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September 28, 2007

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Ms. Diane Riddle
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

Re: Comments on Revised Draft Environmental Impact Report for
Consideration of Modifications to United States 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), dated July 2007

Dear Ms. Riddle:

The Santa Ynez River Water Conservation District ("SYRWCD") appreciates the opportunity to provide the following comments with respect to the above-referenced Revised Draft Environmental Impact Report ("2007 DEIR") prepared by the State Water Resources Control Board ("State Board").

SYRWCD encompasses most of the Santa Ynez River Watershed downstream of Cachuma Reservoir and Bradbury Dam. One of SYRWCD's primary functions is to protect the downstream rights of its landowners and residents in and to the use of Santa Ynez River water below Bradbury Dam, including water released from Cachuma Reservoir. In this regard, as you are aware, SYRWCD is responsible for ordering water rights releases in accordance with your Order WR 89-18 and does so in cooperation with the United States Bureau of Reclamation ("Reclamation"). Since the 2007 DEIR considers modifications to the Reclamation's Cachuma water right permits to protect public trust values "and downstream water rights" of the Santa Ynez River below Bradbury Dam, the 2007 DEIR is of utmost importance to SYRWCD and its constituents.

As provided in more detail below, SYRWCD appreciates all the effort that has been put into the 2007 DEIR by the State Board, but is concerned that it does not comply with the California Environmental Quality Act (“CEQA”)¹ and respectfully requests that the State Board make appropriate changes as may be necessary to bring the 2007 DEIR into compliance with CEQA before considering any modification of Reclamation’s permits.

I. HISTORICAL BACKGROUND

SYRWCD was formed in 1939 to protect the water rights and supplies of its landowners and residents. The District’s boundaries encompass most of the lands within the watershed downstream of Cachuma Reservoir. The water rights of SYRWCD’s constituents are not before the State Board. However, as explained below, the State Board has recognized from the very beginning that Cachuma Project operations can have adverse impacts on the downstream water rights of SYRWCD’s constituents and that such rights must be protected. Thus, SYRWCD has historically been involved in Cachuma Project proceedings before this Board.

The Cachuma Project was authorized in 1948 by House Document 587, 80th Congress, 2nd Session, and designed to conserve certain waters of the Santa Ynez River. The State Board described the objective of the Project as follows:

“[t]he objective of the Cachuma Project . . . was to divert waters principally for use within the south coast area, that would otherwise waste to the ocean, and not to divert water which would normally flow down the Santa Ynez River and be beneficially used in that watershed.” (D-1486, p. 15 at fn. 11.) (Emphasis added.)

The key decision of the State Board (and its predecessor) regarding the Cachuma Project is Decision D-886 issued February 28, 1958. In D-886, the State Board’s predecessor held, in part, that Reclamation had to release water from Cachuma Reservoir in such amounts and at such time and rates as will be sufficient to, among other things,

“maintain percolation of water from the stream channel as such percolation would occur from unregulated flow, in order that operation of the project shall not reduce natural recharge of groundwater from the Santa Ynez River.” (D-886, MU Exhibit 100, p. 33).

This requirement is based, in part, on the State Board predecessor’s observation that:

“The United States has committed itself to operate the Cachuma Project so as not to export water from the watershed of the Santa Ynez River which is, or will be, required to maintain natural percolation below Cachuma Dam, and the Board has declared its intention to retain jurisdiction for the

¹ See, Public Resources Code § 21000, *et seq.*; and the Guidelines for CEQA, California Code of Regulations, Title 14, Chapter 3, §§ 15000-15387 (“CEQA Guidelines”).

purpose of requiring sufficient releases of water to so accomplish this purpose.” (*Id.*, p. 29).

Adversarial proceedings have been ongoing for over 50 years to determine the appropriate level of releases to ensure the protection of downstream interests, as recited in D-886. Over the years, there have been numerous proceedings and disagreements, some before this Board, as to whether appropriate releases were being made to satisfy the downstream water rights and supply protection requirements of D-886. Most recently, concerns have been expressed by the City of Lompoc that, although the release regime under WR 89-18 may provide adequate quantities of water, operation of the Cachuma Project adversely affects water quality in the Lompoc Plain and, in particular, water drawn from wells operated by the City of Lompoc.

In WR 94-5, this Board ordered Reclamation to submit reports or data compilations developed pursuant to a 1994 MOU² to address and resolve outstanding fish and fish habitat issues related to the portion of the Santa Ynez River below Bradbury Dam. (WR 94-5, Finding Nos. 10 & 11, Order No. 3(b).) At the same time, this Board also ordered Reclamation to submit information developed and conclusions reached during negotiations among Lompoc and the Cachuma Member Units relating to the water quantity and quality issues in the Lompoc Plain. (WR 94-5, Finding No. 15, Order No. 3(d).)

As directed by WR 94-5, the parties to the 1994 MOU conducted studies and worked together to develop and implement a Fish Management Plan (“FMP”). The FMP protects and provides habitat for steelhead in the Santa Ynez River below Bradbury Dam through a combination of measures including water releases from the Dam. During development of the FMP, the National Marine and Fishery Service (“NMFS”) listed the Southern California Evolutionary Significant Unit of steelhead as an endangered species under the federal ESA. The parties to the 1994 MOU coordinated with NMFS, resulting in a Biological Opinion (“BO”) that provided for steelhead protection consistent with the FMP. The FMP, which was presented to the State Board in 1999, provides for releases below the Bradbury Dam as provided in Alternative 3C in the 2007 DEIR. The release regime provided for in the FMP and the BO then formed the basis for the negotiations among the downstream water right interests and the Member Units relating to resolution of their outstanding water quantity and quality issues.

After much negotiation, the downstream water right interests (including the City of Lompoc) and the Member Units reached a compromise and settled their long-standing disputes relative to downstream water quantity and water quality issues. The compromise is set forth in the “Settlement Agreement between Cachuma Conservation Release Board, Santa Ynez River Water Conservation District, Santa Ynez River Water Conservation District Improvement District No. 1, and the City of Lompoc, relating to

² In addition to Reclamation and representatives for all the downstream water right interests, Lompoc and the Member Units, California Department of Fish and Game and the United States Fish and Wildlife Service were parties to the 1994 MOU. (WR 94-5, Finding No. 11.)

Operation of the Cachuma Project,” dated December 17, 2002 (“Settlement Agreement”). The Settlement Agreement is the first time since proceedings commenced before this Board (and its predecessor) that all parties – Reclamation, its Member Units and all downstream interests – are in agreement on a release mechanism that protects the downstream water right interests but which is also acceptable to the project users and Reclamation, and is consistent with the FMP’s and BO’s protections for steelhead.³

The provisions of the Settlement Agreement were described in detail in the most recent hearing on the Cachuma Project (MU Exhibit 220; R.T. 202-218). The actual changes to Reclamation’s permits to implement the Settlement Agreement were described by Ms. Struebing (R.T. 218-220; DOI Exhibit 10) and are particularly described as technical amendments to WR 89-18 in Exhibit “C” to the Settlement Agreement. Most of the provisions of the Settlement Agreement constitute contractual commitments between the parties and for which the parties do not request any action of the State Board – it is only those technical amendments identified by Ms. Struebing and contained in Exhibit “C” for which State Board approval is sought.

