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February 13, 2004

## VIA FEDERAL EXPRESS

STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF WATER RIGHTS  
1000 I Street, 14<sup>th</sup> Floor  
Sacramento, CA 95814

**Re: Cachuma Project Hearing -- Applications 11331 and 11332**

Dear Sir:

In connection with the above-referenced matter, enclosed you will find an original plus six copies of **CLOSING BRIEF OF SANTA YNEZ RIVER WATER CONSERVATION DISTRICT** for filing with your office.

Also, we have enclosed an additional copy of the Brief, together with a self-addressed postage paid envelope and request that your office stamp this copy "filed/endorsed" and return it to this office in the envelope provided.

Thank you for your assistance. If you have any questions, please do not hesitate to contact me.

Very truly yours,

*Ernest A. Conant/meh*

Ernest A. Conant

EAC/meh  
Enclosures

cc: Bruce Wales,  
SANTA YNEZ RIVER WATER CONSERVATION DISTRICT  
cc: Ali Shahroody,  
STETSON ENGINEERS

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Conservation District

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SANTA YNEZ RIVER WATER  
CONSERVATION DISTRICT

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

In the Matter of:

**Hearing to Review the United States  
Bureau of Reclamation Water Right  
Permits 11308 and 11310 (Applications  
11331 and 11332) to Determine  
Whether Any Modifications are  
Necessary to Protect Public Trust  
Values and Downstream Water Rights  
on the Santa Ynez River below  
Bradbury Dam (Cachuma Reservoir)**

**CLOSING BRIEF OF  
SANTA YNEZ RIVER WATER  
CONSERVATION DISTRICT**

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1                   **I. INTRODUCTION**

2                   Santa Ynez River Water Conservation District ("Santa Ynez") submits this Closing  
3 Brief regarding Phase II of the Cachuma Project Hearing. As more particularly referenced  
4 below, Santa Ynez references and incorporates the Closing Briefs of the Cachuma Member  
5 Units and the Bureau of Reclamation.

6                   Santa Ynez was formed in 1939 to protect the water rights and supplies of its  
7 landowners and residents. The District's boundaries encompass most of the lands within  
8 the watershed downstream of Cachuma Reservoir (R.T. 238-9). Santa Ynez has  
9 coordinated its activities in these hearings with other public agencies within its boundaries  
10 which are parties to these proceedings, namely Santa Ynez River Water Conservation  
11 District, Improvement District No. 1, City of Solvang and City of Lompoc. Although the  
12 downstream water rights of Santa Ynez's constituents are not part of these proceedings  
13 (except to insure that the Cachuma Project not adversely affect those rights), and in large  
14 part downstream rights are not subject to jurisdiction of the State Board, obviously how the  
15 Cachuma Project is operated can have dramatic effects on protection of downstream water  
16 rights. Thus this District has historically been involved in Cachuma Project proceedings  
17 before this Board.

18                   Santa Ynez asserts that the State Board should modify Reclamation's Cachuma  
19 Water Rights permits in accordance with the Settlement Agreement executed by the CCRB<sup>1</sup>  
20 and downstream water interests<sup>2</sup> on December 17, 2002, and supported by Reclamation.  
21 Among other things, the Settlement Agreement resolves long-standing disputes between  
22 CCRB and the downstream interests regarding water quality and water quantity issues, thus  
23 putting to rest the water quality and water quantity Key Issues raised in this hearing.

24  
25  
26                   <sup>1</sup> The Cachuma Conservation Release Board or "CCRB" is composed of the City of Santa Barbara,  
Goleta Water District, Montecito Water District and Carpinteria Valley Water District.

27                   <sup>2</sup> The downstream parties to the Settlement Agreement are Santa Ynez, the City of Lompoc and  
28 Santa Ynez River Water Conservation District, Improvement District No. 1 ("ID#1"). ID#1 is in a  
unique position – it is both a downstream interest and a Cachuma Member Unit.

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1 Santa Ynez also supports change in the Purpose and Place of Use of Cachuma  
2 Project water, consistent with a stipulation previously filed with State Board.

3 Santa Ynez further believes that it is unnecessary to modify Reclamation's  
4 Cachuma Project permits to further protect public trust resources, with one exception. The  
5 Project is presently being operated in accordance with the terms and conditions of the  
6 Biological Opinion issued to Reclamation by NOAA Fisheries in September, 2000. In order  
7 to remove any inconsistency which may exist between Cachuma permits and the Biological  
8 Opinion, Santa Ynez believes it would be appropriate for the State Board to insert into the  
9 permits the same condition requiring compliance with the requirements of the ESA that was  
10 imposed upon Reclamation's Central Valley Project permits through its D-1641.

