



December 9, 2016

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Via email to commentletters@waterboards.ca.gov, hard copy to follow

Re: COMMENT LETTER–Cachuma Project Draft Order and Final Environmental Impact Report

Dear Ms. Townsend:

The following comments are submitted by the Environmental Defense Center (“EDC”) on behalf of California Trout (“CalTrout”) urging the State Water Resources Control Board (“Board”) to revise and adopt the Draft Order amending the Bureau of Reclamation (“Reclamation”) Permits 11308 and 11310 for the Cachuma Project (“Draft Order”) along with the modified permits 11308 and 11310 (“Draft Amended Permits”), and to certify the December 2011 Final Environmental Impact Report¹ (“Final EIR” or “FEIR”), which evaluates modifications to the Draft Amended Permits. CalTrout submits these comments with respect to the protection of fish and public trust resources in the Santa Ynez River.

CalTrout is a non-profit river conservation organization with a substantial interest in the public trust resources of the Santa Ynez River, including the endangered southern California steelhead (“steelhead”). EDC is a non-profit, public interest law firm that protects and enhances the environment in Santa Barbara, Ventura, and San Luis Obispo Counties through education, advocacy and legal action. EDC has represented CalTrout in these proceedings since 2000.

Since the construction of Bradbury Dam, the steelhead population in the Santa Ynez River has plummeted by over ninety-nine percent.² Before 1950, steelhead were abundant in the Santa Ynez River, with an estimated population of 20,000 to 30,000 fish.³ The current estimated run size for the Santa Ynez River, combined with five other rivers and streams, is currently less

¹ Including errata issued April 5, 2012.

² A History of Steelhead and Rainbow Trout (*Oncorhynchus mykiss*) in the Santa Ynez River Watershed, Santa Barbara County, California. Peter S. Alagona, Scott D. Cooper, Mark Capelli, Matthew Stoecker, and Peggy H. Beedle, December 2012.

³ NOAA-6.

than 200 fish,⁴ underscoring the species' continuing dire condition under current management efforts.

CalTrout's participation in these proceedings has focused on the protection of steelhead as a public trust resource. Specifically, CalTrout has focused on Key Issues 3 and 6 identified in the August 13, 2003, Notice of Field Orientation Tour and Supplemental Notice of Phase 2 Public Hearing. During the Board's 2003 Phase 2 Hearing, CalTrout submitted evidence regarding 1) what flow requirements are necessary to protect public trust resources, 2) what other measures are necessary to protect public trust resources, 3) how these measures will affect Reclamation and the Member Units, and 4) what water conservation measures could be implemented to minimize impacts.

In our closing brief, we argued that in order to fulfill its public trust objectives, the Board should 1) implement the instream flow schedule identified in Alternative 3A2 of the 1995 Final Cachuma Project Contract Renewal Environmental Impact Statement/Environmental Impact Report ("Contract Renewal EIR/EIS") as modified to reduce flows during dry years ("CalTrout's Alternative 3A2 Modified"), along with a study to verify that these flows improve habitat and steelhead population; 2) require immediate commencement of a comprehensive study to evaluate the feasibility of passage around Bradbury Dam; and 3) require certain additional studies to evaluate what additional water could be made available through water conservation and modifications to the downstream water rights release schedule, with the studies subject to independent peer review and deadlines. In addition, we supported an adaptive management approach with measurable performance standards and we requested that the Board reserve authority to evaluate additional modifications of the Draft Amended Permits in light of the studies.⁵

In 2003, the Board released a Draft Environmental Impact Report ("DEIR") for the project. CalTrout submitted comments demonstrating that none of the alternatives were capable of protecting public trust resources. In July 2007, the Board circulated a partially revised DEIR ("RDEIR") with two new alternatives (5B and 5C) that purportedly were in response to CalTrout's request that the Board consider Alternative 3A2 Modified. CalTrout submitted comments on September 28, 2007, regarding the RDEIR, arguing that the newly-added alternatives (5B and 5C) are somewhat more beneficial for steelhead than the alternatives identified in the DEIR, but that they are still incapable of protecting public trust resources. In 2011, the Board recirculated the RDEIR in light of updated information on water supply, biological resources, oak trees, and recreation, and sought comment only on water supply and comparison of alternatives. On May 27, 2011, CalTrout commented on the second RDEIR, again arguing that Alternative 3A2 Modified is a feasible environmentally superior alternative that should be analyzed in EIR, and that it is most capable of fulfilling public trust objectives, among other requests. In December 2011, the Board released the FEIR, and in 2012, CalTrout participated in the hearing regarding whether the FEIR should be accepted into the record. CalTrout has awaited the release of this Draft Order since that time.

⁴ NOAA-6.

⁵ CalTrout Closing Brief, p. 1-2.

CalTrout applauds the Board's recognition of the need for habitat improvements for the critically imperiled remnant population of steelhead in the Santa Ynez River. We support the fundamental approach of the Draft Order of requiring an improved flow regime with a study to determine the effects of flows and how flows can be conjunctively used with releases for downstream water users. We fully support the need for a study of fish passage and additional studies to protect steelhead. We likewise agree with the Board's conclusion that any impacts on water supply can be feasibly mitigated.

However, revisions and clarifications of conditions are needed to meet the Board's public trust objectives and to ensure the terms and conditions can be meaningfully implemented and enforced. Specifically, as an overarching matter, the Board should further improve flows for steelhead through the adoption of CalTrout's Alternative 3A2 Modified, which can be feasibly implemented. The Board also must correct its Order consistent with its public trust responsibilities, which extend *above* Bradbury Dam in addition to *below* the Dam. In addition, we request specific modifications and clarifications to the operative Order language in Conditions 8 through 15, and Condition 17; corresponding Section 5, Public Trust Resources in the Draft Order background; and the corresponding Draft Amended Permits 11308 and 11310, as described below. Some of these provisions as currently drafted contain language that would undermine the purposes of the Board's Order and create confusion in implementation, but can be easily corrected.

In addition, the underlying FEIR should be certified with revisions for the reasons described below.

I. The Draft Order Provides Necessary Conditions on Reclamation's Permits; However, Additional Protections Must Be Adopted to Meet the Board's Public Trust Objectives.

The Draft Order correctly concludes that it is necessary to protect and improve the condition of the "remnant imperiled Steelhead fishery in the Santa Ynez River." (Draft Order at 79) As the Draft Order recognizes, the construction and operation of Bradbury Dam is a "critical limiting factor in providing sufficient habitat" for steelhead because it "limits access to habitat above the dam and limits through flow modifications the amount and quality of habitat below the dam." (Draft Order at 77) The Board likewise correctly makes the important distinction between the state law standards applied in the Draft Order and the federal Endangered Species Act ("ESA"): the Biological Opinion ("BO") requirements were developed pursuant to the less protective standard to "avoid jeopardy to the continued existence of the fishery and to prevent adverse modifications of designated critical habitat rather than to keep fish in good condition." (Draft Order at 77) CalTrout applauds the Board for its recognition of the ample evidence in the record that existing protections are inadequate to protect the species as a public trust resource, and to attempt to craft an order to meet public trust objectives.

However, there are two critical ways in which the Draft Order falls short of public trust mandates. First, it fails to require the flow regime that would most likely benefit steelhead and,

second, it appears to improperly limit the scope of the Draft Order with emphasis on steelhead and habitat *below* the dam even though the Board's responsibility and authority for protecting the public trust in the Santa Ynez River also extends *above* the dam.

A. The Board Should Adopt CalTrout's Alternative 3A2 Modified.

CalTrout urges the Board to adopt CalTrout's Alternative 3A2 Modified because it provides the most benefits for the critically-imperiled steelhead and is feasible to implement.

1. CalTrout's Alternative 3A2 Modified Provides the Most Benefits for Steelhead.

CalTrout agrees with the conclusion in the Draft Order that evidence in the record supports the need to improve habitat for steelhead through flow modifications and studies, including studies to identify potential future actions needed to protect public trust resources, and that any potential water impacts can be feasibly mitigated.

The Board correctly concluded that Alternative 3C is not keeping steelhead in good condition and that higher flows are needed during wet and above normal years. We agree with the Board's conclusion that the BO is insufficient to "restore the steelhead to the point that the fishery is a viable, self-sustaining population, which would be necessary to meet the criteria for fish in good condition." (Draft Order at 60) CalTrout Biologist William Trush testified that:

As a reference point and compelling reason for concern, NMFS's estimated minimum viable population size for the Santa Ynez River is an adult run size of 4,150 adults to avoid a 5% chance of extirpation in the next 100 years; contemporary adult steelhead run size is less than .4% of this minimum. Based on these considerations, today's steelhead population is at heightened risk of future decline and extirpation.⁶

The Board further concluded that evidence in the record supports the determination that Alternative 5C will benefit the steelhead fishery by providing more habitat. (Draft Order at 77–78) However, the Board overlooks that while 5C is likely to benefit the fishery, evidence in the record supports that CalTrout's Alternative 3A2 Modified is even more likely to fulfill the Board's public trust objectives. In fact, the Draft Order paraphrases CalTrout's expert as testifying that "Table 2 Flows, if provided in all water year types would likely maintain steelhead population in good condition." (Draft Order at 64) Under Alternative 5C, Table 2 Flows are implemented but this schedule is modified to reduce Table 2 flows to the BO target flows in sixty percent of the years (below average, dry and critical but not above average or wet years). Under CalTrout's Alternative 3A2 Modified, the flow release schedule would be modified to reduce Table 2 flows to BO target flows in twenty percent of the water year types.⁷

⁶ CT-120, p. 8.

⁷ CalTrout Closing Brief, p. 6; see also FEIR, Vol, I, pp. 2.0-71–2.0-91.

