

**TESTIMONY OF JOANN STRUEBING
REGARDING
U.S. BUREAU OF RECLAMATION
WATER RIGHTS PERMITS 11308 AND 11310 (PHASE 2)**

I. INTRODUCTION

I am a Water Rights Specialist for the United States Bureau of Reclamation's (Reclamation's) Mid-Pacific Region. In this capacity, I am responsible for assisting with the general administration and protection of Reclamation's water rights for projects in the Mid Pacific Region. I have worked with Reclamation since 1997 and have been assigned to the Water Rights section since 1998.

II. PURPOSE OF TESTIMONY

The purpose of my testimony is to provide a brief history and general background concerning Reclamation's Cachuma Project water rights on the Santa Ynez River, Santa Barbara County. My testimony will also address Reclamation's compliance with Conditions 3 and 4 of State Water Resources Control Board (SWRCB) Order WR 94-5.

Testimony addressing Reclamation policy will be addressed by Michael Jackson, Deputy Area Manager for Reclamation's South Central California Area Office (SCCAO). Issues of a technical nature will be addressed in testimony provided by Antonio Buelna, Chief of Operations and David Young, Environmental Specialist, of Reclamation's SCCAO, as

well as testimony provided by individuals representing the Cachuma Project Member Unit's¹ (Member Units) interests in this hearing.

III. CACHUMA PROJECT AUTHORIZATION

The Cachuma Project was authorized by the Secretary of the Interior in 1948, pursuant to Section 9(a) of the Reclamation Project Act of 1939. (DOI-1b) As authorized, the principal features of the project are: Bradbury Dam and Cachuma Reservoir located on the Santa Ynez River about 25 miles northwest of Santa Barbara, the Tecolote Tunnel which conveys water from Cachuma Reservoir through the Santa Ynez Mountains to the south coast areas of Santa Barbara County, and the South Coast Conduit which connects to the tunnel and distributes water across the South Coast area to the Member Units, running roughly parallel to the coast for about 25 miles to its eastern terminus in Carpinteria. Included in the main conduit system are three small regulating reservoirs, Glerin Anne, Lauro and Ortega, located along the conduit, and a terminal reservoir in Carpinteria. Attached to the conduit are local distribution systems serving the Goleta, Montecito, and Carpinteria Valley Water Districts. (See DOI-1b and D-886, page 12)

Construction of Bradbury Dam was completed in 1953 and construction of the Tecolote Tunnel was completed in 1956. (See D-886, pages 12-13) A contract transferring the operation and maintenance of the Cachuma Project facilities, other than Bradbury Dam,

¹ The Cachuma Project Member Units consist of the City of Santa Barbara; Goleta Water District; Montecito Water District; Carpinteria Valley Water District; and the Santa Ynez River Water Conservation District, Improvement District No. 1, all of whom are members of the Santa Barbara County Water Agency and hold subcontracts under the Agency's master contract with Reclamation for water service from the Cachuma Project.

to the five Member Units of the Santa Barbara County Water Agency (Agency) was executed by the United States, the Member Units and the Agency on February 24, 1956. The Cachuma Operations and Maintenance Board currently operates and maintains the Tecolote Tunnel and the South Coast Conduit system for Reclamation under Contract No. 14-06-200-5222R (**DOI-24**) Operation of the South Coast Conduit and the Tecolote Tunnel began in 1956. (See Historical Operations, **DOI-31**)

The original Cachuma Project Master Water Service Contract was executed in 1949 between Reclamation and the Agency. (Contract No. I75r-1802). The Master Contract contracted the entire yield of the Cachuma Project to the Agency on behalf of the Member Units. (**Id.**) The Agency administers the Master Contract with Reclamation on behalf of the Member Units. (**Id.**) Individual contracts were entered into between the Agency and Member Units pursuant to the terms and conditions of the Master Contract. The Master Contract, along with the Member Units contracts, became effective upon the initial delivery of water in 1955. (**Id.**) The original Master Contract and Member Units contracts had terms of 40 years, which expired in 1995. (**Id.**) The contracts were subsequently renewed by Reclamation, the Agency and Member Units. (**DOI -1c**). Renewal of these contracts was subject to the provisions of the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) and resulted in a Final Environmental Impact Statement/Environmental Impact Report prepared by

Reclamation and the Cachuma Project Authority² as NEPA and CEQA lead agencies.
(SWRCB Staff Exhibits by Reference, #5)

The original contractual entitlement for the Cachuma Project was 32,000 acre-feet (af) per year based on the initial estimates of the Project's safe yield. The planning studies that supported the original contract, however, were performed using a Cachuma Reservoir capacity of 205,000 af and a hydrologic study period that did not include the 1946-1951 drought. Later incorporation of this drought into the study period resulted in a lowering of the safe yield. Additionally, silt surveys performed in the late 1980s, indicated a reduction in the Cachuma Reservoir storage capacity to approximately 188,030 af (See **DOI-6**, Testimony of Tony Buelna, pg 2, and **Exhibit CCRB-2**, Testimony of Kate Rees, page 4) As a result of these findings, under renewal of the Master Contract and Member Units contracts, the original contractual entitlement of 32,000 acre-feet (af) was reduced to an agreed operational yield of approximately 25,714 af.

