



State of California – The Natural Resources Agency

Edmund G. Brown, Jr., Governor

DEPARTMENT OF FISH AND GAME

John McCamman, Director

South Coast Region
4949 Viewridge Avenue
San Diego, CA 92123
(858) 467-4201
<http://www.dfg.ca.gov>

May 31, 2011

Ms. Jane Farwell
State Water Resources Control Board- Water Rights
1001 I Street
Sacramento, CA 95814
Fax #: (916) 341-5400

Received:
Division of Water Rights
2011 May 31 AM 10:10 by
Jane Farwell

Subject: Notice of Completion of a 2nd Revised Draft Environmental Impact Report for the Modifications to the US Bureau of Reclamation Water Right Permits 11308 and 11310 for the Cachuma Project on the Santa Ynez River SCH #2000021068

Dear Ms. Farwell:

The Department of Fish and Game (Department) reviewed the 2nd Revised Draft Environmental Impact Report (2nd RDEIR) for the above referenced project relative to impacts to biological resources.

The proposed project analyzed in the 2nd RDEIR consists of potential modifications to the US Bureau of Reclamation's (Reclamation) water right permits 11308 and 11310 for the Cachuma Project in order to provide appropriate protection of downstream water rights and public trust resources on the Santa Ynez River. The Cachuma Project includes Bradbury Dam, which impounds water on the Santa Ynez River in northern Santa Barbara County, forming Cachuma Lake. The Cachuma Project provides water to the Cachuma Project Member Units for irrigation, domestic, municipal, and industrial uses.

The proposed project, as listed in the Notice of Preparation (NOP) issued by the State Water Resources Control Board (SWRCB) is: "development of revised release requirements and other conditions, if any, in the Reclamation water rights permits (Applications 11331 and 11332) for the Cachuma Project. These release requirements will take into consideration the National Marine Fisheries Service's (NMFS) Biological Opinion and the draft Lower Santa Ynez River Fish Management Plan and other reports called for by Order WR 94-5. The revised release requirements are to provide appropriate public trust and downstream water rights protection. Protection of prior rights includes maintenance of percolation of water from the stream channel as such percolation would occur from unregulated flow, in order that the operation of the project shall not reduce natural recharge of groundwater from the Santa Ynez River below Bradbury Dam."

The Lead Agency has noted that the CEQA Guidelines Section 15088.5(a)(1) requires that an EIR be re-circulated if a new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented. The lead agency may recirculate only those portions of the document that have been revised, and request that reviewers limit their comments to the revised chapters or portions of the document. (Cal. Code Regs., tit. 14, § 15088.5, subds. (c) & (f)(2).) Although a complete copy of the 2nd RDEIR is available for public review, only Sections 4.3 and 6.0 are being recirculated for comment, and the State Water Board has requested that reviewers limit their comments to those revised portions.

Conserving California's Wildlife Since 1870

Ms. Jane Farwell

May 31, 2011

Page 2 of 3

The project has the potential to affect a number of sensitive fish and wildlife species and associated habitat including, but not limited to: Federal Endangered Species Act (FESA) threatened southern steelhead (*Oncorhynchus mykiss*); FESA endangered and California Endangered Species Act (CESA) endangered southwestern willow flycatcher (*Empidonax traillii extimus*); FESA threatened and California Species of Special Concern (CSC) California Red-legged frog (*Rana aurora draytonii*); CSC western pond turtle (*Emmys marmorata*) and two-striped garter snake (*Thamnophis hammondi*); the loss of oak woodland along the margin of Cachuma Lake, changes in riparian vegetation along the Santa Ynez River, and disruption of breeding bird behavior.

The Department prepared the following statements and comments pursuant to authority as Trustee Agency with jurisdiction over natural resources affected by the project under the California Environmental Quality Act (CEQA Section 15386) and Responsible Agency (Section 15381) over those aspects of the proposed project that come under the purview of the California Endangered Species Act (Fish and Game Code Section 2050 et seq) and Fish and Game Code Section 1600 et seq. regarding impacts to streams and lakes.

The Department commented on the original DEIR for the project on October 7, 2003 (Attachment 1) and expressed a number of concerns regarding project scope, impacts to southern steelhead, impacts to riparian zones and southwestern willow flycatcher, the need for a Streambed Alteration Agreement pursuant to Fish and Game Code Section 1600, and the proposed alternatives.

Subsequently, the Department commented on a revised DEIR (RDEIR) on September 28, 2007 (Attachment 2) and expressed a number of concerns regarding the alternatives presented and the lack of a reasonable and feasible alternative providing for fish passage above Bradbury Dam, the lack of an analysis of "flow related actions" for each alternative presented, the failure to incorporate "significant new information" into the analysis of impacts of each alternative in the RDEIR, a reiteration of the 2003 comment that fish migration issues were not adequately addressed, a reiteration of the 2003 comment that impacts to riparian zones and southwestern willow flycatcher were not adequately addressed, and a reiteration that a Streambed Alteration Agreement pursuant to Fish and Game Code Section 1600 would be required.

Upon reviewing the 2nd RDEIR for this project, the Department would like to repeat and reinforce its previous concerns about the issues identified. The 2nd RDEIR (pg. ES-4) states that:

"The Revised Draft EIR (2007) included sections on background information and alternatives analyzed in the 2003 Draft EIR to establish a context for the analysis of Alternatives 5B and 5C, but focused on the analysis of the new alternatives. In addition, the Revised Draft EIR was updated to reflect a number of changes, including the surcharging of Cachuma Lake to 2.47 feet, that have occurred since the 2003 Draft EIR was prepared. Finally, the Revised Draft EIR made some changes and corrections in response to comments on the 2003 Draft EIR. The Revised Draft EIR did not contain, however, a complete response to comments."

The Department does not feel that its comments from the past two EIR reviews and comment submittals were adequately addressed. The Department has attached the previous comment letters for reference and intends for them to be used as a repeat of its concerns that need to be addressed by the Lead Agency and incorporated within the 2nd RDEIR.