The Settlement Agreement is not only historic and mostly self-executing as described above, it is also comprehensive in that it resolves between the parties not only water quantity, water quality and flood control issues, but it also includes the requirements of the Biological Opinion and Fish Management Plan (see testimony of Charles Evans (R.T. 198 – 201), Bruce Wales (R.T. 240-241) and Gary Keefe (R.T. 471-474)). Thus, for the first time ever, one document commits the parties to protection of downstream water rights, flood control and fish protection measures in an integrated manner that has been the subject of thorough analysis, study and peer-review.

Only minor modifications to WR 89-18 are requested from the State Board to implement the Settlement Agreement. One involves resolution of the trigger as to when the lower percolation curve would be used in lieu of the upper percolation curve for calculation of Below Narrows Account (BNA) Credits. The State Board made provision for this in 1989 when it requested the parties to resolve the issue and return to the Board (see discussion of Ali Shahroody at MU Exhibit 220, p. 8-10; R.T. 208-211). This provision provides for maximum credits for recharge on the Lompoc Plain in return for some additional drought protection for the Member Units. The other requested changes to WR 89-18 include changed observation and monitoring procedures necessary to update the Order to be consistent with operational changes implemented since 1989 (see discussion of Ali Shahroody at MU Exhibit 220, pp. 10-13; R.T. 211-212).

³ The background leading up to the Settlement Agreement, its terms and conditions and how those terms and conditions integrate into operation of the Cachuma Project are particularly described in detail in testimony of Charles Evans, William Mills and Ali Shahroody (MU Exhibits 219 and 220; R.T. 198-218) as well as in Section 3.1.1 of the Santa Barbara Countywide Integrated Regional Water Management Plan, dated May 2007. (The Plan is incorporated herein by this reference and available at <http://www.countyofsb.org/pwd/water/irwmp.htm>.) The testimony and exhibits referred to herein are from the record relating to Phase II of the 2003 Cachuma Hearing.

During the most recent State Board hearings relating to the Cachuma Project, no party presented evidence in opposition to the historic Settlement Agreement nor any evidence that the Settlement Agreement would have any adverse effects on public trust resources. Mr. Lecky testified that NOAA Fisheries has no objection to the Settlement Agreement (R.T. 715).

There being no evidence that the Settlement Agreement should not be approved, and in furtherance of this Board's long-standing policies to encourage parties to settle their differences and the directives of Order WR 94-5, the parties to the Settlement Agreement and Reclamation previously requested that the State modify those specific provisions of the permits to implement the Settlement Agreement, as requested by Reclamation in two enclosures under cover of a letter dated March 21, 2003, entitled "Proposed Modifications to WR 73-37 as amended by WR 89-18 Pertaining to Permits 11308 and 11310 and Revised USBR Exhibit 1, February 1, 2003." (DOI Exhibit 10). As mentioned above, the requested modifications to WR 89-18 are set forth in detail in the technical amendments to WR 89-18 in Exhibit "C" of the Settlement Agreement.

Consistent with the foregoing history and the reasons provided herein, SYRWCD believes that the proposed project under the 2007 DEIR should be Alternative 3C including modifications to WR 89-18 as provided in the technical amendments in Exhibit "C" of the Settlement Agreement.

II. THE 2007 DEIR FAILS TO COMPLY WITH CEQA

A. There is No Proposed Project or Adequate Project Description

The requirement that an EIR contain an accurate, stable and consistent project description was first set forth in *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, and then incorporated into Section 15124 of the CEQA Guidelines. "Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the 'no project' alternative) and weigh other alternatives in the balance. An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." (*County of Inyo, supra*, 71 Cal.App.3d at 192.) Thus, a project description that omits integral components of the project will likely result in an EIR that fails to disclose all of the impacts of the project. (*See, Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829.) Moreover, failure to adequately define the proposed project carries over to and threatens to render defective an EIR's analysis of potential project mitigation measures and alternatives, including the no-project alternative. This is because the selection and the impact analysis of potential mitigation measures and alternatives are each and all driven by and inextricably tied to the project description and its impacts. (*See, e.g.*, CEQA Guidelines, § 15126.6(a) ("EIR shall describe reasonable range of alternatives to the project...which would feasibly attain most of the basic objectives of the project but which would avoid or substantially lessen any of the significant affects of the project..."); § 15126.6(e)(1) ("The purpose of describing and analyzing a no project alternative is to allow decision makers to compare the impacts of

approving the proposed project with the impacts of not approving the proposed project.”).)

The 2007 DEIR is flawed because there is a comparative analysis of the impacts of various alternatives, but no initial selection of a proposed project or analysis of the impacts of a proposed project as required by CEQA (CEQA Guidelines, § 15126.2(a)) or selection of alternatives in light of significant project impacts (CEQA Guidelines, § 15126.6(a)). In this regard, the 2007 DEIR acknowledges that the “SWRCB has not selected a particular modified operational scheme as a proposed project, opting instead to examine several alternatives” (2007 DEIR, § 4.1.2, p. 4-1.) Similarly, the 2007 DEIR reiterates that the “SWRCB has not selected a particular alternative as a proposed project at this time.” (*Id.*, § 6.1, p. 6-1.) As provided above, selection and analysis of alternatives before selection and analysis of a proposed project is just the opposite of the analytic route mandated by CEQA.

Although the 2007 DEIR states that the State Board has not selected a proposed project, the 2007 DEIR also contradicts itself by indicating or suggesting that there is a proposed project. However, even so, the different proposed project descriptions themselves are too unduly vague and inconsistent. For example, the NOP describes the proposed project as:

Development of revised release requirements and other conditions, if any, in the Reclamation water right permits (Applications 11331 and 11332) for the Cachuma Project. These release requirements will take into consideration the [NMFS] Biological Opinion and draft [FMP] and other reports called for by Order 94-5. The revised release requirements are to provide appropriate public trust and downstream water rights protection. Protection of prior rights includes the maintenance of percolation of water from the stream channel as such percolation would occur from unregulated flow, in order that the operation of the project shall not reduce natural recharge of groundwater from the Santa Ynez River below Bradbury Dam. (2007 DEIR, § 1.1, p. 1-1; emphasis added.)

Yet, the 2007 DEIR later describes the proposed project as:

“The ... modification of releases required under Order WR 94-5, and potential modification of other requirements, taking into consideration the requirements of the Biological Opinion and Fish Management Plan, and the instream flow requirements advocated by CalTrout (discussed in section 3.2.2, below).” (2007 DEIR, § 3.1.1, p. 3-1.) (Emphasis added.)

