



environmental
DEFENSE CENTER

October 4, 2010

Mr. Charles L. Lindsay, Chief
Hearings Unit
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

RE: New Information Identified By NMFS For Environmental Impact Report and Hearing to Review 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 in the Santa Ynez River (Cachuma Project)

Dear Mr. Lindsay:

This letter is submitted by the Environmental Defense Center ("EDC") on behalf of our client California Trout, Inc. ("CalTrout"), a party in 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").

We have reviewed the September 21, 2010 letter submitted to the State Water Resources Control Board ("Board" or "SWRCB") by NOAA's National Marine Fisheries Service ("NMFS"). In this letter, NMFS identifies significant new information related to Cachuma Project effects on southern California steelhead (*O. mykiss*). We agree with NMFS that the Board should postpone finalizing the Environmental Impact Report ("EIR") so that it can consider this important information in the EIR and in its ultimate public trust decision for the Santa Ynez River.

The Cachuma Conservation Release Board and the Santa Ynez River Water Conservation District, Improvement District No. 1 (collectively known as "Cachuma Member Units") have asserted that NMFS' request should be rejected, but their reasoning has no legal foundation and is otherwise misguided. The Cachuma Member Units have

not identified any CEQA authority that prevents the Board from adjusting its proposed EIR schedule to consider new information related to the Cachuma Project's effects on *O. mykiss*. In fact, CEQA provides ample authority for the Board to consider and incorporate new information into the EIR.¹

In addition, while we understand and share the Cachuma Member Units' frustration with a delay in the release of a final EIR, since we now find ourselves at the point where this important information is and will be available to inform the Board's final decision, we believe it is worth waiting the extra time. Delay has been a longstanding problem in these proceedings, but NMFS is not the reason that the parties are still waiting – seven years after submission of evidence to the Board – for a final EIR and a final decision regarding the water rights permits. In this respect, it is interesting that the Cachuma Member Units have accused NMFS of trying to delay these proceedings, when it was their own action that halted and delayed finalization of the EIR three years ago.²

The fact of the matter is that NMFS has identified new information not included in the 2007 Revised Draft EIR that is relevant to the matter under review by the Board, and that likely affects the adequacy of the analysis in the EIR. As NMFS notes in its September 21, 2010 letter,

In particular, the recovery plan identifies a recovery strategy (based on scientific information developed by NMFS' Technical Recovery Team) and essential recovery actions, ***including actions pertaining to Bradbury Dam*** that are necessary to recovery this endangered species. Because the recovery plan presents information that could be considered substantial evidence under Public Resources Code §21080 that was not available when the draft EIR was circulated in 2007, ***the final EIR is not expected to appropriately consider and characterize the effects of the Cachuma Project water releases on Southern California steelhead.***³

NMFS also points out that the reinitiated consultation under Section 7 of the Endangered Species Act

will result in a new biological opinion on the ***effects of the operation and maintenance of the Cachuma Project on Southern California steelhead and designated critical habitat for this species.*** The new biological opinion will consider the appropriateness of existing ***and proposed water releases from the Cachuma Project*** for supporting the life history and

¹ See Pub. Res. Code § 21092.1 and CEQA Guidelines § 15088.5 (discussing recirculation of EIR prior to certification when significant new information is added).

² See attached Dec. 14, 2007 letter from Jane Farwell (SWRCB) to Michael Jackson (BOR) with enclosed letter from Ms. Kate Rees stating Cachuma Member Units' refusal to finance any further work on SWRCB's EIR.

³ September 21, 2010 letter from Rodney R. McInnis (NMFS) to Charles L. Lindsay (SWRCB). Emphasis added.

habitat requirements of Southern California steelhead in the Santa Ynez River.”⁴

We therefore urge you to take the additional time to incorporate NMFS’ recovery plan, as well as new information that arises from the pending biological opinion, into the EIR to ensure that it adequately considers the potential environmental effects of the Cachuma Project. Without this information, the EIR may fail to meet CEQA requirements for ensuring adequate disclosure of potential environmental effects of a proposed project. (See, e.g., Pub. Res. Code §21001: it is State policy to “prevent the elimination of fish or wildlife species due to man’s activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history;” see also CEQA Guidelines §15003(d): “The EIR is to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.”; CEQA Guidelines §15021 (a)(1): “In regulating public or private activities, agencies are required to give major consideration to preventing environmental damage.”)

