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VIA EMAIL AND U.S. MAIL

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

Re: Comments on the Draft Environmental Impact Report Prepared in Connection with Consideration of Modifications to the U.S. Bureau of Reclamation's 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) (SCH#1999051051)

Dear Ms. Riddle:

On behalf of Nancy Crawford-Hall and San Lucas Ranch, we provide the following comments on the Draft Environmental Impact Report ("DEIR") identified above:

1. Cachuma Operation and Maintenance Board's ("COMB") has improperly asserted that it is the lead agency over flow-related projects over which the State Water Board has exclusive jurisdiction.

COMB has prepared an EIR for the Fish Management Plan for the Lower Santa Ynez River ("FMP EIR"). In the FMP EIR, COMB purports to analyze the environmental impacts of numerous projects, many of which are "flow-related" projects, i.e., projects that involve the storage of water in, and/or flow of water from, the Cachuma Reservoir (Bradbury Dam). (*See*, Exhibit A (excerpts from FMP EIR).) COMB purports to be the lead agency in the FMP EIR, even for projects that are flow related and thus are clearly within the exclusive jurisdiction of the State Water Board. (*Id.*) Ms. Crawford-Hall and San Lucas Ranch have initiated legal action that challenges, in part, COMB's assertion as lead agency (*Crawford-Hall, et al. v. COMB*, Santa Barbara County Superior Court Case No. 1171135). In her briefing on the issue, Ms. Crawford-Hall demonstrated that COMB's assertion as lead agency in the FMP EIR was error. (*See* Exhibits B (opening brief) and C (reply brief).)

Similar to the FMP EIR, the DEIR analyzes flow-related projects concerning the Cachuma Reservoir, and properly identifies the State Water Board as the lead agency to conduct the environmental review for those activities. However, the DEIR fails to adequately discuss COMB's improper assertion in the FMP EIR as the lead agency over the same flow-related activities. As a

result, a fundamental confusion exists between the DEIR and the FMP EIR about who is the lead agency over the flow related activities concerning the Cachuma Reservoir. The DEIR's statement that the State Water Board is lead agency over flow-related projects is not sufficient to resolve the confusion. The DEIR must acknowledge and discuss the public confusion that has resulted over this issue, and must identify actions that can be taken to avoid and eliminate this confusion. Among other things, the DEIR should discuss efforts that the State Water Board can take towards decertification of the FMP EIR that improperly identifies COMB as lead agency over flow-related activities. The confusion created by COMB's improper assertion as lead agency over flow-related projects cannot be completely resolved unless the FMP EIR is decertified. Likewise, the DEIR remains inadequate and confusing so long as the FMP EIR remains certified because there are two public agencies purporting to assert lead agency status over the same activities. The DEIR must acknowledge, analyze, and resolve this confusion.

2. The DEIR's cumulative impacts analysis is inadequate.

The DEIR's cumulative impacts analysis is inadequate for failure to identify and avoid or mitigate the significant cumulative impacts resulting from implementation of non-flow projects by, among others, COMB and Reclamation. Specifically, as the State Water Board is aware, COMB and Reclamation are in the process of implementing a series of non-flow projects that are subordinate to, but integrally related with, the State Water Board's flow-related proposals analyzed in the DEIR. From the outset, COMB and others planned these non-flow projects as a quick and inexpensive (but ineffective) fix on the impacts to public trust resources (including the southern Steelhead) that result from the operation of the Cachuma Project. COMB and others ignored more effective solutions (such as creating passage over Bradbury Dam) and instead proposed to create fish habitat in tributaries in the Lower Santa Ynez River where fish do not reside due to, among other things, a complete lack of water. In order to ensure that their efforts would pay off in terms of ensuring water deliveries, COMB and Reclamation proposed a package to NOAA Fisheries that included both flow and non-flow elements—the Biological Assessment for the Fish Management Plan that combined the quick, cheap non-flow proposals with flow-related measures that would ensure COMB's desired water deliveries. The Biological Assessment became the Biological Opinion, which contains both flow and non-flow proposals.

COMB and Reclamation are now trying to implement the non-flow related measures, many of which will have a direct, adverse impact on public trust resources that the State Water Board is entrusted to protect. As one example, COMB, in conjunction with the California Department of Transportation, is attempting to modify a culvert that lies underneath Highway 154 where it crosses Hilton Creek. According to COMB, the culvert is a complete barrier to fish passage. The proposed modifications to the culvert will, according to COMB, allow Steelhead to pass upstream of the culvert to access the upper portions of Hilton Creek. Unfortunately, COMB proposed this suggested modification as part of the Biological Assessment before it had done any investigation or analyses as to the suitability of upper Hilton Creek as habitat for steelhead. Ms. Crawford-Hall, however, who owns upper Hilton Creek, caused a comprehensive study to be performed on upper

Hilton Creek by a renowned fish biologist, Dr. Alice Rich.[1] Dr. Rich's study concluded that upper Hilton Creek does not have suitable habitat for steelhead and that allowing steelhead to travel to upper Hilton Creek would be tantamount to "trout murder." (*See* Exhibit D (p. 18115); Exhibit E (DVD and transcript).)