There is ample evidence in the record that 3A2 Modified would benefit steelhead and is most capable of fulfilling the Board's public trust objectives.⁸ This includes testimony from the National Marine Fisheries Service ("NMFS"), and information from CalTrout's biologist demonstrating that 3A2 is better for steelhead than the EIR alternatives. Specifically, CalTrout's expert biologist Tom Keegan testified that 3A2 Modified would provide benefits to steelhead.⁹ The record also demonstrates that 3A2 Modified for dry years would also benefit steelhead.¹⁰

CalTrout Biologist William Trush testified that the BO, which is the basis for all EIR alternatives except Alternative 5C, threatens the continued survival of steelhead.¹¹ Trush testified that the BO would not result in a viable steelhead population.¹² He explained, "[w]ithout a measurable increase in the predicted or observed adult run size for the lower Santa Ynez River, the FEIR cannot conclude that flows implemented under the 2000 BiOp have resulted in increased abundance of steelhead, the sea-going life history alternative of *O. mykiss*, in the lower Santa Ynez River."¹³ Indeed, given implementation of the BO for sixteen years without any measurable increase in the adult steelhead population, it is clear that the BO and the EIR's BO-based alternatives would not protect steelhead as a public trust resource.¹⁴

2. CalTrout's Alternative 3A2 Modified is Feasible.

Evidence submitted by experts in water management from the Pacific Institute over the course of these proceedings, most recently in testimony on the adequacy of the FEIR, demonstrates that it would be feasible to implement CalTrout's Alternative 3A2 Modified.¹⁵ Measures necessary to protect public trust resources must be adopted "whenever feasible."¹⁶ The Board perfunctorily dismisses this substantial expert testimony. For example, Ms. Cooley, co-Director of the Water Program at the Pacific Institute, provided oral testimony and written testimony demonstrating that the Member Units' water demand projections in the FEIR:

- are based on outdated estimates and ignore more recent water demand projections supplied by the water contractors, including in their 2010 Urban Water Management Plans ("UWMPs"); and

⁸ R.T., November 12, 2003, p. 705:1–705:14, 791:4–791:18, 794:2–794:6 (stating that 3A2 benefits steelhead); 813:16–813:19 (stating that 3A2 would benefit steelhead and provide passage in 84% of the years); 816:3–816:11 (noting that 3A2 would benefit steelhead rearing in the estuary) and 820:21–820:23 (stating that 3A2 would be better for steelhead than the EIR alternatives).

⁹ R.T., November 13, 2003, p. 920:18–920:22.

¹⁰ CalTrout-30 at 5–8 and 11 (testimony by CalTrout Biologist Tom Keegan noting that 3A2 Modified will benefit steelhead).

¹¹ R.T., March 29, 2012, p. 216:6–216:11.

¹² R.T., March 29, 2012, p. 228:2–228:6.

¹³ CT-120, p. 6.

¹⁴ *Id.*

¹⁵ See e.g., CT-101–119 (March 2012 Rebuttal Testimony of Heather Cooley and accompanying exhibits, admitted during the March 29, 2012 SWRCB FEIR hearing).

¹⁶ *National Audubon Society v. State Water Resources Control Board*, 33 Cal. 3d 419, 446 (1983).

- fail to integrate mandated water conservation and efficiency improvements, particularly a requirement to reduce urban per capita water demand by 20% by 2020.¹⁷

The Board attempts to refute this substantial evidence with statements from only two of the five of the Member Units. Of those statements, one provides no actual data to rebut Ms. Cooley's conclusions – only a general assertion that “numbers in the Final EIR are very consistent with the numbers that we've developed in our long-term supply plan and that are in our Urban Water Management Plan.” (Draft Order at 75, citing R.T., March 29, 2012, pp. 128:9–129:16, 132:2–134:22) The Board similarly relies on qualitative statements from only two of the five Member Units regarding the potential for alternative water supplies, while Ms. Cooley identifies options for all five Member Units (assessing potential use of recycled water, rainwater harvesting, and storm water capture). (Draft Order at 75)

In addition, CalTrout's expert testimony demonstrates that water demand could be even further reduced by the Member Units. In 2003, the Pacific Institute evaluated the urban conservation potential available to the Cachuma Member Units and concluded that 5,000 to 7,000 acre-feet (“AF”) of water could be cost-effectively conserved.¹⁸ Following the Phase 2 Hearing, Pacific Institute submitted additional evidence that technological improvements since 2003 indicate that conservation potential could exceed 5,000 to 7,000 AF.¹⁹ The Board asserts that the Member Units are already implementing water conservation programs and practices, but this does not contradict the substantial evidence submitted by Pacific Institute about *additional* available urban conservation potential. (Draft Order at 75–76) As the Board itself has made clear, the issue for these proceedings is not whether the Member Units are complying with state or federal standards, but “what water conservation measures could be implemented in order to minimize any water supply impacts.”²⁰ As testified to by water conservation experts during these proceedings, including the Member Unit's own expert, none of the Member Units, even those that are complying with the California Urban Water Conservation Council's best management practices, have fully captured water conservation potential.²¹ Thus, significant opportunity to reduce water demand, and minimize potential impacts to water supply, remains.

Finally, the Board mistakenly mischaracterizes Ms. Cooley's testimony with an assertion that she “admitted that she had not evaluated the potential for water conservation within the Cachuma Project service area specifically.” (Draft Order at 75) To the contrary, Ms. Cooley and other experts at the Pacific Institute specifically evaluated the *urban* conservation potential available to the Cachuma Member Units, and concluded that 5,000 to 7,000 AF of water could be cost-effectively conserved (technological improvements since 2003 indicate that urban conservation potential could exceed 5,000 to 7,000 AF).²² The Draft Order discussion references

¹⁷ CT-101, p. 2–5.

¹⁸ CT-50.

¹⁹ See, e.g., CT-101.

²⁰ Supplemental Hearing Notice, p. 4.

²¹ R.T., November 13, 2003, p. 900:22–25, p. 901:1–3, p. 1069:4–9.

²² CT-50 and CT-101.

testimony discussing potential *agricultural* conservation, not urban conservation.²³ (Draft Order at 75)

B. The Draft Order Should Be Modified Consistent with Board's Responsibility to Protect Public Trust Resources Above the Dam.

Even if the Board declines to implement CalTrout's Alternative 3A2 Modified, it must correct the Order to adequately protect public trust resources above Bradbury Dam. The Draft Order uses the correct sources of law, including the public trust doctrine, and the Peter Moyle definition of "good condition" at the individual, population, and community levels. (Draft Order at 21, 48–54, and 112) CalTrout applauds the Board for recognizing this important definition, which is critical to implementing the mandates of Fish and Game Code section 5937.

However, the Board's authority and responsibility in these proceedings is not limited to restoring good condition of steelhead *below* Bradbury Dam. The public trust doctrine protects public trust uses.²⁴ Thus, to the extent a public trust use or interest (e.g., recreational fishery) is impacted by a water diversion, the Board has jurisdiction to, and must, consider and remedy the impact, whether or not the impact is above or below the diversion. The Board has previously considered public trust resources upstream of a dam or diversion.²⁵ The Board has required a broad array of measures to protect above-dam public trust resources including requiring physical habitat restoration, prohibiting the continued installation of a "summer" dam, and requiring fish bypass above water diversions.²⁶

The Board's obligation to consider public trust resources, and to protect such resources whenever feasible, is not limited to those resources located below Bradbury Dam. Fish and Game Code section 5937 is a legislative expression concerning the public trust doctrine that should be taken into account when the Board acts under its public trust authority.²⁷ While the requirement to keep fish in good condition under section 5937 refers to fish "below" the dam, good condition includes consideration of steelhead on a population level. Relatedly, Fish and Game Code section 5933 addresses fish passage around dams and should be considered as further important legislative intent when the Board acts on its public trust authority—highlighting the importance of above-dam habitat to the migratory needs of steelhead. Finally, Water Code sections 1243 and 1253 also provide broad authority for the Board to consider and protect public trust resources above a dam or diversion.

²³ R.T., March 29, 2012, p. 101:23–102:7 (including reference to Exhibit CT-118, Sustaining California Agriculture in an Uncertain Future); see also, R.T., November 13, 2003, p. 903: 21–23 (explaining purpose of study is to evaluate uncaptured water conservation potential in "these agencies").

²⁴ *National Audubon*, 33 Cal. 3d at 446.

²⁵ See, e.g., Decision No. 1632 (Carmel River) at 73–74 (considering impacts of proposed dam on habitat that will be inundated by reservoir); Order No. WR 95-17 (Lagunitas Creek) at 136–39 (considering effects of dam on migration of salmon).

²⁶ See, e.g., Decision 1631 (Mono Lake), 59, 71, 82, 117; Order No. WR 95-17 at 147–48.

²⁷ See, e.g., SWB Decision 1644 (Lower Yuba River), 30 (2001) (citing *California Trout, Inc. v. State Water Resources Control Board*, 207 Cal. App. 585, 626, 631 (1989)).

