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JOHN D. HIGGINBOTHAM
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THERESA E. ANTONUCCI
MELISSA W. WOO
E. SEAN ARTHUR
TRANG T. TRAN
CARMEN MARTINEZ DE OSABA
TRACIE PHAM
JASON C. GLESS

RAYMOND BEST (1 868-1957)
JAMES H. KRIEGER (1 913-1975)
EUGENE BEST (1 693-1981)

3750 UNIVERSITY AVENUE
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502-1028
TELEPHONE (909) 686-1450
TELECOPIERS
(909) 686-3083 682 4612
BBKLAW.COM

OF COUNSEL
CHRISTOPHER L. CARPENTER*
MICHAEL D. HARRIS*
ANNE T. THOMAS*
DONALD F. ZIMMER*
CHRISTINA L. DYER
FRANKLIN C. ADAMS
WILLIAM WOOD MERRILL
D. BRIAN REIDER
KIRK W. SMITH
DINA O. HARRIS
WARREN B. DIVEN

OFFICES IN
INDIAN WELLS (760) 568-2611
ONTARIO (909) 989-8584
SAN DIEGO (619) 525-1300
ORANGE (714) 939-5940

File No. 18613.00000

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January 4, 2001

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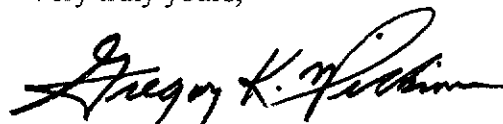
John W. Brown, Hearing
Officer and Board Member
State Water Resources Control Board
c/o Ms. Katherine Mrowka, Senior
Hearing Specialist
Division of Water Rights
1001 I Street, 24th Floor
Sacramento, California 95814

Re: Cachuma Project Hearings -- Application X003139 and Petition
of Westlands Water District for Partial Assignment of
Application 005638 to Appropriate Water from San Joaquin
River Tributary to San Joaquin/Sacramento River Delta

Dear Ms. Mrowka:

Enclosed you will find the Phase I Closing Brief of the Santa Ynez River Water Conservation District, Improvement District No. 1 that we are herewith submitting to the State Board. If you or Mr. Brown have any questions regarding any of the arguments set forth in the brief, please do not hesitate to contact me at your convenience.

Very truly yours,



Gregory K. Wilkinson
of BEST BEST & KRIEGER LLP

GKW/lch/Enclosure

RPUB/GKW/606114

**STATE WATER RESOURCES CONTROL BOARD
OF THE STATE OF CALIFORNIA**

HEARING TO REVIEW UNITED STATES)	PHASE I CLOSING BRIEF OF
BUREAU OF RECLAMATION WATER)	THE SANTA YNEZ RIVER
RIGHT PERMITS 11308 AND 11310 TO)	WATER CONSERVATION
DETERMINE WHETHER ANY)	DISTRICT, IMPROVEMENT
MODIFICATIONS IN PERMIT TERMS)	DISTRICT NO. 1
AND CONDITIONS ARE NECESSARY TO)	
PROTECT PUBLIC TRUST VALUES AND)	November 6, 2000 Hearing
DOWNSTREAM WATER RIGHTS ON THE)	
SANTA YNEZ RIVER BELOW BRADBURY)	
DAM (CACHUMA RESERVOIR) AND TO)	
CONSIDER CHANGE PETITIONS FOR)	
WATER RIGHT PERMITS 11308 AND 11310)	
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Gregory K. Wilkinson, Bar No. 054809
Michelle Ouellette, Bar No. 145191
BEST BEST & KRIEGER LLP
3750 University Avenue
Suite 400
Riverside, California 92501
(909) 686-1450

Attorneys for Santa Ynez River Water Conservation
District, Improvement District No. 1