IV. PERMITS 11308 AND 11310

On March 25, 1946, Reclamation filed Water Right applications 11331 and 11332, in support of the federally authorized Cachuma Project. On February 28, 1958, the former State Water Rights Board adopted Decision 886 (D-886), approving Applications 11331 and 11332 and subsequently issued Permits 11308 and 11310.

² The Cachuma Project Authority was established in 1993 by the Member Units pursuant to the Joint Powers Agreement to represent their collective interests in renewal of the Master Contract with Reclamation.

Permit 11308 permits the appropriation of 100 cubic feet per second (cfs) from the Santa Ynez River by direct diversion from January 1 through December 31, and 275,000 af per annum by storage to be collected between about October 1 of each year and about June 30 of the following year. The purposes of use as permitted under Permit 11308 are for irrigation, domestic, salinity control, incidental recreational purposes, and stock watering. Permit 11310 permits the appropriation of 50 cfs from the Santa Ynez River by direct diversion from January 1 through December 31, and 275,000 af per annum by storage to be collected between about October 1 of each year and about June 30 of the following year. The purposes of use as permitted under permit 11310 are for municipal, industrial and incidental recreational purposes. The total amount of water to be appropriated by storage for all purposes under both permits 11308 and 11310 is not to exceed 275,000 af per annum. (See **SWRCB Staff Exhibits by Reference, #1 and #2**; and D-886, pages 31-32)

The existing place of use for Permits 11308 and 11310 is shown on Map No. B-1P-21 (Sheets 1 and 2), as on file with the SWRCB (See **SWRCB Staff Exhibits by Reference, #1 and #2**). The place of use generally covers the service area boundaries for the Goleta Water District, the City of Santa Barbara, the Montecito County Water District, the Carpinteria Valley Water District and the Santa Ynez River Water Conservation District, within a gross area of 175,000 acres. The existing place of use for irrigation under Permit 11308 includes irrigation of 61,000 net acres within a gross area of 175,000 acres along the south coast area of Santa Barbara County. Both Permits

11308 and 11310 allow for use of water for recreational purposes at the Cachuma Reservoir site. (Id.)

In addition to its primary uses, Permits 11308 and 11310 also provide that water from Cachuma Reservoir released into the Santa Ynez River and from the Tecolote Tunnel may be used for groundwater recharge in areas along the coastal plain, within the place of use boundary as shown on Map B-1P-21.

V. RESERVED JURISDICTION OF THE SWRCB

During the hearing resulting in D-886, the SWRCB found that while there was sufficient unappropriated water to justify issuance of Permits 11308 and 11310, it was necessary for the SWRCB to retain jurisdiction in order to determine the required streamflow of the Santa Ynez River that would be necessary for the protection of vested rights, without resulting in waste into the ocean. (See D-886, pages 30-31) D-886 reserved the SWRCB's jurisdiction for a 15-year trial period or such further time, prior to issuance of license, as the SWRCB may determine to be reasonably necessary in determining the amounts, timing and rates of releases of water past Bradbury Dam required for the protection of downstream rights. Condition 12 of D-886 required Reclamation to conduct various monitoring studies and investigations to ensure that sufficient water was released into the Santa Ynez River from Cachuma Reservoir, "... to supply downstream diversions of the surface flow under vested prior rights to the extent water would have been available for such diversions from unregulated flow..." and to ensure

that the operation of the project would "...not reduce the natural recharge of groundwater from the Santa Ynez River...". (See D-886, pages 33-34)

The reserved jurisdiction of the SWRCB was continued by Order WR 73-9, dated February 15, 1973 and by WR 73-37, dated July 5, 1973. Condition 7 of Order WR 73-37 provided for another extension of the SWRCB's reserved jurisdiction through July 5, 1988. This order also amended the provisions of Conditions 5 and 6 of Permits 11308 and 11310. These modified conditions established a detailed accounting system (divided into two categories: Above the Narrows and Below the Narrows) for the storage and release of water at Cachuma Reservoir to enable the project to maximize water supplies while ensuring protection of downstream water rights. (See Order WR 73-37, pages 3-11)