Ms. Jane Farwell
May 31, 2011
Page 3 of 3

4.3 Water Supply

The Department is concerned that, during a three year drought period, current water supply (including that for natural resources) would not meet current water demands. The Department is also concerned that the projected increase in demand would further exceed drought period supply under all project alternative scenarios, even with the Central Coast Water Authority (CCWA) drought buffer reserves and increased use of groundwater.


The 2nd RDEIR does not appear to consider the direct environmental impacts to natural resources because, according to the 2nd RDEIR, water for fish and other resources has already been factored into the numbers supplied. The Department requests clarification on whether water for fish and other resources would be released under all water year scenarios regardless of human demand.

The 2nd RDEIR states that indirect environmental impacts would be due to increased groundwater pumping and overdrafting the Goleta Groundwater Basin, saltwater intrusion, and/or desalinization operations, but does not quantify what these impacts would be. The Department requests further analysis and discussion on the indirect environmental impacts identified in the 2nd RDEIR.

The conclusion of this section states that "drought contingency measures identified in the Member Units' urban water management plans shall be implemented to the extent necessary to make up for a shortage in water supply in a critical drought year" (pg. 4.3-31). The Department requests further information on specific mitigation measures and quantification of how these measures would effectively cover demand during drought conditions, and how effectively they would mitigate for indirect environmental impacts.

Thank you for this opportunity to provide comment. Please include the above concerns and comments into the final 2nd REIR for the subject project. Please contact Mrs. Mary Larson, Senior Fisheries Biologist at (562) 342-7186 or Mr. Sean Carlson, Staff Environmental Scientist at (909) 596-9120 for any questions and further coordination.

Sincerely,



Edmund Pert
Regional Manager
South Coast Region

Attachments

Helen Birss, CDFG, Los Alamitos
Betty Courtney, CDFG, Santa Clarita
Natasha Lohmus, CDFG, Carpinteria
Mary Larson, CDFG, Los Alamitos
Krys Vyverberg, CDFG, Sacramento HQ
Scott Morgan, State Clearinghouse, Sacramento



State of California - The Resources Agency

GRAY DAVIS, Governor

DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>
4949 Viewridge Avenue
San Diego, CA 92123
(858) 467-4201



October 7, 2003



BY FACSIMILE AND U.S. MAIL

Mr. Andrew Fecko
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000
Fax No.: (916) 341-5400

**Draft Environmental Impact Report for the Consideration of Modifications to the
Bureau of Reclamation's Water Right Permits 11308 and 11310
SCH # 2003081074, Santa Barbara County**

Dear Mr. Fecko:

The Department of Fish and Game (Department), has reviewed the above referenced Draft Environmental Impact Report (DEIR) for impacts to biological resources. The following statements and comments have been prepared pursuant to the Department's authority as Trustee Agency with jurisdiction over natural resources affected by the project (CEQA Guidelines §15386) and pursuant to our authority as a Responsible Agency (CEQA Guidelines §15381) over those aspects of the proposed project that come under the purview of the Fish and Game Code Section 1600 et seq. In addition we are incorporating, by reference, comments submitted to the Cachuma Operation & Maintenance Board, dated September 30, 2003 (attached) to address issues involving Alternatives 3B and 3C (Loss of Oak Woodland Resulting From Cachuma Lake Surcharging).

The proposed project consists of potential modifications to the U.S. Bureau of Reclamation's (Reclamation) water right permits for the Cachuma Project (Order WR 94-5) to provide appropriate protection of downstream water rights and public trust resources on the Santa Ynez River. The Cachuma Project provides water to Cachuma Project Member Units for irrigation, domestic, municipal and industrial uses. 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. Permit conditions require Reclamation to release enough water to satisfy downstream users with senior rights to surface water and to maintain percolation of water from the stream channel, and not reduce natural recharge of

Mr. Andrew Fecko
State Water Resources Control Board
October 7, 2003
Page 2 of 7

groundwater from the Santa Ynez River. Potential adverse impacts from the project include, but are not limited to, the loss of oak woodland along the margin of Cachuma Lake, changes in riparian vegetation along the Santa Ynez River, and disruption of breeding bird behavior. Wildlife with the potential to be impacted by the project includes a long list of State and Federally listed and otherwise sensitive species of plants, animals, and communities, including the Federally Endangered southern steelhead (*Oncorhynchus mykiss*), the Federal and State Endangered southwestern willow flycatcher (*Empidonax traillii extimus*), the Federally Threatened and State Species of Special Concern California red-legged frog (*Rana aurora draytonii*), the State Species of Special Concern southwestern pond turtle (*Clemmys marmorata pallida*) and two-striped garter snake (*thamnophis hammondi*).

Project Scope

The DEIR describes public trust resources for this project on page 3-4 of the document. This description limits the scope of the project to those resources found only at Cachuma Lake or downstream of Bradbury Dam. The SWRCB clarified the scope of the Cachuma Project water right hearing by reiterating that key issue 4a asks what terms, conditions, or recommendations contained in the Biological Opinion, if any, should be incorporated into Reclamation's permits (Letter from Peter Silva to Cachuma Hearing Service List, dated May 29, 2003). Since the Biological Opinion includes a conservation recommendation that Reclamation study effective passage for steelhead to spawning and rearing habitat upstream of Bradbury Dam, the SWRCB declared that it will allow parties to present evidence concerning whether Reclamation's permits should be modified to address impacts of Cachuma Project operations to public trust resources above Bradbury Dam, including evidence concerning requirements that would apply above the dam.

Based on the migratory nature of Steelhead Trout (SH), and the life cycle and habitat requirements of other aquatic and riparian species within the Santa Ynez river drainages the Department feels the DEIR should expand the area of project impact to include all fish and wildlife resources affected by the project. This area of impact would include the upper portion of the watershed as well as the lake and below the dam to the mouth.

Furthermore, the SWRCB has not defined what constitutes protection of public trust resources. The Department requested this clarification at the Pre-hearing Conference on May 13, 2003, and the Hearing Officer stated that the SWRCB would do this. Without this clear definition, the DEIR lacks the basis for making any determination as to whether or not any of the alternatives meet the stated objective of protection of public trust resources.

