here, off-site planting should also be considered in preparing a mitigation strategy. The DEIR/S acknowledges that more replanting sites will be needed over time, but concludes without any justification or explanation that such off-site planting is infeasible. The vegetation map (DEIR/S, Appendix A, Figure 6-1) indicates that even within the Cachuma Recreation Area there appears to be numerous areas of oak savanna and woodland present. Inclusion of additional sites and nurturing existing seedlings for deciduous oak replacement could help to alleviate the limited area available for replacement oak plantings.

Mitigation Measures and Residual Impact, Section 6.4.5, Page 6-23

The residual impact cannot be determined and remedied by a 10-year period of monitoring and replanting. The DEIR/S states that prior tree loss from inundation has been observed over a 10 to 15 year period and loss as a result of wave splash could occur over 20 to 25 years. If monitoring is only conducted for 10 years, some tree loss will go undetected and no mitigation replanting is provided. It would be better to do the replanting immediately, in anticipation of loss, which would also shrink the temporal loss of biomass. Further, if the replanted trees are only tracked and replaced within a 10-year period, there is a high likelihood that many of them will not make it to maturity. As a result the original impact to oak trees will not have been sufficiently mitigated and the residual loss could be high. This again argues for oak tree deaths to be treated as a Class I impact.

The DEIR/S should identify and utilize a long-term goal for replacing oak trees rather than presume that a 10-year planting and monitoring program will suffice to fully mitigate the trees lost. We recommend a formal oak tree resource management plan be prepared and adopted, which incorporates County's oak tree replacement standards and requirements. Otherwise, the ecosystem functions will not be fully mitigated and may result in the slow degeneration of the oak community and the habitat it provides.

Sensitive Aquatic Species and Terrestrial Wildlife, Section 6.5, Page 6-24

Many other sensitive species have not been identified and impacts to their habitat are not discussed. Attachment C to this letter contains a list of sensitive species that may inhabit the uplands or riparian corridor around Lake Cachuma and/or along the lower Santa Ynez River, but have not been mentioned in the DEIR/S. In particular, six grassland species could be highly impacted by increasing the level of Lake Cachuma through surcharging. Grasslands may not "migrate" out from the lake over time if suitable conditions are not available. Similarly, wetlands extension could be limited by the topography surrounding the lake. Therefore, these habitats could be reduced by the proposed implementation of the Plan. Insufficient information is provided in the DEIR/S to assess the potential impacts to grasslands and wetlands.

In addition, some of these species are protected and may require consultation with resource agencies. For example, insufficient information is provided to determine impacts to the bald eagles that over-winter or are resident at Cachuma Lake. The DEIR/S states that the proposed project would not have any affect on the bald eagle or peregrine falcon. (DEIR/S, at p. 6-25.) However, there is no explanation of or support for this conclusion. Information about the use of oak trees by eagles or falcons for nesting, roosting, resting or hunting is not provided. Impacts on fish species that the raptors feed upon is not presented. Given that the bald eagle is a federally listed species, changes to the lake may constitute a take under the Endangered Species Act, which requires consultation with the United States Fish and Wildlife Service under Section 7 of that Act. At a minimum, in justifying its conclusions about impacts to the eagle, the DEIR/S should report the results of any consultation with the USFWS and California Department of Fish and Game.

Recreation, Section 6.6, Page 6-26

The EIR/S fails to address loss of recreation as a potentially significant impact. Inundation of critical park facilities (water treatment and sewer collection facilities) would necessitate closure of the park during periods when the lake level is above 1.8 feet. No meaningful estimate is given of the length of time of the inundations. County staff experience with the Santa Ynez Hydrology Model and recession curves used to estimate spill duration and volume suggest that meaningful estimates could feasibly and reasonably be prepared as part of this EIR/S. These estimates must be prepared in order to estimate 1) loss of recreational opportunity and 2) the local economic impact of loss of recreational opportunity. These estimates may be based on SYRNM model runs already performed for other issue areas.

In addition, the DEIR/S incorrectly classifies the impact upon recreational uses at the County Park as a short-term significant but mitigable impact (Class II). Regardless of agency obligations to relocate park facilities, the DEIR/S is required to accurately identify and classify the direct physical impacts of the proposed surcharging upon recreational use and park facilities at the lake. The impacts to the park, which is an

intensely used local and regional recreational facility, will persist for an unknown amount of time, during an unspecified time of year. The time over which the park or individual facilities are unavailable constitute an irretrievable recreational loss for a large user population. Since there is no revised park facility plan and no funding for such plan or facility replacement evaluated in the DEIR/S, it cannot be determined that the significant impacts to the park will eventually be completely mitigated. Given the high usage of this regional recreational facility, and the lack of an acceptable relocation plan and funding for such activities, the overall long-term impact to the park should be considered a Class I impact. By not acknowledging impacts to a major local and regional recreational facility as Class I impacts, the environmental analysis of alternatives is skewed to favor the proposed project.

Furthermore, there is no discussion of potential impacts to other recreational facilities upstream from the lake as a result of the proposed surcharging. The DEIR/S identifies Live Oak Park at the head of the lake and Ranch Road equestrian trail that follows the north side of the lake, but gives no analysis of whether or not surcharging will impact these facilities. Again, a map of lake levels that will result from surcharging (requested in comments related to Reservoir Surcharging, Sections 2.5 and 10.3.2, above) would assist in this analysis. It is possible that surcharging alone or coupled with spring runoff could make the equestrian trail inaccessible; or exacerbate flooding of Paradise Road, the access road to recreational areas in the national forest. At a minimum, higher lake levels in the vicinity of Live Oak Park could change the ecology of the park's setting if not directly impact park facilities, thus changing the public's recreational experience of plants and wildlife that inhabit the park or its surroundings. Without discussion, these potentially significant impacts remain unresolved.

Potential Impacts During Surcharging, Section 6.6.2, Page 6-30

The DEIR/S indicates that impacts due to the potential surcharge at the maximum lake level for all operations is approximately four consecutive months. This analysis is not adequate. The length of surcharge will vary by year and may be considerably longer (under conditions which occurred in 1983 and 1969, for example). This estimate also does not consider a surcharged lake under very wet conditions, which could extend the estimated 4-month period into the summer, when the highest recreational use of the lake and County park occurs. Even under the inadequate analysis presented in the DEIR/S, the estimated period of surcharge presented would preclude operation of the County's Park for months at a time due to the impacts to the overall operation of the recreational area infrastructure and maintenance of resources. Roadways, camping areas, grassland, and oaks inundated over that extended period become compromised and will require a continuing reinvestment of funds. Even if these facilities were inundated for a short period of time, damage would occur to the facilities and repairs would have to be made before the Park would be operable again. These recreational impacts would be Class 1, even if critical park facilities are successfully modified and operations eventually resumed.

