



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Southwest Region  
501 West Ocean Boulevard, Suite 4200  
Long Beach, California 90802-4213

GK/DKR

DEC 7 2007

In Response, refer to:  
150308SWR2007PR00445

STATE WATER RESOURCES  
CONTROL BOARD  
2007 DEC 11 PM 4:36  
DIV OF WATER RIGHTS  
SACRAMENTO

Ms Diane Riddle  
Division of Water Rights  
State Water Resources Control Board  
P.O. Box 2000  
Sacramento, California 95812-2000

Dear Ms. Riddle:

In a letter dated September 28, 2007, NOAA's National Marine Fisheries Service (NMFS) submitted written comments to the State Water Resources Control Board (SWRCB) on the Revised Draft Environmental Impact Report (RDEIR) which considers modifications to the Bureau of Reclamation's water rights to protect public trust resource values and downstream water rights on the Santa Ynez River below Bradbury Dam (Cachuma Reservoir). We are hereby withdrawing that comment letter because it did not undergo full management review and vetting prior to signature. We apologize for this situation and hope that you will accept our official comments on the RDEIR which follow below even though the comment period has closed.

### NMFS Recovery Planning Efforts

Since the SWRCB's issuance of the 2003 DEIR, NMFS has been actively engaged in steelhead recovery planning efforts in Southern California. NMFS's Southwest Region convened a Technical Recovery Team (TRT) in 2003 which has completed and published a number of Technical Memoranda and reports that are intended to support the development of a recovery plan for the Southern California steelhead distinct population segment (DPS) that includes the population in the Santa Ynez River and which is listed as an endangered species under the Endangered Species Act (ESA). The relevant Technical Memoranda and reports are listed below and were submitted to the SWRCB with our September 28, 2007, letter:

1. Contraction of the Southern Range Limit for Anadromous *Oncorhynchus mykss* (2005);
2. Steelhead of the South-Central/Southern California Coast: Population Characterization for Recovery Planning (2006);
3. Potential Steelhead Over-summering Habitat in the South-Central/Southern California Coast Recovery Domain: Maps Based on the Envelope Method (2006);



4. Viability Criteria for Steelhead of the South-Central and Southern California Coast (2007);
5. Updated Status of federally listed ESUs of West Coast salmon and steelhead (2005);
6. Population Structure and Ancestry of *O. mykiss* Populations in South-Central California Based on Genetic Analysis of Microsatellite Data (2006).

These Technical Memoranda and reports represent new information that should be considered by the SWRCB in finalizing the RDEIR. These documents analyze and present new information regarding the Southern California steelhead DPS, including information relevant to the Santa Ynez River. This information was not available to the SWRCB when the 2003 DEIR was developed and was not considered by the SWRCB in the development of the RDEIR. NMFS received a wide range of public comments on some of these documents, notably the 2007 Viability Criteria Report (#4 above), prior to their publication, and these comments are available upon request from the SWRCB.

It is important to emphasize that even though most of the technical analyses necessary to support the recovery plan development for the Southern California DPS have been completed by the TRT, NMFS has not yet completed a recovery plan for this DPS. Our goal is to develop a recovery plan for this DPS that has broad stakeholder support and that can be implemented to the maximum extent possible on a voluntary basis. We initiated work on the development of a draft recovery plan in 2006 and then more recently held a series of recovery planning outreach workshops in the spring of 2007 to inform the public about the TRT findings and to gather public input on the threats facing steelhead and possible recovery actions that would address those threats. We are actively working now on a detailed threats assessment for each watershed and in some cases sub-watersheds throughout the entire range of the Southern California DPS, including the Santa Ynez River. We currently expect to release a draft recovery plan for the Southern California DPS for public review and comment in 2008. This draft plan will identify recovery goals for the DPS as a whole, as well as identify threats and recovery actions by watershed, including the Santa Ynez River, that we believe will achieve the identified recovery goals and if successfully implemented lead to eventual recovery of the species. We will convene public meetings to gather public input on the draft plan it is released for review and then finalize it in 2008. We will provide the SWRCB with the draft plan during the public review period and a final plan once it is completed.

We think its important the SWRCB be aware of, and utilize, the technical information that is currently available as a result of NMFS' recovery planning process. We also think the final recovery plan for the Southern California DPS will contain valuable information that could be useful to the SWRCB in its decision making. However, we also want to emphasize that it is not our goal to merge our recovery planning effort with the SWRCB's regulatory process for the purposes of implementing the recovery actions contained in the plan. Recovery plans are guidance documents, not regulatory documents, and the implementation of actions identified in such plans are voluntary. NMFS mission is to recover listed species, including the endangered Southern California steelhead DPS, and we intend to work diligently to implement the recovery plan, particularly with Federal agencies who have an obligation under the ESA to support

species recovery, but we do not think it is appropriate to use the water rights decision making process for this purpose.