Mr. Andrew Fecko
State Water Resources Control Board
October 7, 2003
Page 3 of 7

Impacts to Southern Steelhead

Gibraltar Dam, completed in 1920, blocked access to much of the steelhead spawning habitat of the river and the Cachuma Project, including Bradbury Dam, completed in 1953, eliminated access to nearly all historic spawning and rearing habitat (McEwan and Jackson 1996). The remaining steelhead spawning and rearing habitat is reduced to approximately 10 miles of the mainstem Santa Ynez River and some habitat in tributaries below Bradbury Dam. Prior to the construction of Bradbury Dam both the U.S. Fish and Wildlife Service and the Department recommended that sufficient water be released below the dam to provide migration, spawning, and rearing flows for steelhead. In addition, trapping and holding facilities were recommended for salvage of adult steelhead migrating as far as the dam. However, these two recommendations were not included in the project because the water releases required to maintain a steelhead run would amount to about 33% of the firm yield and would impact the full allotments for domestic and irrigation purposes (CDFG 1975).

The Department's Steelhead Restoration and Management Plan for California (McEwan and Jackson 1996) affirms that the two most important long-term restoration recommendations for steelhead on the Santa Ynez River are: 1) a permanent flow regime from Bradbury Dam to restore the steelhead resource to a reasonable level and maintain it in good condition, and 2) to initiate a feasibility study for providing adult and juvenile passage around Bradbury Dam, followed by implementation of the recommendations accordingly. Nearly all historic spawning and rearing habitat is located upstream of Bradbury Dam, therefore blocked access is probably the most significant limiting factor for steelhead.

The pre-project mitigation recommendations and the 1996 restoration recommendations have not been adequately pursued and as a result steelhead in the Santa Ynez watershed have been nearly extirpated (CDFG 1975, McEwan and Jackson 1996). A consequence of this inaction and similar conditions in other southern California watersheds is the 1997 listing of southern steelhead as endangered under the federal Endangered Species Act (ESA). A result of this listing had been the development of the aforementioned Biological Opinion for the Cachuma Project and the definition of an ESU (Evolutionarily Significant Unit) for the species. The reference to the "ESU" should be deleted throughout the document since it refers to a distinct population segment that occurs over a much larger geographic area; not just the Santa Ynez River.

The effect of different downstream flow regimes under the various alternatives is described by Entrix (2000b) and is used in this DEIR. The reference for Entrix is not listed in the Reference section of the DEIR. This analysis uses a scoring system that assigns a higher score for flows that are more likely to provide more habitat and a lower score for flows that are likely to provide less habitat. The underlying assumption is that more habitat is better for steelhead. The DEIR should clarify how specific steelhead habitat attributes (e.g., water temperature, depth, velocity) would vary as a function of flow to demonstrate that steelhead and their habitat are

Mr. Andrew Fecko
State Water Resources Control Board
October 7, 2003
Page 4 of 7

protected by the proposed flow regime. Otherwise, the assumption that more habitat is equivalent to better habitat is not supported. In addition, the analysis relies on the jeopardy standard used in the biological opinion.

The analysis for fish passage in the lower reach uses a criterion of 25 cfs at the Alisal Road Bridge. It states that this is sufficient flow to pass critical riffles between the dam and the lagoon 92% of the time. Therefore, for suitable access to mainstem and tributary spawning habitat, there must be a sufficient number of days with flow at the Alisal Road Bridge greater than or equal to 25 cfs. The NMFS Biological Opinion states that 25 cfs is a minimum flow for passage (at 8 feet of contiguous wetted channel and ½ foot of depth), but does not provide "water depth and width that produce good migration habitat" (NMFS 2000).

The number of passage days used in the analysis is 14. Reclamation proposed in its biological assessment to supplement storm flows to ensure that there are approximately 14 days for migration. The statement in the DEIR that "NMFS considered 14 days of passage in a particular year to be an adequate passage opportunity (NMFS 2000), and therefore this was given a score of 5 (Table 4-41)" is inaccurate. The conclusion NMFS made was based on Reclamation's modeling results which showed that supplemental flows to assist steelhead migration would be applied in approximately 24% of the years and would double the amount of normal years when 14 or more consecutive days of migration would be available. The 14 days of fish passage is not per year, but per storm event in a given year. The Biological Opinion stated that based on the limited information available, 14 days of consecutive migration availability is likely to significantly increase successful migration by steelhead compared to recent operating conditions. However, migration opportunity below the dam will continue to be reduced over the life of the project when compared to natural conditions associated with the larger historic steelhead population in the Santa Ynez River. Therefore, a flow of 25 cfs for 14 or more days per storm event should be considered a minimum criterion for fish passage and should be scored in the lower end of the range, not at the highest.

The Highway 154 reach was selected as the index location for spawning and rearing habitat. The spawning flows range from 0 cfs (score = 0) to >30 cfs (score = 5). NMFS concluded that supplemental flows for migration may increase spawning habitat, but because of a lack of data, NMFS could not conclude that spawning habitat could be increased or decreased. Regardless of NMFS findings, the DEIR concludes that the alternatives would result in beneficial impacts (Page 4-100). The relationship between flow and spawning habitat quantity and quality needs to be determined.

The minimum long-term flow used in the biological assessment and Biological Opinion is 2.5 cfs and this flow is given a score of 3, middle of the scoring range. The Biological Opinion

Mr. Andrew Fecko
State Water Resources Control Board
October 7, 2003
Page 5 of 7

notes that flows between 0 and 2.5 cfs result in lethal dissolved oxygen levels and water temperatures. Therefore, as a minimum flow this should have been scored at the lowest end of the range.

The method of analysis and scoring system used in the DEIR is based on flow standards and location criteria that are scored too high given the information provided in the Biological Opinion. For the purpose of comparing the alternatives in the DEIR, the inflated results shouldn't make any difference (page 4-100 and 101). However, to determine whether or not any of the alternatives protect steelhead a comparison should be made between the proposed alternatives and pre-dam conditions.