The DEIR/S notes that surcharge "could disrupt recreational activities and possibly cause a public safety hazard." (DEIR/S, at p. 6-31.) The discussion also states that surcharge could persist for many months and interfere with summer recreation on the lake.

This analysis greatly minimizes the impact to County Park facilities as well as the magnitude of the public health and safety hazard. The surcharge as proposed at three feet will have a direct and immediate effect on both the water intake and treatment facility as well as two primary sewer lift stations. Each of these facilities is essential to the operation of the park. Inundation of the sewer lift station would result in contamination of the water reservoir. The DEIR/S must provide more specific analysis of the proposed project and the alternatives (as discussed below). At the very least, the following related questions must be addressed:

1. If the surcharge occurs before modifications of Park facilities such as sewer collection facilities are completed, what are the specific impacts to reservoir water quality, current water uses, and park operations?
2. If surcharge to the 3.0-foot level is delayed until park facilities may be successfully funded and implemented, what are the specific impacts to water supply and how may they be mitigated?

The Lake Cachuma recreation area serves over 750,000 visits per year. Many of these visitors are from throughout the Central Coast and Southern California region. A reduction of park activity in the heavy use months of spring and summer will have significant adverse impacts on visitors as well as the corresponding revenue utilized to support the lake and operations (Lake Cachuma Recreation Area is self funding).

Consideration of the reduced availability of the Park area, coupled with the decrease in visitors, will have a direct impact on the economy of the local area (e.g., Solvang, Buellton, Los Olivos, Santa Ynez) and on other for-profit and non-profit entities. The economic impacts of the surcharge are not identified or analyzed in the DEIR/S. The potentially significant socio-economic impacts of the implementation of the Plan must be analyzed in this EIR/S, and should incorporate any revised estimates for the length of inundation and time of year for inundation.

Instead of providing an adequate analysis and providing for appropriate mitigation of the impacts of the Plan on the County's recreational and public works facilities, the DEIR/S concludes that "The need to relocate these facilities to protect against wave action must be determined by County Parks based on the level of risk that they are willing to take regarding each facility." (DEIR/S, at p. 6-32.) This analysis does not take into account actual and observable conditions at the lake, primarily during winter months. If the surcharge were to be achieved, it would be the result of significant rain during winter months. Such winter storms typically result in wave run up. The analysis of a 3.0-foot surcharge without wave run up is not a practical review of actual, observable,

and frequent occurrences in the field. Both NEPA and CEQA require an analysis of potential impacts based on actual and existing conditions. (40 C.F.R. 1502.15; CEQA Guidelines § 15125; Bureau's NEPA Handbook, Section 8.8.2.) All analysis should include the impact of the 3.0 surcharge coupled with the wave action (756") as noted in Table 6-15 of the document. As reflected in this table, all critical County facilities and key infrastructure are inundated at 756 feet. CEQA and NEPA prohibit a lead agency from relying on future analysis to determine impacts and mitigation at some unspecified time in the future. (40 C.F.R. § 1508.8(b); Stanislaus Natural Heritage Project v. County of Stanislaus (1996) 48 Cal.App.4th 182; Sundstrom v. County of Mendocino (1988) 202 Cal.App.3d 296.)

This use of the wave run up factor was applied in Section 6, when referring to oak trees, yet not applied to facilities. Why are different standards and methodology applied? This is an inconsistent application of items requiring review. As discussed elsewhere in these comments, Bureau review and operational constraints limit the surcharge to begin only after April 15 due to risk of large storms prior to that date. Thus, wave run up needs to be discussed as a factor in those months during which surcharge would be expected to occur.

On page 6-34, the DEIR/S recognizes that at minimum, the following facilities would need to be relocated immediately: water treatment plant and intake, boat launch ramp and marina path and docks. It is unlikely, even under a best-case scenario (necessary funding available, expedited design review and construction utilized), that all facilities could be relocated within the 2005 timeframe indicated. As discussed elsewhere in these comments, an evaluation of a temporary 1.8 surcharge, which would allow time for the County to accomplish the necessary relocation activities, must be presented. In addition, an evaluation of impacts to the reservoir if facilities modifications are not completed and reservoir surcharge occurs must be provided as well.

Our best estimates suggest that park facilities modification could be completed in the summer of 2007. However, this estimate depends on the action of several agencies. COMB and the Bureau must certify an EIR/S which will constitute an adequate environmental review document for County's relocation activities, the Bureau and the County must successfully renegotiate the RMP so that County remains the agency responsible for maintenance and operation of the Park), and the State Water Board must approve the new reservoir storage limits. The analysis should explore the impacts associated with a facility modification deadline of 2007.

On page 6-34 of the DEIR/S, the document states that "Under the recreation contract with Reclamation, the County is responsible for relocating the facilities to avoid conflicts with reservoir operations, including surcharging." This comment regarding responsibility for removal or relocation of County facilities is refuted in a letter dated August 27, 2002 from Santa Barbara County Counsel to Mr. Michael Jackson of the Department of the Interior – Bureau of Reclamation. (Attached hereto as Attachment D.) The determination of which agency is responsible for relocating Park facilities due to implementation of the Plan is a legal issue. During the preparation of the EIR/S, COMB

and the Bureau must identify the potential impact of the proposed project and indicated how, if at all, those impacts can be mitigated. Simply asserting that the County is responsible for relocation is not a sufficient discussion of alternative avenues of mitigation. At the very least, should this assertion be made, a balanced discussion of the legal issue, including a description of the opposing opinions, should be presented.

In any event, if the County is in fact responsible for implementing the relocation of facilities, as the DEIR/S asserts, then the County is a responsible agency for purposes of CEQA and should be identified as such, and the document revised to make it adequate for the County's use as a responsible agency.