In conclusion, the Board should withhold a final EIR until new information from NMFS regarding the recovery plan and biological opinion can be considered and incorporated into the document. Thank you for your consideration.

Sincerely,



Karen M. Kraus
Staff Attorney

Attachment

cc: Cachuma Project Hearing Service List (6/8/10)

⁴ *Id.* Emphasis added.



State Water Resources Control Board

SURNAME



Division of Water Rights

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Arnold Schwarzenegger
Governor

Linda S. Adams
Secretary for
Environmental Protection

DEC 14 2007

VIA MAIL AND EMAIL

Michael Paul Jackson, P.E.
Area Manager
United States Bureau of Reclamation
South Central California Area Office
1243 N Street
Fresno, California 93721-1813

MPJACKSON@mp.usbr.gov

Dear Mr. Jackson:

CACHUMA PROJECT FINAL ENVIRONMENTAL IMPACT REPORT: CHARGES FOR ADDITIONAL WORK

The Division of Water Rights (Division) has been provided with a copy of Cachuma Conservation Release Board's (CCRB) November 11, 2007 letter (enclosed) to Mr. David Fee, URS Corporation (URS), regarding CCRB's refusal to pay for any additional work associated with the completion of the Cachuma Project final environmental impact report (FEIR). URS has provided the enclosed spreadsheet breakdown of cost for the completion of work related to the FEIR.

In accordance with the provisions of the executed Supplemental Statement of Responsibilities (SSOR) between the United States Bureau of Reclamation (USBR) and the Division, this response is being sent to inform you that the additional work specified in the enclosed cost breakdown spreadsheet is required to complete the FEIR. The Division requests that USBR take appropriate measures to determine whether the work requested or the costs being charged for work performed by the consultants are reasonable and necessary.

Please advise the Division of the outcome of USBR's determination, so that staff can determine whether action should be initiated pursuant to the "Conflict Resolution" section of the SSOR.

Sincerely,

Jane Farwell
Environmental Scientist

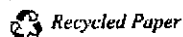
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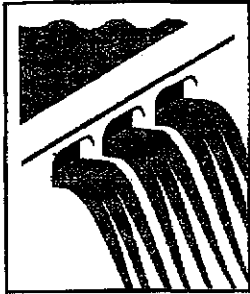
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California Environmental Protection Agency

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CACHUMA
CONSERVATION
RELEASE BOARD

Carpinteria Valley
Water District

City of Santa Barbara

Goleta Water District

Montecito Water District

November 11, 2007

David Fee
URS
1333 Broadway, Suite 800
Oakland, CA 94612

RE: State Water Resources Control Board's EIR on Cachuma Operations

Dear Mr. Fee:

Thank you for forwarding your revised scope of work and cost estimate for completion of a Final EIR for Cachuma Operations on behalf of the State Water Resources Control Board (State Board). This information has been presented to both the Cachuma Conservation Release Board (CCRB) Board of Directors and the Santa Ynez River Water Conservation District, ID No. 1 Board of Trustees, who jointly have paid all costs for preparation of the 2003 DEIR and 2007 DEIR. However, I must inform you that both Boards have declined to finance any further work on this document.

Your August 2004 Contract with CCRB was initially \$21,995. That contractual amount was subsequently increased to \$113,400 in January 2005 and again in February 2006 to \$254,000 based on additional analyses and revisions of the DEIR requested by State Board staff. These increases were approved by the CCRB Board of Directors. As of your August 24, 2007 invoice, which we have paid, you are currently approximately \$5,704 over budget, thus exceeding your contracted authorized amount. Prior to entering into the August 2004 agreement with CCRB, the Cachuma Operation and Maintenance Board contracted with URS in July 1999 for \$300,000 to prepare the EIR, so the Cachuma Member Units have paid approximately \$560,000 to date for an EIR that is, in our opinion, grossly flawed and far from a final EIR.

Given the nature and volume of the comments submitted on the revised 2007 DEIR, the CCRB and ID No. 1 Boards are of the opinion that your estimate of \$123,200 to produce a Final EIR is most likely unrealistic, and that the eventual total cost and amount of time involved to complete this document have been, and continue to be, wholly unreasonable. They further believe that if the State Board wishes to issue a Final EIR on Cachuma Project operations, it must pay for any additional work on the document itself. Consequently, CCRB will not make any

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November 11, 2007

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additional payments to URS, or authorize any additional Work Orders for completion of the Final EIR.