Impacts to Riparian Zones and Southwestern Willow Flycatcher from Downstream Releases

Water releases from Cachuma Lake via Bradbury Dam to enhance fish passage in the Santa Ynez River are considered, on page 4-132 of the DEIR, a beneficial impact to aquatic and terrestrial wildlife between the dam and the Alisal Road Bridge in Solvang. The Department has reservations about the depiction of this impact as beneficial.

One benefit identified in the DEIR of downstream releases could be to "...increase the vigor and extent of wetland and riparian vegetation along the river to Alisal Bridge." The Santa Barbara County Flood Control District (SBCFCD) implements a Routine Maintenance Plan which includes the Santa Ynez River and the removal or reduction of riparian vegetation in areas where it constitutes a threat of flooding. Any increase in vigor and extent of riparian vegetation in the Santa Ynez River above Alisal Bridge may therefore lead to initiation or intensification of riparian vegetation management by SBCFCD. This would constitute a foreseeable indirect effect of the proposed project as defined in CEQA Guidelines §15064(d), and as such should receive analysis in the DEIR to determine if the effect would be adverse.

Southwestern willow flycatchers (SWF) are known to nest in areas along the Lower Santa Ynez River which have potential to be affected by the proposed project. As stated on page 4-133 of the DEIR, "Releases from the ANA and BNA to recharge downstream groundwater basins have the potential to adversely affect willow flycatcher nesting." SWF sometimes build nests in vegetation growing directly over the river channel, sometimes as close as 0.5-1m above the surface of the water. A rise in water levels as little as 0.5m could therefore result in the destruction of occupied SWF nests. Although the DEIR does not anticipate an increase in flows along the reaches of river where SWF are known to nest, it was not clear to us how proposed releases might combine with natural flows to produce a rise in river water levels which could impact nesting SWF. An analysis of this issue should be included in the Sensitive Wildlife Species section of the DEIR. One method for avoiding possible negative impacts to nesting SWF would be to end water releases prior to May 20th of each year.

Mr. Andrew Fecko
State Water Resources Control Board
October 7, 2003
Page 6 of 7

Streambed Alteration Permitting

This project will require issuance of a Streambed Alteration Agreement (SAA), under Section 1600, et seq. of the California Fish and Game Code prior to commencing work. You may call our South Coast Regional office at (858) 636-3160 to initiate the 1600 process. You may also obtain a Notification package for an SAA online by visiting the Department's website at <http://www.dfg.ca.gov/1600/1600.html>. The Department emphasizes that in order to protect sensitive resources, substantial revisions to the proposed project may be required in the SAA.

Proposed Alternatives

The DEIR, rather than describing one project and presenting alternatives, describes seven alternatives, without presenting any one alternative as the preferred project. Each alternative would result in at least one significant, unmitigable impact (Class I). The environmentally superior alternative, Alternative 3A, has the fewest environmental impacts, and the fewest Class I impacts. CEQA Guidelines §15021(a)(2) establishes a duty for public agencies to not approve a project if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects the project would have on the environment.

However, the DEIR limits the range of alternatives to those that address downstream water rights and public trust resources on the Santa Ynez River downstream of Bradbury Dam (Page 3-1). It does not include any alternatives that take into consideration the upstream public trust resources and none of the alternatives take into consideration the recommendations contained in the Biological Opinion and Fish Management Plan (FMP) for evaluation of fish passage at Bradbury Dam. The DEIR does not contain a range of reasonable alternatives that would satisfy the stated objective of protection of public trust resources.

All of the alternatives go no further than the flow related measures contained in the Biological Opinion. The jeopardy standard used in an ESA Section 7 consultation is not necessarily equivalent to the SWRCB responsibility to protect public trust resources. Jeopardy is defined as any action that would appreciably reduce the likelihood of both the survival and recovery of a listed species in the wild by reducing species reproduction, number or distribution (50 CFR § 402.02). The impacts of the alternatives on surface water hydrology are based on "target flows." The comparisons between the alternatives are based on the frequency of occurrence assuming these target flows are achieved. The DEIR should make this distinction clear.

The DEIR should include a comparison of the predicted surface water hydrology (using SYRHM) under Alternative 2 (current conditions) to actual surface water hydrology since September 2000 when the Biological Opinion was issued. This illustrates the value of the Santa

Mr. Andrew Fecko
State Water Resources Control Board
October 7, 2003
Page 7 of 7

Ynez River Hydrologic Model (SYRHM) and the potential differences between predicted and actual hydrology. Providing this information would assist the SWRCB and trustee agencies in determining whether or not the protection of public trust resources is likely to occur under the various alternatives.

Thank you for this opportunity to provide comment. Should you have questions regarding this letter, please contact Ms. Mary Larson, Senior Biologist Specialist, at (562) 342-7186 for steelhead issues, and Mr. Martin Potter, Environmental Scientist at (805) 640-3677 for all other issues.

Sincerely,



C. F. Raysbrook
Regional Manager

Attachment

cc: MPotter; MWehtje; NLOhmus; MCardenas; Mary Larson; Scott Morgan-SCH;
Larry Week-NAFWB; Katie Perry-NAFWB; Harlee Branch-Gen'l Counsel office;
CFR-Chron [REDACTED]

mwehtje\SWRCB_SantaYnezRiver_EIR.doc

References:

California Department of Fish and Game. 1975. An assessment of federal water projects adversely affecting California's salmon and steelhead resources. Report. Series mandated by the Calif. State Legislature under Senate Concurrent Resolution No. 64. Rpt. No. 4, Cachuma Project. 4pp.

McEwan, D. and T. A. Jackson. 1996. Steelhead Restoration and Management Plan for California. California Department of Fish and Game.

National Marine Fisheries Service 2000. Biological Opinion issued to the U. S. Bureau of Reclamation for operation and maintenance of the Cachuma Project on the Santa Ynez River in Santa Barbara County, California. Dated September 11, 2000.