Finally, on page 6-35, the DEIR/S states that "Until relocations are completed, critical recreational facilities...could be flooded during a maximum surcharge event which would likely result in park closure for weeks to months." This comments fails to acknowledge that should these facilities not be successfully relocated before implementation of the Plan, significant water quality impacts would result from potential seepage from sewer lift stations to the reservoir during surcharge. These water quality impacts are not referenced nor analyzed.

Furthermore, no mention is made of (temporal) limitations on surcharging. Specifically, County and the Bureau have agreed that surcharge may only occur after April 15, since the risk potential due to the probability of large storms is unacceptable prior to that date. Existence of any surcharge could substantially hamper modified storm operations or lead to higher discharges/releases during storms. The County forwarded rainfall probability analysis for Bureau review on July 14, 1994. This analysis was (in part) the basis for the Bureau's approval of surcharge concept subsequently given by the Bureau's Denver Technical Center. The limitations approved by the Bureau's technical staff must be incorporated into any analysis of surcharge timing and impacts. These limitations are thus part of the project descriptions and should be discussed in the EIR/S. If these limitations are to be changed, a new risk analysis acceptable to the Bureau's Technical Services Center personnel must be contained in this EIR/S. This is an important issue, since a surcharge prior to April 15 could greatly reduce the effectiveness of flow reductions due to winter storm operations.

Mitigation Measures and Residual Impact, Section 6.6.3, Page 6-35

The DEIR/S concludes that Park facility relocation is the responsibility of the County, and as such, the mitigation to avoid long-term recreation impact is under the authority of another public agency, not the Bureau or COMB.

As noted in previous comments, this is a disputed legal issue, and cannot provide COMB or the Bureau with an excuse for failing to analysis the impacts or identifying appropriate mitigation for the impacts of the Plan. The County of Santa Barbara refutes the contention that it is solely responsible for relocation of facilities. These facilities have been placed on Bureau land based on Bureau guidelines, in accordance with the County's lease, and after Bureau review and approval. Furthermore, such facilities have

been in place for an extended period. At no time was the County ever advised that facilities were not to be constructed, or that locations were not suitable.

As previously explained, the County estimates it would be able to accomplish the timing of facility modifications by 2007 with the cooperation of COMB, the Bureau, and the State Water Board several other agencies. The County urges COMB and the Bureau to revise the DEIR/S as set forth in this comment letter to make it an adequate document for the County's use as a responsible agency, recirculate the revised document for further public review of the impacts and mitigation measures identified in this comment letter, and adopt the suggested feasible temporal surcharge alternative set forth in this comment letter in order to allow the County, as a responsible agency, to successfully accomplish relocation of its facilities.

Cultural Resources, Sections 6.7.4 and 6.7.5

Although the DEIR/S summarily analyzes the impacts associated with the relocation of County Park facilities in the cumulative impacts section, the DEIR/S inexplicably acknowledges that cultural resource impacts would result from facility relocation and includes this in the Plan impact analysis. (DEIR/S, at p. 6-44.) Such direct project-specific analysis and mitigation is required in the DEIR/S for each impact resulting from County Park facility relocation, albeit in enough detail to provide an adequate environmental document for these activities.

Alternatives Addressed in the DEIR/S, Section 10.1.3

Table 10-3, Page 10-9

Table 10-3 is incomplete. It appears that the loss of oak trees, up to 452 (or 472?), is not included in this comparison table.

Surcharge Alternatives, Page 10-13

As set forth elsewhere in these comments, insufficient alternatives for the surcharging component of the project are evaluated in the DEIR/S. Only two alternatives are presented: the existing .75-foot surcharging, which is also referred to as the current operation, and a 1.8-foot surcharging alternative. It is debatable, or at least confusing, whether the .75-foot surcharge is even an alternative, given that it is considered, at least in some sections of the EIR/EIS to be the current situation. If that is the case, then it should be evaluated as part of the "no action" alternative. The EIR/EIS is not clear or consistent on this, and this confusion should be cleared up not just in the discussion of the alternatives, but throughout the EIR/EIS.

There is also no evaluation of a combination of the alternatives that address individual components of the proposed project (surcharging, fish releases, impediments removals) into an alternative to the proposed project. For example, combining the 1.8-foot surcharge with a lower target flow at Highway 154 could reduce the impacts on water supply with a minimum reduction in rearing targets. Given that this could have a significant reduction in biological and recreational impacts, it and other combinations should be evaluated in the EIR/EIS.

There is also no evaluation of a temporary or incremental surcharge of Lake Cachuma would reduce or avoid the significant recreational impacts of the proposed Plan by allowing the County additional time to obtain sufficient financing and accomplish the physical relocation of over \$12 million worth of facilities, while still achieving the project's long-term objectives. This alternative would satisfy the short-term and long term needs of fish, avoid significant recreation impacts and pose minimum threat to short term water supply. Nevertheless, the DEIR/S does not analyze such an alternative. Indeed, the DEIR/S provides no explanation whatsoever for why this feasible alternative was not considered.

The County urges COMB and the Bureau to take the time necessary to analyze the feasibility of such alternatives. While this may delay the Bureau's self-imposed 2005 surcharge deadline, the County would be given sufficient time to secure funds and accomplish necessary relocation activities in order to accommodate the Plan's long-term goals without damage or loss to its recreation facilities.

Upper Basin Alternatives, Section 10.13, Page 10-89

It is our understanding that the analysis of impacts associated with the alternatives that involve the relocation or planting of fish above Bradbury Dam is included in the DEIR/S merely to provide the technical basis for dismissing this action as an infeasible alternative that has been eliminated from further consideration. Therefore, neither COMB nor the Bureau may rely on this environmental document to approve any activities related to relocating or planting fish above Bradbury Dam. If such an alternative were to be further considered by COMB or the Bureau, the DEIR/S must be revised or another document prepared to analyze the effects of such an alternative on the recreational impacts to fishing for various species in Lake Cachuma and the upper tributaries of the Santa Ynez River.

Cumulative Impacts, Section 11.0, Page 11-1

The DEIR/S asserts that the "impacts of relocating the County Park facilities to avoid flooding by surcharging would be considered indirect and cumulative effects of the proposed project." (DEIR/S, at p. 11-5.) To the contrary, the need for the County to move or modify its facilities is a direct, foreseeable consequence of Plan implementation under the alternative analyzed in the EIR/S, and the EIR/S must therefore fully analyze the environmental impacts associated with those activities as part of the proposed project.