On July 5, 1978, the SWRCB adopted Order WR 78-10, amending Condition 5. (1.4) of Permits 11308 and 11310, as amended by WR 73-37. This amendment allowed for a change in the method of measurement of water released from Cachuma Reservoir to satisfy downstream water rights; this change specifically revised how the term "live stream" was defined within the order. (Order WR 78-10, page 4)

During the trial period established by Condition 7 of WR 73-37, Reclamation, along with the Santa Ynez River Water Conservation District, the Cachuma Conservation Release Board (CCRB), and the City of Lompoc, jointly reviewed the operating procedures for Cachuma Reservoir to determine if the permit terms, as amended by WR 73-37 and WR 78-10, had actually resulted in the required releases of water for satisfaction of

downstream rights. Following negotiations, there was agreement among all parties that the SWRCB should not hold a hearing on this matter until the parties were able to have three new observation wells constructed which would provide additional data for further review and analysis. On March 13, 1989, Reclamation petitioned the SWRCB for an additional ten-year trial period and requested that a hearing not be held on the matter until the parties had an opportunity to gain experience under the new trial operating procedures. (See Order WR 89-18, findings 6 and 7)

Furthermore, the Department of Fish and Game had requested that Reclamation modify and extend the riparian vegetation monitoring program required under Condition 6 of Permits 11308 and 11310, as amended by WR 73-37. Reclamation agreed to extend the program and provide for continued monitoring of riparian vegetation in and along the margins of the Santa Ynez River below Bradbury Dam for at least an additional five years. (See WR 89-18, finding 8)

As a result of the foregoing, the SWRCB adopted WR 89-18, on September 21, 1989, again continuing its reserved jurisdiction through December 31, 1994 and extending the date for hearing until July 1, 1994. Conditions 5, 6 and 7 of the permits were further amended as proposed in Reclamation's submittal of March 13, 1989 (attached to and incorporated by reference into WR 89-18) and agreed to by the downstream users. (WR 89-18, Condition 5)

In July of 1990 the SWRCB commenced a consolidated hearing to consider outstanding issues within the Santa Ynez River watershed. The issues included a complaint filed by the California Sportfishing Protection Alliance in 1987, alleging that Reclamation's operation of Cachuma Reservoir was adversely affecting steelhead trout in the Santa Ynez River. That consolidated hearing was recessed at the end of August to allow the parties to work together to resolve some of the technical concerns outside of the hearing process. On December 20, 1990, Chairman W. Don Maughan wrote to the parties to explain that before the SWRCB could act on the pending actions, the following preliminary actions must be accomplished: 1) a cumulative environmental impact report must be prepared; 2) a determination of the availability of unappropriated water must be made; and 3) potential mitigation measures for the remnant steelhead fishery and for rare and endangered species and related habitats must be evaluated. (See WR 94-5, finding 8)

In 1994, a Memorandum of Understanding (MOU) for Cooperation in Research and Fish Maintenance was developed and signed.³ (CCRB Exhibit 12) Through the provisions of this MOU, Reclamation, the Member Units and other interested parties agreed to provide for the establishment of a Fish Reserve Account that supports water releases up to 2,000 af per year for purposes of fishery studies, as well as providing water for habitat downstream of Bradbury Dam.

Subsequently the SWRCB determined that before they could take final action, further evaluation of the measures needed to protect downstream water rights and public trust

³ The parties to the 1994 MOU are the California Department of Fish and Game, the United States Fish and Wildlife Service, the Bureau of Reclamation, the Cachuma Conservation Release Board, Santa Ynez River Water Conservation District, Santa Barbara County Water Agency, and the City of Lompoc.

resources was necessary. As such, SWRCB Order WR 94-5, issued December 1, 1994, once again continued the SWRCB's reserved jurisdiction in Condition 7 of Permits 11308 and 11310, until such time as long-term permit conditions are established to protect downstream water right holders. Condition 2 of WR 94-5 set a hearing date for December 1, 2000. Condition 3 of WR 94-5 required Reclamation to complete by no later than February 1, 2000, various studies and investigations. Condition 4 of WR 94-5 required Reclamation to prepare any additional environmental documentation, as determined by the Division Chief, to be required for the SWRCB's compliance with the California Environmental Quality Act (CEQA), in connection with the SWRCB's determination if any modification to Reclamation's permits may be necessary for the protection of downstream water rights and public trust resources affected by the project. The Division Chief determined that an Environmental Impact Report pursuant to the CEQA, was required to disclose the environmental effects of any changes in the conditions contained in Reclamation's water right permits for the Cachuma Project. (See letter dated January 27, 1999, from the SWRCB to Reclamation, **SWRCB Staff Exhibits by Reference, #1 and #2**)

