



## United States Department of the Interior

BUREAU OF RECLAMATION  
Mid-Pacific Region  
South-Central California Area Office  
1243 N Street  
Fresno, CA 93721-1813



IN REPLY REFER TO:

SCC-100  
WTR-4.10

DEC 09 2016

VIA ELECTRONIC MAIL AND CERTIFIED MAIL

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100  
Email: [Jeanine.Townsend@Waterboards.ca.gov](mailto:Jeanine.Townsend@Waterboards.ca.gov)

Subject: Comments of the Bureau of Reclamation on Draft Order Dated September 7, 2016  
Amending Permits 11308 and 11310 Held by the United States Bureau of Reclamation for  
the Cachuma Project, Santa Ynez River, Santa Barbara County ("Draft Order")

Dear Ms. Townsend:

This has been a multi-year long process, which has required many hours of work by the Bureau of Reclamation (Reclamation), Cachuma Member Units (Member Units), downstream water rights users, natural resource agencies, environmental groups, and the State Water Resources Control Board's (State Board).

While Reclamation appreciates the extension of time granted to comment on the Draft Order, it was shorter than our request and is insufficient to thoroughly vet our concerns, coordinate with others, and develop alternative language. Nonetheless, Reclamation offers the enclosed comments for the State Board's consideration.

Reclamation understands the State Board's responsibility to balance the needs of the Cachuma Project with the needs of public trust resources, and in that regard appreciates the State Board's efforts to incorporate an adaptive management approach in several instances within the Draft Order.

Reclamation has coordinated with Member Units and downstream water rights users representatives to the extent possible in the time allowed and joins in many of their comments and has found none to which we are averse.

Reclamation shares the Member Units and others concerns that there is a lack of substantial evidence in the record to support the notion in the Draft Order that adopting Alternative 5C will improve the overall conditions for steelhead. We are also in agreement with the Member Units and others that the Draft Order does not adequately discuss the water supply impacts caused by implementation of Alternative 5C.

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In this regard, adopting Alternative 5C as proposed in the Draft Order will likely exacerbate water supply shortages in critically dry years or periods while the benefits to steelhead if any, are uncertain as the State Board lacks scientific knowledge to make a fully informed decision on how best to protect the steelhead. Both notations of which are noted conclusions in the Draft Order.

### **3.5.4 Section 7 Consultation for the Cachuma Project – Biological Assessment, Rearing Flow Releases, Page 29**

The requirement that Reclamation install a gage at the Highway 154 bridge is contradicted by the State Board’s own analysis that such a requirement is not feasible.

The Draft Order requirement that Reclamation maintain a continuous record of the daily instream flows in the Santa Ynez River at the Highway 154 bridge is infeasible, and would require Reclamation to condemn private property to construct the necessary gaging station. *See* Draft Order at 29. Several factors make measuring flows at the Highway 154 bridge infeasible, including the bridge easement’s limitations, the landowner’s denial of access, the porosity of the riverbed, and the presence of multiple channels that fill during high-flow periods. The location of the low flow channel has moved multiple times since the Highway 154 Bridge was included as a monitoring location in the 2000 Biological Opinion (2000 BiOp). Large storm events rearrange the channels in the predominantly cobble and gravel substrate, and the current low flow channel runs along the southern edge of the floodplain. Nothing in the Draft Order explains why the current method is insufficient for monitoring purposes.

The updated methodology for determining flow at the Highway 154 Bridge by formula is a more cost-effective and accurate method of monitoring flows at this location, and the Draft Order should be revised to provide for continuation of the updated methodology.

### **5.3.2.4 Conclusion Regarding the Measures Necessary to Protect Steelhead, Page 80, 118, 119**

Reclamation’s operation of the Cachuma Project is subject to the Endangered Species Act (ESA). National Marine Fisheries Service (NMFS) is responsible for the administration of the ESA with regard to marine species including the ESA listed steelhead. Reclamation and NMFS obligations under the ESA should be allowed to proceed without seeking approval of the Executive Director or any other official not responsible for the operation of the Cachuma Project or administering the ESA.