INTRODUCTION

The Santa Ynez River Water Conservation District, Improvement District No. 1 (hereinafter "I.D. No. 1") was organized and created in 1960. It encompasses an area of approximately 10,850 acres located within the boundaries of the Santa Ynez River Water Conservation District and the watershed of the Santa Ynez River. Testimony of Kate Rees, Member Unit Exhibit 2, p. 86. The purpose of I.D. No. 1, inter alia, is to supply Cachuma Project water for municipal, industrial, commercial and agricultural use. Along with the Carpinteria Valley Water District, Montecito Water District, the City of Santa Barbara and the Goleta Water District, I.D. No. 1 is commonly referred to as one of the Cachuma Project Member Units ("Member Units"). Water Right Permits 11308 and 11310 are held by the Bureau of Reclamation on behalf of the Member Units, including I.D. No. 1. Id., p. 3. Because the Cachuma Project yield comprises approximately one-fourth of the water supply available to I.D. No. 1 (see Testimony of Rees, p. A6), the Improvement District is vitally interested in these hearings, including the Phase I proceedings relating to change of place of use and purpose of use.

The I.D. No. 1 service area includes the unincorporated communities of Santa Ynez, Los Olivos and Ballard as well as the City of Solvang. Since the Improvement District was first formed, annexations to its service area have continued to occur as a result of decisions by the Board of Directors of the Santa Ynez River Water Conservation District ("SYRWCD") – not by I.D. No. 1's Board of Trustees. Testimony of Rees, p. A6. As a result of those decisions, 6,491 acres within the I.D. No. 1 service area currently are outside the existing place of use. Id.

Because I.D. No. 1, like virtually all water districts in California, operates an integrated water supply system, it is not possible for the Improvement District to segregate Cachuma Project water from other supplies provided to consumers. Id., p. 3. Instead, in the absence of a separate delivery system – which would entail unreasonable expense and considerable environmental impact to construct – Cachuma Project water is commingled with other sources of water and distributed throughout the I.D. No. 1 service area.

Granting the change of place of use and purpose of use petitions will not operate to the injury of any legal user of the water involved. In a typically representative year, the demand for water within I.D. No. 1's entire service area is approximately 7,850 acre feet. Of this total, the demand for water within I.D. No. 1's existing place of use is calculated to be 3,033 acre feet. Testimony of Rees, p. B-4. By comparison, I.D. No. 1's Cachuma Project entitlement is 2,651 acre feet. Id. In short, the Improvement District's entire Cachuma Project entitlement is capable of being used within the existing place of use – and would be so used since it is the least expensive source of supply available within the District. Accordingly, as testified to by witnesses from both the Bureau of Reclamation and the Member Units, granting the pending petitions to change the purpose and place of use of use of Cachuma Project water will result in no change in Cachuma Project operations, including diversions to storage or downstream releases. Testimony of Rees, p. 1; Testimony of Gale Heffler-Scott, DOI Exh. 2, pp. 3, 16. Stated differently, granting the pending petitions will not operate to the injury of any legal user of the water involved.

Further, for the reasons testified to by Michael Jackson for the Bureau of Reclamation and by Jean Baldrige, Charles Evans and William Mills for the Member Units, the Bureau has already substantially complied with Order WR94-5. Accordingly, no enforcement or other action should be taken by the State Board with regard to the Bureau. Indeed, no party to the Phase I hearing urged that any should enforcement or other action be taken.

**THE PETITIONS FOR CHANGE OF PLACE OF USE
AND PURPOSE OF USE OF CACHUMA PROJECT
WATER SHOULD BE GRANTED**

The State Board's Notice of Public Hearing issued September 25, 2000 identified two "Key Issues" for consideration as part of Phase I. The first of these key issues follows from the language of Section 1702 of the California Water Code¹ and asks the following:

"Would approval of the petitions for change in purpose and place of use result in any changes in Cachuma Project operations and flows in the Santa Ynez River, compared to the operations and flows that would exist if water from the Project were delivered only to areas within the current place of use?" (Notice of Public Hearing, p. 4)

For the purpose of responding to Key Issue No. 1, only two parties to the Phase I hearing offered evidence as part of a case in chief – the Bureau of Reclamation and the Member

¹ Water Code Section 1702 provides:

"Before permission to make such a change is granted the petitioner shall establish, to the satisfaction of the board, and it shall find, that the change will not operate to the injury of any legal user of the water involved."