To this end, in its 2003 Order, the Board specifically recognized that the key hearing issue described in the Board's notice is "not limited to public trust resources below Bradbury Dam, or to requirements that apply below Bradbury Dam." Therefore the Board allowed parties to present evidence "concerning whether Draft Amended Permits should be modified to address any impacts of the Cachuma Project operation to public trust resources above Bradbury Dam, including evidence concerning requirements that would apply above the dam."²⁸

Substantial evidence in the record demonstrates that, on the Santa Ynez River, steelhead access to and use of above-dam habitat is necessary to achieve good condition and protect steelhead as a public trust resource. The record supports the determination that there is extensive habitat upstream of the dam²⁹ and that a study of fish passage to access this habitat, including a study of this habitat, would help fulfill the Board's public trust objectives. Specifically, CalTrout testified that "US Forest Service habitat mapping activities show that the main stem and tributaries contain suitably sized substrates (gravel and cobble) and habitats for spawning and rearing. Instream cover is also relatively abundant."³⁰ CalTrout requested in addition to upstream passage, "downstream smolt trapping facility, and screening of the Tecolote Tunnel and other water intakes," located above Bradbury Dam.³¹ The expert agency NMFS testified that there is "large potential habitat upstream of the dam" and requested that the Board study upstream habitat for spawning and rearing and connecting upstream and downstream populations.³² Further, NMFS testified that "there may be some special consideration for tributaries upstream from Bradbury Dam" and that "we should assess tributary confluences for evidence of headcutting or channel armoring because these processes are operating in companion with main stem armoring or degradation."³³

In addition, the U.S. Forest Service evaluated habitat conditions above Bradbury Dam and concluded that with passage for steelhead over Bradbury Dam, the River could support a steelhead run of 1,800 to 4,000 adult steelhead.³⁴ NMFS submitted Exhibit NOAA 7a—a map of steelhead habitat above and below the dam—in order to demonstrate that the vast majority of steelhead habitat is above the Dam.³⁵ NMFS also submitted photographs of steelhead habitat located above Bradbury Dam.³⁶ In 1996, California Department of Fish and Wildlife ("CDFW") identified the habitat above Bradbury Dam as important to the recovery and management of steelhead, and, in a non-binding management document, called for fish passage feasibility studies.³⁷ CalTrout Biologist William Trush concluded there is not enough habitat below the

²⁸ Peter S. Silva, Hearing Officer, State Water Board Order re NOAA Fisheries Party Application and Scope of Hearing, p. 2 (May 29, 2003).

²⁹ NOAA-7a.

³⁰ CT-30 at 13–14.

³¹ CT-30 at 13.

³² R.T., November 12, 2003, p. 662:7–662:15.

³³ R.T., November 12, 2003, p. 659:10–659:15.

³⁴ CT-12 at 16.

³⁵ NOAA-7a.

³⁶ NOAA-8b, -8c, -8e and -8g.

³⁷ NOAA-11: CDFG's Steelhead Restoration and Management Plan for California, p. 198 (February, 1996).

Dam to avoid extirpation.³⁸ Finally, Peter Moyle testified on the importance of assessing *potential* habitat, providing further support on an assessment of upstream habitat for steelhead.³⁹

The Draft Order should require an evaluation of above-Dam steelhead habitat to (1) inform the fish passage study, (2) identify suitable habitat above Bradbury Dam, and (3) develop information which may be needed by the Board to ensure steelhead are protected as a public trust resource and kept in good condition. An assessment of this upstream habitat is critical to support all life stages of steelhead, and to evaluate the extent to which passage will help achieve good condition for fish currently relegated to the River below the Dam. The Board has evidence in the record that recognizes the value of fish passage over the Dam because of the extensive habitat upstream.⁴⁰ It will therefore further support the purposes of the fish passage study to take the necessary first step in identifying the above-Dam locations of adequate spawning and rearing habitat for steelhead.

The Board should clarify its language throughout the Order and require the studies in Condition 11 to include above Dam resources. For example, Condition 11b requires Reclamation to study “any other measures that may be necessary to keep the steelhead fishery in the Santa Ynez River *below* Bradbury Dam in good condition. . .” (Draft Order at 121) This condition should be revised to ensure that the steelhead fishery is kept in good condition in light of the fact that the population and its habitat occurs *below and above* the dam. The Board should thoroughly review its Draft Order for other references that limit analysis to *below* Bradbury Dam and likewise revise these references to encompass *above* dam resources.

II. Conditions 8 through 17 in the Draft Order, and the Corresponding Permit Sections, Should be Revised as Explained Herein and Adopted as Final.

In addition to our request to adopt CalTrout’s Alternative 3A2 Modified and clarify the scope of public trust responsibility and authority, we request the following specific modifications with regard to Conditions 8 through 15 and 17, to ensure that public trust objectives of the Order are achieved through clear implementation and enforcement. Regardless of whether the Board declines to adopt CalTrout’s Alternative 3A2 Modified, we nonetheless request the following:

A. Incorporation of the Biological Assessment, BO and Table 1 Flows: Condition 8

Condition 8 requires Reclamation to operate and maintain the Cachuma Project in accordance with the description of proposed action in the 2000 Biological Assessment (“BA”) and comply with all of the Reasonable and Prudent Measures (“RPMs”) and Conditions in the 2000 BO. The incorporation of the 2000 ESA documents is problematic because a new BO is expected for release soon; therefore, CalTrout requests that the Board automatically update

³⁸ R.T., March 29, 2012, p. 229:1–229:8.

³⁹ R.T., November 12, 2003, p. 805:13–805:25.

⁴⁰ NOAA-7a.

provisions that specifically incorporate the BO when a new BO is released, as further described with respect to Condition 14 below.

The incorporation of the BA and BO is also problematic because it is too vague. There are numerous provisions and conditions in those documents, some of which are now being adopted explicitly in the Draft Order—in whole or in part (e.g., Condition 8, Table 1). Some are not. A general incorporation by reference creates confusion and ambiguity as to which requirements apply to the Board's Order. If the Board intends that other requirements in the 2000 BA or BO apply, then the Board should state which additional requirements in the 2000 BO or BA apply with specificity.

In addition, the Draft Order should specify certain RPMs from the 2000 BO that require additional Reclamation action, including:

- RPM 1 requires Reclamation to “maintain full residual pool depth in Alisal and Refugio Reaches” until 3.0 ft surcharge is achieved *and eleven passage impediments are fixed*. In order to ensure that Reclamation complies with RPM 1 as required through Condition 8, the Draft Order should specifically restate RPM 1 and note that all of the eleven passage impediments have not been removed⁴¹, thus requiring Reclamation to maintain full residual pool depth in the Alisal and Refugio reaches until all of the eleven passage improvements are made.⁴²
- RPM 6 requires Reclamation to monitor fish movement during the first three water rights releases following issuance of the BO.⁴³ NMFS' and CalTrout's concern is that the water rights releases result in unnaturally high summertime flows which may induce movement of fish into other River reaches which may subsequently go dry. While Reclamation completed the monitoring, NMFS disagreed with the monitoring methods rendering the results unreliable.⁴⁴ Given the continued lack of clarity regarding the impacts of water rights releases on steelhead, Draft Order Condition 8 should require additional monitoring pursuant to a NMFS and Board-approved plan to determine if steelhead move and/or are harmed by water rights releases.
- RPM 12 requires Reclamation to relocate steelhead in danger if flows fail due to human or mechanical error. In 2007, the BO target flows were not complied with, resulting in “several days of zero or no flow at the bridge resulting in conditions and mortality of steelhead.”⁴⁵ Given this history, Draft Order Condition 8 should specify effective measures for fish rescue and relocation, and should specify that

⁴¹ R.T., March 29, 2012, p. 166:9–166:13.

⁴² BO at 67.

⁴³ BO at 68 and 70.

⁴⁴ R.T., March 29, 2012, p. 227:4–227:19.

⁴⁵ R.T., March 29, 2012, p. 167:10–167:22.

rescue efforts must proceed within a given timeframe following any future flow failures (e.g., one hour after flows fail).

CalTrout supports the implementation of Table 1 Flows from the BO in dry years (CalTrout's 3A2 Modified). However, there are several discrepancies in the Draft Order from BO requirements that must be corrected. While the Board can and must authorize requirements that are more protective than those in the BO, it can in no circumstances weaken these federal requirements that are designed to meet the lower standard of avoiding jeopardy.

The Table 1 flows are inconsistent with the BO flows in two respects and, to the extent these inconsistencies weaken flow requirements for steelhead, they must be corrected to at least reflect the BO. First, the Draft Order states that 1.5 cfs flow at Alisal Bridge is only required (a) if there was a spill exceeding 20,000 AF *the prior year*, and (b) if there are steelhead present in the Alisal reach. (Draft Order at 116, fn d) However, the BO actually requires 1.5 cfs flows at Alisal both the year after a spill exceeding 20,000 AF if steelhead are present in the Alisal reach, *and the year of a spill exceeding 20,000 AF*, if steelhead are present. Thus, this provision might cut the years when target flows apply at Alisal in half compared to the target flow requirements in the current BO.

Second, the Draft Order states that in years when the reservoir holds 30,000 AF or less, 30 AF per month can be released to refresh the stilling basin and Long Pool, and that less than 30 AF per month can be released if approved by "the fishery agencies and State Water Board." (Draft Order at 116, fn e) The BO does not appear to have this provision. The BO states that under these conditions, "it is anticipated by Reclamation that there would only be enough water to refresh the stilling basin and long pool ... about 30 acre-feet per month." The BO requires that Reclamation reinitiate consultation under these conditions but does not specifically authorize a release below 30 AF per month. (BO at 9–10) This is problematic because the Draft Order is intended to achieve good condition but it appears weaker than the BO by allowing releases of less than 30 AF per month. Since the BO is not achieving good condition, the Draft Order should provide more protection for fish than the BO, not less. The Draft Order fails to provide any explanation or rationale for departing from the BO requirements with respect to both changes.

Finally, the Draft Order relies on the BO's reference to "less than 30,000 acre feet of storage in the reservoir"⁴⁶ without needed clarification, leaving the Draft Order vague and potentially difficult to enforce. Specifically, the BO is silent regarding whether 30,000 acre feet in storage means project water or total storage; this vagueness resulted in substantial confusion in interpreting and applying the BO's Critical Drought Years provision on pages 9 and 10. This vagueness could harm steelhead by allowing the flow curtailment to occur earlier (i.e., if the BO is interpreted as referring to 30,000 acre feet of project water). The Draft Order should therefore specify that flow curtailment is allowed only after *total storage* drops below 30,000 AF.

⁴⁶ BO at 9.

