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BEFORE THE STATE WATER RESOURCES CONTROL BOARD

Hearing to Review the U.S. Bureau of
Reclamation Water Right Permits 11308
and 11310 (Applications 11331 and 11332)
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)

CITY OF LOMPOC’S
CLOSING BRIEF FOR PHASE I
OF THE CACHUMA PROJECT
HEARING
The City of Lompoc ("Lompoc") respectfully submits the following closing brief on Key Issue No. 1 regarding the United States Bureau of Reclamation's ("Reclamation") Consolidated Petitions for Change in the Place of Use and Purpose of Use ("Change Petition").

I.

INTRODUCTION

Lompoc has several concerns regarding Reclamation's and the Member Units' testimony on the Change Petition. In evaluating the changes in operation of the Cachuma Project, Reclamation and the Member Units' analysis relies upon the existing uses of the water as compared to permitted uses. Thus, the analysis assumes an inappropriate baseline for evaluating impacts to the operation of the Cachuma Project or the flows of the Santa Ynez River. Neither Reclamation nor the Member Units presented evidence to demonstrate how the Project would have operated under permitted conditions or whether such operations would change by expanding the place of use and purpose of use. Prior to making any determination as to the potential impacts to Project operations, the State Water Resources Control Board ("SWRCB") must have competent evidence that evaluates how the Project should have been operated under the permitted uses. Once this evidence is submitted, the SWRCB can evaluate and compare whether the proposed changes in the place of use and purpose of use results in any significant change to the operation of the Cachuma Project or the flow in the Santa Ynez River below Bradbury Dam.

II.

BACKGROUND INFORMATION

A. The City of Lompoc's Interest in the Cachuma Project

The City of Lompoc was an original participant to these proceedings when Reclamation first sought to appropriate water from the Santa Ynez River for the Cachuma Project. Lompoc's concern then was that the operation of the Cachuma Project would have an impact on the groundwater basin and Lompoc's water rights. In an effort to protect its downstream water rights, Lompoc participated in the SWRCB's proceedings regarding Decision No. D 886, Water Rights Order 73-37, 89-18, and 94-5. Each of these proceedings was for the purpose of
developing an operating regime for the Cachuma Project that protected downstream water rights as required in SWRCB Decision 886.

The City of Lompoc’s purpose and goal in this proceeding is likewise to protect the quantity and quality of its downstream water rights. When Lompoc engaged in this process many years ago, it feared the Cachuma Project’s potential impact to groundwater recharge and resulting reduction in groundwater levels in the Lompoc region. In the last several years, Lompoc, through its consulting groundwater hydrologists, Timothy J. Durbin and Dr. Jeffrey Lefkoff, conducted an extensive investigation of the current and past operation of the Cachuma Project and the Project’s relationship with the groundwater basin in Lompoc. Lompoc’s consultants prepared a detailed groundwater model demonstrating the impact of the Cachuma Project on the groundwater basin in the Lompoc Plain and on Lompoc’s groundwater wells. Lompoc spent in excess of $1.5 million for this investigation and modeling.

As will be discussed in significant detail in Phase II of this hearing, through Mr. Durbin’s and Dr. Lefkoff’s investigation and modeling, Lompoc has determined that under the current operating scenario for the Project, the Lompoc Plain is not in overdraft, but the Cachuma Project has resulted in an adverse impact to the groundwater quality of the groundwater basin. The adverse impact to the groundwater quality results from an increase in the total dissolved solids in the water that recharges the groundwater basin.

Lompoc’s modeling concludes that under the current operating regime that includes the required downstream water rights releases using the upper curve as discussed in Order 89-18 and the commingling of water imported by the Central Coast Water Authority (“CCWA”), the groundwater quality in the eastern portion of the Lompoc groundwater basin will return to a no Project condition within the foreseeable future. Any change in the downstream release program under Order 89-18, including a shift from the upper curve to the lower curve or a change in the commingling of the CCWA’s imported water, will result in the adverse water quality impact noted above continuing for an extended number of years or indefinitely. Thus, Lompoc’s objective in both phases of this hearing is to ensure that the current operating regime for the Project is not altered, and in that context, insure that Lompoc’s groundwater rights continue to be protected.
Therefore, Lompoc's concerns regarding Reclamation's Change Petition can be satisfied if
Lompoc is provided enforceable assurances in a permit condition that the current operations will
not be modified.