Units. According to the expert witnesses produced by both parties, granting the petitions for change in purpose and place of use will not result in any change in Cachuma Project operations or in flows in the Santa Ynez River. Testimony of Heffler-Scott, DOI Exh. 2, pp. 3, 16; Testimony of Rees, p. 1-2, 6, 8. Ms. Rees' conclusion in this regard was reached as a result of a detailed analysis that compared the Project's operational yield of 25,714 acre feet per year with the current demands of Member Unit consumers, both within and without the existing place of use. See Member Unit Exhibit 2, Appendix B. For each and every one of the Member Units, including I.D. No. 1, Ms. Rees demonstrated that demand within the existing place of use authorized by the State Board far exceeds each Member Unit's share of the Cachuma Project's operational yield.

For example, in 1999, total demand in the aggregate water service areas of all of the Member Units was 40,656 acre feet. Member Unit Exhibit 2, p. 8. Of this aggregate figure, total demand within the existing, authorized place of use was calculated to be 33,229 acre feet for all Member Units. Id. Thus, not only can all of the Cachuma Project operational yield of 25,714 acre feet be used within the existing authorized place of use of the Member Units, but an additional 7,515 acre feet of water is required to satisfy demand within the existing place of use. Id. In order to meet "total demand," including the demand of consumers within the Member Units' service areas located outside the existing authorized place of use, an additional 7,427 acre feet of water is required. Id.

The conclusion to be drawn from these calculations – and the conclusion reached by the expert witnesses for both the Bureau and the Member Units – is straightforward: all of the

Cachuma Project operational yield is capable of being used to meet total demand within the existing, authorized place of use. Moreover, if the existing place of use is not changed, Cachuma Project water will be used to meet demand since it is the least expensive source of supply available to the Member Units. Consequently, changing the place and purpose of use, as sought by the pending petitions, will not result in any change in storage or downstream releases since Cachuma Project water supplies would, in any event, be committed to meeting demands within the current place of use.

On the other hand, denying the pending petitions for change of the purpose and place of use will have substantial adverse economic and environmental effects within the Member Units. Like most water districts in California, the Member Units operate distribution systems in which water supplies are commingled: they have not constructed separate delivery systems for their other sources of supply or for their annexed lands. Testimony of Rees, p. 3. Nor do they believe that the construction of such separate systems would be reasonable or even feasible. Nevertheless, if the pending petitions are denied, the construction of separate water delivery systems would be virtually compelled since Cachuma Project water could not be delivered to those parts of the Member Unit service areas that lie outside the currently existing, authorized place of use. In such circumstances, the economic, social and environmental impacts would be enormous; conversely, the benefits would be nonexistent. While the construction of separate water supply systems to limit the delivery of Cachuma Project water to the currently existing place of use would be extremely expensive and would consist of a series of major infrastructure construction projects with their attendant social and environmental affects, such construction

would not result in any change in Cachuma Project operations, any increase in downstream flows, or any benefit to any other legal user of water.

**THE BUREAU OF RECLAMATION HAS COMPLIED
WITH THE REQUIREMENTS OF ORDER WR 94-5**

The second "Key Issue" noticed by the State Board for Phase I asked the following:

"Has Reclamation complied with Order WR 94-5? If not, what enforcement or other action, if any, should the SWRCB take?"

In this regard, Order WR 94-5 required the Bureau of Reclamation to submit several items to the Board staff prior to the onset of a consolidated hearing to consider outstanding actions within the Santa Ynez River watershed. Pursuant to paragraph 3 of Order WR 94-5, the following items were to be submitted:

- The final contract renewal EIS/EIR
- The reports or data compilations resulting from fishery related memoranda of understanding, including any extensions thereof,
- A report on the riparian vegetation monitoring program in and along the margins of the Santa Ynez River below Bradbury Dam;
- Information developed and conclusions reached, if any, during the negotiations among the Cachuma Member Units and the City of Lompoc; and
- A study report, or compilation of other existing materials, that clearly describes the

impacts, or lack thereof, of the Cachuma Project on downstream diverters as compared to conditions that would have existed in the absence of the Cachuma Project.

During the course of the Phase I hearing, testimony on Key Issue No. 2 was provided by Michael Jackson for the Bureau of Reclamation and by Jean Baldrige, Charles Evans and William Mills for the Member Units. No contrary testimony was offered by any other party; indeed, only minimal cross-examination was undertaken with respect to any of the witnesses who testified with respect to Key Issue No. 2.