B. Table 2 Flows and Modifications to Table 2 Flows: Condition 9

As explained above, CalTrout requests that the Board adopt CalTrout's Alternative 3A2 Modified instead of 5C to be incorporated into Table 2 flows. However, whether the Board adopts this requirement or adopts Table 2 as currently drafted, the process set forth to modify these flows must be revised because it is inconsistent with the Board's public trust objectives.

CalTrout recognizes that certain circumstances might warrant a speedy modification of Table 2 Flow requirements. However, any such modification should be *temporary*, and based on the wildlife-expert agencies' showing of *harm* to steelhead. Therefore, CalTrout supports Condition 9b, which allows for changes if CDFW or NMFS demonstrate flows will harm the fishery. (Draft Order at 118) However, we request that the Board require public notification and an opportunity to comment if CDFW or NMFS has made this determination, and if Table 2 flows are to be modified, including information regarding the reason that the flows are likely to harm steelhead, the new regime to be implemented, and the expected duration of the modification.

However, Condition 9c is wholly inappropriate and has the potential to completely undermine implementation of the Order, as the exception that swallows the rule. This Condition allows CDFW, NMFS *or Member Units alone* to demonstrate to the Executive Director that flows "will not benefit the fishery or are likely to harm the fishery" (Draft Order at 118), which could result in a *long-term* modification of the requirement to meet Table 2 flows. This provision should be stricken in its entirety, for several reasons.

First, Condition 9c applies an inappropriate standard: that flows are "not likely to benefit" steelhead. Through these evidentiary, public proceedings, the Board has determined that Alternative 5C flows are likely to benefit steelhead and are feasible. The parties and the Board have taken considerable time and resources to put forth evidence on this issue, and the hearing record is closed. Allowing an immediate, non-evidentiary, non-public process to disprove that decision would not only violate due process, but would also result in an inefficient waste of limited Board resources. The Board also offers little guidance on what this process would entail. In addition, if this provision is intended to account for the notion that requirements should only be implemented if they in fact benefit steelhead, the Board has already carefully accounted for that through the process for adaptive management in Condition 11a. (Draft Order at 120–121) Condition 9c is inconsistent with this Condition, which requires a study to verify how flows impact steelhead, and reserves the Board's authority to modify the Order in light of new information provided by such study. (Draft Order at 118)

In addition, Condition 9c inappropriately allows for long-term or permanent modifications with no safeguards to ensure that the Table 2 flows, which the parties and the Board expended considerable resources to establish, will ever be restored.

Condition 9c also suffers the critical flaw in that it allows Member Units alone to invoke this process to change Table 2 Flows. The expert wildlife agencies CDFW and NMFS possess the appropriate expertise to make this showing. In addition, this provision is duplicative because any modification based on flows that are "likely to harm" steelhead is already covered by

Condition 9b. That Condition provides all the necessary safeguard and flexibility to modify flows, but is critically different in that it only allows short-term modifications based on a showing by the appropriate resource agencies, CDFW or NMFS. Therefore, Condition 9c would undermine the public trust objectives of the Order and the adaptive management process it requires, and should be removed from the Order.

C. Compliance Monitoring: Condition 10

Condition 10 requires Reclamation to submit a plan for compliance with flow requirements within 90 days. CalTrout supports the inclusion of this plan as critical to implementing Table 1 and 2 Flow requirements; however, development of the plan should involve an opportunity for input from CDFW and NMFS because they are the agencies specifically charged with managing steelhead.

In addition, the Draft Order omits a plan to develop a proposal for installation and maintenance of a measuring station at Highway 154 to accurately measure BO flows, despite the assertion in the background section that such a plan will be required. (Draft Order at 29) This requirement should be added to Condition 10.

D. Studies to Verify Flows and Coordinate with Downstream Water Users: Condition 11a

CalTrout applauds the Board's inclusion of the required studies in Condition 11. However, several revisions are needed to ensure clarity of deadlines, appropriate standards and methodology, and timely implementation.

The first study in Condition 11a, which includes studying effects of Table 2 flows on steelhead habitat ("Verification Study"), is critical to ensuring the adequacy of Table 2 flows and meeting public trust objectives. Condition 11a anticipates potentially reducing the Table 2 flows to minimize water supply effects in Condition 11a, part 4, which requires consideration of "whether benefits to the steelhead fishery could be maximized through an alternative flow schedule with equivalent or reduced water supply impacts." However, the scope of the study does not include the potential for *increasing* flows if needed to benefit steelhead. If the Board declines to adopt the flows in Alternative 3A2 Modified, we request that 11a include a new part 5 which requires studying whether benefits to the steelhead fishery could be maximized through an alternative flow schedule that *increases* flows for steelhead, including CalTrout's Alternative 3A2 Modified, and whether any potential increase on water supply impacts can be feasibly mitigated.

In addition, this section should include a requirement that after a period of six years of implementing the Order, the Board must reassess whether steelhead are adequately protected for purposes of the public trust doctrine and whether the "good condition" standard is being met. If steelhead continue to fail to be kept in good condition, the Board must adopt additional measures that are more protective of steelhead, in order to meet this mandate, through reopening Permits 11308 and 11310.

Regarding methodology, Condition 11a requires that the study be conducted in a similar manner as the requirements in the 2000 BA. The BA requires Reclamation to use a “consistent and repeatable methodology to accurately characterize instream and riparian habitats in both mainstem and tributaries of the SYR below Bradbury Dam.”⁴⁷ Based on discussions with NMFS, in 1999 Reclamation elected to use the interdisciplinary Proper Functioning Conditions (“PFC”) method.⁴⁸ However, the inventorying of the mainstem and tributaries would occur only “every 2-3 years” unless significant storms occur, in which case inventorying may be done again the same year.⁴⁹ The BA also requires diurnal water quality monitoring (dissolved oxygen, temperature, depth and time of measurement) in the mainstem at least twice a month from May through September.⁵⁰ The BA identifies specific locations for these measurements, including River miles 3.4, 6.0, 7.8, 8.0, 10.5 and 13.9,⁵¹ but defers identification of locations in the Alisal Reach.

Given this, the reference to the BA in 11a leaves some questions regarding the appropriate methodology to utilize. First, the Board should require that Reclamation’s development of a plan for this study be subject to NMFS, CDFW and Deputy Director review and approval. The Board should specify that Reclamation should evaluate the PFC method to determine whether a more accurate method is now available so that inventorying can happen more frequently than every 2 to 3 years. In addition, the Order should require the studies to be designed in such a way that they will generate results which can be compared with prior study results so that long-term trends can be identified. Finally, Reclamation and the Cachuma Operations Management Board regularly conduct: (1) migrant trapping, (2) snorkel surveys, and (3) redd (nest) surveys. To ensure consistency, these important monitoring practices should be expressly adopted in the Draft Order in addition to the referenced methodology in the BA.

Condition 11a also requires a study to analyze the “extent to which flows can be conjunctively used to satisfy downstream water rights, and whether any adjustments to the ‘above Narrows’ account or the ‘below Narrows’ account are warranted in order to minimize the effects of release or bypass flow requirements on Cachuma Project yield.” CalTrout supports the intent of this condition, to investigate whether the downstream water rights releases can be made in such a way as to benefit steelhead, as expressed in CalTrout’s closing brief.⁵² If all of Condition 11a is intended to refer to one study with multiple components, the language should be clarified accordingly. If not, we recommend separating out this study in an additional subsection or paragraph. As currently drafted it is not clear which requirements apply to which studies. For example, there appears to be a deadline for the second study, but it is not clear whether that deadline applies to the Verification Study. The Order should clarify that both studies are due within a year after the 5th wet year. In addition, this deadline should be clarified such that the

⁴⁷ BA at 3-58(June 13, 2000).

⁴⁸ BA at p. 3-58.

⁴⁹ BA at p. 3-59.

⁵⁰ BA at p. 3-54.

⁵¹ BA at 3-54 (June 13, 2000).

⁵² See e.g., CalTrout Closing Brief , p. 20, fn. 33.

five wet or above normal years need not occur consecutively. In addition, the Verification Study is specifically exempted from the requirement to adhere to a study plan. Instead, the timeframes for this study should be integrated into the Study Plan so that one document can incorporate all required studies. It is likewise not clear whether the downstream water rights study is subject to the study plan requirement. To ensure clarity and consistency, both 11a studies should be subject to the study plan requirements in 11c and to independent peer review.

**E. Studies on Fish Passage, Flow, Invasives, and Habitat, and the Study Plan:
Condition 11b, 11c**

Condition 11b requires Reclamation to Study “any other measures that may be necessary to keep the steelhead fishery in the Santa Ynez River below Bradbury Dam in good condition at the individual, population and community level.” (Draft Order at 122) This Condition requires, at a minimum, “study of fish passage, instream flow, invasive species, and stream and streamside habitat restoration and habitat improvements.” *Id.* CalTrout supports these studies as critically important to protecting steelhead as a public trust resource. However, as explained above, the scope of studies should not be limited to keeping steelhead in good condition *below* the dam but extend to above dam habitat. In addition we request several minor revisions to clarify the timing and methodology of these measures.

CalTrout agrees that the passage study should “conform to the Santa Ynez River Fish Passage Feasibility Analysis.” While that analysis does not contain a mandatory deadline, it provides that Phase I of the study should be completed in 12 to 18 months, and that the Bureau should begin any field work needed to implement the recommendations “within 6 to 12 months of receiving the information.”⁵³ Rather than leave Reclamation with discretion to create a deadline, the Board should require 18 to 30 months from the date of the Final Order as a deadline within Condition 11b1.

However, this provision also states that “it may be possible to defer the remaining studies pending completion of the passage study.” (Draft Order at 121–122) This optional delay would mean that important studies ordered in 11b 2, 3 and 4 might never occur. While fish passage is incredibly important and has been a focus of CalTrout throughout the proceedings, the additional studies address aspects separate than fish passage that may be necessary to protect the species as a public trust resource, even if passage is successful. The Board should require the flow, invasive species and habitat restoration studies to occur concurrently, rather than leaving the timing to the discretion of Reclamation.