State of California - The Resources Agency

GRAY DAVIS, Governor

DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>
4949 Viewridge Avenue
San Diego, CA 92123
(858) 467-4201



September 30, 2003

BY FACSIMILE AND U.S. MAIL

Ms. Kate Rees, Project Manager
Cachuma Operation & Maintenance Board
3301 Laurel Canyon Road
Santa Barbara, CA 93105
Fax No.: 805-569-5825

**Draft Environmental Impact Report for
The Lower Santa Ynez River Fish Management Plan and
Cachuma Project Biological Opinion for Southern Steelhead Trout
SCH # 2003071160, Santa Barbara County**

Dear Ms. Rees:

The Department of Fish and Game (Department) has reviewed the Draft Environmental Impact Report (DEIR) for Impacts to biological resources. The Cachuma Operation & Maintenance Board (COMB) proposes several management actions and projects to improve habitat conditions for the Federally Endangered southern steelhead (*Oncorhynchus mykiss*) and other aquatic species on the Santa Ynez River downstream of Bradbury Dam, in accordance with the Lower Santa Ynez River Fish Management Plan (FMP) and Cachuma Project Biological Opinion (BO). In addition to steelhead, wildlife with the potential to be impacted by the projects includes a long list of State and Federally listed and otherwise sensitive species of plants, animals, and communities, including the Federal and State Endangered southwestern willow flycatcher (*Empidonax traillii extimus*), the Federally Threatened and State Protected and Species of Special Concern California red-legged frog (*Rana aurora draytonii*), and the State Protected and Species of Special Concern southwestern pond turtle (*Clemmys marmorata pallida*) and two-striped garter snake (*Thamnophis hammondi*).

The following statements and comments have been prepared pursuant to the Department's authority as Trustee Agency with jurisdiction over natural resources affected by the project (CEQA Guidelines §15386) and pursuant to our authority as a Responsible Agency (CEQA Guidelines §15381) over those aspects of the proposed project that come under the purview of the Fish and Game Code Section 1600 et seq.:

The Department supports the recommended management actions identified in the FMP and BO. While the actions identified in the DEIR are expected to produce positive benefits for steelhead in the lower Santa Ynez, the ongoing monitoring and adaptive management process outlined in the FMP and BO will refine these actions and progress should not end there. The Department sees the implementation of these management actions as a starting point with an expectation that there will be further studies of stream flows, passage barriers in the Santa Ynez watershed and exploration of other habitat restoration actions that will further enhance the watershed and aid in the restoration of the steelhead population.

As a Program EIR, the DEIR describes some proposed actions and activities which do not contain a thorough analysis of impacts to sensitive species (e.g., California red-legged frog).

Ms. Kate Rees
September 30, 2003
Page 2 of 5

The Department therefore assumes COMB will produce appropriate environmental documents in the future to address these issues, in accordance with the requirements for Program EIRs outlined in CEQA Guidelines §15168(c).

In addition, the DEIR overlaps with the DEIR recently released by the State Water Resources Control Board (SWRCB) that considers modifications to the U.S. Bureau of Reclamation's water right permits to protect public trust values and downstream water rights on the Santa Ynez River below Bradbury Dam. The upcoming water rights hearings, scheduled to begin on October 21, 2003, may result in changes to the amount and timing of water releases. Therefore, the range of alternatives evaluated in this DEIR would be expected to change. The Department recommends that the final EIR be delayed until after the SWRCB certifies its final EIR and that it incorporate any revisions to the USBR water right permits and any required fish habitat enhancement measures.

Loss of Oak Woodland Resulting From Cachuma Lake Surcharging

The proposed additional Cachuma Lake surcharging (to support releases under the Fish MOU) will result in the gradual inundation and loss of 24.1 acres of oak woodland along the margins of the lake. The Oak Tree Restoration Program (OTRP) proposed to mitigate this loss involves oak tree replacement at an initial replacement ratio of 3 replacement trees for every tree lost (3:1), and a final ratio (after ten years) of 2 mature replacement trees for every tree lost (2:1).

The DEIR estimates 452 oak trees would be lost as the result of inundation of the foot zone from lake surcharging. One thousand, three hundred, fifty-two replacement trees would be planted initially (3:1), and monitored to assure long-term survival of 904 trees (2:1). The 3:1 initial planting ratio was derived from the observed oak tree mortality rate of about 33% during recent oak tree planting efforts at the Cachuma Lake County Park. About 78% of the trees (1,054) would be planted at the Park, identified as having areas in need of oak tree restoration. No sites were identified for planting the remaining 298 replacement trees. About two-thirds of the 1,054 Park replacement trees would be planted in areas of low oak-tree density (1-12 trees per acre), with the remainder planted in moderate density (2-24 trees per acre) and high density (> 25 trees per acre) areas.

Mitigation measure OK-1, on page 6-23 of the DEIR, states the OTRP would be designed to create new oak woodlands and enhance existing oak woodland in the Park. However, the description of the OTRP in the DEIR is limited to only discussing oak tree planting. The Department considers the oak woodland around the lake lost as a result of the proposed project to have biological value beyond the individual trees. This value includes oak woodland understory vegetation of native shrubs and grasses. Oak woodland restoration therefore should include oak trees and understory species planted in appropriate soils and spaced appropriately, primarily in the low oak-tree density areas of the Park. We recommend the Department be given the opportunity to provide input and review the OTRP prior to its implementation. The OTRP should also be consistent with CEQA Guidelines §15126.4 (D) which requires discussion of significant effects caused by mitigation measures. Analysis of the location(s) of the OTRP sites is needed to determine if a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project. For example, new woodland areas proposed in the OTRP may impact other habitats (such as grasslands).

We also are concerned with the lack of identification of oak tree replacement planting sites to accommodate all 1,352 proposed replacement trees. Because the Park has adequate space for 1,054 trees, and the target number of trees after 10 years is 904, we recommend the

Ms. Kate Rees
September 30, 2003
Page 3 of 5

OTRP include measures for nurturing oak trees to increase their survival rate beyond 66% (such as supplemental watering). We also recommend replacement trees that die be re-planted and monitored for 10 years to assure the target final mitigation ratio of 2:1. This would allow all replacement planting to occur in the Park and eliminate the need to find additional sites at some future time.

Hilton Creek Channel Extension

This action would improve habitat for steelhead and was presented in the DEIR at a programmatic level. We acknowledge, as stated on page 10-85 of the DEIR, the intention to produce a supplemental environmental report at some future date to address impacts resulting from this action, prior to its implementation.