On September 25, 2000, the SWRCB issued a Notice of Public Hearing to be conducted in two phases. Key Issues were identified in that notice for both Phase 1 and Phase 2. Phase 1 of the hearing occurred on November 6, 2000. The key issues addressed during Phase 1 of the proceedings were related to Reclamation's petitions for change in purpose and place of use of Permits 11308 and 11310 and Reclamation's compliance with the requirements set forth in Conditions 3 and 4 of WR 94-5. The key issues to be addressed

in Phase 2 of the hearing include the protection of downstream water rights and public trust resources.

VI. CHANGE PETITIONS

Reclamation originally petitioned the SWRCB in 1983, to request an expansion of the permitted place of use and a consolidation of the purposes of use for Permits 11308 and 11310. (DOI-2b) The purpose of the 1983 petition was to include within the place of use areas that had present or future potential for agricultural and/or subdivision development and to include changes in local district boundaries. This involved modifying the gross area (175,000 acres) of the water right place of use boundary only, and leaving the net irrigated area (61,000 acres) unchanged. The 61,000 acres represented a maximum potential area of agricultural use of Cachuma Project water. It was envisioned that the net irrigated area would remain the same but, under the proposed change, could be moved around anywhere with the gross area, once approved by the SWRCB. (See DOI-2, Testimony of Gale Heffler-Scott)

The 1983 petition had been amended several times to include further changes, without deviating from the intent and scope of the original petition. In 1999, Reclamation filed a separate change petition at the request of the Goleta Water District, requesting inclusion of an additional 130 acres to the place of use under Permits 11308 and 11310, again with no deviation from the original intent and scope of the 1983 petition. The resulting proposed place of use boundary modifies the existing place of use boundary from a gross area of 175,000 acres to a gross area of 192,506 acres, with the permitted net irrigable

area of 61,000 acres remaining unchanged.(Id.) The change petitions filed by Reclamation merely reflect boundary changes by the Member Units due to land annexations that have been approved at the local level. (See **Staff Exhibits by Reference, #3 and #4**, Initial Study/Negative Declaration for the Change Petitions and EIR and Addendum to the Final EIR for the Dos Pueblos Golf Links Project). Reclamation is not involved in decisions at the local level affecting modifications to district service area boundaries. Reclamation's approval of district boundary changes is strictly an administrative requirement under the terms of the Master Water Service contract. (See **DOI-1c**, and **DOI-2**)

There were six protests originally received by the SWRCB in response to the hearing notice of May 22, 1997 on the change petitions. One of the protests was dismissed and four others were cancelled by the SWRCB, Division of Water Rights⁴. One outstanding issue relative to the change petitions was an unresolved protest filed by the City of Lompoc. By way of the recent settlement agreement between the CCRB, Santa Ynez River Water Conservation District, Santa Ynez River Water Conservation District Improvement District No. 1, and the City of Lompoc, relating to the operation of the Cachuma Project, dated December 17, 2002, the City of Lompoc has agreed to withdraw its protest to the Cachuma Project Change in Place and Purpose of Use presented in connection with Phase 1 of the WR 94-5 hearing. (**CCRB Exhibit 220A**, page 7, paragraph 3.2)

⁴ Refer to protest cancellation letters from the SWRCB, Division of Water Rights, dated December 6, 1999, addressed to Mr. Steve Jordan; Mr. David Serge, City of Solvang; Mr. Robert Baiocchi, California Sportfishing Protection Alliance; Mr. Ronald Rempel, Department of Fish and Game; and the dismissal letter to Mr. Ernest Conant, Santa Ynez River Water Conservation District.

VII. COMPLIANCE WITH WR 94-5

Order WR 94-5, issued on December 1, 1994, required Reclamation to comply with a series of conditions in regard to Reclamation's permits for the Cachuma Project. Pursuant to Condition 3, for the period of 1995 through 2000, Reclamation filed bi-annual reports on the status of the requirements set forth in Conditions 3(a) through 3(f). As presented in testimony provided by Reclamation's witness, Michael Jackson during the Phase 1 proceedings (see **DOI-1**), Reclamation has complied with Condition 3(a), 3(b), 3(c), and 3(e) of Order WR 94-5, by providing to the SWRCB copies of the various studies and reports identified under those conditions. Thus, these conditions are satisfied and no further obligation remains.