In addition, the instream flow study seems to require adherence to the Instream Flow Incremental Methodology (“IFIM”); however, it allows the use of “a comparable study.” (Draft Order at 122) The reference to “a comparable study” should be deleted in its entirety because it does not set a meaningful standard as to when deviation from IFIM is acceptable, and adherence to IFIM is important because the quality of this study is critical to understand the needs of public trust resources on the Santa Ynez River. Alternately, if Condition 11b2 were to require CDFW

⁵³ CDFW Closing Brief Appendix I, p. 1.

and NMFS approval of Reclamation's proposed use of a specific comparable study methodology as an alternative to IFIM, then the Order would ensure that an effective methodology is used.

In addition, the requirement to study channel morphology and water quality are included as part of the IFIM study under 11b2. However, these are substantial issues that warrant additional separate studies, rather than being encompassed in the IFIM. The Board should thus separate out and require studies related to channel morphology as well as water quality, as both are issues that may impede the public trust resource.

Condition 11b4 indicates that Reclamation may study habitat restoration and improvements "in lieu of the Table 2 Flows." (Draft Order at 122) CalTrout agrees with the Draft Order that Reclamation has implemented only some of the eleven habitat restoration projects downstream from Bradbury Dam as required by the BO.⁵⁴ Even with the completion of several fish passage projects in tributaries below Bradbury Dam, the adult steelhead population has not increased.⁵⁵ Additional habitat restoration below the Dam may be necessary to help achieve good condition, but alone cannot assure good condition as indicated by the evidence in the record.⁵⁶ Instead, evidence in the record supports the Table 2 Flows (based on 3A2) as essential to achieving good condition.⁵⁷ Condition 11b4 must therefore not include this substantial loophole allowing Reclamation to avoid implementing the Table 2 Flows.

Condition 11c sets forth important requirements for the contents of a Study Plan that must be prepared within 180 days, including: sequences of studies, proposed deadlines, and description of metrics. However, as noted above, all such studies should be required to occur concurrently. In addition, all studies should be subject to clear deadlines, no later than within three years of the issuance of the Final Order. The Board should order that the Study Plan be updated at regular intervals. Finally, CalTrout requests a process for independent peer review of all studies; this process should be built into the schedule set forth in the Study Plan.

F. Monitoring and Reporting: Conditions 12 and 13

Condition 12 establishes the monitoring and reporting program for compliance with the Order. It requires daily instream flows to be recorded and available online; the Order should clarify the deadline for submittal of this data is likewise daily, so that daily data is available to the public immediately. Given significant, multi-year delays in release of prior Annual Monitoring Reports, we request a requirement for release of all fisheries and hydrology data within six months of data collection (e.g., 2016 monitoring data and report released before June 1, 2017).

In addition, Condition 12 generally refers to the BA as the relevant source for the monitoring program. (Draft Order at 124) This reference is too vague and should be clarified.

⁵⁴ BO at 14.

⁵⁵ CT-120 at 1.

⁵⁶ R.T., March 29, 2012, p. 229:2–229:8: CalTrout Expert Biologist William Trush noting that there are not enough miles of habitat below the dam to avoid extirpation.

⁵⁷ CT-30 at 4, 5 and 7.

The monitoring program should (1) be developed in consultation with CDFW and NMFS and require CDFW and NMFS approval before implementation, (2) be consistent with prior and ongoing monitoring, and (3) include continuation of the migrant trapping, snorkel surveys and redd surveys described with respect to Condition 11a above.

Condition 13 requires the preparation and submittal of annual compliance reports. However, they are only required to be submitted to the Deputy Director. It is critical that the Board add a requirement for the public availability of these reports. This section should also specifically require reporting on the status of the Study Plan and the study referred to in Condition 11a.

In addition, Condition 13 specifies that the report is due December 31 of each year regarding compliance with the previous water year, and annual submittal of the Reclamation document prepared in compliance with RPM No.11's implementing terms. Importantly, it should be noted that the Draft Order places new deadlines on Reclamation beyond what is currently required in the BO. The current monitoring program pursuant to BO RPM 11 has already proven problematic with respect to the timely preparation, submission, and public availability of Annual Monitoring Reports. RPM 11 and the Terms and Conditions implementing RPM 11 do not specify when the "yearly reports" are due to NMFS.⁵⁸ Release of data and annual monitoring reports have often been significantly delayed. This reporting delay has compromised NMFS' and the public's ability to understand the effectiveness of Reclamation's efforts to maintain steelhead. In order to ensure compliance with RPM 11's intent, the Draft Order should specifically state that Reclamation shall provide the *data*, in addition to the reports, within six months of data collection.

G. Compliance, Modification: Conditions 14 and 15

Condition 14 generally reserves the Board's authority to modify Draft Amended Permits under Water Code section 100 and its public trust authority and specifies that changes "should be made with the benefit of the study of the effects of the Table 2 Flows and the results of the studies required by [Condition 11]." CalTrout supports this adaptive management approach of the Permit. In addition, see comments regarding Condition 14 discussed under Section II.H (Reducing Water Demand: Condition 17). Finally, CalTrout urges the Board to reevaluate whether good condition and adequate public trust protection is being met after a period of six years of Order implementation, as described above, and revise the Permits to ensure adequate protections for steelhead.

In addition, because NMFS has indicated that release of a new BO is imminent, the Board should automatically modify only those sections of the Order that currently rely on or incorporate the 2000 BA or BO. Because the new BO will automatically subject Reclamation to new federal law requirements, there is no need for any additional extensive process to reevaluate the mandates of the Board's Order.

⁵⁸ BO at 68 and 75-77.

Condition 15 requires Reclamation to notify the Deputy Director if it anticipates a violation of any of the terms or conditions of the Order. This provision should also be expanded to require immediate notification if Reclamation realizes that a violation has occurred. In addition, the Deputy Director should be required to make these notifications available to the public.

H. Reducing Water Demand: Condition 17

We agree with the conclusion in the Draft Order that Alternative 5C measures would be feasible to implement,⁵⁹ including mitigating for any potential water supply impacts. (Draft Order at 77) The Draft Order identifies multiple new Permit Conditions⁶⁰ that would minimize impacts to water supply, including:

- Condition 8, Table 1 instream flow requirements, which identify critical low flow rearing conditions, but otherwise provide for reduced water below Bradbury Dam during dry water years. (Draft Order at 56–57)
- Condition 9, Table 2 instream flow requirements, which allow for decreased flow requirements during 60% of the water year types, and only require the Table 2 Flows in above-normal and wet water years, once the cumulative Cachuma inflow of 33,307 AF is first reached during a water year. (Draft Order at 62–63)
- Condition 9, requiring Reclamation to confer with Member Units, and to consider the current and future droughts when reducing the safe yield of the Project. (Draft Order at 79 and 119)
- Studies identified in Condition 11, which will provide the parties and the Board with additional information and sufficient flexibility to appropriately modify the Permit if new information supports that outcome. See, e.g., a) study of Condition 8, Table 2 Flows that will include “whether benefits to the steelhead fishery could be maximized through an alternative flow schedule with equivalent or reduced water supply impacts;” b) study of “the extent to which the Table 2 Flows can be conjunctively used to satisfy downstream water rights, and whether any adjustments to the ‘above Narrows’ account or the ‘below Narrows’ account are warranted in order to minimize the effects of release or bypass flow requirements on Cachuma project yield;” and study of any other potential measures to protect steelhead fishery as a public trust resource and keep it in good condition, including impacts of the measures on water supplies. (Draft Order Conditions 11a and 11b at 120–121) Under Condition 14, the SWB reserves authority to modify the Permit, including instream flow requirements based on the results of these studies. (Draft Order at 125)

⁵⁹ As discussed above, it would also be feasible to implement CalTrout Alternative 3A2 Modified.

⁶⁰ This discussion presumes adoption of CalTrout’s additional comments on the new Permit Conditions identified in the Draft Order.

The Draft Order also includes new Condition 17, requiring Reclamation to modify its 1996 contract with the Santa Barbara County Water Agency, if necessary, to require the Member Units:

to implement the water demand management measures identified as part of the urban water shortage contingency analyses contained in their urban water management plans. [Reclamation] shall require the Member Units to implement the measures in accordance with the Member Units' urban water management plans, as they may be amended. (Draft Order at 126)

We support the concept of new Condition 17 as a feasible measure that would minimize any potential water supply impacts. The MUs have self-identified the water demand management measures in their UWMPs so these measures are, by definition, feasible. (Draft Order at 105) However, we have several comments and concerns regarding Condition 17, which are discussed below.

Fundamentally, Condition 17 is fatally flawed if Reclamation lacks the authority to implement this requirement or is unable to adequately enforce such a requirement. The Board fails to explicitly identify and evaluate the federal authority or the contract provision through which Reclamation would implement this requirement. It is simply assumed that Reclamation has adequate authority, that the contract is either adequate as-is, or that it can be revised. (Draft Order at 105) Furthermore, Condition 17 itself refers generally to a “February 8, 1996 contract with Santa Barbara County Water agency,” but that contract is not identified as an exhibit to these proceedings and cannot be verified. In addition, the Board fails to consider historical implementation and enforcement of the current contract conservation provision to evaluate its continued and future efficacy. For example, three of the Member Units (Carpinteria Valley Water District, Santa Ynez Water Conservation District ID#1 and Montecito Water District) failed to comply with the existing Reclamation contract requirement.⁶¹

Even presuming Reclamation's legal authority and adequate contract terms to impose this requirement, we recommend the following modifications to Condition 17 to ensure the intent of the Condition is met and water supply impacts are minimized:

First, four of the five Member Units are urban water suppliers required to submit UWMPs (Santa Ynez River Water Conservation District, ID#1 is a small water supplier, not required to submit an UWMP⁶²). Condition 17 should be modified to require that these Member Units timely submit an UWMP in accordance with state law.⁶³ Only two of the four (Carpinteria Valley Water District and City of Santa Barbara) timely submitted a UWMP in 2015.⁶⁴ The

⁶¹ CT-2, p. 1–2 and R.T., November 12, 2003, p. 835:3–12.