The preliminary preferred alignment (Alternative B in the FMP) for the channel extension would result in the loss of an unknown amount of dense riparian forest. As stated on page D-3-10 of the Hilton Creek Enhancement Report (Appendix D of the FMP), "...trees adjacent to the proposed alignment support a heron rookery." The potential impact to this rookery was not discussed in the DEIR, and the supplemental document will have to address this and other potential significant effects, as required by CEQA Guidelines §15064(d).

Impacts to Riparian Zones and Southwestern Willow Flycatcher from Downstream Releases

Water releases from Cachuma Lake via Bradbury Dam to enhance fish passage in the Santa Ynez River are proposed to occur during the period January to May, according to page 2-18 of the DEIR. COMB considers this, on page 5-72 of the DEIR, a beneficial impact to sensitive aquatic and terrestrial wildlife between the dam and the Alisal Road Bridge in Solvang (the DEIR anticipates that flow rates from proposed project releases will diminish with distance from the dam, and flow rates below Alisal Road will not be above the current condition.) The Department has reservations about the depiction of this impact as beneficial.

One benefit identified in the DEIR of downstream releases could be to "...increase the vigor and extent of wetland and riparian vegetation along the river to Alisal Bridge." The Santa Barbara County Flood Control District (SBCFCD) implements a Routine Maintenance Plan which includes the Santa Ynez River and the removal or reduction of riparian vegetation in areas where it constitutes a threat of flooding. Any increase in vigor and extent of riparian vegetation in the Santa Ynez River above Alisal Bridge may therefore lead to initiation or intensification of riparian vegetation management by SBCFCD. This would constitute a foreseeable indirect effect of the proposed project as defined in CEQA Guidelines §15064(d), and as such should receive analysis in the DEIR to determine if the effect would be adverse.

Southwestern willow flycatchers (SWF) are known to nest in areas along the Lower Santa Ynez River which have potential to be affected by the proposed project. SWF sometimes build nests in vegetation growing directly over the river channel, sometimes as close as 0.5-1m above the surface of the water. A rise in water levels as little as 0.5m could therefore result in the destruction of occupied SWF nests. Although the DEIR does not anticipate an increase in flows along the reaches of river where SWF are known to nest, it was not clear to us how proposed releases might combine with natural flows to produce a rise in river water levels which could impact nesting SWF. An analysis of this issue should be included in the Sensitive Wildlife Species section of the DEIR. One method for avoiding possible negative impacts to nesting SWF would be to end water releases prior to May 20th of each year.

Ms. Kate Rees
September 30, 2003
Page 4 of 5

Impacts to California Red-Legged Frog

California red-legged frog (*Rana aurora draytonii*) - The California red-legged frog (CRLF) is listed as threatened by the U.S. Fish and Wildlife Service (USFWS). The CRLF also is listed as a Protected Amphibian by the Department (Title 14 CCR, § 41). The project site is within the USFWS established range for CRLF. At this time the Department does not have descriptions of proposed fish passage enhancement projects or other proposed projects on tributaries of the Lower Santa Ynez River which may impact CRLF. We will therefore address the proposed project mitigation measures in a generic form with the understanding that as details become available in subsequent environmental documents, the Department biologist will develop specific mitigation measures for each.

In general, where impacts to CRLF are likely, mitigation and avoidance measures should include:

1. At least 15 days prior to the onset of activities, the applicant shall submit the name(s) and credentials of the biologist who will conduct activities specific to the following measures. Project activities will not begin until COMB has received approval from the Department to conduct work.
2. Two weeks prior to any activities, a Department-approved biologist shall survey the work site(s) according to USFWS protocols. If CRLF adults, tadpoles, or eggs are found, the approved biologist shall contact the Department. Only approved biologists are authorized to capture, handle, and monitor CRLF.
3. COMB will implement best management practices as defined by the Regional Water Quality Control Board (San Luis Obispo Office).
4. To prevent access of adult CRLF to the work site(s), silt fencing will be placed along the perimeter of the work site(s). The silt fencing will be keyed into the ground approximately six inches. If screening the streamflow is required, the mesh size will be no larger than 0.2 inches (largest dimension). If CRLF tadpoles are identified upstream and in proximity of the work site(s), the angle of the screen to the streamflow will be such that water velocities will not impinge tadpoles onto the screen. To minimize screen failure, screens will be cleaned as required. COMB will notify the Department Biologist at telephone number 805.640.1852 prior to construction activities.
5. If stream flows require screens to prevent fish passage, screens shall be constructed such that CRLF tadpoles will not become impinged on screen surfaces.

Upper Basin Alternatives

The description and evaluation of fish passage alternatives is cursory and may lead to false conclusions. Although achieving passage at Bradbury Dam is filled with challenges, providing passage at Bradbury will overcome "probably the most significant limiting factor for steelhead" in the basin (McEwan and Jackson 1996). With such a severity of need, these challenges should not be viewed as insurmountable obstacles. The DEIR does not adequately evaluate the actions in terms of benefits to the steelhead population. Furthermore, these sections of the DEIR did not include the full suite of passage options for consideration. Lastly, the Institutional Concerns sections presume inflexibility on the part of the agencies that may not exist as specific alternatives are advanced in a credible process. Also note that Figure 10-1 (referenced on page 10-93) is not included in Appendix A or in the List of Figures.

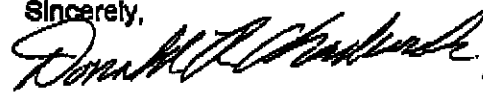
Ms. Kate Rees
September 30, 2003
Page 5 of 5

Streambed Alteration Permitting

These projects will require issuance of Streambed Alteration Agreements (SAA), under Section 1600, et seq. of the California Fish and Game Code prior to commencing work. You may call our South Coast Regional office at (858) 636-3160 to initiate the 1600 process. You may also obtain a Notification package for an SAA online by visiting the Department's website at <http://www.dfg.ca.gov/1600/1600.html>. The Department emphasizes that in order to protect sensitive resources, substantial revisions to the proposed project may be required in the SAA.