B. The Santa Ynez River Watershed

The Santa Ynez River originates in the Juncal Canyon area of the Santa Ynez Mountains
and traverses Santa Barbara County from east to west. The river runs for approximately 70 miles
to the Pacific Ocean, passing the cities of Santa Ynez, Solvang, Buellton, and Lompoc, and its
mouth is near the town of Surf. (Decision No. D 886 at pp. 9-10.)

Three dams are located on the Santa Ynez River: (1) Juncal Dam (Jameson Lake), owned
and operated by the Montecito Water District; (2) Gibraltar Dam and Reservoir, owned and
operated by the City of Santa Barbara; and (3) Bradbury Dam (Cachuma Reservoir), owned and
operated by Reclamation, completed in 1953 as part of the Cachuma Project. (Id.) Bradbury
Dam and Cachuma Reservoir are, by far, the largest on the Santa Ynez River. Bradbury Dam is
located approximately 20 miles downstream of Gibraltar Dam. Diversion of water from Cachuma
Reservoir is made to five of the Cachuma Member Units via the 6.4-mile long Tecolote Tunnel.
(Id. at p. 13.)

Below Bradbury Dam, the Santa Ynez River flows west through the broad part of the Santa
Ynez Valley near Buellton. From Buellton, the Santa Ynez River flows west through a narrow
stretch to the Narrows located adjacent to the City of Lompoc. From the Narrows, the river
emerges onto the broad flat Lompoc Plain and flows past Lompoc across the Lompoc Plain. The
Lompoc Plain is a flat alluvial plain and is bordered on the north, east, and south by hills or low
mountains. The Plain is about twelve miles long and three miles wide at its maximum extent. The
Santa Ynez River empties into the Pacific Ocean at Surf.

C. The Cachuma Project

The Cachuma Project is located on the Santa Ynez River, about 25 miles northwest of
Santa Barbara. (DOI Exh. 1 at p. 2.) Bradbury Dam impounds the runoff from the upper
Santa Ynez River, creating Cachuma Reservoir. Bradbury Dam is located approximately
45.7 miles from the mouth of the Santa Ynez River and has a drainage area of approximately
421 square miles. Cachuma Reservoir has a current water storage capacity of approximately 188,000 acre-feet. (Member Units Exh. 2 at p. 4.) Cachuma Project facilities include Bradbury Dam, Cachuma Reservoir, Tecolote Tunnel, the South Coast Conduit, and four small regulating reservoirs along the South Coast. (DOI Exh. 1 at p. 3.)

Reclamation began impounding water behind Bradbury Dam in 1953. Cachuma Project water is diverted out of the watershed (exported) via the Tecolote Tunnel to the Cachuma Member Units in the South Coast area of Santa Barbara County.

D. **SWRCB Decisions and Orders Regarding Reclamation’s Water Rights Permits**

On February 28, 1958, the State Water Resources Board ("WRB"), predecessor of the SWRCB, adopted Decision No. D 886 which approved Reclamation’s Applications 11331 and 11332. On March 19, 1958, the WRB issued Permits 11308 (Application 11331) and 11310 (Application 11332). Permit 11308 allows for a year-around direct diversion of 100 cubic feet per second ("cfs"). Permit 11310 allows for a year-around direct diversion of 50 cfs. The total amount of water that may be appropriated for storage under both permits is 275,000 acre-feet per annum ("afa").

During the water rights permitting process, Lompoc and others filed protests to Reclamation’s applications, expressing concern over harm to downstream users. (Decision 886 at pp. 5-6.) In response to the protests, Reclamation committed not to export water which would interfere with the natural percolation of water below the Cachuma Project. (*Id.* at pp. 29-30.) Based upon this commitment, the WRB imposed a condition that the Cachuma Project “not reduce natural recharge of groundwater from the Santa Ynez River.” (Decision 886, Condition 11, at p. 33; Permit 11308, Condition 5.) The WRB also retained jurisdiction for 15 years over Reclamation’s permits to enforce this condition. (Decision 886 at pp. 21-30, Condition 13, at p. 36.) Reclamation’s permits required Reclamation to perform studies and investigations to determine the amount, time, and rate of releases to protect downstream water uses and provide for the natural recharge of the groundwater.