The Draft Order as written with the Executive Director’s disapproval role with regard to recommendations or requests from NMFS has a high risk of forcing Reclamation to conflict with and/or violate Reclamation’s responsibilities and obligations under the ESA, and as such is unacceptable to Reclamation.

### **8.5 Mitigation, Monitoring and Reporting Program, Page 109**

While the Draft Order intentions to direct water conservation measures be provided for in Reclamation’s contract with the Santa Barbara County Water Agency (SBCWA) may be well

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intended, the State Board lacks any authority let alone unilateral authority to require Reclamation to amend its water service contract with SBCWA. Reclamation negotiates its contracts in good faith and cannot unilaterally modify a lawful and lawfully executed contract. The Draft Order with regard to requiring Reclamation to amend the SBCWA contract is unacceptable to Reclamation.

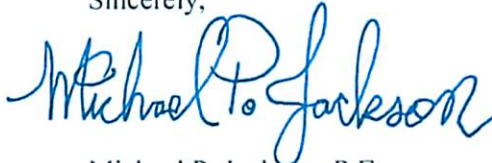
#### **10.0 Conclusion, Page 82, 83, 112**

Reclamation cannot study fish passage above Bradbury Dam without authorization from Congress. The Draft Order requires Reclamation to study the feasibility of providing passage for fish above Bradbury Dam. Fish and wildlife protection and enhancement is not an authorized purpose of the Cachuma Project, and the feasibility report adopted by Congress expressly acknowledged that the project would impede fish passage above the dam. Moreover, Reclamation can only undertake a feasibility study for a project facility if the study authorized by Congress. *See* 16 U.S.C. § 4601-19 ("...neither the Secretary of the Interior nor any bureau nor any person acting under his authority shall engage in the preparation of any feasibility report under reclamation law with respect to any water resource project unless the preparation of such feasibility report has been specifically authorized by law..."). The Draft Order with regard to requiring Reclamation to study the feasibility of providing passage upstream and downstream around Bradbury Dam is unacceptable to Reclamation.

#### **Conclusion**

Reclamation recommends that the State Board adopt Alternative 3C in place of Alternative 5C, and change to 5C only if studies indicate that it is supported by substantial evidence. Reclamation appreciates the opportunity to provide comments on the Draft Order. Please contact me at 559-487-5116 or via email [mjackson@usbr.gov](mailto:mjackson@usbr.gov) should you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Michael P. Jackson". The signature is written in a cursive, flowing style.

Michael P. Jackson, P.E.  
Area Manager

**STATEMENT OF SERVICE**

**Cachuma Project Evidentiary Hearings**

I hereby certify that I have this day submitted to the State Water Resources Control Board (Board) and caused a true and correct copy of the following document(s):

Letter, dated December 9, 2016, "Comments of the Bureau of Reclamation on Draft Order, dated September 7, 2016, Amending Permits 11308 and 11310 Held by the United States Bureau of Reclamation for the Cachuma Project, Santa Ynez River, Santa Barbara County ("Draft Order")"

to be served **by Electronic Mail** (email) upon the parties listed in the Cachuma Project Evidentiary Hearings Service List (updated 09/07/2016), posted by the State Water Resources Control Board at:

[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/hearings/cachuma/docs/cachuma\\_servlist\\_090716.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/cachuma/docs/cachuma_servlist_090716.pdf)

I caused a true and correct **hard copy** of the document(s) to be served by the following method of service to NOAA Office of General Counsel Southwest Region Mr. Dan Hytek 501 West Ocean Blvd., Suite 4470 Long Beach, CA 90802-4213

**Method of Service: U.S. Mail - Certified**

I certify that the foregoing is true and correct and that this document was executed on December 9, 2016  
Date

Signature: 

Name: James Hines  
Title: Administrative Assistant  
Party/Affiliation: DOI  
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