Thank you for keeping me apprised of the continual scheduling delays and additional work requests by State Board staff throughout this process.

Sincerely,



Kate Rees
Manager

cc: Chris Dahlstrom, Santa Ynez River Water Conservation District, ID No. 1
Gregory Wilkinson, Best, Best & Krieger
Tom Howard, State Water Resources Control Board
Victoria Whitney, State Water Resources Control Board
Michael Jackson, U.S. Bureau of Reclamation

Cachuma Total Cost Estimate

Task	D. Fee	J. Jones	T. Baity	R. Laird	Tech Editor	Clerical	URS Total Labor Hours	URS Labor Subtotal	URS ODC's	Entrix	Steson	Total Cost
	\$150.00	\$85.00	\$180.00	\$90.00	\$75.00	\$65.00						
Task 2: Response to Comments	48	96	24	16	24	30	250	\$24,870	\$200	\$23,050	\$43,750	\$91,870
Task 3: Final EIR	24	48	8	8	40	24	152	\$14,400	\$4,800	\$0	\$0	\$19,200
Task 4: Public Hearing	8	0	8	0	0	0	16	\$2,640	\$200	\$0	\$0	\$2,840
Task 5: Project Management	48	0	8	0	0	6	62	\$9,030	\$200	\$0	\$0	\$9,230
SUBTOTAL	128	144	48	24	64	60	480	\$50,940	\$5,400	\$23,050	\$43,750	\$123,140

**Cachuma Project Hearing
Phase-2 Hearing
Final Service List
(updated 06/08/2010)**

(Based on 01/05/2004 list, updated 07/26/2007)

The parties whose E-mail addresses are listed below agreed to accept electronic service, pursuant to the rules specified in the hearing notice.)	
<p>Cachuma Conservation Release Board Mr. Gregory K. Wilkinson Best, Best & Krieger, LLP 3750 University Avenue, Suite 400 Riverside, CA 92501 gkwilkinson@bbklaw.com</p>	<p>City of Solvang Mr. Christopher L. Campbell Baker, Manock & Jensen 5260 N. Palm Avenue, Suite 421 Fresno, CA 93704 clc@bmi-law.com</p>
<p>Santa Ynez River Water Conservation District, Improvement District No. 1 Mr. Gregory K. Wilkinson Best, Best & Krieger, LLP 3750 University Avenue, Suite 400 Riverside, CA 92501 gkwilkinson@bbklaw.com</p>	<p>(updated 06/8/2010) City of Lompoc Ms. Sandra K. Dunn Somach, Simmons & Dunn 500 Capitol Mall Suite 1000 Sacramento, CA 95814 sdunn@somachlaw.com</p>
<p>Santa Ynez River Water Conservation District Mr. Ernest A. Conant Law Offices of Young Wooldridge 1800 – 30th Street, Fourth Floor Bakersfield, CA 93301 econant@youngwooldridge.com</p>	<p>California Trout, Inc. c/o Ms. Karen Kraus Environmental Defense Center 906 Garden Street Santa Barbara, CA 93101 kkraus@edcnet.org</p>
The parties listed below DID NOT agree to accept electronic service, pursuant to the rules specified in the hearing notice.)	
<p>U.S. Bureau of Reclamation Ms. Amy Aufdemberg 2800 Cottage Way, Room E-1712 Sacramento, CA 95825 Fax: (916) 978-5694 AMY.AUFDEMBERGE@sol.doi.gov</p>	<p>Santa Barbara County Parks Ms. Terri Maus-Nisich Director of Parks 610 Mission Canyon Road Santa Barbara, CA 93105 tmaus@co.santa-barbara.ca.us</p>
<p>Christopher Keifer NOAA Office of General Counsel Southwest Region 501 West Ocean Blvd., Ste 4470 Long Beach, CA 90802-4213 Christopher.Keifer@noaa.gov</p>	<p>Department of Fish and Game Office of General Counsel Nancee Murray 1416 Ninth Street, 12th Floor Sacramento, CA 95814 Nmurray@dfg.ca.gov</p>