



January 17, 2007

Victoria A. Whitney, Chief
Division of Water Rights
State Water Resources Control Board
1001 "I" Street
Sacramento, CA 95812

Re: Environmental Impact Report for Consideration of Modifications to the U.S. Bureau of Reclamation's Water Rights Permits 11308 and 11310 (Application 11331 and 11332) To Protect Public Trust Values and Downstream Water Rights on the Santa Ynez River Below Bradbury Dam (Cachuma Reservoir)

Dear Ms. Whitney:

This letter is submitted by the Environmental Defense Center ("EDC") on behalf of our client California Trout ("CalTrout"), 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. EDC and CalTrout have previously submitted comments regarding the State Water Resources Control Board ("SWRCB") *Environmental Impact Report for the proposed Modifications to the U.S. Bureau of Reclamation's Water Rights Permits 11308 and 11310 To Protect Public Trust Values and Downstream Water Rights on the Santa Ynez River Below Bradbury Dam* ("EIR"). EDC and CalTrout are also party to the Hearing to Review the U.S. Bureau of Reclamation Water Rights Permits (Applications 11331 and 11332) – Cachuma Project Phase 2 ("Cachuma Water Rights Hearing" or "Hearing").

For the reasons discussed below, EDC and CalTrout believe that the retention of Stetson Engineers, Inc. and Entrix, Inc. to assist in the preparation of the SWRCB's EIR creates an unacceptable conflict of interest, that the retention of these consultants conflicts with terms of the SWRCB's and U.S. Bureau of Reclamation's October 2004

Supplemental Statement Of Responsibilities For Preparation Of Environmental Impact Report For Possible Modifications Of The Cachuma Project Water Right Permits (Permits 11308 And 11310) To Protect Prior Rights And Public Trust Resources In The Santa Ynez River (“Supplemental SOR”), and that it is therefore improper for these consultants to participate in the preparation of the SWRCB’s EIR.

The SWRCB is the lead agency responsible for the preparation and adequacy of the EIR in these proceedings. In support of this responsibility, the SWRCB has directed the U.S. Bureau of Reclamation to draft the EIR.¹ The U.S. Bureau of Reclamation has, in turn, contracted with the URS Corporation (“URS”) to draft the EIR.² URS has, in turn, retained Stetson Engineers, Inc. (“Stetson”) and Entrix, Inc. (“Entrix”) to draft portions of the EIR.

As you may know, both Stetson and Entrix have been retained by the Cachuma Conservation Release Board and the Santa Ynez River Water Conservation District, Improvement District #1 (“Member Units”) to represent the Member Units during the Cachuma Water Rights Hearing. Mr. Ali Shahroody (a Principal with Stetson) and Ms. Jean Baldrige (a Principal with Entrix) are identified on the Member Units’ Notice of Intent to Appear in the Cachuma Water Rights Hearing and both individuals prepared and presented testimony at the Hearing. URS’s retention of Stetson and Entrix to participate in the preparation of the SWRCB EIR while these consultants are simultaneously representing a party to the Cachuma proceedings raises several significant concerns.

First, Stetson’s and Entrix’s simultaneous retention by URS and the Member Units creates a conflict of interest that puts other parties participating in these proceedings at a disadvantage. Vesting Stetson and Entrix with responsibility for preparing portions of the EIR affords them an unfair opportunity to influence the contents of the EIR so as to advance their other paying clients’ – the Member Units – interest in the EIR and the outcome of the Cachuma Water Rights Hearing. This concern is further heightened where the individuals who prepared and presented testimony for the Member Units during the Cachuma Water Rights Hearings are the same individuals involved with the preparation of the EIR. For example, we are aware that Ms. Baldrige, until recently, was acting as a senior advisor and reviewer on the fishery biology portion of the EIR. SWRCB staff counsel has informed us that Ms. Baldrige has been restricted from any further involvement in the preparation of the EIR, but her involvement to this point has already provided an opportunity for undue influence that may still be reflected in the EIR.

¹ Supplemental SOR at Section B.

² Wong, Noel (August 25, 2004). Letter to Victoria A. Whitney RE: Finalize Draft EIR for Consideration of Modifications to the USBR Water Rights Permits 11308 and 11310 Applications 11331 and 11332 to Protect Public Trust Values and Downstream Water Rights on the Santa Ynez River below Bradbury Dam (Cachuma Reservoir) (Cachuma Project EIR).

Stetson's and Entrix's preparation of the EIR may also provide the Member Units with advance information regarding the contents of the EIR and the SWRCB's deliberative process. This places the other parties to these proceedings at an unfair disadvantage in their ability to comment on the EIR and participate in any additional Hearing proceedings. The 2004 Supplemental SOR prohibits the Bureau's consultants (i.e., URS) from communicating with the Bureau "or any other interested person regarding the analytical or other substantive work performed by the consultants," but does not appear to similarly limit communications of URS's consultants.³

Finally, URS's retention of Stetson and Entrix is in direct conflict with the terms of the 2004 Supplemental SOR. As paid advocates for the Member Units, both Stetson and Entrix have a pecuniary interest in these proceedings. This situation is explicitly prohibited under the terms of the Supplemental SOR, which prevents the Bureau's consultants from employing "any person to assist in the preparation of the [EIR] who has a financial interest in the outcome of the SWRCB's action on Reclamation's permits."⁴ In addition, the terms of the 2004 Supplemental SOR require the Bureau's consultants to "attend and provide expert witness testimony at any public hearings that may be necessary to allow the SWRCB to consider modification of Reclamation's permits."⁵ This may put Stetson and Entrix in the untenable position of testifying on behalf of the SWRCB and on behalf of the Member Units during the same hearing.

For these reasons, we believe it is improper for URS to retain Stetson and Entrix to prepare portions of the SWRCB EIR. We appreciate your consideration of this matter. Please contact me if you have any questions about our concerns.

Sincerely,

/s/
Karen M. Kraus
Staff Attorney

cc: Cachuma Project Hearing Service List

³ Supplemental SOR at ¶ C.6. We have been informed by SWRCB staff counsel that Stetson and Entrix consider themselves bound by this provision of the Supplemental SOR, but have not seen any written statements which would so bind them.

⁴ Supplemental SOR at ¶ C.5.

⁵ Supplemental SOR at ¶ C.3.