Thank you for this opportunity to provide comment. Should you have questions regarding this letter, please contact Ms. Mary Larson, Senior Biologist Specialist, at (562) 342-7186 for steelhead issues, and Mr. Maurice Cardenas, Fisheries Biologist, at (805) 640-1852 for all other matters.

Sincerely,


FOR
C. F. Raysbrook
Regional Manager

cc: Mr. Martin Potter, Ojai
Ms. Morgan Wehtje, Camarillo
Ms. Natasha Lohmus, Santa Barbara
Mr. Maurice Cardenas, Santa Barbara
Ms. Mary Larson, Los Alamitos
CFR-Chron; HCP-Chron
Department of Fish and Game - South Coast Region

Mr. Scott Morgan
State Clearinghouse, Sacramento

Mr. Larry Week
Department of Fish and Game - NAFWB

Mr. Harlee Branch
Department of Fish and Game - Legal Office

sl

Corresp_HQ/LowerSantaYnez_fishmgmtplanEIR_9-03

State of California - The Resources Agency

ARNOLD SCHWARZENEGGER, *Governor***DEPARTMENT OF FISH AND GAME**

<http://www.dfg.ca.gov>
South Coast Region
4949 Viewridge Avenue
San Diego, CA 92123
(858) 467-4201



September 28, 2007

Ms. Diane Riddle
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812
Fax No.: (916) 341-5400

**Revised Draft Environmental Impact Report for the
Consideration of Modifications to the
Bureau of Reclamation's Water Right Permits 11308 and 11310
SCH # 1999051051, Santa Barbara County**

Dear Ms. Riddle,

The Department of Fish and Game (Department), has reviewed the Revised Draft Environmental Impact Report (RDEIR) for impacts to biological resources. The following statements and comments pertain to the revised portions of the RDEIR, distinguished from the rest of the document by italicized font. This letter supplements the Department's October 7, 2003 comment letter (attached) reviewing the original Draft Environmental Impact Report (DEIR). The proposed project consists of potential modifications to the U.S. Bureau of Reclamation's (Reclamation) water right permits for the Cachuma Project (Order WR 94-5) to provide appropriate protection of downstream water rights and public trust resources on the Santa Ynez River. The Cachuma Project provides water to Cachuma Project Member Units for irrigation, domestic, municipal and industrial uses. 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. Permit conditions require Reclamation to release enough water to satisfy downstream users with senior rights to surface water and to maintain percolation of water from the stream channel, and not reduce natural recharge of groundwater from the Santa Ynez River. Potential adverse impacts from the project include, but are not limited to, the loss of oak woodland along the margin of Cachuma Lake, changes in riparian vegetation along the Santa Ynez River, and disruption of breeding bird behavior. Wildlife with the potential to be impacted by the project includes a long list of State and Federally listed and otherwise sensitive species of plants, animals, and communities, including the Federally Endangered southern steelhead (*Oncorhynchus mykiss*), the Federal and State Endangered southwestern willow flycatcher (*Empidonax traillii extimus*), the Federally Threatened and State Species of Special Concern California red-legged frog (*Rana aurora draytonii*), the State Species of Special Concern southwestern pond turtle (*Clemmys marmorata pallida*) and two-striped garter snake (*Thamnophis hammondi*).

The following statements and comments have been prepared pursuant to the Department's authority as Trustee Agency with jurisdiction over natural resources affected by the

Ms. Diane Riddle
September 28, 2007
Page 2 of 5

project (CEQA Guidelines §15386(a)) and pursuant to our authority as a Responsible Agency (CEQA Guidelines §15381) over those aspects of the proposed project that come under the purview of the California Endangered Species Act (Fish and Game Code Section 2050 et seq.) and Fish and Game Code Section 1600 et seq. As trustee for the State's fish and wildlife resources, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species.

3.2 Alternatives

The RDEIR describes five alternatives, without presenting any one alternative as the preferred project. The RDEIR states that each of the alternatives presented would result in at least one significant, unmitigable impact (Class I). CEQA Guidelines §15021(a)(2) establishes a duty for public agencies to not approve a project if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects the project would have on the environment. While the Department appreciates the efforts of the Water Board to include an analysis of two new alternatives (5B and 5C) in the RDEIR, the Board fell short in not considering all feasible and reasonable alternatives as required under CEQA Guidelines §15026.6 (a). Of particular concern is the lack of alternatives that examine the feasibility of fish passage past Bradbury Dam either as a stand alone alternative or in combination with one of the five alternatives outlined in the RDEIR or as part of non-flow related alternatives. The Board has received numerous requests from the Department and other Resource Agencies in written communications regarding the 2003 DEIR, as well as in written and oral testimony during the 2003 water rights hearing to include this in the RDEIR. An outline of a scientifically based fish passage feasibility study is included in attachment 1. For this reason, the RDEIR does not contain a range of all reasonable feasible alternatives that would satisfy the stated objective of protection of public trust resources.

4.0 Environmental Analysis of Alternatives (Flow-Related Actions)

Bradbury Dam is located approximately 46 miles from the ocean on a watershed that encompasses over 900 square miles. Due to its location, approximately 78% of the watershed is above the dam. This has a tremendous effect on the fluvial processes within the watershed. The document states on page 2-1 that siltation has reduced the original 204,874 acre feet (af) capacity of Lake Cachuma. The document further goes on to state that estimates in 2000 place the capacity at 188,030-af (MNS, 2000). This illustrates that the natural movement of sediments has been interrupted by the presence of Bradbury Dam. The environmental analysis of the 5 alternatives fails to analyze the significant impact the release of "hungry water" (waters devoid of sediment), will have or has had on the downstream resources. The change in sediment budget due to capture of all but the finest materials by the dam, and the increased sediment transport capacity of sediment-free water released from the dam, can have a detrimental effect on the stability of the channel, bank and associated riparian habitat. In turn, destabilized banks result in increased erosion, loss of riparian cover and nesting habitat, and for the aquatic resources, increased water temperatures and decrease in dissolved oxygen. The RDEIR needs to evaluate these potentially significant impacts. If it is determined that the Impacts are unavoidable, a potentially feasible mitigation measure would include implementation of a sediment management plan. This might include sediment removal from behind the dam and placement onto the

Ms. Diane Riddle
September 28, 2007
Page 3 of 5

spillway for transport during scheduled water releases or spill events.