The summary analysis set forth in the cumulative impacts section of the document is not adequate. It is apparent from the document that COMB and the Bureau, in cooperation with the County, would have sufficient information to provide an adequate analysis and provide for appropriate feasible mitigation to address the impacts associated with relocating County facilities in the EIR/S.

Because the EIR/S contains an inadequate analysis of the Plan's impacts on County facilities at Lake Cachuma, the County, as a responsible agency, will be required to prepare further environmental analysis to analyze the impacts of relocating those facilities, a direct and foreseeable impact resulting from implementation of the Plan. As set forth in this comment letter, the analysis contained in the EIR/S is currently inadequate for those purposes.

ATTACHMENT B

A selection of some of the relevant policies from the Santa Barbara County Comprehensive Plan is provided below. Some of these policies or parts of them may only be relevant to projects for removal of impediments to fish migration or to the surcharging of Lake Cachuma, while others may be relevant to both.

LAND USE ELEMENT

HILLSIDE AND WATERSHED PROTECTION POLICIES

1. Plans for development shall minimize cut and fill operations. Plans requiring excessive cutting and filling may be denied if it is determined that the development could be carried out with less alteration of the natural terrain.
2. All developments shall be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions and be oriented so that grading and other site preparation is kept to an absolute minimum. Natural features, landforms, and native vegetation, such as trees, shall be preserved to the maximum extent feasible. Areas of the site which are not suited to development because of known soil, geologic, flood, erosion or other hazards shall remain in open space.
3. For necessary grading operations on hillsides, the smallest practical area of land shall be exposed at any one time during development, and the length of exposure shall be kept to the shortest practicable amount of time. The clearing of land should be avoided during the winter rainy season and all measures for removing sediments and stabilizing slopes should be in place before the beginning of the rainy season.
4. Sediment basins (including debris basins, desilting basins, or silt traps) shall be installed on the project site in conjunction with the initial grading operations and maintained through the development process to remove sediment from runoff waters. All sediment shall be retained on site unless removed to an appropriate dumping location.
5. Temporary vegetation, seeding, mulching, or other suitable stabilization method shall be used to protect soils subject to erosion that have been disturbed during grading or development. All cut and fill slopes shall be stabilized as rapidly as possible with planting of native grasses and shrubs, appropriate non-native plants, or with accepted landscaping practices.
7. Degradation of the water quality of groundwater basins, nearby streams, or wetlands shall not result from development of the site. Pollutants, such as chemicals, fuels, lubricants, raw sewage, and other harmful waste, shall not be discharged into or alongside coastal streams or wetlands either during or after construction.

STREAMS AND CREEKS POLICIES

1. All permitted construction and grading within stream corridors shall be carried out in such a manner as to minimize impacts from increased runoff, sedimentation, biochemical degradation, or thermal pollution.

FLOOD HAZARD AREA POLICIES

The intent of the Flood Hazard Area policies is to avoid exposing new developments to flood hazards and reduce the need for future flood control protective works and resulting alteration of stream and wetland environments by regulating development within the 100 year flood plain.

2. Permitted development shall not cause or contribute to flood hazards or lead to expenditure of public funds for flood control works, i.e., dams, stream channelizations, etc.

HISTORICAL AND ARCHAEOLOGICAL SITES POLICIES

1. All available measures, including purchase, tax relief, purchase of development rights, etc., shall be explored to avoid development on significant historic, prehistoric, archaeological, and other classes of cultural sites.
2. When developments are proposed for parcels where archaeological or other cultural sites are located, project design shall be required which avoids impacts to such cultural sites if possible.
3. When sufficient planning flexibility does not permit avoiding construction on archaeological or other types of cultural sites, adequate mitigation shall be required. Mitigation shall be designed in accord with guidelines of the State Office of Historic Preservation and the State of California Native American Heritage Commission.
4. Off-road vehicle use, unauthorized collection of artifacts, and other activities other than development which could destroy or damage archaeological or cultural sites shall be prohibited.
5. Native Americans shall be consulted when development proposals are submitted which impact significant archaeological or cultural sites.

PARKS/RECREATION POLICIES

2. Opportunities for commercial and sport fishing should be preserved and improved where appropriate.
3. Future development of parks should emphasize meeting the needs of the local residents.

4. Opportunities for hiking and equestrian trails should be preserved, improved, and expanded wherever compatible with surrounding uses.
5. Schools and other public-owned lands should be utilized for joint use recreational activities whenever possible.

CONSERVATION ELEMENT SUPPLEMENT: OAK TREE PROTECTION IN INLAND RURAL AREAS OF SANTA BARBARA COUNTY

Goal: Santa Barbara County shall promote the conservation and regeneration of oak woodlands in the County over the long term, and, where feasible, shall work to increase the native oak population and extent of woodland acreage. The highest priority for conservation, protection and regeneration shall be for valley oak trees, valley oak woodlands and valley oak savanna.

Policy: Native oak trees, native oak woodlands and native oak savannas shall be protected to the maximum extent feasible in the County's rural and/or agricultural lands, Regeneration of oak trees shall be encouraged. Because of the limited range and increasing scarcity of valley oak trees, valley oak woodlands and valley oak savanna, special priority shall be given to their protection and regeneration.

Development Standards:

Development Standard 1: Protection of all species of mature oak trees

All development shall avoid removal of or damage to mature oak trees, to the maximum extent feasible. Mature oak trees are considered to be live oak trees six inches or greater diameter at breast height and blue oak trees four inches or greater diameter at breast height, or live and blue oaks six feet or greater in height. Native oak trees that cannot be avoided shall be replanted on site. When replanting oak trees on site is not feasible, replanting shall occur on receiver sites known to be capable of supporting the particular oak tree species, and in areas contiguous with existing woodlands or savannas where the removed species occurs. Replanting shall conform to the County's *Standard Conditions and Mitigation Measures*. (This development standard applies to oak trees other than valley oaks. Valley oak trees are addressed in separate Development Standards.)

Development Standard 2: Protection of valley oak trees

All development shall avoid removal of or damage to protected valley oak trees. Development shall not encroach within six feet of the dripline of any protected valley oak trees. Protected valley oak trees are those valley oak trees two inches or greater diameter at breast height, or six feet or taller in height. Valley oak trees that cannot be avoided shall be appropriately replaced on site. If replanting valley oak trees on site is not feasible, replanting shall occur on receiver sites known to be capable of supporting valley oaks, and that allow re-planting in areas contiguous with existing woodlands or savannas where valley oaks occur. All oak tree replanting shall conform to the County's *Standard Conditions and Mitigation Measures*.