In accordance with its retained jurisdiction over the permits, the SWRCB issued orders modifying Reclamation’s water rights permits in 1973 (Order WR 73-37) and in 1989 (Order...
WR 89-18). The modifications established methods for calculating the amount and timing of releases from Bradbury Dam for the purpose of recharging groundwater basins below Bradbury Dam. The 1973 and 1989 Orders do not alter the fundamental requirement that water be released to provide natural recharge of groundwater basins. Both the 1973 and 1989 SWRCB Orders contain the following:

Water of the Santa Ynez River shall be stored in and released from Lake Cachuma in such amounts and at such times and rates as . . . (b) will be sufficient, together with inflow from downstream tributary sources, to maintain 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. (Water Rights Order 73-37, Condition 5; Water Rights Order 89-18, Condition 5 (emphasis added).)

In July of 1990, the SWRCB commenced a Consolidated Hearing on the Santa Ynez River to consider all the outstanding actions within the Santa Ynez River watershed. After several days of testimony, the Consolidated Hearing was recessed at the end of August 1990. To this date, the Consolidated Hearing remains recessed.

In 1994, the SWRCB adopted Order WR 94-5 continuing its reserved jurisdiction. Order WR 94-5 also required Reclamation to conduct the studies and investigations that were initially to have been conducted by WRB Decision No. D 886, Permits 11308 and 11310, Order WR 73-7 and Order WR 89-18. Order WR 94-5 mandates that the studies and investigations that were to have commenced in 1958 be complete in the year 2000, 42 years after the issuance of Reclamation’s permits. In addition, Order 94-5 also requires the preparation of an environmental review document pursuant to the California Environmental Quality Act.

E. Reclamation’s Petition to Change the Permitted Place and Purpose of Use for the Cachuma Project

In 1996, Reclamation submitted an amended Change Petition. The Change Petition seeks to expand the authorized place of use of water from the Cachuma Project to allow water to be delivered to all the lands within the Member Units’ respective service areas. Over 17,000 acres of land is proposed to be added to the existing authorized place of use. The Change Petition also seeks to expand the purposes for which Cachuma Project water may be used.
On May 22, 1997, the SWRCB issued a "Notice of Requested Changes in Water Rights Permits for the Bureau of Reclamation’s Cachuma Project on the Santa Ynez River in Santa Barbara County, Permits 11308 and 11310 (Applications 11331 and 11332)." The SWRCB’s notice states that "the SWRCB is the lead agency under CEQA and must evaluate the environmental impacts relating to the proposed changes in place of use and purpose of use."

III.

DISCUSSION

Before the SWRCB may grant a petition to change the place of use or purpose of use, the petitioner shall establish to the SWRCB’s satisfaction, and the SWRCB shall find, that the change will not operate to the injury of any legal uses of the water involved. (Wat. Code, § 1702.) In considering Reclamation’s Change Petition, the SWRCB’s Notice of Public Hearing divides the issues associated with the Change Petition into two keys issues that are further divided between the two phases of the hearing. In Phase I, Key Issue No. 1 states:

Would approval of the petitions for change in purpose and place of use result in any changes in Cachuma Project operations and flows in the Santa Ynez River, compared to the operations and flows that would exist if water from the Project were delivered only to areas within the current place of use?

The findings the SWRCB must make in Phase I of this hearing are limited and not sufficient to rule on Reclamation’s Change Petition. The issue of whether the proposed changes would injure any legal user of water is reserved for Phase II of the hearing. Key Issue No. 6, states:

Should the petitions for change in purpose and place of use be approved?

a. Will approval of the change petitions operate to the injury of any legal user of the water involved?

b. Will approval of the change petitions adversely affect fish, wildlife, or other public trust resources?

Lompoc intends to present evidence in Phase II regarding Lompoc’s water rights and the potential impact that the Change Petition may have on Lompoc’s water rights.

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CITY OF LOMPOC’S CLOSING BRIEF FOR PHASE I OF THE CACHUMA PROJECT HEARING
A. Reclamation and the Member Units Failed to Demonstrate How the Project Would Have Been Operated Under Permitted Conditions

Key Issue No. 1 specifically requested an analysis using the permitted place of use as the baseline. Neither Reclamation nor the Member Units presented evidence to demonstrate how the Project would operate under permitted conditions as compared to operations pursuant to the proposed change in place of use and purpose of use. In evaluating the changes to operation of the Cachuma Project, the Member Units’ analysis relies entirely upon existing uses of the water; not the permitted uses. As a result, the analysis assumes an inappropriate baseline for evaluating the impacts resulting from the proposed changes. Accordingly, Reclamation and the Member Units cannot establish whether approval of the Change Petitions will result in any changes in Cachuma Project operations, flows in the Santa Ynez River, or injury to any legal user of water.