The RDEIR also failed to examine the impact of water releases for irrigation and flood control releases under the alternatives presented in the RDEIR. These water releases are potentially significant impacts due to the fact that rapid rates of increased and decreased flow and the associated changes in water surface elevation have destabilizing impacts on bank conditions that have not been addressed. A potentially feasible mitigation measure includes the establishment of ramping rates similar to those established for fishes for irrigation and flood control releases as mitigation for downstream impacts.

4.7.2. Potential Impacts of the Alternatives

Significant new information prepared as part of the recovery planning process by the National Marine Fisheries Service (NMFS) during the past 5 years has not been incorporated into the RDEIR, which would enable the Department, other agencies and the public to better evaluate the alternatives and their potential impacts on *O. mykiss*. In particular, the 2007 Federal Recovery Outline for the Distinct Population Segment of Southern California Coast Steelhead (NMFS 2007, attachment 2) identifies the need to protect the inland populations of the five core populations as well as reconnect those populations to the ocean. These two elements are essential to the recovery of the species in the Santa Ynez watershed. As this significant new information was not included in the RDEIR, it is impossible to adequately assess the potential impact of the five alternatives or to evaluate other proposed actions.

Fish Migration (excerpt from the Department's 2003 comment letter, attachment 3)

The Department continues to be concerned that fish migration issues have not been adequately addressed in the environmental document. The RDEIR fails to address our previous comments regarding the impacts to Steelhead and the evaluation criteria developed for the DEIR continues to be used in the RDEIR. For example, the analysis for fish passage in the lower reach uses a criterion of 25 cfs at the Allsal Road Bridge. It states that this is sufficient flow to pass critical riffles between the dam and the lagoon 92% of the time. Therefore, for suitable access to mainstem and tributary spawning habitat, there must be a sufficient number of days with flow at the Allsal Road Bridge greater than or equal to 25 cfs. The NMFS Biological Opinion states that 25 cfs is a minimum flow for passage (at 8 feet of contiguous wetted channel and ½ foot of depth), but does not provide "water depth and width that produce good migration habitat" (NMFS 2000). Please refer to the Department's 2003 letter for additional comments on evaluation criteria used in the environmental document.

Impacts to Riparian Zones and Southwestern Willow Flycatcher from Downstream Releases

The Department continues to be concerned that impacts to Riparian Zones are not adequately addressed (see attached 2003 comment letter). The RDEIR addresses some of the Department's previous comments on this issue, but the document concludes "...it is not possible to accurately assess the magnitude of the impact of ongoing and future water rights releases...". In addition, the RDEIR fails to analyze the potentially significant impact that the release of "hungry water" will have on the downstream resources, as described above.

Ms. Diane Riddle
September 28, 2007
Page 4 of 5

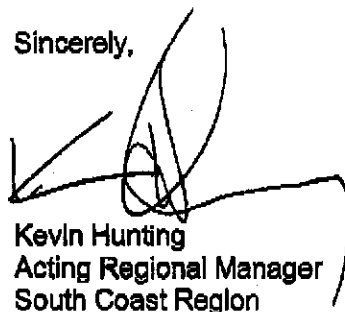
The Department therefore recommends monitoring the effects of releases on southwestern willow flycatcher (SWF) nesting along the Lower Santa Ynez River. This can be accomplished by conducting thorough SWF nest surveys annually and monitoring active nests on a weekly basis to determine impacts from downstream releases, which would include pre- and post-release surveys. Additionally, the Department recommends that a monitoring program be established to evaluate the habitat expansion and/or contraction, and its effects on willow flycatcher. All results should then be provided to an advisory committee consisting of the Department, the U.S. Fish and Wildlife Service, and Mr. Mark Holmgren.

Impacts to Jurisdictional Drainages

The Department requires a Streambed Alteration Agreement (SAA), pursuant to Section 1600 et seq. of the Fish and Game Code, with the applicant prior to any direct or indirect impact to a lake or stream bed, bank or channel or associated riparian resources. The law requires any person, state or local governmental agency, or public utility to notify the Department before beginning an activity that could substantially modify a river, stream, or lake. The project as proposed includes impacts to streambeds within Department jurisdiction. An application for a Lake or Streambed Alteration Agreement (LSAA), under Section 1600 et seq., therefore will be required. You may call our San Diego office at (858) 636-3160 to initiate the 1600 process. You may also obtain a notification package online by visiting the Department's website at <http://www.dfg.ca.gov/1600/1600.html>.

Thank you for this opportunity to provide comment. Questions regarding this letter and further coordination on these issues should be directed to Ms. Mary Larson, Senior Biologist Specialist, at (562) 342-7186 and Mr. Martin Potter, Environmental Scientist, at (805) 640-3677.

Sincerely,



Kevin Hunting
Acting Regional Manager
South Coast Region

References:

MNS Engineers, Inc. 2000. Cachuma Lake Bathymetric Study. Prepared for the Cachuma Operations and Maintenance Board. September 2000.

National Marine Fisheries Service 2000. Biological Opinion issued to the U. S. Bureau of Reclamation for operation and maintenance of the Cachuma Project on the Santa Ynez River in Santa Barbara County, California. Dated September 11, 2000.

Ms. Diane Riddle
September 28, 2007
Page 5 of 5

National Marine Fisheries Service 2007. 2007 Federal Recovery Outline for the Distinct
Population Segment of Southern California Coast Steelhead. September 2007.

Attachments (2)

cc: Ms. Betty Courtney
Department of Fish and Game
Santa Clarita, California

Ms. Mary Larson
Department of Fish and Game
Los Alamitos

Mr. Martin Potter
Department of Fish and Game
Ojai, California

Ms. Natasha Lohmus
Department of Fish and Game
Santa Barbara, California

Ms. Terri Dickerson
Department of Fish and Game
Laguna Niguel, California

Mr. Scott Morgan
State Clearinghouse
Sacramento, California