⁶² Cal. Water Code § 10617.

⁶³ Cal. Water Code § 10621.

⁶⁴ 2015 Department of Water Resources (“DWR”) UWMP Data Retrieval, publically available at https://wuedata.water.ca.gov/uwmp_plans.asp (identifying water agencies that have submitted 2015 UWMPs). Cal. Gov. Code § 11513(c) and Cal. Evidence Code § 452(h) (Judicial notice may be taken of “Facts and propositions

Goleta Water District timely submitted its 2010 UWMP but not its 2015 UWMP (due July 2016). Only three of the four urban water agencies submitted their 2010 UWMPs (Carpinteria Valley Water District, City of Santa Barbara, and Goleta Water District), and one of those was submitted late.⁶⁵ Montecito Water District still has not submitted a 2010 or a 2015 UWMP.⁶⁶

Second, Condition 17 should be modified to require that urban water suppliers also update their water shortage contingency analyses, and continue to do so as required by state law. Preparation of a water shortage contingency analysis is an UWMP requirement.⁶⁷ However, only two of the Cachuma Member Units have submitted a 2015 UWMP that includes a recent water shortage contingency analysis.⁶⁸ The other MUs have failed to timely submit their UWMPs, or not submitted one at all.⁶⁹ Additionally, the State has recognized that existing water shortage contingency plans may be inadequate to quickly respond to a severe drought.⁷⁰ Condition 17 should therefore be modified to ensure that the Member Units' water shortage contingency analyses are regularly updated, and consistent with state requirements, to ensure water supply impacts are minimized.

Finally, the Permit should be revised to require all of the Member Units to conduct a detailed study of cost-effective ways to reduce demand through water conservation and efficiency improvements.⁷¹ The Board has declined to impose feasible conservation measures identified by CalTrout that would reduce the Member Units' demand by at least 5,000 to 7,000 AF per year.⁷² However, the demand management measures identified in the UWMPs do not represent the full cost-effective conservation potential for these agencies.⁷³ Moreover, this study requirement will also ensure that potential agricultural water savings are evaluated, including savings for Santa Ynez River Water Conservation District ID#1, which is not required to submit an UWMP. The study should evaluate the full range of conservation options available to the Member Units, the associated savings potential and cost-effectiveness, and the mix of conservation options most appropriate for each agency (including market penetration studies to provide clear direction about where greatest savings can be achieved and how they can be captured). This requirement can be added to Condition 17, or to Condition 11 along with the other study requirements.

Our recommended changes can be incorporated into Condition 17 by modifying the second sentence of the current draft Condition and adding the additional sentences, as follows:

that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy”).

⁶⁵ CT-101, p. 2.

⁶⁶ 2015 DWR and CT-101, p. 2.

⁶⁷ Cal. Water Code § 10632.

⁶⁸ 2015 DWR UWMP Data Retrieval, publically available at https://wuedata.water.ca.gov/uwmp_plans.asp (identifying water agencies that have submitted 2015 UWMPs).

⁶⁹ *Id.*

⁷⁰ May 9, 2016 Executive Order B-37-16, “Making Water Conservation A California Way of Life,” para. 8. (“May 2016 E.O.”); (Draft Order at 79, fn 48).

⁷¹ CT-101, p. 7.

⁷² see e.g., CT-101, p. 5–7.

⁷³ R.T., November 13, 2003, p. 900:22–25, p. 901:1–3, p. 1069:4–9.

“Rightholder shall revise [contract provisions] to the extent necessary to require the Member Units . . . to timely submit their urban water management plans in accordance with California Water Code Section 10621. Rightholder shall require the Member Units to 1) implement the water demand management measures identified as part of the urban water shortage contingency analyses contained in their urban water management plans, as they may be amended; 2) to update and submit their water shortage contingency analyses as part of their urban water management plans. Rightholder shall also require all Member Units to conduct a study of cost-effective ways to reduce demand through water conservation and efficiency improvements (analyzing the full range of conservation options available to the Member Units, the associated savings potential and cost-effectiveness, and the mix of conservation options most appropriate for each agency, including market penetration studies to provide clear direction about where greatest savings can be achieved and how they can be captured). A study plan shall be prepared in accordance with Condition 11(c).”

With the above Permit conditions in place, corrected in accordance with our comments, Alternative 5C (as well as CalTrout’s Alternative 3A2 Modified) is feasible. Moreover, ongoing developments in State-wide water management are likely to result in continued reductions in water demand that will further minimize impacts to the Member Units’ water supplies, especially during dry years. The Draft Order highlights two examples. First, the Board has already adopted water demand management regulations that have reduced the Member Units’ water demand and “could do so again in the future if conditions warrant.” (Draft Order at 104–105, citing generally Wat. Code Sec. 1058.5) Second, on May 9, 2016, the Governor issued Executive Order B-37-16, “Making Water Conservation A California Way of Life” (“May 2016 E.O.”), directing several actions to update temporary emergency water restrictions and develop permanent, long-term improvements in water-use efficiency.⁷⁴ The May 2016 E.O. requires State-wide standards to ensure that water shortage contingency plans (already required to be submitted with UWMPs) will be quickly utilized during a drought or other water supply interruption.⁷⁵ It also requires that water contingency plans should include adequate action to respond to a drought of at least five years in duration, as well as more frequent and severe droughts.⁷⁶ The May 2016 E.O. also directs the implementation of water-use targets to generate more permanent water conservation than the current twenty percent reductions required under SBx7-7.⁷⁷

Finally, Condition 14 (generally reserving the Board’s authority to modify the Permits under Water Code section 100 and its public trust authority) should be modified to specify that

⁷⁴ The Board “takes notice” of this May 2016 E.O. and the January 17, 2014 Proclamation of a State of Emergency due to drought conditions at Draft Order 79, fn 48; see also, Cal. Gov. Code § 11513(c) and Cal. Evidence Code § 452(c) (Judicial notice may be taken of “Official acts of . . . any state of the United States”).

⁷⁵ May 2016 E.O., para. 8.

⁷⁶ *Id.* and Draft Order at 79, fn 48.

⁷⁷ May 2016 E.O., para. 2.

that changes “should be made with the benefit of the study of the effects of the Table 2 Flows, the results of the studies required by [Condition 11], [Condition 17⁷⁸], and future developments in State-wide water management that reduce demand for water by Member Units.” (Draft Order at 124–125)

In sum, implementation of the Conditions in the Draft Order (with our modifications), is unlikely to result in any residual water supply impacts. In the event it does (from Alternative 5C or otherwise), we agree that the “reduction in the MUs’ water supplies that may result during drought conditions from implementation of Alternative 5C does not outweigh the potential benefits that may be achieved for the remnant imperiled steelhead fishery in the SYR from implementation of Alternative 5C.” (Draft Order at 78–79)

III. Reclamation’s Amended Permits Should be Revised to Correspond with the Draft Order.

Our comments above also apply to the Draft Amended Permits, and CalTrout requests that all of our requested modifications to the Board’s Draft Order, in particular of Conditions 8 through 17, be implemented with respect to the corresponding sections in Draft Amended Permits 11308 and 11310, enclosed in the Board’s October 12, 2016 Notice of Extension of Comment Deadline on the Draft Order Amending Reclamation’s Permits for the Cachuma Project.

In addition, we request that the annual diversion to storage limit expressed in the Permits be reduced to the actual current capacity of Cachuma. As currently drafted, 275,000 AF is almost 100,000 AF over the reservoir’s capacity. Reclamation could not possibly divert 275,000 AFY.

IV. The FEIR and the CEQA Findings Should be Revised to Adequately Address Mitigation of Water Supply Impacts, the Environmentally Superior Alternative and Protection of Public Trust Resources.

CalTrout herein submits comments regarding the adequacy of the FEIR for purposes of CEQA certification and findings, in addition to the above comments regarding the Draft Order. We incorporate CalTrout’s previous comments on the 2003, 2007 and 2011 Draft and Revised Draft EIRs by reference, as well as testimony and evidence submitted for and during the March 29, 2012, hearing to receive evidence regarding the FEIR. Our comments also address the Findings and the Mitigation Monitoring and Reporting Program.

⁷⁸ This modification is not necessary if the Board adds the water conservation and efficiency study to Condition 11 instead of Condition 17.

A. The FEIR Should Be Revised to Acknowledge the Feasibility of Mitigating Potential Water Supply Impacts.

The Draft Order includes feasible mitigation measures, such as the potential adoption of emergency conservation regulations and a condition requiring the Member Units to implement water demand management measures identified as part of the water shortage contingency analyses in their UWMPs, to address potential water supply impacts. (Draft Order at 104–105) In addition, as discussed above, CalTrout and its experts have submitted extensive testimony regarding the feasibility of further means of mitigating potential water supply impacts. The FEIR should be revised to include these feasible mitigation measures to adequately inform decision makers and the public.