11 Santa Ynez believes that it is unnecessary for the State Board to amend the  
12 Cachuma permits to require additional studies, impose time tables or the like. The evidence  
13 at the hearing illustrated there is a broadly representative Adaptive Management Committee  
14 ("AMC") established under the Biological Opinion and Fish Management Plan, which is  
15 already operating and conducting a variety of studies, including a study regarding possible  
16 fish passage around Bradbury Dam. No evidence was presented to suggest that the  
17 AMC's activities are ineffective or will not be completed.

18 Furthermore, the State Board should not consider either implementation or further  
19 study of the draconian fish flow releases identified as Alternative 3A2 (initially studied and  
20 rejected as part of the EIR/EIS supporting renewal of Reclamation contracts with the  
21 Member Units) or as Alternative 3A2 adjusted for dry years. In addition to the dramatic  
22 water supply impacts described in the Member Unit's Closing Brief, such Alternatives would  
23 have significant effects on the water quality available to downstream interests.

24 Finally, Santa Ynez supports the State Board adopting Alternative 3C as the  
25 preferred alternative for Cachuma Project operations. This will allow the Biological Opinion  
26 to be fully implemented without significantly adversely affecting Project yield.

27 We will address the Key Issues raised in the State Board's August 13, 2003,  
28 Supplemental Notice in the order described in the Member Unit's Closing Brief.

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**II. SETTLEMENT AGREEMENT. (Key Issue 6)**

Should Reclamation's water right permits be modified in accordance with the Settlement Agreement Between Cachuma Conservation Release Board, Santa Ynez River Water Conservation District, Santa Ynez River Water Conservation District Improvement District No. 1, and the City of Lompoc Relating to the Operation of the Cachuma Project? Specifically, should Reclamation's water right permits be modified in accordance with the two enclosures submitted to the SWRCB by Reclamation under cover of letter dated February 26, [March 21] 2003, entitled "Proposed Modifications to WR 73-37 as amended by WR 89-18 Pertaining to Permits 11308 and 11310 (Applications 11331 and 11332)" and "Revised USBR Exhibit 1, February 1, 2003"?

Reclamation's water right permits for the Cachuma Project should be modified in accordance with the Settlement Agreement (MU Exhibit 220a) and in accordance with enclosures provided by Reclamation (enclosures to Reclamation's March 21, 2003, letter to the State Board, DOI Exhibit 10).

Initially, citation to prior State Board orders and other matters may be helpful to put the significance of the Settlement Agreement into perspective. The key decision of the State Board (and its predecessor) regarding the Cachuma Project is State Water Right Board Decision D-886 issued February 28, 1958. In D-886, the State Board's predecessor held in part that Reclamation had to release water from Cachuma Reservoir in such amounts and at such time and rates as will be sufficient to, among other things, "maintain percolation of water from the stream channel as such percolation would occur from unregulated flow, in order that operation of the project shall not reduce natural recharge of groundwater from the Santa Ynez River." (D-886, MU Exhibit 100, p. 33). This requirement is based in part on the State Board predecessor's observation that, "The United States has committed itself to operate the Cachuma Project so as not to export water from the watershed of the Santa Ynez River which is, or will be, required to maintain natural percolation below Cachuma Dam, and the Board has declared its intention to retain jurisdiction for the purpose of requiring sufficient releases of water to so accomplish this purpose." (Id. at p. 29).

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1 Adversarial proceedings have been ongoing for nearly 50 years to determine what is  
2 the appropriate level of releases to ensure the protection of downstream interests, as recited  
3 in D-886. There have been over the years numerous proceedings and disagreements, some  
4 before this Board, as to whether appropriate releases were being made to satisfy the  
5 requirements of D-886 and as otherwise required by law. Most recently, concerns have been  
6 expressed by the City of Lompoc that although the release regime under WR 89-18 may  
7 provide adequate quantities of water, operation of the Cachuma Project adversely affects  
8 water quality in the Lompoc plain, and in particular water drawn from wells operated by the  
9 City of Lompoc. The Settlement Agreement is the first time since these proceedings  
10 commenced before the Board and its predecessor that all parties – Reclamation, its Member  
11 Units and all downstream interests – are in agreement on a release mechanism that protects  
12 the downstream interest but which is also acceptable to the project users and Reclamation.

13 The background leading up to the Settlement Agreement, its terms and conditions  
14 and how those terms and conditions integrate into operation of the Cachuma Project are  
15 described in detail in testimony of Charles Evans, William Mills and Ali Shahroody (MU  
16 Exhibits 219 and 220; R.T. 198-218).