The “instream flow requirements advocated by CalTrout” are being considered in connection with the proposed project. However, the 2007 DEIR fails to indicate whether the proposed project includes the State Board’s approval of the modifications to WR 89-18 as provided in the technical amendments in Exhibit “C” of the previously described

December 17, 2007, Settlement Agreement (between CCRB, SYRWCD, SYRWCD, Improvement District No. 1, and the City of Lompoc) is part of the proposed project.⁴ As provided in the NOP, the revised release requirements are to provide “downstream water rights protection” and “not reduce natural recharge of groundwater from Santa Ynez River below Bradbury Dam.” However, although the proposed project description now mentions the instream flow requirements advocated by CalTrout, it fails to mention the Settlement Agreement, which is *the* measure advocated by Reclamation, the Cachuma Member Units and all the downstream interests to best protect downstream water rights and historic recharge below Bradbury Dam in concert with the Biological Opinion and FMP. Under CEQA, “project” means “the whole of an action” (CEQA Guidelines, § 15378). The 2007 DEIR should clarify that the technical amendments to WR 89-18, as provided in Exhibit “C” of the Settlement Agreement, are part of the proposed project (the “whole of the action”) and/or part of the alternatives to the proposed project evaluated in the DEIR.

In conclusion, the 2007 DEIR is flawed for failing to clearly define a stable, finite, accurate proposed project or project description. However, as explained below, SYRWCD believes it may be possible to cure the above-referenced flaws by identifying Alternative 3C, with the technical amendments in Exhibit “C” of the Settlement Agreement, as the proposed project.

B. The Proposed Project Should Be Identified as WR Order 89-18 Operations Modified by the Requirements of the Biological Opinion and the Settlement Agreement

The lack of an adequate project description is particularly unfortunate in this case because Reclamation, SYRWCD and the Member Units presented the State Board with a detailed and clearly defined project for analysis. In a letter from Reclamation to the State Board dated March 21, 2003, Reclamation informed State Board staff that the December 17, 2002 Settlement Agreement had been entered by the Cachuma Conservation Release Board, Santa Ynez River Water Conservation District, Santa Ynez River Water Conservation District Improvement District No. 1, and the City of Lompoc. Reclamation also informed the Board that, based on the terms of the Settlement Agreement, the Cachuma Project could be operated to protect downstream water rights and public trust resources according to a set of “Proposed Modifications to Order WR 73-37, as amended by Order WR 89-18, Pertaining to Permits 11308 and 11310 (Applications 11331 and 11332).” (Reclamation’s letter is part of the record and is referred to in and attached to the Member Unit’s comments and incorporated herein by this reference.) In a similar letter to the State Board dated February 26, 2003, CCRB also stated that the Settlement Agreement and related modifications to Order WR 89-18 as submitted by Reclamation should serve as the project proposal. (CCRB’s letter is part of the record and referred to in and attached to the Member Unit’s comments and incorporated herein by this reference.) Furthermore, extensive testimony was presented to the State Board during the Phase II Cachuma Hearing in support of the use of the Settlement Agreement and Reclamation’s proposed modifications of WR 89-18 as the proposed project. (See

⁴ The Settlement Agreement is only briefly referenced at page 2-7 of Section 2 of the 2007 DEIR.

testimony of Charles Evans, William Mills, Kate Rees, Chris Dalstorm, Bruce Wales, Marlene Demery and Gary Keefe.)

As requested above, the 2007 DEIR should include as the proposed project or clarify that the proposed project is WR 89-18 as modified by the Settlement Agreement's technical amendments in Exhibit "C" thereto, as submitted by Reclamation. Alternatively, in the event the State Board's proposed project is properly defined by alternatives, the DEIR should clearly demonstrate that such technical amendments are included within Alternative 3C, and have been addressed and adequately analyzed as part of the DEIR process. As mentioned above, the Settlement Agreement's proposed modifications to WR 89-18 settled a long-standing dispute between the parties and it was specifically developed to protect downstream water right interests in concert with releases from Bradbury Dam under the Biological Opinion and FMP as provided in Alternative 3C.

C. **The 2007 DEIR Employs an Inappropriate Baseline Against Which to Measure Environmental Impacts of the Proposed Project and Alternatives**

Existing physical environmental conditions should normally be used as the "baseline" for determining whether project impacts are significant. The CEQA Guidelines state that existing conditions are determined as of the time the Notice of Preparation ("NOP") is published. (CEQA Guidelines, §§ 15125(a), 15126.2(a); *Save Our Peninsula Comm. v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 125 (court rejected a water use baseline that was based on current water use for irrigation because the current level of use was inconsistent with the level of use at the time of the NOP).)

The 2003 DEIR states that "SWRCB issued a NOP in May 1999...." (2003 DEIR, p. 3-4.) However, contrary to the CEQA Guidelines, the 2007 DEIR did not use existing conditions as of the date of the May 1999 NOP as the environmental baseline against which to assess impacts. Instead, the 2007 DEIR provides that it used Alternative 2 as the baseline, described as: "Operations under Orders WR 89-18 and 94-5 and the Biological Opinion (interim release requirements only)." (2007 DEIR, pp. ES-3, 5.) Alternative 2 represents conditions existing in September 2000, which is when "Reclamation initiated the interim target flows in September 2000." (2007 DEIR, p. ES-3, 6.) However, in contrast to Alternative 2, the 2007 DEIR also states "the baseline conditions that existed in August of 2003 are used to analyze the project alternatives." (2007 DEIR, p. 4-3.) Neither Alternative 2 nor conditions existing in August of 2003 are appropriate conditions for use as the baseline.

The 2007 DEIR should have used former Alternative 1 as the baseline physical environmental conditions against which to measure impacts. Alternative 1 is the only alternative compatible with the conditions existing at the time of the NOP and with the so-called project, "potential modification of the releases required under Order WR 94-5....," which Order did not include implementation of the requirements in the Biological Opinion (2007 DEIR, p. 3-1).

The 2007 DEIR does not explain why environmental conditions at the time of the NOP were not used to measure impacts of the project or alternatives. The 2007 DEIR acknowledges that Alternative 2, which only assumes a 0.75-foot surcharge, does not represent current conditions -- a 2.47-foot surcharge. (2007 DEIR, p. ES-6.) But, then justifies use of Alternative 2 because it “will result in a more conservative estimate of the potential impact of the alternatives.” (*Id.*) However, this same logic employed to justify use of Alternative 2 counsels for use of Alternative 1 as the baseline. Unlike Alternative 2, Alternative 1 is consistent with pre-project/BO conditions and the only alternative that allows for evaluation of *all* impacts of the proposed project and alternatives incorporating various BO requirements.

