October 4, 2010

Charles L. Lindsay
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

Re: Comments from the California Department of Fish and Game and the National Marine Fisheries Service on the Final Environmental Impact Report (FEIR) for the Cachuma Project

Dear Mr. Lindsay:

Background

This letter follows a letter to you from the Cachuma Conservation Release Board ("CCRB") and the Santa Ynez River Water Conservation District, Improvement District No. 1 ("ID #1") dated September 28, 2010. We incorporate the CCRB/ID #1 September 28th letter into the following comments, and occasionally refer to terms from that letter.

In addition to the concerns aptly addressed by the CCRB and ID #1, we wish to inform you of our further concerns regarding comments directed to the State Board from the California Department of Fish and Game ("Fish and Game" or "DFG") and the National Marine Fisheries Service ("NMFS") regarding the FEIR for the Cachuma Project.

Fish and Game and NMFS Comments

On September 21, 2010 and September 23, 2010, respectively, NMFS and Fish and Game wrote letters to the State Board expressing concern that the State Board will release the FEIR for the Cachuma Project without having fully considered new and pending information that has or may become available since the circulation of the 2007 DEIR. After the 2007 DEIR, NMFS released a Draft Recovery Plan (in 2009) that it asserts could be considered substantial new evidence that is not expected to be included in the FEIR. Both NMFS and DFG have recommended delaying the release of the FEIR
indefinitely until NMFS has completed its Final Recovery Plan and NMFS and the Bureau of Reclamation can conduct a reconsultation on the Cachuma Project and NMFS can complete a revised or new Biological Opinion. Additionally, Fish and Game has suggested a possible recirculation of the DEIR.

**Santa Ynez River Water Conservation District Response**

In addition to the comments set forth in the CCRB’s and ID#1’s September 28, 2010 letter, we would ask that the State Board further consider the following.

First, there is no evidence that the State Board has failed to consider all new information relevant to the Cachuma Project. In particular, with reference to the Draft Recovery Plan, NMFS's December 7, 2007 comment letter on the 2007 DEIR describes at length NMFS's recovery planning efforts, and suggests that the State Board be aware of and utilize such available technical information. There is no indication the State Board has failed to consider such efforts and neither NMFS nor DFG offer any evidence to the contrary. Notably, too, while NMFS now expresses concern about its pending Recovery Plan, its earlier letter to the Board also stated that “Recovery plans are guidance documents, not regulatory documents, and the implementation of actions identified in such plans are voluntary.”

Case law further confirms that new information not included in the DEIR does not require recirculation of the DEIR, or preclude circulation of an FEIR unless certain standards are met.  (A Local and Regional Monitor v. City of Los Angeles (1993) 12 Cal.App.4th 1773, 1803.) In particular, unless such new information is substantial to the point of requiring “major revisions” to an EIR, no subsequent EIR is necessary.  (Id.)  Section 15088.5 of the CEQA Guidelines confirms this standard.  Neither NMFS nor Fish and Game have submitted any tangible evidence of new information that meets the standard. To the contrary, their requests for an indeterminate delay fail to provide any specifics regarding their claims of “new” or “pending” information. In this regard, indefinitely delaying an already lengthy environmental review process based on such conjecture runs contrary to one of the goals of CEQA, which is to bring finality to the environmental review process.

In their letter to you of September 28, 2010, CCRB and ID#1 appropriately noted that NMFS’ assertions in its September 21st letter run contrary to statements contained in NMFS’ prior briefing to the State Board on this matter. The statements are also contrary to NMFS’ subsequent letter of December 7, 2007 to the State Board, in which NMFS asserted that its recovery plans are “separate and distinct” from the State Board’s processes. (See Page 2, ¶ 3.) It is completely contradictory with that earlier claim for NMFS to now suggest that the State Board’s processes are somehow dependent on the findings of a new NMFS Biological Opinion.
Conclusion

In summary, and with all due respect, the comments of Fish and Game and NMFS are contradictory to their prior positions and are without foundation or merit. We urge the State Board to disregard them accordingly and to complete the FEIR pursuant to the schedule in your May 27, 2010 letter to Ms. Rees of the CCRB.

Thank you for your consideration.

Sincerely,

SANTA YNEZ RIVER WATER CONSERVATION DISTRICT

[Signature]

Bruce A. Wales
General Manager

Copy: Service List (see attached)
# Cachuma Project Hearing

## Phase-2 Hearing

### Final Service List

*(updated 06/08/2010)*

*(Based on 01/05/2004 list, updated 07/26/2007)*

<table>
<thead>
<tr>
<th>The parties whose E-mail addresses are listed below agreed to accept electronic service, pursuant to the rules specified in the hearing notice.</th>
<th></th>
</tr>
</thead>
</table>
| Cachuma Conservation Release Board  
Mr. Gregory K. Wilkinson  
Best, Best & Krieger, LLP  
3750 University Avenue, Suite 400  
Riverside, CA 92501  
gkwilkinson@bbklaw.com | City of Solvang  
Mr. Christopher L. Campbell  
Baker, Manocchi & Jensen  
5260 N. Palm Avenue, Suite 421  
Fresno, CA 93704  
clc@bmj-law.com |
| Santa Ynez River Water Conservation  
District, Improvement District No. 1  
Mr. Gregory K. Wilkinson  
Best, Best & Krieger, LLP  
3750 University Avenue, Suite 400  
Riverside, CA 92501  
gkwilkinson@bbklaw.com | (updated 06/8/2010)  
City of Lompoc  
Ms. Sandra K. Dunn  
Somach, Simmons & Dunn  
500 Capitol Mall  
Suite 1000  
Sacramento, CA 95814  
sdunn@somachlaw.com |
| Santa Ynez River Water  
Conservation District  
Mr. Ernest A. Conant  
Law Offices of Young Wooldridge  
1800 – 30th Street, Fourth Floor  
Bakersfield, CA 93301  
econant@youngwooldridge.com | California Trout, Inc.  
c/o Ms. Karen Kraus  
Environmental Defense Center  
906 Garden Street  
Santa Barbara, CA 93101  
kkraus@edcnet.org |

<table>
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<tr>
<th>The parties listed below DID NOT agree to accept electronic service, pursuant to the rules specified in the hearing notice.</th>
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</thead>
</table>
| U.S. Bureau of Reclamation  
Ms. Amy Aufdenberg  
2800 Cottage Way, Room E-1712  
Sacramento, CA 95825  
Fax: (916) 978-5694  
AMY.AUFDENBERGE@sol.doi.gov | Santa Barbara County Parks  
Ms. Terri Maus-Nisich  
Director of Parks  
610 Mission Canyon Road  
Santa Barbara, CA 93105  
tmaus@co.santa-barbara.ca.us |
| Christopher Keifer  
NOAA Office of General Counsel  
Southwest Region  
501 West Ocean Blvd., Ste 4470  
Long Beach, CA 90802-4213  
Christopher.Keifer@noaa.gov | Department of Fish and Game  
Office of General Counsel  
Nancie Murray  
1416 Ninth Street, 12th Floor  
Sacramento, CA 95814  
nmurray@dfg.ca.gov |