17 During these hearings, the provisions of the Settlement Agreement were described in  
18 detail (MU Exhibit 220; R.T. 202-218). The actual changes to Reclamation's permits to  
19 implement the Settlement Agreement were described by Ms. Struebing (R.T. 218-220; DOI  
20 Exhibit 10). Most of the provisions of the Settlement Agreement constitute contractual  
21 commitments between the parties and for which the parties do not request any action of the  
22 State Board – it is only those technical provisions identified by Ms. Struebing required to  
23 implement the Settlement Agreement for which State Board approval is sought.

24 The Settlement Agreement is not only historic and mostly self-executing as described  
25 above, it is also comprehensive in that it resolves between the parties not only water quantity,  
26 water quality and flood control issues, but it also includes the requirements of the Biological  
27 Opinion and Fish Management Plan (see testimony of Charles Evans (R.T. 198 – 201), Bruce  
28 Wales (R.T. 240-241) and Gary Keefe (R.T. 471-474). Thus, for the first time ever, one

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1 document commits the parties to protection of downstream water rights, flood control and fish  
2 protection measures in an integrated manner.

3 Yet as indicated above and as explained in more detail in the Member Units' Brief,  
4 only minor modifications to WR 89-18 are requested from the State Board to implement the  
5 Settlement Agreement. One involves resolution of the trigger as to when the lower percolation  
6 curve would be used in lieu of the upper percolation curve for calculation of Below Narrows  
7 Account (BNA) Credits. The State Board made provision for this in 1989 when it requested  
8 the parties to resolve the issue and return to the Board (see discussion of Ali Shahroody at  
9 MU Exhibit 220, p. 8-10; R.T. 208-211). The parties are now returning to the Board to report  
10 on and seek concurrence of the resolution of this issue. This provision provides maximal  
11 credits for recharge on the Lompoc Plain in return for some additional drought protection for  
12 the Member Units.

13 The other requested changes to WR 89-18 involve changed observation and  
14 monitoring procedures necessitated to update the Order due to operational changes since  
15 1989 (see discussion of Ali Shahroody at MU Exhibit 220, p. 10-13; R.T. 211-212).

16 Most significantly, during these proceedings no party presented evidence in  
17 opposition to the historic Settlement Agreement nor any evidence that the Settlement  
18 Agreement would have any adverse effects on public trust resources. Mr. Lecky testified that  
19 NOAA Fisheries has no objection to the Settlement Agreement (R.T. 715).

20 There being no evidence that the Settlement Agreement should not be approved,  
21 and in furtherance of this Board's long-standing policies to encourage parties to settle their  
22 differences, the State Board should modify those specific provisions of the permits to  
23 implement the Settlement Agreement, as requested by Reclamation in two enclosures under  
24 cover of a letter dated March 21, 2003, entitled "Proposed Modifications to WR 73-37 as  
25 amended by WR 89-18 Pertaining to Permits 11308 and 11310 and Revised USBR Exhibit 1,  
26 February 1, 2003." (DOI Exhibit 10).



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**III. WATER QUALITY AND QUANTITY. (Key Issues 4 and 5)**

**Has any senior, legal user of water been injured due to changes in water quality resulting from operation of the Cachuma Project?**

- a. **Has operation of the Cachuma Project affected water quality in the Lompoc Plains Groundwater Basin in a manner that impairs any senior water right holder's ability to beneficially use water under prior rights?**
- b. **What permit terms, if any, should be included in Reclamation's water right permits to protect senior water right holders from injury due to changes in water quality?**

**Has operation of the Cachuma Project injured any senior water right holders through reduction in the quantity of water available to serve prior rights and, if so, to what extent?**

- a. **Condition 5 of Permits 11308 and 11310, as modified by Order WR 89-18, establishes an accounting methodology to determine the quantity of water that is available to serve prior rights on the Santa Ynez River downstream of Cachuma Reservoir. Should the accounting methodology be modified to protect prior rights or take into account new water supplies?**
- b. **What other permit terms, if any, should be included in Reclamation's water right permits to protect senior water right holders from injury due to a reduction in the quantity of water available?**

Regarding Key Issue 4 concerning water quality, if operation of Cachuma Project did adversely affect water quality of downstream interests, something which the parties to the Settlement Agreement were unable to resolve as a technical matter, those adverse impacts are mitigated by provisions of the Settlement Agreement. Specifically, Mr. Mills, through MU Exhibit 220d, illustrated the improvement in water quality which occurs as a result of the "Deliveries During Releases" component of the Settlement Agreement (MU Exhibit 220, p. 4-5; R.T. 205-206), indicating most of the time there is approximately a 100 milligrams per liter improvement in water quality absent deliveries during releases. The importance of this

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1 provision of the Settlement Agreement (which does not require any action of the State Board  
2 to implement) was also discussed by the City of Lompoc's expert witness, Mr. Timothy Durbin.