Moreover, there is no substantial evidence in the 2007 DEIR that supports use of a 0.75-foot surcharge instead of no surcharge conditions existing as of the date of the NOP. Stated another way, there is no substantial evidence that justifies excluding analysis of the impacts between zero (0) and 0.75-foot surcharge just like (as the 2007 implicitly concedes) there is no substantial evidence that justifies limiting the analysis to impacts resulting from the difference between 2.47-foot to 3.0-foot surcharge. In both cases, impacts are concealed or masked through use of an inappropriate baseline. As noted, the 2007 DEIR implicitly concedes this problem. Alternative 1, in contrast, is the only alternative that will allow for full analysis of all impacts that will result from the proposed project modifying the release requirements of WR 89-18.

D. The 2007 DEIR Lacks an Adequate Statement of Project Objectives

A project description must state the objectives sought to be achieved by the proposed project. The statement of objectives should include the underlying purpose of the project and should be clearly written to guide the selection of alternatives to be evaluated in the EIR. (CEQA Guidelines, § 15124(b).) The 2007 DEIR does not include a so-called “statement of objectives.” In describing the proposed project in Section 3.1.1, the 2007 DEIR merely suggests, and we presume for purposes of these comments, that the two objectives that must be attained by any modification of Reclamation’s permits *are* appropriate protection of (1) downstream water rights and (2) public trust resources. (2007 DEIR, p. 3-1.) However, there is no clearly written statement of objectives and the 2007 DEIR is objectionable for that reason. In particular, the 2007 DEIR’s statement of objectives should, but fails to, include the following requirement from the NOP as part of the downstream water right protection objective:

“Protection of prior rights includes the maintenance of percolation of water from the stream channel as such percolation would occur from unregulated flow, in order that the operation of the project shall not reduce natural recharge of groundwater from the Santa Ynez River below Bradbury Dam.” (2007 DEIR, § 1.1, p. 1-1.)

As mentioned above, the 2007 DEIR’s project description includes taking into consideration “the instream flow requirements advocated by CalTrout,” but says nothing about the Settlement Agreement’s proposed technical amendments to WR 89-18 (Exhibit “C”) advocated by the permittee, Reclamation, the Member Units and the downstream water right interests. (2007 DEIR, p. 3-1.) If the

technical amendments in the Settlement Agreement are not part of the proposed project, then they should be incorporated into Alternative 3C because, as explained below, without them, there will be no alternative that feasibly attains most objectives of the proposed project as required by CEQA (CEQA Guidelines §, 15126.6(a)).

E. The 2007 DEIR Fails to Analyze an Appropriate No-Project Alternative

CEQA requires that an EIR contain an analysis of a “no project” alternative. (CEQA Guidelines, § 15126.6(e)(1).) “The ‘no project’ alternative shall discuss the existing conditions at the time the notice of preparation is published..., as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, ...” (CEQA Guidelines, § 15126.6(e)(2), emphasis added.) “The purpose of describing and analyzing a no project alternative is to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project.” (CEQA Guidelines, § 15126.6(e)(1).)

The first problem with the 2007 DEIR is that it contains contradictory and confusing statements about what alternative is the no project alternative. The 2007 DEIR explains why Alternative 3C is considered the No Project Alternative instead of Alternative 2 (the no project alternative in the 2003 DEIR). (2007 DEIR, p. 3-11.) However, the 2007 DEIR still labels Alternative 2 as the “No Project Alternative” at various places in the document. (*E.g.*, 2007 DEIR, pp. ES-5, 3-6, 3-7 [Table 3-1].) The 2007 DEIR, thus, contradicts itself and is confusing.

The second problem with the 2007 DEIR is that, assuming Alternative 3C is the no project alternative, it fails to address impacts of Cachuma operations on downstream water rights interests without implementation of the Settlement Agreement’s proposed technical amendments to WR 89-18 (Exhibit “C”). As detailed above, the Settlement Agreement was prompted by and resulted from the State Board’s WR Order 94-5 (Finding No. 15, Order No. 3.(d)) and settled a long-standing dispute between the downstream water right interests and the Cachuma Member Units relating to Cachuma operations in a manner compatible with the release requirements in the Biological Opinion and FMP (Alternative 3C). Because the Settlement Agreement was prompted by said order of the State Board, its Paragraph 5.1 provides for the State Board’s approval of technical amendments to WR 89-18 as described in Paragraphs 1.2, 1.3 and 1.4 and Exhibit “C” of the Agreement. Most of the technical amendments have been voluntarily implemented by the parties. However, Paragraph 5.2 allows for their possible termination if, following the completion of the hearing required by Order 94-5, the State Board “does not require that downstream water rights releases continue to be made consistent with WR 89-18, as modified by this Agreement, without material change.”

As advocated above, SYRWCD believes that approval of the Settlement Agreement’s proposed technical amendments plus Alternative 3C should be the proposed project. The 2007 DEIR, however, fails to indicate whether the Settlement Agreement is an element of the proposed project. (2007 DEIR, p. 3-7 [Table 3-1].) Further, if the DEIR is now considering Alternative 3C to be the no project alternative, then, by

definition Alternative 3C would not include approval of the Settlement Agreement's proposed technical amendments in Exhibit "C." The 2007 DEIR also fails to adequately evaluate the impacts of the State Board not approving the Settlement Agreement as part of the proposed project. Those impacts must include the negative environmental consequences (e.g., on water resources to downstream water right interests) without implementation of the Settlement Agreement's technical amendments. (See, *Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 913-915 (EIR failed to evaluate negative environmental consequences of failure to approve the project, namely possible permanent reduction in water entitlements stemming from invoking article 18(b) of water supply contracts).) This is particularly important because the State Board's analysis appears to include some or all of the changes in operations brought about by the parties' voluntary implementation of the Settlement Agreement, but does not address what adverse impacts would occur if those changes do not continue following any State Board decision. That is certainly something the State Board should consider in its decision making and certainly something that concerns all the beneficiaries of the Settlement Agreement and their constituents.

F. Alternatives with 1.8-Foot Surcharge are neither Reasonable nor Feasible

An EIR must contain a range of reasonable alternatives to the project, which would feasibly obtain most of the basic objectives of the project, but which would avoid or substantially lessen any of the significant effects of the project. (CEQA Guidelines, § 15126.6(a).) Alternatives 3B and 5B each assume operations under the Biological Opinion with a 1.8-foot surcharge. (2007 DEIR, p. 3-10.) While that may have been a reasonable assumption at the time of the 2003 DEIR, it is not reasonable now. In this regard, the 2007 DEIR states that since 2003, "Reclamation has...increased the surcharge of Cachuma Lake from 0.75 to 2.47, and has begun to implement long-term release requirements under the Biological Opinion." (*Id.*, p. 3-11.) Thus, according to the 2007 DEIR, operation under a 0.75 or 1.8-foot surcharge "no longer reflects how the Cachuma Project is likely to be operated in the foreseeable future..." and "[i]nstead, Alternative 3C ...better reflects how the Cachuma Project is likely to be operated..." (*Id.*) In light of this discussion, and the fact that CEQA does not provide the State Board with independent approval power with respect to implementation of the Biological Opinion, a 1.8-foot surcharge is neither reasonable nor feasible and there appears to be no substantial evidence in support of using such surcharge as an element of any alternative. (*Kenneth Mebane Ranches v. Superior Court* (1994) 10 Cal.App.4th 276, 292; Public Resources Code §§ 21004, 21081(a)(3); CEQA Guidelines, §§ 15040(b) & (e), 15091(a)(3), 15126.6(a), 15364.)