The FEIR concludes that alternatives 3B, 5B and 5C would potentially create an appreciable water supply shortage in both the “critical drought year” and “critical three-year drought” scenarios, and, “depending on the manner in which the Member Units make up for the shortage,” this may result in indirect environmental impacts.⁷⁹ Although the FEIR generally identifies implementation of “drought contingency measures identified in the Member Units’ UWMP “to the extent necessary to make up for a shortage in water supply in a critical drought year” as a mitigation measure, it fails to adequately consider and identify specific, feasible conservation and alternative water sources as mitigation.⁸⁰

CalTrout and the Pacific Institute have repeatedly identified such measures to the Board in prior comments on the EIR. Most recently Ms. Heather Cooley, co-director of the Pacific Institute’s Water Program, affirmed and updated the already substantial submitted evidence that potential water supply impacts identified in the FEIR could be feasibly mitigated by 1) cost-effective urban water conservation measures; 2) utilizing alternative water supply sources such as recycled water, rainwater harvesting, and storm water capture; and 3) reducing agricultural water use.⁸¹

Ms. Cooley’s most recent testimony, along with prior submissions from the Pacific Institute, demonstrates that these measures would be feasible. For example, in a 2003 analysis (submitted regarding the 2003 Draft EIR), the Pacific Institute estimated that between 5,000 and 7,000 AF per year could be conserved cost-effectively through urban conservation measures, allowing the Cachuma contractors to “reduce their take of water from Santa Ynez River without a loss of service or quality of life.”⁸² Conservation measures considered in the analysis included installing high-efficiency clothes washers and low water-use landscapes in homes, and installing ultra-low-flow toilets in homes and businesses.

⁷⁹ FEIR at 4.3–31.

⁸⁰ FEIR at 4.3–37.

⁸¹ CT-101–119 (“Cooley 2012”).

⁸² Haasz, D. and P. Gleick. 2003. Comments on the Draft EIR for the Cachuma Water Rights Hearing. For unknown reasons, this does not appear to be included in the FEIR.

The FEIR dismisses the Pacific Institute's 2003 analyses without addressing the merits, stating only: "The Member Units presented rebuttal testimony . . . that disputed the testimony of CalTrout's witnesses."⁸³ The Pacific Institute, however, has submitted a point-by-point response to the Member Units' rebuttal testimony, identifying errors, omissions and incorrect conclusions,⁸⁴ and the FEIR does not discuss, address, or respond to this submission.⁸⁵ Thus, the Pacific Institute's 2003 conclusion that the Member Units could feasibly conserve 5,000 to 7,000 AF of water remains valid. Moreover, technological improvements since 2003 suggest urban conservation potential may be even greater.⁸⁶

The FEIR fails to demonstrate that the measures to reduce demand for Cachuma Project water identified by the Pacific Institute are facially infeasible. In fact, in its responses to comments ("RTC") the FEIR effectively concedes the feasibility of the identified measures by recognizing that the Member Units may be required by current State law to implement such measures (e.g., UWMP requirements, SBx7-7).⁸⁷ (See, e.g., RTC 16-7 (re improving rate structures) at FEIR 2.0-244; RTC 16-13 (re reducing agricultural water use) at FEIR 2.0-247); RTC 16-14 (re improving rate structures) at FEIR at 2.0-247.) The FEIR also suggests that uncertainty whether potential impacts can be "fully" mitigated would render these measures infeasible.⁸⁸ However, complete mitigation is not required for a measure to be "feasible."⁸⁹

Thus, the FEIR should be revised to explain that potential impacts to water supply can be feasibly mitigated.

B. The FEIR and Findings Should Be Revised to Correctly Identify the Environmentally Superior Alternative.

As a preliminary matter, CalTrout agrees with the Board's rejection of Alternatives 2,⁹⁰ 3C, and 4B as "infeasible because they do not meet the State Water Board's objective of protecting public trust resources to the extent feasible and in the public interest, consistent with the reasonable use and Public Trust doctrines." (Draft Order at 106)

⁸³ FEIR at 4.3-36.

⁸⁴ Cooley, H. and P. Gleick. 2007. Comments on the Revised Draft EIR for the Cachuma Water Rights Hearing. For unknown reasons, this does not appear to be included in the FEIR.

⁸⁵ FEIR at 4.3-36; 2.0-533 – 2.0-544.

⁸⁶ CT-101: Cooley 2012 at 6–7.

⁸⁷ Irrespective of these State requirements, the SWRCB is independently responsible for, and authorized to, prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water and to take the public trust into account in the planning and allocation of water resources. See, e.g., Article X, Section 2 of the California Constitution; *National Audubon*, 33 Cal. 3d at 419.

⁸⁸ FEIR at 4.3-36.

⁸⁹ *Los Angeles Unified Sch. Dist. V. City of Los Angeles* (1997) 58 Cal. App. 4th 1019, 1031 ("CEQA, however, does not speak in terms of absolute avoidance of environmental effects but of mitigation measures 'which would substantially lessen the significant effects of proposed projects'" (citing Cal. Pub. Resources Code § 21002)).

⁹⁰ Alternative 2 is also rejected because it no longer representative of existing conditions and has otherwise been rendered obsolete by requirements of the 2000 BO. Alternative 4B is also rejected because the City of Lompoc residents have rejected SWP water as a new water supply.

In addition, we note that CalTrout's Alternative 3A2 Modified could feasibly protect steelhead without causing significant adverse impacts.⁹¹ Substantial evidence also demonstrates it is more capable than the EIR alternatives of fulfilling the public trust objective and has been identified as the most protective standard based on available information.⁹² As discussed above, substantial evidence in the record also demonstrates this alternative is feasible.

In the absence of the FEIR evaluating CalTrout's Alternative 3A2 Modified, however, Alternative 5C should be identified as the CEQA environmentally superior alternative.

The FEIR concludes that Alternative 3C, the "no project" alternative is the environmentally superior alternative.⁹³ Pursuant to CEQA, "[i]f the environmentally superior alternative is the 'no project' alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives."⁹⁴ The FEIR thus identifies Alternative 4B as the CEQA environmentally superior alternative.⁹⁵

The FEIR's conclusion that Alternative 4B is the environmentally superior alternative is partially based on its finding that this alternative meets the Project's public trust objective.⁹⁶ The "public trust" measures of this alternative are entirely premised on implementation of the 2000 BO, which the Board has concluded is inadequate to achieve "good condition" or sufficiently protect steelhead as required by the Board's public trust objective. (Draft Order at 59–62, 77–78, 106) To the contrary, substantial evidence indicates steelhead populations are not improving and may, in fact, be at greater risk of endangerment with continued implementation of the 2000 BO.⁹⁷ This alternative is not capable of fulfilling the public trust objective, and is not environmentally superior.

As noted above, CalTrout maintains that Alternative 3A2 Modified is the environmentally preferable alternative. However, of the alternatives in the FEIR, Alternative 5C would provide better habitat conditions for steelhead than the other alternatives, and should therefore be identified as the environmentally superior alternative.⁹⁸

C. The CEQA Findings Should Be Revised to Ensure Adequate Mitigation of Potential Water Supply Impacts.

To the extent there may be potentially significant water supply impacts from Alternative 5C or other FEIR alternatives, we generally support the CEQA Findings for water supply identified in the Draft Order, with the following comments:

⁹¹ FEIR, Vol. I, p. 2.0-644–2.0-678; FEIR at 2.0-424–2.0-466.

⁹² *Id.* at 30–31.

⁹³ FEIR at 6.03–6.04.

⁹⁴ CEQA Guidelines § 15126.6(e)(2).

⁹⁵ FEIR at 6.03–6.04.

⁹⁶ FEIR at 6.0-3.

⁹⁷ CT-120, p. 6–8.

⁹⁸ Williams, John. 2007. Letter to Diane Riddle re Revised Draft Environmental Impact Report, p. 15.

The Findings state that “Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.”⁹⁹ Support for this Finding includes: 1) the Board’s authority to adopt emergency conservation regulations in the future; and 2) the statement that the Board will require Reclamation to require the Member Units to implement the water demand management measures identified as part of the water shortage contingency analyses in their UWMPs, to address potential water supply impacts. (Draft Order at 104–105)

CalTrout agrees that the Board may adopt emergency conservation regulations in the future that would apply to the Member Units and reduce water demand. In addition, as discussed above, ongoing developments in State-wide water management are also likely to result in continued reductions in water demand, which will further minimize impacts to Member Units’ water supply.

CalTrout understands the Finding that “the State Water Board will require Reclamation to require the Member Units to implement the demand management measures identified as part of the urban water shortage contingency analyses contained in the member Units’ urban water management plans” be referring to the requirement identified in new Permit Condition 17. The Board should state explicitly that this is the requirement incorporated in Permit Condition 17. In addition, although we generally support the concept of Condition 17,¹⁰⁰ the Board has not demonstrated with substantial evidence that this Condition, as currently drafted, would avoid or substantially lessen potentially significant impacts. Our concerns are explained in detail above (see Section II.H). The Board must modify Condition 17 as identified above to ensure that potential impacts are avoided or substantially lessened.

Lastly, CalTrout identified several additional mitigation measures in its comments on the EIR that would further avoid or substantially lessen potentially significant impacts:¹⁰¹ 1) cost-effective urban conservation measures, including a study to identify additional, cost-effective reductions to water demand for the Member Units; 2) alternative sources of water supply (recycled water, rainwater harvesting, and storm water capture); 3) and reducing agricultural water use. The Findings should refer to these additional measures.

The Findings further state that “changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.”¹⁰² Support for this Finding appears to include new Permit Condition 17, by which “Reclamation shall require the Member Units to implement the demand management measures identified as part of the urban water shortage contingency analyses contained in the Member Units’ urban

⁹⁹ CEQA Guidelines § 51091(a)(1).

¹⁰⁰ We also note that several new Permit Conditions identified in the Draft Order (including 8, 9, and 11) would minimize water supply impacts.

¹⁰¹ CalTrout and the Pacific Institute have repeatedly identified such measures to the Board in prior comments on the EIR, but most recently, see, e.g., CT-101–119: March 2012 Rebuttal Testimony of Heather Cooley and accompanying exhibits, admitted during the March 29, 2012 FEIR hearing.

¹⁰² CEQA Guidelines § 51091(a)(2).

water management plans.” (Draft Order at 105–106) However, the Draft Order does not specifically refer to Condition 17 and characterizes this requirement as only pertaining to “local regulation of groundwater pumping.” The Board should state explicitly that this Finding is supported by new Condition 17.