3 He concluded:

4 " . . . the blending of State Water Project water into the river, as described in  
5 the Settlement Agreement, is essential to making the City whole with regard to  
6 its groundwater quality. And that the other point has to do with basic operation  
7 of the reservoir under 89-18. So that if there were some fundamental change in  
8 the way that the releases were operated from what they would be anticipated to  
9 be under 89-18, there may be or could be adverse water quality impacts on the  
10 city." (R.T. 489).

11 Accordingly, Santa Ynez believes that the water quality issue is put to rest, subject  
12 to the provisions of the Settlement Agreement being fully implemented.

13 With respect to Key Issue 5 involving water quantities, again, this issue is put to rest  
14 by the Settlement Agreement. In particular, Paragraph 1.1 of the Settlement Agreement (MU  
15 Exhibit 220a) provides in part, "The parties to this Agreement agree that releases pursuant to  
16 State Board Order WR 73-37 as modified by WR 89-18... and modified as provided in this  
17 Agreement, will adequately protect downstream water rights and will not significantly  
18 adversely affect water quality otherwise available to downstream water right holders."

19 Accordingly, provided that the Settlement Agreement is fully implemented, including  
20 the technical amendments requested by Reclamation, the permit terms do not need to be  
21 modified further to protect downstream interests from reductions in the quantity of water  
22 available.

23 If, on the other hand, those provisions of the Settlement Agreement for which it is  
24 requested by Reclamation that changes in the permits be provided were not accommodated  
25 by the State Board, or if in any other matter, the release regime as provided under WR 89-18  
26 was substantively modified, Santa Ynez asserts that Key Issues 4 and 5 would need to be  
27 reopened in order to allow testimony to be presented as to the adverse affects on water  
28 quantity and quality which may result therefrom as a result of operation of the Cachuma  
Project. This fact is noted by the quoted statement from Mr. Durbin cited above. Adverse

1 effects could occur to downstream interests if either the Settlement Agreement was not fully  
2 implemented or if other substitutive changes were made to WR 89-18.

3 **IV. CHANGE IN PURPOSE AND PLACE OF USE. (Key Issue 7)**

4 **Should the petitions for change in purpose and place of use be**  
5 **approved?**

- 6 a. **Will approval of the change petitions operate to the**  
7 **injury of any legal user of the water involved?**  
8 b. **Will approval of the change petitions adversely**  
9 **affect fish, wildlife, or other public trust resources?**

10 With respect to the Change Petitions, by Stipulation dated August 4, 1997, by and  
11 between Santa Ynez, Reclamation and the Member Units, Santa Ynez's protest of August 4,  
12 1997, was resolved, subject to certain conditions therein specified. By letter dated September  
13 7, 1999, Santa Ynez, through its attorneys, advised the State Board that the conditions of the  
14 Stipulation had been met. Accordingly, Santa Ynez took no position in Phase I of these  
15 proceedings.

16 It is noted that through the Settlement Agreement, and specifically Paragraph 3.2  
17 (MU Exhibit 220a), the City of Lompoc, the only party to present a protest, has withdrawn its  
18 protest. The Change Petitions should be approved.

19 **V. PUBLIC TRUST RESOURCES. (Key Issue 3)**

20 **Should Permits 11308 and 11310 be modified to protect public**  
21 **trust resources?**

- 22 a. **What flow requirements, including magnitude and**  
23 **duration of flows released from Bradbury Dam, are**  
24 **necessary to protect public trust resources,**  
25 **including, but not limited to, steelhead, red-legged**  
26 **frog, tidewater goby and wetlands, in the Santa Ynez**  
27 **River downstream of Bradbury Dam? What terms,**  
28 **conditions or recommendations contained in the**  
**Biological Opinion, if any, should be incorporated**  
**into Reclamation's water rights permits?**

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- b. What other measures, if any, are necessary to protect public trust resources?
- c. How will any proposed measures designed to protect public trust resources affect Reclamation and the entities that have water supply contracts with Reclamation?
- d. What water conservation measures could be implemented in order to minimize any water supply impacts?

Santa Ynez incorporates by reference Sections IID, III, IV and VI of the Member Units' Closing Brief relating to Public trust resources. Specifically, we concur with the Member Units that implementation of the Biological Opinion/Fish Management Plan and Alternative 3C will protect public trust resources as required by California Law (MU Brief p. 22). The additional studies sought by NOAA Fisheries (and CalTrout and possibly California Department of Fish and Game) are properly a part of NOAA's own recovery planning process, not the Cachuma Project permits (Id., p. 12). There is no evidentiary basis for imposing criteria for steelhead recovery in the Cachuma Project permits (Id., p. 21). Finally, should the State Board wish to amend the Cachuma permits from the standpoint of public trust, Santa Ynez believes it would be appropriate to incorporate a condition similar to that imposed on Reclamation by D-1641 regarding operation of the Central Valley Project (Id., p. 9).