G. There is No Substantial Evidence That the Alternatives Will Attain Most of the Basic Project Objectives

Under CEQA, an alternative must attain most of the basic objectives of the project. (CEQA Guidelines, § 15126.6(a).) However, as explained in Sections II.A and II.D. above, the 2007 DEIR fails to contain a project, an adequate project description and an adequate statement of project objectives. These deficiencies make it difficult if not impossible to determine what alternatives attain most of the proposed project's

objectives. In particular, failure to include and evaluate the Settlement Agreement's proposed amendments to WR 89-18 as part of the proposed project and its objectives distorts not only the project but also the alternatives to the project. (*See, e.g., County of Inyo v. City of Los Angeles* (1981) 124 Cal.App.3d 1, 9-15.) This is evident here since it is not possible to determine with a reasonable degree of certainty if the Settlement Agreement's technical amendments are part of the alternatives or not.

The NOP (see above) and the 2007 DEIR both indicate that the project, whatever it may be, must "provide appropriate protection of downstream water rights and public trust resources on the Santa Ynez River downstream of Bradbury Dam." (2007 DEIR, p. 3-1, emphasis added.) SYRWCD assumes these are the two basic objectives of the proposed project. However, as explained herein, only Alternative 3C with the Settlement Agreement technical amendments protects downstream water rights. There is no substantial evidence that any of the other alternatives do so. Indeed, as provided in Sections II.J. and II.K. below, there is substantial evidence that Alternatives 4B and 5B and 5C will cause adverse impacts to the interests of downstream water right holders with little or no benefit to public trust resources. In addition, the 2007 DEIR fails to adequately analyze the impacts of such alternatives on downstream water right interests including with and without the protections afforded to downstream water right holders by the Settlement Agreement. Because the alternatives have not been shown by substantial evidence and/or appropriate analysis to meet the downstream water right objective of the project, the alternatives are not appropriate for consideration under CEQA.

H. There is No Substantial Evidence That The Alternatives Will Avoid or Lessen Significant Effects of the Project, and the 2007 DEIR fails to identify the Environmentally Superior Alternative

In addition to not meeting most of the project objectives, there is no substantial evidence that the alternatives will avoid or lessen any of the significant effects of the project as required by CEQA (Guidelines, § 15126.6(a).) As noted above, there is no project or adequate project description or evaluation of project impacts. Without an understanding of what *project* impacts are significant, it is impossible to determine whether alternatives are necessary to avoid or lesson significant project impacts.

The 2007 DEIR also fails to identify the environmentally superior alternative. An EIR must identify the environmentally superior alternative and, if that is determined to be the no-project alternative, the EIR must also identify an environmentally superior alternative from among the other alternatives (CEQA Guidelines, § 15126.6(e)(2)). As mentioned above, the 2007 DEIR does not identify a project. It also does not identify an environmentally superior alternative to the project or whether the no-project alternative is the environmentally superior alternative. However, for the reasons provided herein, Alternative 3C with revisions to WR 89-18, as provided in Exhibit "C" to the Settlement Agreement, is the only alternative that provides for protection for public trust resources *and* downstream water rights. As provided below, there is no substantial evidence that Alternative 5C provides any significant additional public trust benefits and, importantly, Alternative 5C's impacts on downstream water rights, including the Settlement Agreement, have not been adequately evaluated in the 2007 DEIR and are not fully known. Thus, Alternative 3C should be identified as the environmentally superior, or

preferred, alternative among the alternatives.

I. There is No Substantial Evidence the Oak Tree Impact Is a Class I Significant, Unmitigable Impact

The 2007 DEIR identifies the loss of oak trees due to surcharge required by the Biological Opinion as a significant, unmitigable impact (Class I). (2007 DEIR, p. 4-77.) However, there is no substantial evidence that any of the alternatives may feasibly avoid or lessen that impact. Even more fundamentally, there is also no substantial evidence that the impact on oak trees is a significant, unmitigable (Class I) impact. As provided in more detail in the Member Units' comments at SECTION VI.C., such oak tree impacts have been mitigated to a level of insignificance and should be downgraded to a Class II impact. (SECTION VI.C. of the Member Units' comments relative to the DEIR's analysis of oak tree impacts is incorporated herein by this reference.) Notably, the impacts of the surcharge on oak trees have already been evaluated in the joint Environmental Impact Report/Environmental Impact Statement for the Lower Santa Ynez River Fish Management Plan and Cachuma Project Biological Opinion ("FMP/BO EIS/EIR"). The FMP/BO EIS/EIR resulted in the implementation of a comprehensive Oak Tree Restoration Program, which the FMP/BO EIS/EIR found mitigated oak tree impacts to a level of insignificance (Class II). The State Board should and is authorized by CEQA to consider the oak tree mitigation and no significant impact findings in the FMP/BO EIS/EIR (CEQA Guidelines § 15153(a)). The FMP/BO EIS/EIR supplies substantial evidence that implementation of the BO will *not* result in any significant, unmitigable impacts on oak trees.

The results of the actual implementation of the Oak Tree Restoration Program also provide substantial evidence that there are no near-term unmitigated, significant oak tree impacts. In this regard, the 2007 DEIR states that implementation of the Oak Tree Restoration Program began after the 2003 DEIR, in 2005, and that the success rate for Year 1 was 98.6%, which is "far above survival rates normally assumed to be about 70%," and that "[a]ssuming the current projected survival continues at the same rate, the target of 904 replacement trees would be reached by Year 3 of the program, rather than by Year 20." (2007 DEIR, p. 4-79.) On the other hand, there is no substantial evidence in the 2007 DEIR that project impacts on oak trees are not mitigated to a level of insignificance, in the near-term or otherwise, by and through continued implementation of the ongoing Oak Tree Restoration Program, as the FMP/BO EIS/EIR concluded. Because there is no substantial evidence that project impacts on oak trees are or will be significant, no independent mitigation should be considered or required by the 2007 DEIR.