In all cases, the testimony of the witnesses was that substantial compliance has occurred with respect to each of the items identified in Order WR 94-5. Mr. Jackson, for example, testified regarding preparation of the final contract renewal EIS/EIR which was produced to the Board in December, 1995. Testimony of Jackson, SWRCB Exh. 5, p. 9. In addition, Mr. Jackson testified regarding work on the riparian vegetation monitoring program undertaken by the Bureau. The vegetation report was produced at the hearing, as SWRCB staff Exhibit 8. Further, Mr. Jackson's testimony described the extensive consultation undertaken by the Bureau with the National Marine Fisheries Service ("NMFS") regarding the effect of Cachuma Project operations on the steelhead. Testimony of Jackson, p. 7. In connection with that testimony, the Biological Opinion issued by NMFS with respect to Cachuma Project operations on October 1, 2000 was produced as SWRCB Staff Exhibit 11.

Continuing the direction of Mr. Jackson's testimony, Dr. Baldrige testified, at length, regarding the extensive, community-based process undertaken by the Member Units for the purpose of complying with Section 3(b) of Order WR 94-5. See Member Unit Exhibit 10. As explained by Dr. Baldrige, the Member Units developed a series of Memoranda of Understanding for the purpose of organizing a program of investigations to develop an understanding of the hydrology, water temperature regime and fishery resources in the Lower Santa Ynez River. Id., pp. 2-3. In addition, the Member Units annually committed several thousand acre feet of Cachuma Project yield every year for the past 8 years, for the purpose of implementing the investigations outlined in their Memoranda of Understanding. These investigations were implemented through extensive field studies undertaken by expert biologists and produced a vastly enhanced understanding of the River's dynamics including its hydrology, its temperature regimes, fish distribution and abundance, habitat characteristics and operational effects. Id., p. 3. The very large quantity of data collected through these field investigations was subsequently synthesized by the Member Units in June 1997 in a report (the "Synthesis Report", Member Unit Exhibit 34) which formed the technical basis for the development of a Fishery Management Plan for the Santa Ynez River (Member Unit Exhibit 35). That plan was also the result of an extended public outreach effort undertaken by the Member Units and was finalized in early October 2000. Along with NMFS' Biological Opinion on Cachuma Project operations, the Fishery Management Plan forms the basis of efforts to now move forward for the purpose of protecting instream resources in the Santa Ynez River.

Mr. Charles Evans then testified regarding compliance with the provisions of paragraph 3(d) of Order WR 94-5 relating to negotiations between the Member Units and the City of Lompoc. In considerable detail, and without contradiction, Mr. Evans described several phases of discussions that have occurred between the Member Units and the City of Lompoc regarding Cachuma Project operations. Member Unit Exhibits 50, 80. According to his testimony, discussions with the City of Lompoc have covered a great deal of ground in the years following issuance of Order WR 94-5 and have resulted in considerable refinement of the differences between the parties. As he also testified, discussions between the Member Units and the City of Lompoc are ongoing. Member Unit Exhibit 80, p. 6. While differences between the Member Units and the City have not been finally resolved, Mr. Evans noted that, in a letter signed by all participants to the discussions, the State Board was asked not to schedule substantive or controversial issues in Phase I of the Cachuma Project hearings until the completion of the EIR because the parties believe they are close to reaching an agreement. Id.

Finally, Bill Mills testified regarding compliance with paragraph 3(e) of Order WR 94-5. See Member Unit Exhibit 90. More specifically, Mr. Mills provided a progress report on efforts to refine the technical tools necessary to reach a definitive conclusion about the effects of the Cachuma Project on downstream diverters. As he noted, substantial work has been performed – and is still underway in connection with the EIR being prepared by the State Board – that relates to the subject of Project impacts. This work, he also noted, will be completed prior to the onset of Phase II of the hearings and will be described, with accompanying conclusions, in the Environmental Impact Report that is now underway. See Exhibit 90, p. 2. In short, as Mr. Mills

concluded, substantial work has been performed in satisfaction of Section 3(e) of Order WR 94-5 and such work is continuing as part of the EIR process. Id.