Santa Ynez further incorporates by reference Section II of the Bureau of Reclamation's Closing Brief dealing with public trust resources. In particular, we concur with Reclamation's statement that "implementation of the Biological Opinion and Fish Management Plan, together with NOAA Fisheries recovery planning efforts, obviate any need for the Board to order flow requirements, incorporate the terms,

1 conditions and recommendations contained in the Biological Opinion, or to order any  
2 additional studies for the protection of steelhead or other public trust resources”  
3 (Reclamation Closing Brief, p.8).  
4

5 In the following Sections we will address questions on issues raised during  
6 these proceedings related to downstream water rights releases.

7 **VI. WR 89-18 WATER RIGHTS RELEASES ARE NOT HARMFUL TO**  
8 **PUBLIC TRUST RESOURCES AND SHOULD NOT BE CHANGED.**

9 In one paragraph of Mr. Keegan’s written testimony on behalf of Cal Trout, he  
10 asserts that WR 89-18 water rights releases may cause harm to steelhead and that they  
11 should be released in a more continuous fashion and in tandem with other releases (CT  
12 Exhibit 30, p. 12). These points were not brought up during Mr. Keegan’s direct oral  
13 testimony and therefore presumably are not of great importance to Cal Trout. However,  
14 we will address in the following sections each of these contentions raised in Mr. Keegan’s  
15 written testimony.  
16

17 **A. Water Rights Releases Do Not Cause Harm to Public Trust Resources.**

18 Mr. Keegan states in his written testimony “. . . high flow pulse releases during the  
19 summer months can adversely affect juvenile steelhead and their food resources through  
20 downstream displacement. . .” (CT Exhibit 30, p.12). However, Mr. Shahroody testified,  
21 based on his years of experience with Santa Ynez River water rights releases, that the  
22 speed at which water flows during a water rights release is a maximum of 1760 feet per  
23 hour (1/3<sup>rd</sup> mile per hour, compared with walking 2.5 miles per hour) and “I would not  
24 consider that the releases would be a pulse nature.” (SYRWCD Exhibit 6; R.T. 1006-07).  
25 Furthermore, Mr. Thomas Payne testified that displacement would not occur because,  
26 among other things, the normal rearing velocities for young steelhead equal or exceed the  
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highest velocity of water rights releases (SYRWCD Exhibit 10; R.T. 1011). No evidence was presented to contradict either Mr. Payne's or Mr. Shahroody's conclusions.

Mr. Keegan stated in his written testimony "Temporary turbid water conditions are created which may affect the steelhead ability to feed." (CT Exhibit 30, p. 12). Mr. Shahroody testified that he had not observed turbid water conditions because the water flow is moving so slowly (SYRWCD Exhibit 6; R.T. 1006-07). Mr. Payne then testified that the low velocities of releases are not high enough to create turbidity and that the water front described by Mr. Shahroody as containing organic matter may initiate foraging by steelhead (SYRWCD Exhibit 10; R.T. 1012). No evidence was presented to refute either Mr. Shahroody's or Mr. Payne's findings regarding alleged turbidity.

The foregoing are the only references during these hearings of evidence purporting to allege that water rights releases under WR 89-18 are in any way harmful to fish and that the water rights regime under WR 89-18 should therefore be modified.<sup>3</sup> As noted above, uncontroverted rebuttal testimony refutes these written allegations and therefore they should be rejected.

It is also noted that downstream water rights and the uses of those rights are not subjects of this hearing, except as they relate to whether the Project provides adequate releases to satisfy downstream water right holders' rights and the Project is not adversely affecting their quantity or quality.

---

<sup>3</sup> Although not alleged in any written or oral testimony during the hearing, the Biological Opinion also notes an additional possible adverse effect of water rights releases of reducing thermal stratification in pools located between 3.5 - 10 miles downstream of Bradbury Dam (Staff Exhibit 9, p.50). However, it is stated in written testimony by Ms. Baldrige, who supervised on behalf of Reclamation various fisheries studies on the Santa Ynez River for many years, that "Early information . . . indicated WR 89-18 releases may disrupt thermal stratification in pools. Additional monitoring studies . . . indicate that thermal stratification can be transient, even in the absence of WR 89-18 releases". That is to say, more recent information indicates that thermal destratification in pools may occur with or without WR 89-18 releases. Therefore there is no evidence that such releases would cause thermal destratification.