Development Standard 3: Restoration of the valley oak tree population

Where development is proposed within historic valley oak tree habitat (even if no valley oak trees would be removed), mitigation of the loss of historic habitat shall be required, where feasible, through planting of locally obtained valley oaks as part of the project landscaping.

ARTICLE IX OF CHAPTER 35 OF THE COUNTY CODE PROVIDES STANDARDS FOR REPLACEMENT OF DECIDUOUS (BLUE AND VALLEY) OAK TREE REMOVALS.

Sec. 35-911. Standards for Oak Tree Replacement.

Where deciduous oak tree removal requires a permit under this ordinance, the following standards shall be adhered to:

1. The preparation and implementation of an Oak Tree Management Plan for the lot on which the oak tree removal will take place and any lot used for off-site replacement shall be required. The Management Plan shall be prepared or endorsed by the Oak Tree Specialist. The plan shall:
 - a. Demonstrate how the mix of deciduous oak tree savannas, woodlands, and forests on the lot will be preserved, created, enhanced, restored, and maintained, so that:
 - (1) The removal of protected oak trees does not divide the remaining savanna, woodland, and forest habitats into small, isolated fragments.
 - (2) Protection, maintenance, restoration, and enhancement of large blocks of savanna, woodland, and forests are given priority over maintenance, restoration, and enhancement of smaller, more isolated habitat patches.
 - (3) Valley and blue oak trees that link on- or off-site oak tree savannas, woodlands, forests, or other existing, proximate habitats are retained to the maximum extent feasible.
 - (4) On-site replacement is given priority over off-site replacement except where no suitable on-site locations exist, or reasonable use of the lot would be precluded as determined by Planning and Development along with the Oak Tree Specialist. In such cases the replacement oak trees may be planted in an off-site location acceptable to the applicant, the landowner and the Oak Tree Specialist. For off-site replacement planting locations priority shall be given to nearby sites and to sites adjoining existing deciduous oak woodlands or providing links between deciduous oak woodlands.
 - (5) There is avoidance of removal of actively used granary trees, raptor roosting or nesting trees, and trees in riparian and other wildlife corridors.
 - b. Comply with the following requirement, when applicable.
 - (1) When required by the Oak Tree Specialist on a case-by-case basis, a buffer area protecting the critical root zone shall be maintained around identified valley and blue oak trees retained on the lot.
 - c. Identify valley and blue oak tree replanting, restoration, conservation and enhancement sites on a plan or aerial photograph to facilitate mitigation monitoring and tracking; and identify the species, location, and size of all oak trees that are planted or protected as mitigation or to fulfill a condition on the permit.
 - d. Provide the deciduous oak tree replanting schedule and nurturing regime.

2. Protected oak trees that are removed shall be compensated at a 15:1 ratio by replacement planting, or protection of naturally occurring oak trees between six (6) inches and six (6) feet tall on the lot.
3. Naturally occurring valley and blue oak seedlings/saplings, growing on the lot and between six (6) inches and six (6) feet in height that are protected and nurtured for five (5) years, may be counted as replacement (mitigation) trees under the Program.
4. Any combination of acorns, planted seedlings/saplings, or naturally occurring valley and blue oaks between six (6) inches and six (6) feet tall, if established according to the requirements herein, may be used to achieve the required number of replacement trees.
5. Replacement deciduous oak trees that are planted must come from nursery stock grown from locally-sourced acorns, or use acorns gathered locally, preferably from the same watershed in which they are planted. If planting is done using acorns, the ratio of acorns to protected oak trees removed shall be a minimum of forty-five (45) acorns for every protected valley oak tree removed. Up to three (3) acorns may be planted in the same hole.
6. Replacement deciduous oak trees shall be established in a location suitable for their growth and survival as determined by the Oak Tree Specialist, no closer than twenty (20) feet from each other or from existing oak trees and no farther than 165-180 feet from each other or existing oak trees unless otherwise approved by the Oak Tree Specialist.
7. Valley oaks shall replace valley oaks removed and blue oaks shall replace blue oaks removed.
8. The replacement deciduous oak trees shall be nurtured for five (5) years, the last two without supplemental watering, using techniques consistent with the most current version of the University of California publication "How to Grow California Oaks." At the end of the five years, ten trees for every protected tree removed must be alive, in good health as determined by the Oak Tree Specialist, and capable of surviving without nurturing and protection.
9. Each replacement deciduous oak tree must be protected against damaging ground disturbance, soil compaction, or over-irrigation within the dripline. It must be fenced to protect it from grazing or browsing by animals both below and above ground until it has reached a minimum of eight (8) feet in height.
10. Where conditions warrant and where agreed to by the landowner and Oak Tree Specialist, tree planting designs and nurturing practices (e.g. protective structures, watering schedules) may be adjusted to improve the probability that replacement trees will be established successfully.
11. Valley oak tree removal encompassing an area of five (5) acres or greater shall require valley oak replanting of an area of comparable size in accordance with the requirements of this section, in an area of existing or historic valley oak habitat. This area shall be protected in the long-term where feasible.

For the purposes of this ordinance, all replacement trees are considered protected oak trees regardless of size.

ATTACHMENT C

Sensitive Species Not Identified in EIR/EIS

The following list identifies sensitive species that may be impacted by the proposed project given their habitat requirements and local distribution. The list contains wildlife species that meet the CEQA criteria for endangered, rare, or threatened, as well as a plant species (*Lompoc yerba santa*) that is listed as federally endangered and state threatened.