Notably, none of the foregoing testimony was contradicted by the testimony of a witness offered by any other party. Indeed, no other party presented a case in chief. Further, none of the foregoing testimony was subjected to any substantial cross-examination. Inasmuch as the testimony of Messrs. Jackson, Evans and Mills and Ms. Baldrige uniformly supports a conclusion of substantial compliance with the conditions of Order WR 94-5, it is respectfully submitted that no enforcement or other action should be taken by the State Board with respect to the permittee. Indeed, no other party to the Phase I hearing proposed such enforcement.

CONCLUSION

The Phase I hearing that occurred on November 6, 2000 was notable for its lack of controversy. Simply put, no party seriously contended that approval of the petitions for change of purpose and place of use will result in any adverse change in Cachuma Project operations or flows in the Santa Ynez River. Further, no party contended that Reclamation has failed to comply with Order WR 94-5. To the contrary, the only parties presenting a case in chief during the Phase I hearing produced substantial testimony from a variety of witnesses which demonstrated: (1) that approval of the petitions for change in purpose and place of use will not result in any change in Cachuma Project operations or flows in the Santa Ynez River; and (2) that the Bureau has substantially complied, in all respects, with the provisions of Order WR 94-5. In light of the record established during Phase I, Improvement District No. 1 respectfully submits that the State

Board should approve the petitions for change in purpose and place of use. The Improvement District also respectfully submits that no enforcement or other action should be taken by the State Board against the Bureau of Reclamation.

DATED: January 4, 2001

Respectfully submitted,

BEST BEST & KRIEGER LLP

By: 
Gregory K. Wilkinson

Attorneys for the Santa Ynez River Water
Conservation District, Improvement District No. 1

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

I am a citizen of the United States and a resident of the County of Riverside; I am over the age of 18 years and am not a party to the within entitled action; my business address is Best Best & Krieger LLP, 3750 University Avenue, Suite 400, Riverside, California 92501.

I am readily familiar with Best Best & Krieger LLP's practice for collecting and processing documents for mailing with the United States Postal Service. Under that practice, all documents are deposited with the United States Postal Service the same day they are collected and processed in the ordinary course of business.

On January 4, 2001 I served the within: PHASE I CLOSING BRIEF OF THE SANTA YNEZ RIVER WATER CONSERVATION DISTRICT, IMPROVEMENT DISTRICT NO. 1 by placing a copy of the document in a separate sealed envelope for each addressee named below and addressed to each such addressee as follows:

SEE ATTACHED SERVICE LIST

On January 4, 2001, at the offices of Best Best & Krieger LLP, 3750 University Avenue, Suite 400, Riverside, California, I sealed and placed each envelope for collection and deposit by Best Best & Krieger LLP in the United States Postal Service, following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct and that this Proof of Service by Mail is executed on this 4th day of January, 2001 at Riverside, California.



Linda Hutton

CACHUMA PROJECT HEARING

SERVICE LIST

CACHUMA CONSERVATION RELEASE BOARD

Arthur G. Kidman
McCormick, Kidman & Behrens, LLP
695 Town Center Drive, Suite 400
Costa Mesa, CA 92626

CITY OF SOLVANG

Christopher L. Campbell
Baker, Manock & Jensen
5260 N. Palm Avenue, Suite 421
Fresno, CA 93704

U.S. BUREAU OF RECLAMATION

Kaylee Allen
2800 Cottage Way, Room E-1
Sacramento, CA 95825

DEPARTMENT OF WATER RESOURCES

David Sandino
1416 Ninth Street, Room 1118
P. O. Box 942836
Sacramento, CA 94236-0001

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

Robert J. Baiocchi
P. O. Box 1790
Graeagle, CA 96103

CITY OF LOMPOC

Sandra K. Dunn
Somach, Simmons & Dunn
400 Capitol Mall, Suite 1900
Sacramento, CA 95814

CITY OF LOMPOC

Donald B. Mooney

Law Offices of Donald B. Mooney

129 C Street, Suite 2

Davis, CA 95616

SANTA YNEZ RIVER WATER CONSERVATION DISTRICT

Ernest A. Conant

Law Offices of Young Wooldridge

1800 - 30th Street, Fourth Floor

Bakersfield, CA 93301