1           The presence of the Cachuma Project and its Dam should not impose on  
2 downstream water right holders burdens which would not occur absent the Dam having  
3 been constructed. As is noted above, referring to D-886, the overriding "theme" of the  
4 United States and the State Board has been to keep the downstream water right holders  
5 "whole" and in a similar position to what they would have been absent construction of  
6 Bradbury Dam. If as a result of a release regime necessary to satisfy the downstream  
7 water right holders there emerged an impact on public trust resources, that impact must be  
8 mitigated by the Project, not the downstream water right holders who did not create the  
9 impact initially. In any event, the evidence does not support an argument that additional  
10 mitigation measures are required of the Project because the evidence shows that the  
11 Biological Opinion and Fish Management Plan adequately protect public trust resources, as  
12 more particularly described in the Member Units' Closing Brief.

13  
14           **B. 89-18 Water Rights Releases Should Not be Changed.**

15           It is further stated in Mr. Keegan's written testimony that: WR 89-18 releases should  
16 occur over a more continuous nature than occur under present operations; dry river  
17 conditions are necessary to trigger water rights releases which he alleges is not conducive  
18 to improving mainstream rearing habitat; and, WR 89-18 releases should be used in tandem  
19 with other releases (CT Exhibit 30, p. 12).

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21           **1. So-Called "Continuous Releases".**

22           Cal Trout has alleged that water rights releases should occur over a more  
23 continuous nature to maximize public trust protection (CT Exhibit 30, p. 12). However, Mr.  
24 Shahroody testified why water rights releases are made in the manner they are and why, if  
25 water rights releases were extended over a longer period of time, the Above Narrows  
26 Account ("ANA") would become exhausted and not be available in a drought year. In  
27 addition, if water rights releases were extended, he described how sufficient Below Narrows  
28

1 Account ("BNA") water would not be able to be transported to the BNA (Lompoc) area for  
2 recharge (MU Exhibit 264-2<sup>nd</sup> Page 3). Mr. Shahroody detailed the results of such a  
3 scenario which include: (a) the amount of water able to be delivered to the BNA area would  
4 be diminished; (b) diminished quantities diverted to deliver to the BNA area would result in  
5 deterioration of water quality and quantity to the Lompoc area as BNA water would be  
6 "stranded" in Cachuma Reservoir, and (c) the ANA would be depleted prematurely without  
7 providing drought protection for downstream water users (MU Exhibit 264-2<sup>nd</sup> p. 3 and 4;  
8 R.T. 1004-05).

9  
10 Mr. Shahroody also noted that there had been several studies and evaluations in  
11 the past of potential changes to water rights releases and documents were presented  
12 summarizing those findings and associated problems with such potential changes. (See  
13 November 18, 1999 letter from Michael Jackson to Jim Lecky (SYRWCD Exhibit 7) and  
14 November 11, 1998 letter from Ali Shahroody to Craig Fusaro (SYRWCD Exhibit 8); R.T.  
15 1007-08).

16 No evidence was presented to contradict or question Mr. Shahroody's testimony.

17  
18 **2. Manner in Which Water Rights Releases Are Made.**

19 Mr. Shahroody explained the objective of water rights releases as follows:

20 "The objective of downstream water right releases is to percolate the  
21 quantity of water which would have occurred from the unregulated flows.  
22 That means in absence of the dam in the river. To the extent that we have  
23 regulation and storage by the Cachuma Project, there are impairments to  
24 the percolation, and those percolations are quantified in terms of the  
25 accounts, Above Narrows Account and Below Narrows Account. And the  
26 releases are basically to percolate effectively those quantified impairments  
27 due to the project. And to do that, that requires to percolate that water  
28 effectively in the riverbed which would turn out to be dry." (R.T. 1001-1002).

In delivering the Below Narrows Account water for recharge in the Lompoc Plain,  
any percolation occurring in the above Narrows area is debited to the Above Narrows  
Account. The Above Narrows Account is managed to deliver the Below Narrows Account



1 water to the Lompoc Plain and meet the needs of water users in the above Narrows area.  
2 That is why downstream water rights releases are not made in wet periods or when the  
3 dewatered storage is less than 10,000 acre-feet. As explained by Mr. Shahroody,  
4 continuous releases of water rights would result in depleting the Above Narrows Account,  
5 without providing drought protection, and not being able to make the delivery of Below  
6 Narrows Account water to Lompoc. If water rights releases were made when water can not  
7 be recharged effectively, then most of those releases would flow beyond the recharge  
8 areas. This would cause an impairment of downstream water rights and deterioration of  
9 water quality in the Lompoc groundwater basin ( R.T. 1002-1005; MU 264-2<sup>nd</sup> p. 2-4).

10 No evidence was presented to contradict or question Mr. Shahroody's testimony.

11 Additionally, water rights releases are conducive to improving mainstream rearing  
12 flows when released in tandem (that is, conjunctively) with other releases, as explained in  
13 the next Section.

