

December 8, 2016



VIA ELECTRONIC MAIL ONLY

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

Re: COMMENT LETTER – Cachuma Project Draft Order

Dear Ms. Townsend:

This firm represents the City of Lompoc (Lompoc) in the above-referenced proceedings. Lompoc appreciates the extension granted on the time to submit these comments, and used that time to carefully review and, with assistance from Lompoc's consultants, evaluate the Draft Order. Following are Lompoc's comments on the Draft Order.

A. Alternative 3C Remains the Preferred Alternative

Lompoc is disappointed the State Water Resources Control Board (Water Board) chose Alternative 5C instead of 3C. As the Water Board is aware, Lompoc and most of the parties to this proceeding spent many years negotiating the Settlement Agreement that is the basis for Alternative 3C. Significant technical work went into the Settlement Agreement and Alternative 3C. The parties to the Settlement Agreement have, in key regards, diametrically opposed interests in when/how much water is released from Cachuma Reservoir. Yet, those parties were able to negotiate a complicated Settlement Agreement that involved compromises made for the sake of peace and ongoing cooperation. Those compromises and the terms of the Settlement Agreement were made on the foundation of solid technical work that allowed all parties to understand the consequences of their decision.

In contrast, the multiple iterations of the Water Board's environmental review in support of the Draft Order have failed to analyze the water rights/quality impacts associated with Alternative 5C. Lompoc joins the Santa Ynez River Water Conservation District (SYRWCD) in emphasizing the critical importance of the "ANA" and "BNA" water credits. Those credits (BNA) are intended to honor Lompoc's senior water rights, and are crucial to meeting Lompoc's municipal water demand. The Water Board has simply failed to document and explain how 5C comports with the key water right terms of the Settlement Agreement, to the detriment of Lompoc and all parties in this matter.

The Settlement Agreement did and does offer the best opportunity to avoid a costly and protracted adjudication of regional water rights. It would be truly disappointing to have the Settlement Agreement unravel because the Water Board chose 5C over 3C – especially in light of the significant uncertainties described in the administrative record regarding the unknown benefits (if any) of the 5C water releases on fish.

B. The Administrative Record Lacks Credible Evidence That the 5C Fish Releases Will Actually Confer the Intended Benefits

Various parties, including Lompoc, have submitted comments on the Water Board's lack of analysis demonstrating benefits to fish species of interest from increased Cachuma releases. Lompoc does not intend to repeat those arguments, except to say that the Draft Order presents nothing new to support the claim that 5C fish releases will actually benefit steelhead or other species of concern. In fact, the Draft Order even states that the administrative record is incomplete and “does not allow the Board to make a final determination regarding the measures necessary to fully protect the steelhead” (Draft Order, p. 81.) Under these circumstances, it is inappropriate for the Water Board to adopt the increased fish flow regime of Alternative 5C.

C. Lompoc, and the Other Parties With Water Rights/Quality Interests, Must Be Allowed to Participate in the Follow-Up Studies

The Draft Order provides that the Cachuma release regime may change in the future based on a series of studies mandated in Ordering Paragraph 11. (Draft Order, pp. 120-124.) The Draft Order directs the Bureau of Reclamation to carry out those studies, but does not explicitly allow for participation in the study design or implementation by any of the other parties to these proceedings. Again, these studies are intended to inform potential changes in the Cachuma release regime and impact *all parties* with water rights/quality interests in Cachuma releases. **Lompoc requests the Water Board amend the Draft Order to allow active participation by Lompoc, and the other parties with demonstrated water right/quality interests in Cachuma releases, in the design and implementation of these studies – including and in particular any study to the adjustment of accounting methodologies for the ANA or BNA.**

Lompoc has been an active participant in the Adaptive Management Committee (AMC), which works on Santa Ynez River fisheries issues. For many years, Lompoc has funded the work of fisheries biologist Paul Bratovich so that he may participate in the AMC. Then, as now, the reason that Lompoc has participated in the AMC is because of the potential for fisheries issues to impact the water supply/quality of recharge to the groundwater basin that is the sole source of Lompoc's municipal water supply. To the extent that the studies contemplated in the Draft Order may be used to alter the Cachuma release rules, Lompoc has a valid interest in participating in those studies. From a practical perspective, Lompoc's participation should result in study parameters and methods that are acceptable to Lompoc, and reduce the potential for future conflict over study outcomes.