J. Alternative 4B Is An Inappropriate Alternative

In addition to the deficiencies mentioned in Sections II.G. and II.H. above, Alternative 4B is inappropriate because it is neither reasonable nor feasible and, therefore, moot. The 2007 DEIR deletes former Alternative 4A as infeasible because the City of Lompoc decided not to pursue a SWP water supply. (2007 DEIR, pp. ES-4, 3-13.) Alternative 4B should be deleted for similar reasons. As mentioned above, in lieu of Alternative 4B, Lompoc has entered into a Settlement Agreement with the downstream

water right interests and the Member Units, which Reclamation has endorsed, that provides for modifications to WR 89-18 in light of the Biological Opinion to the satisfaction of Lompoc and all downstream water right interests. The Settlement Agreement resolves Lompoc's claims and protests relative to the operation of the Cachuma Project, including with respect to water quality, as provided in Paragraph 3 of the Agreement. Thus, Alternative 4B is unnecessary and neither reasonable nor feasible. The DEIR even seems to acknowledge the infeasibility of Alternative 4B, when it states: "The City of Lompoc, through its legal representative, has notified the SWRCB in a letter regarding the EIR dated June 18, 1999, that the City does not consider this alternative to be feasible because the residents of the City have twice rejected SWP water as a new water supply." (2007 DEIR, p. 3-13.)

Further, Alternative 4B will result in fewer releases from the dam and, therefore, less conjunctive operation of downstream water right releases with fish releases required under the Biological Opinion. This conjunctive operation was also agreed to as a part of the Settlement Agreement in Paragraph 1.2 and Exhibit "A." Thus, Alternative 4B is infeasible because it conflicts with the Biological Opinion's conjunctive operational requirements, as well as the Settlement Agreement. Moreover, if Alternative 4B is not deleted, the impact of Alternative 4B on said conjunctive operation on Cachuma yield should be but is not evaluated in the 2007 DEIR.

Recognizing that BNA water must be released when certain hydrologic conditions exist in the Santa Ynez basin, if Alternative 4B is to be evaluated at all, the DEIR must evaluate whether sufficient quantities of SWP water are expected to be available to satisfy such BNA release requirements under Alternative 4B. This is particularly important in times of SWP shortage. However, the 2007 DEIR fails to contain any such evaluation. Moreover, the 2007 DEIR does not contain an accurate assessment of SWP water reliability. To avoid repetition, SYRWCD incorporates herein by this reference SECTION VI.A. of the Member Units' comments relating to the 2007 DEIR's inadequate evaluation of SWP water supply and reliability.

Finally, SYRWCD reasserts the deficiencies of Alternative 4B previously raised in its comments on the 2003 DEIR, before revision, which are incorporated herein by this reference.

K. Alternatives 5B and 5C Are Not Appropriate Alternatives to the Project

Alternatives 5B and 5C are inappropriate for reasons discussed above, which include, but are not limited to, failure to attain the objective of protecting downstream water rights interests as provided in the NOP. Alternatives 5B and 5C are also inappropriate for the following reasons.

1. The 2007 DEIR Does Not Adequately Analyze Alternative 5B and 5C Impacts on Water Supply Downstream of Bradbury Dam, and Alternatives 5B and 5C Fail to Attain Most Project Objectives or Avoid or Lessen Significant Impacts of the Project

An EIR must set forth the bases for its conclusions; a bare conclusion without an explanation of its factual and analytical basis is not a sufficient analysis of an environmental impact. (*Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 404.) If an EIR concludes that particular environmental impacts are not significant, it should explain the basis for that conclusion. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1111; *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal.App.4th 713.) By the same token, an EIR cannot simply label an impact as significant or insignificant without first providing a good faith reasoned analysis. Such a backwards approach “allows the lead agency to travel the legally impermissible easy road to CEQA compliance.” (*Berkeley Keep Jets Over the Bay Comm. v. Board of Port Comm'rs* (2001) 91 Cal.App.4th 1344, 1370-1371.) As explained below, the 2007 DEIR fails to adequately analyze whether Alternatives 5B and 5C will result in significant adverse impacts on downstream water quantity or quality due to, among other things, reduction of ANA credits, particularly during drought years.

Although the 2007 DEIR mentions a reduction in ANA releases (page 4-11) and asserts that there would be “no significant difference in management of ANA releases” under the project alternatives compared to baseline (Alternative 2) operations (page 4-36), the document nowhere actually quantifies the reduction of ANA releases or analyzes the management implications of these reductions. Moreover, although the application of the SYRHM to Alternatives 1 through 3C was peer-reviewed as described on pages 4-7, no such scrutiny was given to Alternatives 5B/5C, which involve different fisheries flows than the other Alternatives. All that the 2007 DEIR does is quantify the reduction in total “Average Order WR 89-18 releases” in Table 4-7, which reduction it understates because it compares the Alternatives to the wrong baseline conditions (Alternative 2 vs. Alternative 1).

As shown in the tables below⁵, SYRWCD accepted average ANA losses of up to 13% during negotiations for the Settlement Agreement (Alternative 3C) and that reduction would increase to 19% under Alternative 5C, assuming the model application to Alternative 5C is valid (Table 1). These losses increase to as much as 28% during extended dry spells with Alternative 5C, which losses are as much as 15% more than experienced under Alternative 3C (Tables 2 & 3). Despite the fact that these losses could be compensated to some extent by lower values of dewatered storage in the Above Narrows area, they represent significant ANA reductions and suggest serious adverse implications for effectively managing the ANA, especially under drought conditions.

⁵ Tables 1, 2 and 3 are from SYRHM runs requested by SYRWCD.

Table 1
AVERAGE SIMULATED IMPACTS TO ABOVE NARROWS ACCOUNT
FOR WATER YEARS 1918-1993 (ACRE-FEET/YEAR)

	Alt 1	Alt 2	Alt 3C	Alt 5C
ANA Releases	4,559	4,237	3,949	3,690
Difference in ANA Releases	---	-321	-610	-869
Percent Reduction in ANA Releases	---	-7%	-13%	-19%

Table 2
SUMMARY OF SIMULATED ANA NET CREDITS FOR PERIODS WITH EXTENDED
DROUGHT CONDITIONS

Extended Drought Conditions	Cumulative Net Credits (af)				Difference with Alternative 1 (af)			Difference with Alternative 1 (%)		
	Alt 1	Alt 2	Alt 3C	Alt 5C	Alt 2	Alt 3C	Alt 5C	Alt 2	Alt 3C	Alt 5C
1928-1936 ^a	57,028	50,666	47,866	45,641	-6,362	-9,162	-11,388	-11%	-16%	-20%
1946-1951 ^b	32,274	33,783	30,781	24,406	1,509	-1,492	-7,868	5%	-5%	-24%
1959-1966 ^c	43,637	40,625	38,893	37,138	-3,012	-4,744	-6,499	-7%	-11%	-15%
1976-1977 ^d	11,402	11,201	9,675	9,185	-201	-1,726	-2,216	-2%	-15%	-19%
1987-1992 ^e	41,008	38,468	34,846	29,490	-2,540	-6,162	-11,518	-6%	-15%	-28%

- a) Period of analysis is from beginning spill (April 1927) to ending spill (March 1937), 118 months.
- b) Period of analysis is from beginning spill (April 1945) to ending spill (March 1952), 83 months.
- c) Period of analysis is from beginning spill (April 1958) to ending spill (March 1967), 105 months.
- d) Period of analysis is from beginning spill (April 1975) to ending spill (March 1978), 33 months.
- e) Period of analysis is from beginning spill (April 1986) to ending spill (March 1993), 80 months.

