

03/01/2004 12:29 FAX

Daniel G. Shillito
 Stephen R. Palmer
 Amy L. Aufdemberge
 Office of the Regional Solicitor
 United States Department of Interior
 2800 Cottage Way, E-1712
 Sacramento, California 95825
 Telephone: (916) 978-6131
 Facsimile: (916) 978-5694

Attorneys for Bureau of Reclamation

Office of the Regional Solicitor
 United States Department of Interior
 2800 Cottage Way, E-1712
 Sacramento, California 95825
 Telephone: (916) 978-6131
 Facsimile: (916) 978-5694

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In the Matter of:)

Hearing to Review the United States Bureau of)
 Reclamation Water Right Permits 11308 and 11310)
 (Applications 11331 and 11442) to Determine Whether)
 Any Modifications in Permit Terms and Conditions)
 are Necessary to Protect Public Trust Values and)
 Downstream Water Rights on the Santa Ynez River Below)
 Bradbury Dam (Cachuma Reservoir))

**RESPONSE TO MOTION
TO STRIKE; MOTION
FOR DISMISSAL OF
PARTY**

The Bureau of Reclamation (Reclamation) respectfully requests that the Board accepts these comments on the Motion to Strike; Motion for Dismissal of Party filed on February 19, 2004, on behalf of the Cachuma Project Member Units. The Office of the Solicitor, Pacific Southwest Region received a copy of the motion on February 24, 2004, and a copy of the Board's February 24, 2004, letter setting a schedule for responses and replies to the motion on February 25, 2004. Although the Board's letter did not identify Reclamation as a party that may

respond. Reclamation believes that it is appropriate for the Board to accept Reclamation's response as it is being sent within the time line set by the Board's letter.

After receiving the Member Units' Motion, Reclamation reviewed the appendices to the closing briefs filed by Cal Trout, California Department of Fish and Game and NOAA Fisheries. It is clear from this review that the information contained in these exhibits (other than NOAA Fisheries Appendix A) goes beyond what was presented in the hearing. These exhibits contain information that was not subject to cross-examination and that had it been presented to Reclamation, or the Member Units, would have been responded to through testimony or exhibits. Further, as stated in the Member Units' Motion, the Board's Notice of Hearing in this matter expressly prohibited the attachment of any document of an evidentiary nature to its closing brief subject to two exceptions that are not relevant here.¹

Reclamation requests that these appendices be either stricken from the record or that the Board allow any party that wishes the opportunity to respond to the information as presented. Another option, although not one favored by Reclamation, would be for the Board to reconvene the hearing to allow for proper consideration of this new information. This may be necessary should the Board decide to allow these appendices to become part of the evidentiary record in this proceeding, because there is insufficient information provided with at least two of the appendices to determine the source and basis of the statements contained in them.

At a minimum, a party should be required to petition the Board to reopen the record to add this new evidence, and if the Board so provides, that all other parties be given ample

¹ Chairman Silva's comment at the close of the hearing acknowledging that appendices may be attached to closing briefs, must be read in context with the limitations placed on any such appendices as required by the Hearing Notice. Transcript page 1119.

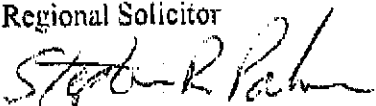
opportunity to submit objections or other responses to the new evidence, including providing additional evidence in response. Due process demands nothing less.

As to the Member Units' motion to dismiss NOAA Fisheries as a party, Reclamation does not see any basis for granting this motion. The Board allowed NOAA Fisheries to be a party to this proceeding. NOAA Fisheries participated in the hearing and other parties have relied on the testimony presented by NOAA Fisheries in their closing briefs. The bases upon which the Board allowed NOAA Fisheries to participate as a party as outlined in the Member Units' Motion at page 6, have not changed. Dismissing NOAA Fisheries as a party at this late date for a presumed procedural violation is unfounded. By striking the extra record exhibit or providing the other parties an opportunity to respond is a sufficient remedy for this perceived procedural violation.

Dated: March 1, 2004

Respectfully Submitted,

DANIEL G. SHILLITO
Regional Solicitor


By: Stephen R. Palmer
Assistant Regional Solicitor
Amy L. Aufdenberge
Assistant Regional Solicitor

CERTIFICATE OF SERVICE

RE: Cachuma Project; Permits 11331 and 11332

I, the undersigned, declare that I am a citizen of the United States, over the age of eighteen, and am not a party to this litigation. On March 1, 2004, I served the following:

"RESPONSE TO MOTION TO STRIKE; MOTION FOR DISMISSAL OF PARTY"

by causing the original and six copies to be hand delivered to the following:

State Water Resources Control Board
Attn: Andrew Fecko
Division of Water Rights
1001 I Street
Sacramento, California 95814
916-941-5393 (phone)

by placing the foregoing document, enclosed in a sealed envelope via regular mail at Sacramento, California to the following:

Mr. Gregory K. Wilkinson
Cachuma Conservation Release Board
Best, Best & Krieger, LLP
3750 University Avenue, Suite 400
Riverside, CA 92501

Mr. Gregory K. Wilkinson
Santa Ynez River Water Conservation District,
Improvement District No. 1
Best, Best & Krieger, LLP
3750 University Avenue, Suite 400
Riverside, CA 92501

Ms. Sandra K. Dunn
City of Lompoc
Somach, Simmons & Dunn
813 Sixth Street, Third Floor
Sacramento, CA 95814-2403

Ms. Karen Kraus
California Trout, Inc.
Environmental Defense Center
906 Garden Street
Santa Barbara, CA 93101

Mr. Ernest A. Conant
Santa Ynez River Water Conservation District
Law Offices of Young Wooldridge
1800 30th Street, Fourth Floor
Bakersfield, CA 93301


Mr. Harlee Branch
Department of Fish and Game
Office of General Counsel
1416 Ninth Street, 12th Floor
Sacramento, CA 95814

Mr. Christopher L. Campbell
City of Solvang
Baker, Manock & Jensen
5260 N. Palm Avenue, Suite 421
Fresno, CA 93704

Ms. Terri Maus-Nisich
Director of Parks
Santa Barbara County Parks
610 Mission Canyon Road

Mr. Christopher Keifer
NOAA Office of General Counsel
Southwest Region
501 West Ocean Blvd., Suite 4470
Long Beach, CA 90802-4213

I certify that the foregoing is true under penalty of perjury. Executed this 1st day of March, 2004, at Sacramento, California.



Carolyn Brooks
Secretary