### 14 3. Water Rights Releases Made in Tandem Benefit Steelhead.

15 Mr. Keegan stated in his written testimony "WR 89-18 flows can be used in tandem  
16 with other releases to afford further protection to instream rearing habitat." (CT Exhibit 30,  
17 p. 12). Through rebuttal testimony, Mr. Shahroody indicated, however, that water rights  
18 releases are already made in tandem with other releases for fish through the conjunctive  
19 use programs recognized in the Biological Opinion and the Settlement Agreement.  
20 Specifically, water rights releases provide fish water to meet the rearing target flows  
21 required by the Biological Opinion when water rights releases are made. On average 31  
22 percent of the long term releases for the target flows come from water rights releases (MU  
23 Exhibits 232, Table 4-1 and 264-2<sup>nd</sup> p. 4; R.T. 1005). This offsets Project yield that can be  
24 released later to meet the target flows. Water rights releases, yield and water derived from  
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surcharge are used in tandem to meet spawning, rearing and migration flows. No evidence was presented to contradict Mr. Shahroody's testimony.

The Settlement Agreement binds the parties to support the Biological Opinion and Fish Management Plan and contains specific provisions of benefit to steelhead. More BNA credits (water accumulated in the Reservoir for recharge in the Lompoc Plain) are provided for than would have been available absent the Settlement Agreement and will be used for longer BNA releases, which will also meet the target flows for steelhead. In Section 1.2 of the Agreement, Santa Ynez commits to provide WR 89-18 releases that will also meet the Biological Opinion's target flows for 65 days per year, on average.

**C. Summary**

In summary, the allegations (in written testimony of Mr. Keegan) that water rights releases may be harmful to public trust resources (specifically steelhead) were refuted by uncontroverted testimony. Accordingly there is no basis for considering further studies of changes to WR 89-18 releases. In any event, the Biological Opinion, as being implemented by the AMC, includes measures to insure that water rights releases are carried out in a manner that is not harmful to steelhead. (See Reasonable & Prudent Measures 6 and 7 of the Biological Opinion and AMC Roles & Responsibilities (SYRWCD Exhibit 4).)

In our view, any alternative to WR 89-18, with the technical amendments referenced in the Settlement Agreement, must accomplish the following:

- (a) assure that downstream water rights are protected, that is, provide quantities of water released to both the ANA and BNA areas as would have occurred absent the Dam and without adversely affecting water quality, all consistent with D-886; and
- (b) not significantly adversely affect Project yield; and
- (c) provide meaningful benefits to public trust resources.

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During these proceedings no change, other than WR 89-18 as modified by the Settlement Agreement, was submitted which accomplishes all the foregoing three criteria.

**VII. FISH RELEASE ALTERNATIVES 3A2 AND 3A2 ADJUSTED FOR DRY YEARS ARE INFEASIBLE AND SHOULD BE REJECTED.**

Cal Trout and NOAA asserted that fish water releases made pursuant to Alternative 3A2 of the Contract Renewal EIR/EIS prepared in 1995 (Staff Exhibit 5) should be implemented and/or studied. CalTrout described the benefits to steelhead of Alternative 3A2 and then promoted implementation and study of 3A2 as modified for dry years, based on its purported lower water supply impacts. Nowhere in CalTrout's direct testimony can one find an analysis of 3A2 (dry)'s benefits for steelhead. Alternative 3A2 was rejected in 1995 because of "significant reduction in water supply" (CT Exhibit 90, p. 6). It was left to the Member Units, as described in the testimony of Mr. Shahroody, to correct Cal Trout's error-ridden analysis of 3A2 dry to show that its water supply impacts were similar to 3A2 (MU Exhibit 264, p.1-3; R.T. 969-972).

Not only did Mr. Shahroody provide extensive testimony as to why 3A2 or 3A2 dry would greatly reduce Project yield, he also provided testimony on why such an alternative would reduce water supplies available for downstream releases and degrade water quality downstream, particularly in the Lompoc area (MU Exhibit 264, p. 7-8 and Figures 2-7A & B). In particular, Mr. Shahroody summarized the data as follows:

"That means on average there would be about 27 to 30 percent less water available for releases to downstream water right users under "3A2" and "3A2 Adjusted for Dry Years" scenarios. To the extent water rights releases are managed to meet the needs of downstream users this reduction may negatively impact some of the users in the lower Santa Ynez Basin in drought periods, including reducing flexibility to convey BNA credits to the Lompoc Plain" (*Id.*, Pages 7-8, see also R.T. 1001 through 1006).