### **NMFS' Comments on the RDEIR**

1) In addition to the new technical recovery planning documents identified above, NMFS has re-designated critical habitat (see 70 FR 52488, September 2, 2005) for the Southern California steelhead DPS which includes the mainstem and tributaries of the Santa Ynez River below Bradbury Dam. In addition, we reconsidered the status of the Southern California steelhead DPS and reaffirmed its status as an endangered (see 71 FR 834, January 5, 2006) species under the federal Endangered Species Act. The RDEIR should reflect this new information.

2) In previous comments to the SWRCB and during the 2003 water rights hearing for this action, NMFS has recommended that the 3A2 flow regime be further evaluated. We recognize, however, that this flow regime has significant impacts on water supply, and therefore, are not advocating it be analyzed or considered further by the SWRCB at this time. We do, however, continue to support implementation of the flows contained in NMFS' 2000 Biological Opinion (BO) for the Cachuma Project. In this regard, we are supportive of the 2002 Cachuma Project Settlement Agreement which serves to resolve long-standing water rights concerns downstream of Bradbury Dam and ensures implementation of flows contained in the 2000 BO.

NMFS is not taking a position on any of the proposed flow alternatives in the RDEIR; however, we do believe that augmented flows above those contained in the Cachuma Project BO may be necessary to support steelhead recovery in the Santa Ynez River. Unfortunately, we are not in a position at this time to identify the required flows and we do not expect specific flow regimes to be identified in the draft or final recovery plan for the Southern California steelhead DPS. We do think the recovery plan is likely identify the need for additional flows beyond those in the BO and that a strategy for identifying necessary flows will be laid out. As the recovery plan is implemented and flows necessary for steelhead recovery in the Santa Ynez are developed, we will make this information available to the SWRCB.

3) In NMFS' testimony during the 2003 water rights hearing for this action, we recommended that a study be conducted to assess the feasibility of providing fish passage for steelhead at Bradbury Dam. We also made a similar conservation recommendation to the Bureau of Reclamation that such a study be conducted in the 2000 Cachuma Project BO. The RDEIR does not include any analysis of fish passage at Bradbury Dam. NMFS continues to think this analysis should be conducted.

4) The RDEIR incorrectly characterizes the scope of public trust resources on the Santa Ynez River as only including those resources, including endangered steelhead, found in Cachuma Lake and downstream of Bradbury Dam along the Santa Ynez River. As you are aware, the SWRCB hearing officer clarified the scope of the public trust resources that would be addressed during the 2003 Cachuma water rights hearing subsequent to the original hearing notice that was issued in September 2000. Specifically, the SWRCB hearing officer (Peter Silva) advised the parties to the Water Rights Hearing that: "By its terms, the key hearing issue 4b is not limited to public trust resources below Bradbury Dam, or to requirements that apply below Bradbury Dam. Consistent

with the hearing notice, I intend to allow parties to present evidence concerning whether Reclamation's permits should be modified to address any impact of Cachuma Project operations to public trust resources above Bradbury Dam, including evidence concerning requirements that would apply above the dam." (letter from Peter S. Silva, Hearing Officer, to Cachuma Hearing Service list, dated May 29, 2003). In NMFS view, there are public trust resources, including native *O. mykiss*, which occur along the mainstem of the Santa Ynez River and its tributaries above Bradbury Dam that should be considered by the SWRCB in the RDEIR.

5) We have several comments on the Environmental Analysis of Alternatives with respect to Impacts on Southern California Steelhead (pg 4-51) that follow below:

#### Method of Analysis and Scoring

The scoring system proposed in the RDEIR only addresses different flow regimes for fish habitat in the lower Santa Ynez River and in Cachuma Lake. As noted previously, the scope of the public trust issues raised by the Cachuma Project "is not limited to public trust resources below Bradbury Dam, or to requirements that apply below Bradbury Dam." It also includes "any impact of Cachuma Project operations to public trust resources above Bradbury Dam . . ." (letter from Peter S. Silva, Hearing Officer, to Cachuma Hearing Service list, dated May 29, 2003).

#### Impacts on Southern California Steelhead/Rainbow Trout along the River (4.7.2.3)

The RDEIR indicates that spawning of steelhead can occur at locations within the mainstem or in tributaries downstream. However, it does not recognize that the overwhelming majority of the suitable steelhead spawning and rearing habitat within the Santa Ynez River system is within the tributaries to the Santa Ynez River above Bradbury Dam, and that the loss of access (as a result of physical blockage and altered flows) to these tributaries by adult steelhead is the principal reason for the decline and near extirpation of the anadromous runs in the Santa Ynez River (see comments above regarding the scope of the public trust interests in the natural resources of the Santa Ynez River; also enclosed map of distribution of potential spawning and rearing habitat in the Santa Ynez River watershed, and "Contraction of the Southern Range Limit for Anadromous *Oncorhynchus mykiss*" (2005))