Table 3
COMPARISON OF SIMULATED ANA CREDITS FOR
FIVE PERIODS WITH EXTENDED DROUGHT CONDITIONS
BETWEEN ALTERNATIVES 3C AND 5C

Extended Drought Conditions	Average Annual ANA Credits During Drought (afy)		Average Difference with Alternative 3C	
	Alt 3C	Alt 5C	afy	%
1928-1936 ^a	4,868	4,641	-226	-5%
1946-1951 ^b	4,450	3,529	-922	-21%
1959-1966 ^c	4,445	4,244	-201	-5%
1976-1977 ^d	3,518	3,340	-178	-5%
1987-1992 ^e	5,227	4,424	-803	-15%

- a) Period of analysis is from beginning spill (April 1927) to ending spill (March 1937), 118 months.
- b) Period of analysis is from beginning spill (April 1945) to ending spill (March 1952), 83 months.
- c) Period of analysis is from beginning spill (April 1958) to ending spill (March 1967), 105 months.
- d) Period of analysis is from beginning spill (April 1975) to ending spill (March 1978), 33 months.
- e) Period of analysis is from beginning spill (April 1986) to ending spill (March 1993), 80 months.

From a management perspective, the amount of water available for releases from the ANA is important for several reasons. The ANA is not only important for satisfying water rights between Bradbury Dam and Lompoc Narrows, it also acts to convey BNA water to users in the Lompoc Valley. Even more importantly, ANA storage in the Reservoir provides supplies that are essential during droughts. The 2007 DEIR fails to adequately analyze these issues, especially as they relate to Alternative 5C. SYRWCD identified these issues as potential problems during Phase II of the 2003 Cachuma Hearing and in its Closing Brief.

As the General Manger of the SYRWCD for about 13 years, I have tracked the ANA and the BNA, monitored water rights releases in real time, and studied the history of past releases. It is my informed opinion that during a prolonged drought, riparian wells could fail, and as a result, land could be fallowed, perennial crops could be lost, and domestic uses would have to be curtailed. These impacts would be worse with Alternative 5C compared to Alternative 3C, and would be more likely to occur in the lower reaches of the Above Narrows area. The loss of ANA water, especially with

Alternative 5C, could leave the District with too little ANA water to transport BNA water to the Lompoc Plain, thus tending to “strand” this water in Cachuma Reservoir. The inability to deliver stranded BNA water would tend to increase the salinity of groundwater on the Lompoc Plain. None of these potential impacts are addressed in the 2007 DEIR.

Similarly, as provided in SECTIONS V.C. and VI.A. of the Member Units’ comments, Alternatives 5B and 5C also adversely impact Cachuma Project yield and the Member Units’ water supply (including SYRWCD’s constituents in ID No. 1), and the 2007 DEIR also fails to adequately address those and other impacts of such alternatives. (SECTIONS V.C. and VI.A. of the Member Units’ comments are incorporated herein by this reference.)

In addition, as discussed above, protection of downstream water rights is, or should be, one of no more than two basic objectives of the project (CEQA Guidelines, § 15126.6(a)). Therefore, to be considered, Alternatives 5B and 5C, must protect those downstream water rights but there is no substantial evidence that those alternatives will protect those rights or that the impacts of Alternatives 5B and 5C on downstream water rights was even seriously considered. Among other things, the 2007 DEIR fails to adequately evaluate what impacts Alternatives 5B and 5C will have on the Settlement Agreement. It cannot be over emphasized that the Settlement Agreement, as reflected in Alternative 3C plus the technical amendments, resolved a long-standing dispute and resulted in a contractual agreement to protect downstream water rights between downstream interests and the Member Units, in concert with the requirements of the Biological Opinion and the Fish Management Plan. The Settlement Agreement was entered into only after careful analysis, peer-review and study for many years and was subject to thorough cross-examination in the recent State Board hearings. In contrast to Alternative 3C, there is no substantial evidence or adequate analysis demonstrating that Alternatives 5B or 5C will protect downstream water rights, and there is no reason to believe that Alternatives 5B and 5C have been subjected to peer-review or will be subject to cross-examination.

Finally, as discussed below, there is not substantial evidence or adequate evaluation indicating that Alternatives 5B and 5C will avoid or lessen any significant impacts on fishery resources in any way that is not already accomplished by the appropriate project (Alternative 3C plus the Settlement Agreement). Alternatives that do not avoid or lessen significant impacts caused by the proposed project should not be considered (CEQA Guidelines, § 15126.6(a)).

2. Alternatives 5B and 5C Unreasonably and Infeasibly Require Significant Additional Releases to Achieve Little or No Fishery Benefits

In addition to Alternatives 5B’s and 5C’s adverse impacts on downstream water rights and Cachuma Project yield, there is no substantial evidence and/or adequate analysis that Alternatives 5B and 5C will have any significant benefits to fishery resources in comparison to other alternatives, including Alternative 3C. In this regard, SYRWCD incorporates SECTION VI.B. of the Member Units’ comments herein by this

reference. The 2007 DEIR finds that all alternatives result in Class IV beneficial impacts in comparison to baseline operations. (2007 DEIR, p. 4-66.) Further, the increased amount of habitat (quantified by top-width) for steelhead created by additional releases for fish under Alternative 5C, as compared to Alternative 3C, are relatively minor, although significant additional quantities of water are required to be released from Bradbury Dam under Alternatives 5B and 5C. In this regard, the Member Units' comments (at page 47) provide, for example, that:

“During the fry rearing period in years when fry habitat receives a score of 5 under Alternatives 5B or 5C, these alternatives provide an average of 6 cfs more flow than Alternatives 3B and 3C (See Figure 1 below). This difference in flow is very significant to the Member Units, but results in only a minor change in habitat for the steelhead. Based on the top-width vs. flow information presented in the Habitat Analysis (SYRTAC 1999a), the difference in top width at flows of 5 and 15 cfs (the range of increase in flows under Alternatives 5B/C as compared to Alternatives 3B/C) would range from 4 to 9 feet (See Figure 2 and Table 1 below). These changes correspond to an increase in top width of only 6 to 9 percent depending on habitat type. Thus, the increased amount of habitat provided under Alternatives 5B and 5C relative to that under Alternatives 3B and 3C would be small. This small increase in habitat, in spite of relatively large increases in flow occurs because the 10 to 20 cfs summer flows required by Alternatives 5B and 5C, falls far above the breakpoint of the top width vs. flow function. As shown in Table 1 and Figure 2 (replicated from SYRTAC 2000b), top width increases most rapidly as flows increase from 0 to 5 cfs. As flows increase above 5 cfs, the rate at which top width increases drops substantially. Thus, increasing habitat substantially above this breakpoint comes at a much higher water cost.”