First, upper Hilton Creek lacks sufficient water to be viable steelhead spawning or rearing habitat. Viable steelhead habitat requires, among other things: (1) flowing water containing an adequate amount of dissolved oxygen, (2) access to and from spawning habitat, and (3) access to and from rearing habitat. (Exhibit E (DVD 5:30).) Adequate stream flows are "absolutely critical" to the survival of steelhead. (*Id.* (DVD at 6:50).) Dr. Rich conducted multiple surveys of upper Hilton Creek in 2002 and 2003 in multiple months during all seasons of the year to determine the suitability of Hilton Creek as habitat for steelhead. (*See generally*, Exhibit D (pp. 18114-66); Exhibit E (DVD).) Dr. Rich concluded that upper Hilton Creek does not have suitable rearing or spawning habitat for steelhead because, among other things, it lacks sufficient water. (Exhibit D at pp. 18116, 18118, 18126.) In both 2002 and 2003, Dr. Rich observed that upper Hilton Creek went completely dry during the summer months, when steelhead need water for rearing. (*Id.* at 18121, 18125; *see also* Exhibit E (DVD at 7:45, 10:30, 11:30, 12:00).) A creek that completely dries during the summer, of course, is insufficient to support steelhead. (Exhibit D at p. 18117; Exhibit E (DVD at 2:45, 10:30).) Based on her multiple surveys, Dr. Rich concluded that it was absurd to proceed with the project to modify the Highway 154 culvert. (Exhibit D at p. 18129.) She concluded that if "any trout are able to immigrate under Route 154, they would be stranded in pools upstream early in the year and, ultimately, die of desiccation or predation by mammals and/or birds." (*Id.*) Thus, "[e]nticing rainbow/steelhead to immigrate to an area of the creek, which does not have year-round flowing water and which dries up at the earliest by spring and latest by summer, will result in more dead rainbow/steelhead, not an increased steelhead population." (*Id.* at p.18131; see also Exhibit E (DVD at 14:30) ("Encouraging adult fish to move upstream if water is temporarily available will certainly result in high fish mortality.").)

COMB and Reclamation are well aware that upper Hilton Creek lacks water. COMB and Reclamation, in fact, artificially add water to lower Hilton Creek thereby demonstrating their realization is insufficient water for fish on Hilton Creek. Moreover, the lack of water in upper Hilton Creek is greater than it is in lower Hilton Creek. Below the Highway 154 culvert, the geology of Hilton Creek is bedrock is Bedrock (Tm) overlain by a thin layer of river terrace deposits ((QOa2). (See Exhibit F.) Hilton Creek is filled with cobble-boulder fan gravel on top of Bedrock, which is thickest above Hwy 154 and thins out and disappears below the culvert. The fan gravel is composed of material ranging from sand to pebbles, rocks and boulders. Above the Highway 154 culvert, water seeps into the gravels down to the bedrock approximately 30 to 150 feet below. Then it flows along the bedrock surface. This results in much lower surface water flows than below the

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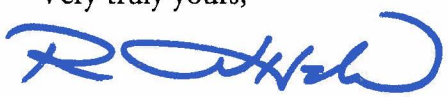
[1] Dr. Rich is highly qualified to analyze the suitability of Hilton creek as habitat for steelhead. For the last twenty years, she has, among other things, studied the thermal impacts on salmonids, including steelhead and rainbow trout (*see* Exhibit D at p. 18121) and has published dozens of articles on, and conducted multiple studies of, fish and fish habitat in California. (*See Id.* at pp. 18140-51.)

Highway 154 culvert. Still, even below the Highway 154 culvert, COMB and Reclamation must resort to artificial water flows in order to create suitable habitat for fish. COMB and Reclamation, of course, have no ability to create artificial water flows above the Highway 154 culvert. Thus, any fish that are lured above the culvert during sporadic periods of rainfall will become stranded and will die, whereas if they were never lured to upper Hilton Creek in the first place, they may have found suitable habitat elsewhere, such as the mainstem Santa Ynez River.

Second, upper Hilton Creek does not contain steelhead spawning habitat. Dr. Rich and her associates took three dozen samples of the substrate material along various points along upper Hilton Creek-none contained suitable spawning habitat. (Exhibit E (DVD at 13:00).) The streambed of upper Hilton Creek either contains boulders too large for spawning, or has a high degree of fine silt that, even when water is flowing, smothers eggs. (*Id.* (DVD at 13:35).)

In short, upper Hilton Creek is naturally dry, even just days after significant rain, and that fish that are lured to the upper reaches, beyond existing boundaries, will have no hope of surviving the summer months, or traveling downstream to more favorable conditions. Accordingly, implementation of this non-flow project will have a significant adverse impact on public trust resources. The DEIR fails to analyze the cumulative impacts of its flow-projects with the non-flow projects proposed by COMB and others that will result in steelhead death. For the same reasons, the DEIR's analysis of the non-flow projects on a programmatic level is deficient for failure to identify, avoid and mitigate the adverse impacts to steelhead that will result from, among other actions, the proposed modifications to the Highway 154 culvert.

Very truly yours,



R. Chad Hales

Enclosures
cc: Nancy Crawford-Hall
San Lucas Ranch