#### Method of Analysis and Scoring (pg 4-63)

The RDEIR uses a simple scoring system for flows based upon whether the flows provide more or less habitat. This approach fails to capture the complex role of flows in the creation and maintenance of habitats. Flows have several basic characteristics that are important to the various life-history stages of steelhead; these include magnitude, duration, rate-of-change, and timing. These aspects are not captured in the habitat scores, which "are derived from the average monthly flows calculated using simulated mean daily flows for each alternative." For example, monthly steps do not provide adequate resolution for rearing and spawning habitat conditions in the river because they do not capture the channel-forming processes that are dependent on rate-of-change and duration, as well as magnitude. The result of the simplistic analysis used in the RDEIR is to not capture the full biological significance of the proposed alternative flow regimes. Also, it is problematic to use a scoring system that equates a flow designed to prevent jeopardy (i.e., not

drive the species to extinction) with a flow designed to protect the public trust interest in the steelhead resources of the Santa Ynez River system, particularly under the circumstances where the steelhead population is severely depressed as is the case with the Santa Ynez River population.

#### Fish Migration (pg 4-64)

The RDEIR indicates that steelhead migrate primarily from February through April. The migration of steelhead in the Santa Ynez River, as with all southern California streams, is closely tied to the rainfall and runoff pattern in the watershed. In the Santa Ynez River watershed significant rainfall and runoff extends from December through April, and runs coincide with this period (see also Fukushima and Lesh 1998, California Fish and Game 84(3):133-145, regarding run timing). Additionally, the initiation of anadromous runs is not keyed to the minimum flow required to navigate over critical riffle areas, as presumed in the RDEIR, but rather peak flows which breach the sand bar and create a sustained flow of sufficient duration to allow fish to successfully migrate to their principal spawning and rearing areas. It is therefore problematic to define a passage day as a day with a flow of greater than or equal to 25 cfs at the Alisal Bridge, because it assumes that adult steelhead will actually enter the Santa Ynez River under the lower flows within the flow range specified.

#### Spawning and Rearing Habitat (pg 4-65)

The spawning and rearing habitat in the lower Santa Ynez River (below Bradbury Dam) is strongly influenced by the channel forming processes of variable flows. The RDEIR does not adequately recognize the degree to which the timing, duration, magnitude and rate-of-change in flows below Bradbury Dam create and maintain habitat suitable for spawning and rearing. Specific habitat features such as the size and distribution of sediment and in-channel morphology that are important to spawning and rearing are a function of the character of instream flows. The alternative flow regimes appear to presume that physical instream spawning and rearing habitats are fixed, or will be adequately sustained by the existing highly modified flow regime below Bradbury Dam.

With regard to water temperature, new information indicates steelhead in southern California streams can tolerate warmer water, under certain conditions (e.g., abundant food sources, adequate oxygenation), than previously presumed. Individuals accept an elevated body temperature that exceed temperature preferences and upper heat tolerances reported for the species as a whole, and forage and remain active throughout the day despite elevated temperatures (Spina 2007, Environmental Biology of Fishes 80:23-34).

#### Results - Fish Migration (pg 4-66)

The number of days with fish passage indicated in this analysis presumes fish have been induced to enter the Santa Ynez River system with a minimum flow over critical riffle areas. The assumption is not consistent with steelhead migratory behavior, and therefore over-estimates the relative passage opportunities (benefits) of the various alternative flow regimes, and therefore the

degree to which the alternative protects the public trust resources of the Santa Ynez River system, including listed steelhead. See the comments above regarding the scoring system based upon the assumptions associated with the minimum flow at critical riffles.

Results - Spawning Habitat (pg 4-67)

As noted above, the alternative flow regimes do not take into account the importance of the channel-forming processes associated with variable flow, particularly those flows above the proposed release level, but presume the suitability of the channel morphology is fixed, or can be maintained by the existing highly modified flow regime below Bradbury Dam.

Results - Rearing Habitat (pg 4-68)

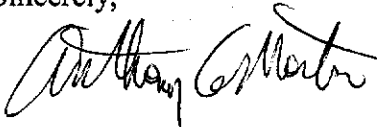
The rearing habitat in the reach between Bradbury Dam and Highway 154 is influenced by a variety of artificial factors such as flow releases, channel-maintenance activities, and land use practices. See comment above regarding Spawning Habitat.

**Other Considerations**

The Cachuma member units and Caltrout have initiated very preliminary discussions about how to address their differences with regard to fish passage and other issues in the Santa Ynez River. NMFS is fully supportive of, and intends to support, these discussions, and is hopeful they will lead to reaching consensus about actions that need to be taken to recovery steelhead in the Santa Ynez River. We recognize the long standing conflicts in the Santa Ynez River and believe that the best way to achieve steelhead recovery in this watershed is for the involved parties to reach consensus on how to proceed. We urge the SWRCB to respect and support these discussions.

NMFS apologizes for the need to withdraw our September 28, 2007, comment letter and respectfully requests that you consider these official comments in finalizing the RDEIR for the Cachuma Project water rights. Should you have any questions regarding these comments, please contact Russ Strach at (916) 930-3621 or Craig Wingert at (562) 980-4021.

Sincerely,

  
~~for~~ Rodney R. McInnis  
Regional Administrator