Thus, although they may result in water supply shortages during critical drought years, as explained above, Alternatives 5B and 5C will only provide minor additional benefits, if any, to fish during relatively wet periods. In addition, habitat bottlenecks during the juvenile lifestage may affect populations, thus eliminating any minor advantage that could accrue for steelhead during the fry stage. In this regard, the Member Units' comments (at page 50) provide:

“Steelhead fry produced during the year grow into juvenile fish and continue to reside in the River through the fall and into the winter. Thus, any additional fry produced under Alternatives 5B or 5C must pass through potential habitat bottlenecks occurring during the juvenile rearing stage. Alternatives 3B and 3C and Alternatives 5B and 5C provide similar flows in fall and winter (See Figure 2 above). Thus, in view of the potential limitations to juvenile rearing in the lower Santa Ynez River, Alternative 5B or 5C would not be expected to increase production relative to Alternative 3B or 3C, since the same habitat limitation would apply at the juvenile rearing stage. These considerations indicate that it is unlikely that Alternatives 5B and 5C will provide any additional benefit to steelhead/rainbow trout over Alternatives 3B and 3C. Any slight benefit

that might occur would come at a very significant cost to the Member Units in addition to the water supply impacts already incurred through their implementation of the Biological Opinion and FMP.”

Further, the 2007 DEIR fails to adequately analyze whether additional higher flows of Alternatives 5B and 5C will affect interactions between individually benefited species such as resident bass and anadromous trout. It is well established that bass prey on fry and juvenile steelhead/rainbow trout. It is possible that increases in largemouth bass populations will increase the rates of predation on fry and juvenile trout. In other words, any benefit from flow for trout may well be negated by the benefit for bass. However, the 2007 DEIR does not discuss the species interactions (e.g., predation) that will result from Alternatives 5B and 5C or the other alternatives. Indeed, on a related point, the Member Units’ comments indicate that the additional releases required by Alternatives 5B and 5C will result in very limited additional trout production in the Refugio and Alisal reaches due, in part, to the presence of bass in pools where surviving steelhead are likely to be confined. On this point, the Member Units’ comments (on page 51) provide:

“The Highway 154 Reach provides the highest quality habitat for steelhead/rainbow trout on the main stem Santa Ynez River. It is this habitat and the habitat improvement measures on the tributaries that are anticipated to result in increased steelhead/rainbow trout production. By comparison, very limited additional production would be expected from the Refugio and Alisal reaches, because of the limited habitat quantity and quality available, and the presence of bass in the pools in which surviving steelhead are likely to be confined. These bass prey upon juvenile steelhead/rainbow trout and can result in significant over-summer mortality. The limited production opportunity in these reaches is recognized in the Biological Opinion, which provides a flow target of 1.5 cfs at the Alisal Bridge in years when spill exceeds 20,000 cfs, but no flow target in other years. Additionally, the Biological Opinion allows for the cessation of such flows in these reaches, once the tributary stream measures have been fully implemented, as the tributary habitat improvements are anticipated to outweigh those for the Refugio and Alisal reaches.”

As the State Board is well aware, the California Constitution does not equate beneficial use with reasonable use (*Joslin v. Marin Mun. Water Dist.* (1967) 67 Cal.2d 132, 143), and prohibits unreasonable and wasteful uses of water. (Article X, § 2; see also, Water Code §§ 100, 275; *United States v. Gerlach Live Stock Co.* (1950) 339 U.S. 725, 751-753 (Supreme Court assumed that the use of substantial flow of the San Joaquin River to lift a comparatively small quantity of water over the banks for natural flooding of pasture was unreasonable).) The courts have confirmed that the State Board’s authority to regulate unreasonable methods of diversion and use of water is quite expansive. (*People ex rel. SWRCB v. Forni* (1976) 54 Cal.App.3d 743 (State Board sought to enjoin diversion of water for frost protection resulting in significant depletion of stream); *Elmore v. Imperial Irr. Dist.* (1984) 159 Cal.App.3d 185, 198-199; *Imperial Irr. Dist. v. SWRCB* (1986) 186 Cal.App.3d 1160, 1162-69; *Imperial Irr. Dist. v. SWRCB*

(1990) 225 Cal.App.3d 548, 559-562.) As explained above and in Section SECTION VI.B. of the Member Units' comments, Alternatives 5B and 5C require significant additional quantities of releases of water, in contrast to all other alternatives, including Alternative 3C, to provide only minor fishery benefits, at best. Thus, Alternatives 5B and 5C are not reasonable or feasible alternatives to the appropriate project (Alternative 3C plus Settlement Agreement) as required by CEQA.

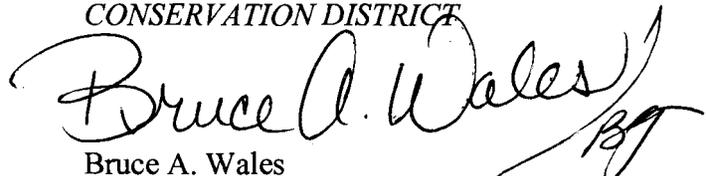
III. CONCLUSION

For the reasons set forth above, SYRWCD believes that the 2007 DEIR should be corrected as indicated above, and requests that the State Board adopt Alternative 3C with modifications to WR 89-18 as provided in the technical amendments in Exhibit "C" of the Settlement Agreement. Alternative 3C should be considered as the proposed project as it is the only alternative that was developed after significant study and compromise, by all stakeholders, pursuant to the directions of WR 94-5. Alternative 3C is also the only alternative that, in accordance with WR 94-5 and prior Board orders, resolves *both* outstanding water quality and quantity issues among the downstream water right interests and the Member Units, consistent with the long-standing Cachuma Project requirement and objective of protecting downstream water right interests and historic percolation below Bradbury Dam, *and* resolves fishery issues and provides for steelhead protection, consistent with the Fish Management Plan and Biological Opinion.

Thank you for considering our comments and suggestions. Should you have any questions or require clarification regarding any of our comments, please contact the undersigned.

Sincerely,

SANTA YNEZ RIVER WATER
CONSERVATION DISTRICT



Bruce A. Wales
General Manager

cc: Cachuma Project Hearing, Phase-2 Hearing Final Service List
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SYRWCD, ID #1
City of Solvang
City of Buellton
City of Lompoc
SYRWCD, Board of Directors
Stetson Engineers
Ernest A. Conant, District Counsel
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Cachuma Project Hearing
Phase-2 Hearing
Final Service List

Updated 05/10/2007

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