The Board has failed to identify the specific authority or contract provision by which Reclamation would implement this requirement. In addition, although we generally support the concept of Condition 17,¹⁰³ the Board has not demonstrated with substantial evidence that this Condition, as currently drafted, would avoid or substantially lessen potentially significant impacts. In order to find that Condition 17 will mitigate water supply impacts, the Board must modify Condition 17 as identified above to ensure that potential impacts are avoided or substantially lessened.

D. The Statement of Overriding Considerations Should Be Revised to Clarify the Public Trust Benefits of Alternative 5C.

The Board finds the following:

1) There is overwhelming evidence in the Cachuma hearing record that the steelhead in the Santa Ynez River are not in good condition and the requirements of the Biological Opinion are unlikely to restore the steelhead population to good condition.

2) The record also supports the finding that the Alternative 5C will provide the endangered steelhead below Bradbury Dam with additional habitat and should lead to an improvement in the condition of the species. This action is consistent with the State Water Board’s responsibility to protect public trust resources to the extent feasible.

3) The benefits of the Alternative 5C outweigh any significant and unavoidable environmental impacts attributable to water supply shortages that may result from this action.

(Draft Order at 109)

We agree that the benefits of Alternative 5C outweigh any significant and unavoidable environmental impacts to water supply. We also generally agree that there is substantial evidence in the record to support the need for measures beyond the 2000 BO to protect the public trust resources of the Santa Ynez River, and that there will be benefits to the Santa Ynez River steelhead if Alternative 5C is implemented. However, as discussed in more detail above, the Board’s authority and this decision are not limited to the “good condition” of steelhead or the area *below* Bradbury Dam. The Statement of Overriding Consideration should be modified as

¹⁰³ Several new Permit Conditions identified in the Draft Order (including 8, 9, and 11) would minimize water supply impacts.

follows:

- 1) There is overwhelming evidence in the Cachuma hearing record that the steelhead in the Santa Ynez River are not in good condition and the requirements of the Biological Opinion are unlikely to restore the steelhead population to good condition or to protect the public trust.
- 2) The record also supports the finding that the Alternative 5C will provide the endangered steelhead ~~below Bradbury Dam~~ with additional habitat and should lead to an improvement in the condition of the species. This action is consistent with the State Water Board's responsibility to protect public trust resources to the extent feasible.
- 3) The benefits of the Alternative 5C outweigh any significant and unavoidable environmental impacts attributable to water supply shortages that may result from this action.

E. The Mitigation, Monitoring and Reporting Program Should Be Revised to Ensure Proper Mitigation of Potential Water Supply Impacts.

The Board relies on the Condition 17 requirement that Reclamation will require the Member Units to implement the water demand management measures identified as part of the urban water shortage contingency analysis contained in their urban water management plans. (Draft Order at 109) Although we generally support the concept of Condition 17,¹⁰⁴ the Board has not demonstrated with substantial evidence that this Condition, as currently drafted, would avoid or substantially lessen potentially significant impacts. Our concerns are explained in detail above. The Board must modify Condition 17 as identified above to ensure that potential impacts are avoided or substantially lessened. In particular, the Board has failed to demonstrate the measure will be fully enforceable. For example, as discussed above, it has not identified or evaluated Reclamation's legal authority to implement or enforce this requirement, or the existing contract provision. These changes must be incorporated into the Mitigation, Monitoring and Reporting Program to ensure fully enforceable mitigation measures in accordance with CEQA Guidelines section 15126.4(a)(2).

V. Conclusion

For the above stated reasons, we urge the Board to modify and adopt its Draft Order and certify the FEIR, in order to protect the critically imperiled population of steelhead in the Santa Ynez River. Thank you for considering our comments on this matter.

¹⁰⁴ Several new Permit Conditions identified in the Draft Order (including 8, 9, and 11) would minimize water supply impacts.

December 9, 2016

~~Cal Trout Comment Letter - Cachuma Project Draft Order and FEIR~~

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Sincerely,

A handwritten signature in cursive script that reads "Margaret Hall".

Margaret M. Hall
Staff Attorney

cc: Cachuma Project Evidentiary Hearings Service List (updated 09/07/2016)

1 PROOF OF SERVICE

2 I am employed in the County of Santa Barbara, California. I am over the age of
3 18 years and not a party to the foregoing action. My business address is 906 Garden
4 Street, Santa Barbara, CA 93101.

5 On December 9, 2016, I served the:

6 **COMMENT LETTER–Cachuma Project Draft Order**

7 **and Final Environmental Impact Report**

8 on all parties listed in the attached Service List, by sending a true and correct copy
9 electronically addressed according to the attached Service List to those parties accepting
10 electronic service as indicated in the attached Service List, and
11 by placing a true and correct copy thereof enclosed in a sealed envelope with first class
12 postage thereon fully prepaid in the United States mail at Santa Barbara, California,
13 addressed according to the attached Service List, to those parties not accepting electronic
14 service as indicated in the attached Service List.

15 I declare under penalty of perjury under the laws of the United States that the
16 foregoing is true and correct. Executed on December 9, 2016 at Santa Barbara,
17 California.

18
19
20 
21 Margaret M. Hall

Cachuma Project Evidentiary Hearings
Service List (updated 09/07/2016)

(Based on 01/05/2004 list, updated 07/26/2007, updated 06/08/2010, updated 01/20/2011, updated 05/13/2011, updated 07/29/2011, updated 01/05/2012, updated 01/30/2012, updated 03/28/2012, updated 12/12/2013, updated 01/06/2014(corrected), updated 01/23/14, updated 03/13/204, updated 08/17/2016, update 09/07/16.)

The parties whose email addresses are listed below agreed to accept electronic service, pursuant to the rules specified in the hearing notice.

<p>Cachuma Conservation Release Board Mr. Kevin O'Brien Downey Brand LLP 621 Capitol Mall, Floor 18 Sacramento, CA 95814 kobrien@downeybrand.com bcougar@downeybrand.com</p> <p><i>updated 01/05/2012</i></p>	<p>City of Solvang Mr. Christopher L. Campbell Baker, Manock & Jensen 5260 N. Palm Avenue, Suite 421 Fresno, CA 93704 ccampbell@bakermanock.com</p> <p><i>updated 07/29/2011</i></p>
<p>Santa Ynez River Water Conservation District, Improvement District No. 1 Mr. Paeter Garcia Best Best & Krieger LLP 3390 University Avenue, 5th Floor Riverside, CA 92501 Paeter.Garcia@BBKlaw.com</p> <p><i>updated 08/15/2014</i></p>	<p>City of Lompoc Mr. Nicholas A. Jacobs Somach, Simmons & Dunn 500 Capitol Mall Suite 1000 Sacramento CA 95814 njacobs@somachlaw.com</p> <p><i>updated 01/06/2014</i></p>
<p>Santa Ynez River Water Conservation District Mr. Ernest A. Conant Law Offices of Young Wooldridge 1800 – 30th Street, Fourth Floor Barkersfield, CA 93301 econant@youngwooldridge.com</p>	<p>California Trout, Inc. Ms. Linda Krop Ms. Maggie Hall Environmental Defense Center 906 Garden Street Santa Barbara, CA 93101 lkrop@environmentaldefensecenter.org mhall@environmentaldefensecenter.org</p> <p><i>updated 08/17/2016</i></p>
<p>County of Santa Barbara Mr. Michael C. Ghizzoni, County Counsel 105 E. Anapamu Street Santa Barbara, CA 93101 mghizzoni@co.santa-barbara.ca.us</p> <p><i>updated 08/12/2016</i></p>	<p>U.S Bureau of Reclamation Ms. Amy Aufdemberg 2800 Cottage Way, Room E-1712 Sacramento, CA 95825 Fax (916) 978-5694 AMY.AUFDEMBERGE@sol.doi.gov</p> <p><i>updated 08/12/16</i></p>

**Cachuma Project Evidentiary Hearings
Service List (updated 09/07/2016)**

(Based on 01/05/2004 list, updated 07/26/2007, updated 06/08/2010, updated 01/20/2011, updated 05/13/2011, updated 07/29/2011, updated 01/05/2012, updated 01/30/2012, updated 03/28/2012, updated 12/12/2013, updated 01/06/2014(corrected), updated 01/23/14, updated 03/13/2014, updated 08/17/2016, update 09/07/16.)

The parties whose email addresses are listed below agreed to accept electronic service, pursuant to the rules specified in the hearing notice.

<p>California Department of Fish and Wildlife Ms. Nancee Murray Senior Staff Counsel 1416 Ninth Street, 12th Floor Sacramento, CA 95814 Nancee.Murray@wildlife.ca.gov</p> <p><i>updated 08/15/2016</i></p>	<p>Bureau of Reclamation, Mid-Pacific Region Mr. Michael Jackson Area Manager South-Central California Area Office 1243 N Street Fresno, CA 93721-1813 mjackson@usbr.gov</p>
<p>Montecito Water District Robert E. Donlan Ellison, Schneider & Harris L.L.P. 2600 Capitol Avenue, Suite 400 Sacramento, CA 95816 red@eslawfirm.com</p>	<p>Santa Barbara County CEO's Office Ms. Terri Maus-Nisich, Assistant CEO 105 E. Anapuma Street, 4th Floor Santa Barbara, CA 93101 tmaus@co.santa-barbara.ca.us</p> <p><i>updated 09/07/2016</i></p>

The parties listed below did not agree to accept electronic service, pursuant to the rules specified by this hearing notice.

<p>NOAA Office of General Counsel Southwest Region Mr. Dan Hytrek 501 West Ocean Blvd., Suite 4470 Long Beach, CA 90802-4213 Dan.Hytrek@noaa.gov</p> <p><i>updated 05/13/2011</i></p>	
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