Reclamation’s testimony regarding Key Issue No. 1 was limited to the testimony of Michael Jackson and Gale Heffler-Scott. Both concluded that the proposed changes to the place of use and purposes of use would not alter the operation of the Cachuma Project. (See Testimony of Michael P. Jackson ("Jackson Testimony") at p. 8; Testimony of Gale Heffler-Scott ("Heffler-Scott Testimony") at p. 3.) On cross-examination, however, Mr. Jackson acknowledged that he conducted no technical analysis other than to confer with his staff and review the data provided by the Member Units’ expert, Kate Rees. (Reporter’s Transcript ("R.T.") at p. 71.) Neither Reclamation nor Mr. Jackson conducted any computer modeling to evaluate the proposed changes. (Id.) Additionally, Ms. Heffler-Scott testified that as the Project is an integrated facility, water supplies are commingled and delivered throughout the Member Units existing service areas. (R.T. at p. 72.) No technical data was offered supporting Reclamation’s witnesses’ conclusions.

As discussed above, the purpose of use for Reclamation’s water rights Permit 11308 is limited to irrigation, domestic, salinity control, incidental recreation, and stock watering. (See also DOI Exh. 2 at p. 9.) The permit does not include municipal and industrial as a purpose of use. Permit 11308 also provides for a direct diversion rate of 100 cubic feet per second ("cfs") from
January 1 to December 31, and diversion to storage of 275,000 acre-feet from October 1 to June 30. (Id.)

The purpose of use for Permit 11310 is limited to municipal and industrial. (See also DOI Exh. 2 at p. 9.) Permit 11310 provides for a direct diversion rate of 50 cfs from January 1 to December 1 and diversion to storage from October 1 to June 1. (Id.) In operating the Project, Reclamation does not distinguish between the two permits. (R.T. at p. 65.) Reclamation makes no effort to break down its water usage based upon the water rights permits. Without this information, it cannot be determined whether the Project has operated in a manner consistent with the terms and conditions of the applicable water rights permits. The result is a lack of evidence as to whether proposed Change Petition would result in a change in the operation of the Project from permitted uses.

The Member Units' expert witness Kate Rees opined that the proposed change in place of use and purposes of use would not result in any changes to the Cachuma Project operations or flows in the Santa Ynez River. However, Ms. Rees acknowledged that her analysis did not take into consideration any of the issues associated with the change of purpose of use of the water. (R.T. at p. 144.) The baseline for Ms. Rees' analysis did not establish how much water would be used for irrigation under Permit 11308 or how much used for M&I under Permit 11310. Instead, the analysis lumps together all the uses. Neither the evidence nor the testimony provides any indication how the Project would have operated had diversions pursuant to Permit 11308 been limited to irrigation and diversions pursuant to Permit 11310 limited to M&I. (See R.T. at p. 154.) Moreover, neither Reclamation, nor the Member Units can assert that all of the diverted water was taken from storage, as Ms. Rees stated her data and subsequent analysis did not distinguish between water diverted under Reclamation's direct diversion right versus its diversion from storage. (See R.T. at pp. 144-145.)

The baseline used in the analysis is premised on existing uses of water, not the permitted uses. Consequently, there is a lack of evidence upon which the SWRCB can rely in making its determination on the Change Petition.
B. Reclamation and the Member Units Failed to Consider That the Cachuma Project’s Operational Yield Has Changed

Another issue regarding the existing operation and the future operation of the Cachuma Project is the uncertainty as to the Project’s Operational Yield. Reclamation and the Member Units testified that the Project’s Operational Yield is 25,714 acre-feet per year. (DOI Exh. 1 at p. 5; Member Units Exh. 2 at p. 8.) That operational yield is based upon, among other things, a reservoir capacity of 190,000 acre-feet. (R.T. at p. 62.) The reservoir capacity, however, is currently 188,000 acre-feet, which arguably should reduce operational yield. (DOI Exh. 1 at p. 62; Member Units Exh. 2 at p. 4; R.T. at p. 146.) Thus, to the extent the analysis of the Cachuma Project’s current operations is based upon an Operational Yield of 25,714 acre-feet, the analysis is inaccurate. Moreover, the analysis does not take into account that the Project’s Operational Yield will continue to decrease as siltation further reduces the reservoir’s capacity below 188,000 acre-feet. (See R.T. at p. 62.)