Condition 3(d) of WR 94-5 required Reclamation to provide the SWRCB with information developed and conclusions reached, if any, during negotiations between the Member Units and the City of Lompoc. In response to this requirement Reclamation refers the SWRCB to the agreement entered into by and among certain affected parties. The agreement is titled "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 the Operation of the Cachuma Project," dated December 17, 2002, (Settlement Agreement). (**CCRB Exhibit 220A**) A copy of the executed Settlement Agreement was forwarded to the SWRCB, Division of Water Rights, by letter dated February 20, 2003, from the Cachuma Conservation Release Board. It is the position of Reclamation that the

provisions of the Settlement Agreement are compatible with the continued operation and maintenance of Bradbury Dam. Reclamation, while not a signatory to the Settlement Agreement, supports the Settlement Agreement, which resolves longstanding issues relating to the Lower Santa Ynez River and operations at Bradbury Dam. (See **DOI-10**)

Condition 3(f) of Order WR 94-5 required Reclamation to produce any reports or other studies requested by the SWRCB staff or ordered by the SWRCB. To date, no further reports or studies have been required pursuant to this condition.

Condition 4 of WR 94-5 required Reclamation to prepare a Draft Environmental Impact Report (DEIR), as determined by the Division Chief, in connection with the SWRCB's determination if any modification to Reclamation's permits may be necessary for the protection of downstream water rights and public trust resources affected by the Cachuma Project. The DEIR was to be submitted to the SWRCB not later than July 31, 2000. Due to the listing of steelhead in 1998 and an extended consultation process with the National Marine Fisheries Service, the DEIR was submitted to the SWRCB in June of 2001. (See **DOI-1**, Testimony of Michael Jackson). Reclamation provided an Administrative Draft EIR, analyzing the environmental impacts of various operational alternatives on downstream water rights and public trust resources to the SWRCB under transmittal memorandum dated June 8, 2001.⁵

⁵ The DEIR was forwarded by Dr. John Gray, a consultant working with URS Greiner Woodward-Clyde International – Americas, Inc. (Contractor), retained by way of a three-party agreement between the United States Bureau of Reclamation, the Cachuma Operation and Maintenance Board, and the Contractor, for the purpose of preparing the Draft Environmental Report for the SWRCB, pursuant to Order WR 94-5.

VIII. PROPOSED MODIFICATIONS TO PERMITS 11308 AND 11310

As expressed in letter dated March 21, 2003, from Reclamation to the SWRCB, Division of Water Rights, Reclamation supports the Settlement Agreement. (DOI-10) The Settlement Agreement resolves certain key issues relative to the satisfaction of downstream water rights. These are identified as key issue No.(s) 4, 4a, 4b, 5, 5a, 5b, and 7a of the SWRCB Supplemental Notice of Phase 2 of the Cachuma Project hearing, dated August 13, 2003, to review Reclamation's Water Right Permits 11308 and 11310 pursuant to Order WR 94-5. Additionally, the Settlement Agreement through measures in it, implemented pursuant to the Cachuma Project Biological Opinion and the Lower Santa Ynez River Fish Management Plan, addresses the public trust resource issues identified in the August 13, 2003, notice. These are identified as key issue No.(s) 3, 3a, 3b, 3c and 7b.

Attached to Reclamation's letter of March 21, 2003, are two enclosures: 1) "Proposed Modifications to Order WR 73-37, as amended by Order WR 89-18, Pertaining to Permits 11308 and 11310 (Applications 11331 and 11332)" and 2) "Revised USBR Exhibit 1, dated February 1, 2003," with the proposed modifications incorporated.(DOI-10) The proposed modifications have been developed in cooperation with the parties to the Settlement Agreement.

In response to key Issue No. 6⁶, Reclamation requests the SWRCB incorporate the proposed modifications into Permits 11308 and 11310 of the Cachuma Project, in order

⁶ As a point of clarification, Reclamation's letter transmitting the two enclosures referred to in key issue no. 6, is dated March 21, 2003, rather than February 26, 2003 as indicated in the supplemental hearing notice.

to provide measures for the protection of downstream water rights on the Santa Ynez River below Bradbury Dam.

IV. SUMMARY

Based on the testimony and evidence presented during Phase 1 of the WR 94-5 hearing and the recent developments resulting in a Settlement Agreement among the affected parties, Reclamation requests that the SWRCB: 1) approve the 1983 Change Petition as amended and the 1999 Change Petition; 2) find that Reclamation is in full compliance with Conditions 3 and 4 of WR 94-5; and 3) amend Permits 11308 and 11310 to incorporate the modifications as proposed in Enclosure 1 of DOI Exhibit 10, to provide measures for the protection of downstream water rights on the Santa Ynez River below Bradbury Dam.