1. **Tri-colored blackbird**: forages in riparian habitat, marsh borders, and grassland habitats; breeds along the Santa Ynez River and near freshwater in emergent wetlands; potentially occurs around Lake Cachuma.
2. **Bell's sage sparrow**: inhabits low, dense shrubland, potentially around Lake Cachuma and parts of the Santa Ynez River.
3. **Yellow-breasted chat**: inhabits dense riparian vegetation along the Santa Ynez River and around Lake Cachuma.
4. **California spotted owl**: prefers large blocks of mature stands of trees, near freshwater; has been documented around Lake Cachuma.
5. **Yellow warbler**: inhabits riparian communities; documented breeding locations along the Santa Ynez River.
6. **White-tailed kite**: breeds in lowland grasslands, oak woodlands/savannas, grass-dominated wetlands and riparian habitats associated with open areas; potential habitat around Lake Cachuma and along the Santa Ynez River.
7. **Cooper's hawk**: prefers dense tree stands or woodland habitats; nest and forage near open water and riparian woodlands; known breeding locations along the upper Santa Ynez River and potential habitat around Lake Cachuma.
8. **California horned lark**: inhabits grasslands and other open habitats, potentially around Lake Cachuma and along the Santa Ynez River.
9. **Long-eared owl**: inhabits dense, riparian and live oak thickets; known breeding near upper Santa Ynez River and potential habitat exists around Lake Cachuma.
10. **Purple martin**: forage in riparian areas and lowland woodland communities; during migration found near water, including grasslands, wet meadows, and emergent wetlands; potentially occurs west of Lake Cachuma and along Santa Ynez River.
11. **California horned lizard**: inhabits annual grasslands, scattered shrubs, and clearings in riparian woodlands; potentially occurs around Lake Cachuma and along the Santa Ynez River.
12. **Western spadefoot toad**: inhabits grasslands, though requires temporary pools for breeding and metamorphosis; potentially occurs around Lake Cachuma and along Santa Ynez River.
13. **La Graciosa thistle**: inhabits marsh, swampland, and riparian scrub communities; potentially occurs along Santa Ynez River west of Buellton.

COUNTY OF SANTA BARBARA



Stephen Shane Stark
County Counsel

SEP 30 2002

105 East Anapamu Street
Suite 201
Santa Barbara, CA 93101
Telephone: (805) 568-2950
FAX: (805) 568-2982

COUNTY COUNSEL

August 27, 2002

Mr. Michael Paul Jackson
Department of the Interior
Bureau of Reclamation
South-Central California Area Office
1243 N Street
Fresno, California 93721-1813

Re: Recreational Area Agreement (Contract No. 14-06-200-600)
Cachuma Project - Letter from Mr. Jackson to the Cachuma Operation
And Maintenance Board dated July 12, 2002

Dear Mr. Jackson:

This letter is written to comment on your letter to Jan Abel of the Cachuma Operation and Maintenance Board (COMB) with respect to the possibility that the County of Santa Barbara, under the Agreement to Administer Recreational Area (hereafter, "Agreement") between the County and the United States Bureau of Reclamation (hereafter, "Bureau") for the recreational facilities at Lake Cachuma, would or could be required to relocate, at its own expense—currently projected at \$12,000,000—its facilities at Lake Cachuma on account of a proposed surcharge of the lake for the benefit of steelhead trout.

In your letter you suggest that the Bureau would or could terminate its agreement with the County either by natural expiration of the agreement in January 2003 or with a six months' notice. Because Section 11 of the Agreement requires that the County return the land to the Bureau "in like conditions as when taken, reasonable wear and tear of the elements excepted..." you conclude that "...any expenses for moving facilities that would be inundated by implementation of the surcharge *should* be borne by the County (emphasis added)."

A review of both the Agreement and the Plan of Cachuma Recreation Area reveals that the reason for the development of Lake Cachuma as a recreation area was to provide a public regional recreational facility, the likes of which did not exist at that

Letter to Michael Paul Jackson
August 27, 2002
Page 2

time and does not otherwise exist today.¹ Only four paragraphs in the whole report dealt with fish; none concerned surcharging the lake². In short, there was nothing in the original Agreement nor the planning for it which considered or even suggested surcharging the lake resulting in the relocation of County facilities.

The County's purpose in managing Cachuma continues to be recreational; nothing about that purpose requires either the removal of the County's current facilities or the rebuilding of new facilities at another location.

On the other hand, the County understands that the Bureau may wish to proceed with the recommendations in the Biological Opinion, done by the National Marine Fisheries Service, to encourage the proliferation of steelhead trout by surcharging the lake. The County also understands that the Bureau may wish to allow the Agreement to expire in January 2003 at the end of its term or terminate it by six month notice—although the Agreement expires in less than six months--and require the County to remove its facilities from the Cachuma Recreational Area.

The County is willing to assist the Bureau in obtaining non-County funds for rebuilding the facilities. However, please understand that the County is opposed to moving or rebuilding its facilities at its own cost. The current Agreement does not require it; the current fiscal climate both in the county and in the state does not support it; and the surcharge project is not a County project.

Very truly yours,

Stephen Shane Stark
County Counsel

By 
Patricia J. Clancy
Senior Deputy County Counsel

¹ This plan, dated January 1953 and consisting of nearly 50 pages, was done by the Santa Barbara County Planning Department for the County Planning Commission and the County Board of Supervisors. A grant of funds from the Bureau enabled Planning to obtain technical assistance from the Nation Park Service in its preparation.

² The only consideration given to the needs of fish was whether warm water or cold water fish (trout) were more suitable with state officials believing that the lake environment favored warm water fish, not trout, but agreeing to a "trial" stocking of trout (pp 39-40).

Letter to Michael Paul Jackson
August 27, 2002
Page 3

Cc: Senator Barbara Boxer
Attn: Johanna Williams, Field Representative for Santa Barbara
312 No. Spring Street
Suite 1748
Los Angeles, CA 90012

Senator Dianne Feinstein
11111 Santa Monica Blvd.
Suite 915
Los Angeles, CA 90025

Congresswoman Lois Capps
1216 State Street
Suite 403
Santa Barbara, CA 93101

Congressman Elton Gallegly
300 Esplanade Drive
Suite 1800
Oxnard, CA 93036

Mr. Ron Waterman
Waterman and Associates
900 Second St., NE
Suite 109
Washington, D.C. 20002

Michael F. Brown, County Administrator
Stephen Shane Stark, County Counsel
Coleen Lund, County Parks Department

ATTACHMENT D

A selection of some of the relevant policies from the Santa Barbara County Comprehensive Plan is provided below. Some of these policies or parts of them may only be relevant to projects for removal of impediments to fish migration or to the surcharging of Lake Cachuma, while others may be relevant to both.