D. Undisputed Evidence in the Administrative Record Demonstrates That Potential Use of Table 2 Flows to Satisfy Downstream Water Rights Has Been Proven Unworkable and Should Not Be Studied Further

Lompoc joins in the comments of the SYRWCD on this topic. The concept of Table 2 Flows satisfying downstream water rights has been squarely refuted by expert testimony. The necessity of the ANA and BNA accounts to satisfy senior downstream water rights has been thoroughly established and is a foundational element of the Settlement Agreement. Lompoc will initiate all proceedings necessary to protect its water rights if there is an attempt to eliminate, or otherwise inappropriately alter, the ANA/BNA and rely on Table 2 flows to satisfy Lompoc's senior water rights.

E. The Draft Order Should Be Amended to Require Further Process In the Event That Table 2 Flows are Deemed Detrimental to Fish

Ordering Paragraph 9 improperly delegates to the CDFW or NMFS the right to temporarily reduce or stop Cachuma releases, if deemed necessary to protect fish. (Draft Order, pp. 117-119.) This is totally unacceptable without involvement of all parties with water rights/quality interests in Cachuma releases. Any change in the releases set forth in Table 2, or anywhere else in the various permits and orders that govern Cachuma releases, should be considered in an open process, with information detailing the reasons for the change and an opportunity for the other parties to respond.

To be clear, Cachuma water right releases – not fish releases - provide the primary source of recharge to the groundwater basin that is the sole source of water supply for Lompoc. Any change in the release regimen, however, should be subject to a transparent process that involves all stakeholders. While Lompoc is sympathetic to the sixteen steelhead that reside the Santa Ynez River, it is totally inappropriate to delegate the authority to cease Cachuma releases without any further process or requirement to demonstrate the need to do so. Through the Settlement Agreement, Lompoc has already offered significant compromises to the Cachuma Project Member Units for the benefit of both their Cachuma water supply and steelhead. Lompoc will not acquiesce to deviations from the agreed-upon release rules if they result in detrimental impacts to the water supply/quality of the Lompoc Plain groundwater basin.

F. Article X, Section 2 of the California Constitution Limits the Water Board's Ever-Increasing Instream Flow Dedications to the Sixteen Remaining Steelhead

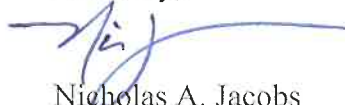
Article X, section 2 of the California Constitution is usually cited in support of arguments to limit otherwise beneficial uses of water. Along with language imposing a duty of reasonableness of use for California's waters, Article X, section 2 also provides, "that the water resources of the State be put to beneficial use to the fullest extent of which they are capable" It appears that the Water Board's ever-increasing efforts to re-allocate water resources from the human uses associated with the Cachuma Project to the sixteen remaining

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steelhead may be in conflict with the constitutional duty to make beneficial use of California's waters "to the fullest extent."

In conclusion, Lompoc respectfully requests that the Water Board reconsider the decision to adopt Alternative 5C instead of 3C. Further, Lompoc urges the Water Board to disallow changes in Table 2 releases without additional process and participation by all parties with water rights/quality interests in Cachuma releases. Finally, the Draft Order should be amended to allow Lompoc, and the other parties with water rights/quality interests in Cachuma releases, to actively participate in the design and implementation of any studies that may result in material changes to the Cachuma release rules.

Sincerely,

A handwritten signature in blue ink, appearing to read 'N. Jacobs', with a long horizontal flourish extending to the right.

Nicholas A. Jacobs
Attorney

cc: Cachuma Project service list
NAJ:cer