C. Increasing the Authorized Place of Use Will Increase the Demand on the Cachuma Project

Reclamation and the Member Units’ deny that increasing the authorized place of use by 17,000 acres results in an increased demand on water from the Cachuma Project. Ms. Rees’ own testimony evidences the contrary. Ms. Rees testified that the Member Units’ supplemental water (non-Cachuma Project water) may not be enough to meet demand, that water from the Cachuma Project in excess of the 25,714 Operational Yield could be used. (R.T. at p. 151.) In fact, water diversions from the Cachuma Project exceeded the Operational Yield of 25,714 acre-feet in 1993, 1994, 1995, 1996 and 1999. (See Member Units’ Exh. 2 at p. 7.) Ms. Rees also testified that in one year over 30,000 acre-feet of water was used from the Project. (R.T. at p. 152.)

Expanding the authorized place of use by 17,000 acre-feet will place an increased demand on water from the Cachuma Project. As the delivery of water to the Member Units has exceeded the Project’s Operational Yield in most of the recent years, it can reasonably be expected that deliveries of water from the Cachuma Project will grow with the increased demand.

The SWRCB reserved its jurisdiction over Reclamation’s water rights permits and stated that at some future date it will conduct evidentiary hearings to evaluate how the Cachuma Project
must be operated in order to protect instream resources and downstream water rights. (See Decision No. D 886, Water Rights Orders 73-37, 89-18, 94-5.) If Reclamation is allowed to change the place of use and purpose of use to areas that have already become dependent upon water from the Cachuma Project prior to the evidentiary hearing, the result will be increased pressure and reliance on the limited water resources of the Santa Ynez River, which Lompoc relies upon as its sole source of water. Thus, prior to ruling on the Change Petition, the SWRCB must determine how the Cachuma Project must operate to protect downstream water rights. (See Wat. Code, § 1702.) Only after the SWRCB determines how the Project will in fact be operated for the foreseeable future, can the SWRCB make a finding regarding whether the proposed changes to place of use and purpose of use will injure any other legal user of water.

IV.

CONCLUSION

Reclamation and the Member Units did not address the specific question raised by the SWRCB in Key Issue 1: Would approval of the Petitions change the operations of the Cachuma Project as compared to operation within the current place of use. The SWRCB framed Key Issue 1 appropriately.

The baseline for evaluating the impact and injury from the proposed expansion cannot be based upon Reclamation’s unauthorized use of the water to areas outside the permitted place of use and purpose of use. In evaluating impacts to downstream water users, the SWRCB must look at the amount of water that was lawfully used within the authorized place of use and the amount of water that was lawfully used for a permitted purpose. To do otherwise rewards Reclamation and the Member Units for ignoring the terms and conditions of its water rights
permits. The SWRCB needs to evaluate how the Project would have, and should have, been
operated under the permitted uses. Thus, the SWRCB should not rule on the Petitions for
Change until completion of the Phase II hearing when all evidence has been submitted on all the
key issues involving the Cachuma Project.

DATED: January 5, 2001

SOMACH, SIMMONS & DUNN
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I am employed in the County of Sacramento; my business address is 400 Capitol Mall, Suite 1900, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

On January 5, 2001, I served the following document(s):

CITY OF LOMPOC’S CLOSING BRIEF FOR PHASE I OF THE CACHUMA PROJECT HEARING
(Original and 6 Copies to SWRCB)

X (by mail) on all parties in said action, in accordance with Code of Civil Procedure § 1013a(3), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Somach, Simmons & Dunn, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of Sacramento, California.

— Via facsimile transmission.

— (by overnight delivery) on all parties in said action, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing, same-day pickup by Federal Express at the offices of Somach, Simmons & Dunn for overnight delivery, billed to Somach, Simmons & Dunn, and addressed as set forth below.

_____ (by personal delivery) by having a true copy thereof hand delivered to the person and at the address set forth below:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 5, 2001, at Sacramento, California.

Julie L. Proctor
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