LAND USE ELEMENT

HILLSIDE AND WATERSHED PROTECTION POLICIES

1. Plans for development shall minimize cut and fill operations. Plans requiring excessive cutting and filling may be denied if it is determined that the development could be carried out with less alteration of the natural terrain.
2. All developments shall be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions and be oriented so that grading and other site preparation is kept to an absolute minimum. Natural features, landforms, and native vegetation, such as trees, shall be preserved to the maximum extent feasible. Areas of the site which are not suited to development because of known soil, geologic, flood, erosion or other hazards shall remain in open space.
3. For necessary grading operations on hillsides, the smallest practical area of land shall be exposed at any one time during development, and the length of exposure shall be kept to the shortest practicable amount of time. The clearing of land should be avoided during the winter rainy season and all measures for removing sediments and stabilizing slopes should be in place before the beginning of the rainy season.
4. Sediment basins (including debris basins, desilting basins, or silt traps) shall be installed on the project site in conjunction with the initial grading operations and maintained through the development process to remove sediment from runoff waters. All sediment shall be retained on site unless removed to an appropriate dumping location.
5. Temporary vegetation, seeding, mulching, or other suitable stabilization method shall be used to protect soils subject to erosion that have been disturbed during grading or development. All cut and fill slopes shall be stabilized as rapidly as possible with planting of native grasses and shrubs, appropriate non-native plants, or with accepted landscaping practices.
7. Degradation of the water quality of groundwater basins, nearby streams, or wetlands shall not result from development of the site. Pollutants, such as chemicals, fuels, lubricants, raw sewage, and other harmful waste, shall not be discharged into or alongside coastal streams or wetlands either during or after construction.

STREAMS AND CREEKS POLICIES

1. All permitted construction and grading within stream corridors shall be carried out in such a manner as to minimize impacts from increased runoff, sedimentation, biochemical degradation, or thermal pollution.

FLOOD HAZARD AREA POLICIES

The intent of the Flood Hazard Area policies is to avoid exposing new developments to flood hazards and reduce the need for future flood control protective works and resulting alteration of stream and wetland environments by regulating development within the 100 year flood plain.

2. Permitted development shall not cause or contribute to flood hazards or lead to expenditure of public funds for flood control works, i.e., dams, stream channelizations, etc.

HISTORICAL AND ARCHAEOLOGICAL SITES POLICIES

1. All available measures, including purchase, tax relief, purchase of development rights, etc., shall be explored to avoid development on significant historic, prehistoric, archaeological, and other classes of cultural sites.
2. When developments are proposed for parcels where archaeological or other cultural sites are located, project design shall be required which avoids impacts to such cultural sites if possible.
3. When sufficient planning flexibility does not permit avoiding construction on archaeological or other types of cultural sites, adequate mitigation shall be required. Mitigation shall be designed in accord with guidelines of the State Office of Historic Preservation and the State of California Native American Heritage Commission.
4. Off-road vehicle use, unauthorized collection of artifacts, and other activities other than development which could destroy or damage archaeological or cultural sites shall be prohibited.
5. Native Americans shall be consulted when development proposals are submitted which impact significant archaeological or cultural sites.

PARKS/RECREATION POLICIES

2. Opportunities for commercial and sport fishing should be preserved and improved where appropriate.
3. Future development of parks should emphasize meeting the needs of the local residents.

4. Opportunities for hiking and equestrian trails should be preserved, improved, and expanded wherever compatible with surrounding uses.
5. Schools and other public-owned lands should be utilized for joint use recreational activities whenever possible.

CONSERVATION ELEMENT SUPPLEMENT: OAK TREE PROTECTION IN INLAND RURAL AREAS OF SANTA BARBARA COUNTY

Goal: Santa Barbara County shall promote the conservation and regeneration of oak woodlands in the County over the long term, and, where feasible, shall work to increase the native oak population and extent of woodland acreage. The highest priority for conservation, protection and regeneration shall be for valley oak trees, valley oak woodlands and valley oak savanna.

Policy: Native oak trees, native oak woodlands and native oak savannas shall be protected to the maximum extent feasible in the County's rural and/or agricultural lands, Regeneration of oak trees shall be encouraged. Because of the limited range and increasing scarcity of valley oak trees, valley oak woodlands and valley oak savanna, special priority shall be given to their protection and regeneration.

Development Standards:

Development Standard 1: Protection of all species of mature oak trees

All development shall avoid removal of or damage to mature oak trees, to the maximum extent feasible. Mature oak trees are considered to be live oak trees six inches or greater diameter at breast height and blue oak trees four inches or greater diameter at breast height, or live and blue oaks six feet or greater in height. Native oak trees that cannot be avoided shall be replanted on site. When replanting oak trees on site is not feasible, replanting shall occur on receiver sites known to be capable of supporting the particular oak tree species, and in areas contiguous with existing woodlands or savannas where the removed species occurs. Replanting shall conform to the County's *Standard Conditions and Mitigation Measures*. (This development standard applies to oak trees other than valley oaks. Valley oak trees are addressed in separate Development Standards.)

Development Standard 2: Protection of valley oak trees

All development shall avoid removal of or damage to protected valley oak trees. Development shall not encroach within six feet of the dripline of any protected valley oak trees. Protected valley oak trees are those valley oak trees two inches or greater diameter at breast height, or six feet or taller in height. Valley oak trees that cannot be avoided shall be appropriately replaced on site. If replanting valley oak trees on site is not feasible, replanting shall occur on receiver sites known to be capable of supporting valley oaks, and that allow re-planting in areas contiguous with existing woodlands or savannas where valley oaks occur. All oak tree replanting shall conform to the County's *Standard Conditions and Mitigation Measures*.

Development Standard 3: Restoration of the valley oak tree population

Where development is proposed within historic valley oak tree habitat (even if no valley oak trees would be removed), mitigation of the loss of historic habitat shall be required, where feasible, through planting of locally obtained valley oaks as part of the project landscaping.

ARTICLE IX OF CHAPTER 35 OF THE COUNTY CODE PROVIDES STANDARDS FOR REPLACEMENT OF DECIDUOUS (BLUE AND VALLEY) OAK TREE REMOVALS.

Sec. 35-911. Standards for Oak Tree Replacement.

Where deciduous oak tree removal requires a permit under this ordinance, the following standards shall be adhered to:

1. The preparation and implementation of an Oak Tree Management Plan for the lot on which the oak tree removal will take place and any lot used for off-site replacement shall be required. The Management Plan shall be prepared or endorsed by the Oak Tree Specialist. The plan shall:
 - a. Demonstrate how the mix of deciduous oak tree savannas, woodlands, and forests on the lot will be preserved, created, enhanced, restored, and maintained, so that:
 - (1) The removal of protected oak trees does not divide the remaining savanna, woodland, and forest habitats into small, isolated fragments.
 - (2) Protection, maintenance, restoration, and enhancement of large blocks of savanna, woodland, and forests are given priority over maintenance, restoration, and enhancement of smaller, more isolated habitat patches.
 - (3) Valley and blue oak trees that link on- or off-site oak tree savannas, woodlands, forests, or other existing, proximate habitats are retained to the maximum extent feasible.
 - (4) On-site replacement is given priority over off-site replacement except where no suitable on-site locations exist, or reasonable use of the lot would be precluded as determined by Planning and Development along with the Oak Tree Specialist. In such cases the replacement oak trees may be planted in an off-site location acceptable to the applicant, the landowner and the Oak Tree Specialist. For off-site replacement planting locations priority shall be given to nearby sites and to sites adjoining existing deciduous oak woodlands or providing links between deciduous oak woodlands.
 - (5) There is avoidance of removal of actively used granary trees, raptor roosting or nesting trees, and trees in riparian and other wildlife corridors.
 - b. Comply with the following requirement, when applicable.
 - (1) When required by the Oak Tree Specialist on a case-by-case basis, a buffer area protecting the critical root zone shall be maintained around identified valley and blue oak trees retained on the lot.
 - c. Identify valley and blue oak tree replanting, restoration, conservation and enhancement sites on a plan or aerial photograph to facilitate mitigation monitoring and tracking; and identify the species, location, and size of all oak trees that are planted or protected as mitigation or to fulfill a condition on the permit.
 - d. Provide the deciduous oak tree replanting schedule and nurturing regime.

2. Protected oak trees that are removed shall be compensated at a 15:1 ratio by replacement planting, or protection of naturally occurring oak trees between six (6) inches and six (6) feet tall on the lot.
3. Naturally occurring valley and blue oak seedlings/saplings, growing on the lot and between six (6) inches and six (6) feet in height that are protected and nurtured for five (5) years, may be counted as replacement (mitigation) trees under the Program.
4. Any combination of acorns, planted seedlings/saplings, or naturally occurring valley and blue oaks between six (6) inches and six (6) feet tall, if established according to the requirements herein, may be used to achieve the required number of replacement trees.
5. Replacement deciduous oak trees that are planted must come from nursery stock grown from locally-sourced acorns, or use acorns gathered locally, preferably from the same watershed in which they are planted. If planting is done using acorns, the ratio of acorns to protected oak trees removed shall be a minimum of forty-five (45) acorns for every protected valley oak tree removed. Up to three (3) acorns may be planted in the same hole.
6. Replacement deciduous oak trees shall be established in a location suitable for their growth and survival as determined by the Oak Tree Specialist, no closer than twenty (20) feet from each other or from existing oak trees and no farther than 165-180 feet from each other or existing oak trees unless otherwise approved by the Oak Tree Specialist.
7. Valley oaks shall replace valley oaks removed and blue oaks shall replace blue oaks removed.
8. The replacement deciduous oak trees shall be nurtured for five (5) years, the last two without supplemental watering, using techniques consistent with the most current version of the University of California publication "How to Grow California Oaks." At the end of the five years, ten trees for every protected tree removed must be alive, in good health as determined by the Oak Tree Specialist, and capable of surviving without nurturing and protection.
9. Each replacement deciduous oak tree must be protected against damaging ground disturbance, soil compaction, or over-irrigation within the dripline. It must be fenced to protect it from grazing or browsing by animals both below and above ground until it has reached a minimum of eight (8) feet in height.
10. Where conditions warrant and where agreed to by the landowner and Oak Tree Specialist, tree planting designs and nurturing practices (e.g. protective structures, watering schedules) may be adjusted to improve the probability that replacement trees will be established successfully.
11. Valley oak tree removal encompassing an area of five (5) acres or greater shall require valley oak replanting of an area of comparable size in accordance with the requirements of this section, in an area of existing or historic valley oak habitat. This area shall be protected in the long-term where feasible.

For the purposes of this ordinance, all replacement trees are considered protected oak trees regardless of size.

ATTACHMENT E

Sensitive Species List

The following list identifies sensitive species that may be impacted by the proposed project given their habitat requirements and local distribution. The list contains wildlife species that meet the CEQA criteria for endangered, rare, or threatened, as well as a plant species (Lompoc yerba santa) that is listed as federally endangered and state threatened.

1. **Tri-colored blackbird**: forages in riparian habitat, marsh borders, and grassland habitats; breeds along the Santa Ynez River and near freshwater in emergent wetlands; potentially occurs around Lake Cachuma.
2. **Bell's sage sparrow**: inhabits low, dense shrubland, potentially around Lake Cachuma and parts of the Santa Ynez River.
3. **Yellow-breasted chat**: inhabits dense riparian vegetation along the Santa Ynez River and around Lake Cachuma.
4. **California spotted owl**: prefers large blocks of mature stands of trees, near freshwater; has been documented around Lake Cachuma.
5. **Yellow warbler**: inhabits riparian communities; documented breeding locations along the Santa Ynez River.
6. **White-tailed kite**: breeds in lowland grasslands, oak woodlands/savannas, grass-dominated wetlands and riparian habitats associated with open areas; potential habitat around Lake Cachuma and along the Santa Ynez River.
7. **Cooper's hawk**: prefers dense tree stands or woodland habitats; nest and forage near open water and riparian woodlands; known breeding locations along the upper Santa Ynez River and potential habitat around Lake Cachuma.
8. **California horned lark**: inhabits grasslands and other open habitats, potentially around Lake Cachuma and along the Santa Ynez River.
9. **Long-eared owl**: inhabits dense, riparian and live oak thickets; known breeding near upper Santa Ynez River and potential habitat exists around Lake Cachuma.
10. **Purple martin**: forage in riparian areas and lowland woodland communities; during migration found near water, including grasslands, wet meadows, and emergent wetlands; potentially occurs west of Lake Cachuma and along Santa Ynez River.
11. **California horned lizard**: inhabits annual grasslands, scattered shrubs, and clearings in riparian woodlands; potentially occurs around Lake Cachuma and along the Santa Ynez River.
12. **Western spadefoot toad**: inhabits grasslands, though requires temporary pools for breeding and metamorphosis; potentially occurs around Lake Cachuma and along Santa Ynez River.