Mr. Durbin confirmed and expanded upon Mr. Shahroody's testimony as it relates to the City of Lompoc. Mr. Durbin concluded that under Alternative 3A2, salinity in the area of the Lompoc wells would be approximately 900 milligrams per liter (mg/l) as compared to

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770 mg/l under Alternative 3C, for an increase of approximately 130 mg/l (R.T. 1081-82). Similarly, the salinity for Alternative 3A2 dry would be 860 mg/l, a difference of 90 mg/l.(Id.). Mr. Durbin's conclusions, in this regard, were not challenged or refuted during these proceedings.

Mr. Keegan's assertions that water rights releases should be made in a more continuous fashion and in tandem with other releases (CT Exhibit 30, p. 12) apparently were referring to Cal Trout's "Maximum Beneficial Use Alternative" (Cal Trout DEIR response letter, page 28). This alternative is 3A2 adjusted for dry years (a.k.a. Cal Trout Public Trust Alternative) "except that it includes continuous releases of ANA and BNA water to support rearing and other steelhead life stages in the river." (Id). This Alternative would not only cause the significant adverse impacts to Project yield and the quality and quantity of water rights releases as discussed above, it would significantly impair the ability of the Santa Ynez District to deliver water for recharge, as discussed in Section VI. B.

The State Board should not include Cal Trout's Alternative 3A2, Alternative 3A2 (dry) or "Maximum Beneficial Use" Alternative in its EIR because they are infeasible, do not meet Project objectives, and would significantly reduce Project yield. At the same time these alternatives would cause severe impacts to downstream water rights releases that are required to be made. An EIR need only examine alternatives "which would feasibly obtain most of the basic objectives of the Project but would avoid or substantially lessen any of the significant effects of the Project" (CEQA Guidelines Section 15126.6(a)). Alternatives 3A2, and 3A2 (dry) and the Maximum Beneficial Use Alternative require no further examination by the State Board in that they not only fail to meet Project objectives but create unmitigated impacts.

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**VIII. ALTERNATIVE 3C SHOULD BE ADOPTED AS THE PREFERRED ALTERNATIVE.**

The State Board should adopt Alternative 3C in the DEIR as the preferred alternative. Consistent with the Biological Opinion, surcharging the Reservoir with more than 9,000 acre-feet of water dedicated to fishery purposes will enhance habitat conditions for steelhead and other public trust resources and minimize adverse impacts on Project yield. It may also provide incidental flood control benefits (Lompoc Exhibit 1, p. 13). No party during these hearings opposed the use of surcharge to enhance public trust resources. Issues with Santa Barbara County have been resolved by the Statement of Agreement presented November 12, 2003.

Alternatives 4A and 4B identified in the DEIR should be rejected. As described generally at the hearing by Gary Keefe of the City of Lompoc (R.T. 484) and more specifically in Santa Ynez's DEIR comment letter of October 7, 2003, these alternatives would impose alternate water supply sources upon Lompoc not acceptable to its citizens and would create a number of additional operational and environmental impacts on downstream interests.

**IX. CONCLUSION**

For the foregoing reasons, Santa Ynez urges the State Board to do the following:

- (1) Acknowledge the Settlement Agreement and modify WR 89-18 in accordance with Reclamation's proposal;
- (2) Adopt Alternative 3C of the draft EIR as the State Board's preferred alternative;
- (3) Approve Reclamation's Petitions to change the purpose and place of use of Cachuma Project water;
- (4) Recognize the obligation of NOAA Fisheries to produce a steelhead recovery plan that includes objective, measurable criteria;

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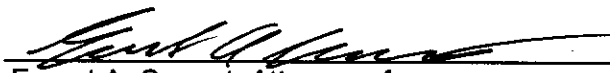
- (5) Impose a condition in the Cachuma Project permits requiring ESA compliance comparable to the conditions imposed upon the CVP permits in D-1641;
- (6) Recognize the Adaptive Management Committee ("AMC") is conducting further studies of various matters affecting the Santa Ynez River, including fish passage around Bradbury Dam and Lake Cachuma;
- (7) Find that the public trust obligations of the Bureau of Reclamation regarding the Cachuma Project are being reasonably satisfied through the Biological Opinion and the Fish Management Plan, as implemented by the AMC; and
- (8) Reserve continuing jurisdiction, it being specifically noted that NOAA Fisheries may wish to petition to reopen these proceedings upon developing a recovery plan should it determine it to be necessary to reopen same, and that some or all of the parties to the Settlement Agreement may petition to reopen these proceedings in accordance with its terms in ten (10) years.

Dated: Feb. 13, 2004

Respectfully submitted,

LAW OFFICES OF YOUNG WOOLDRIDGE, LLP.

By:



Ernest A. Conant, Attorneys for  
Santa Ynez River Water Conservation District

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF KERN

I, Mary E. Hough, declare: I am and was at the times of the service hereunder mentioned, over the age of eighteen (18) years, and not a party to the within cause. My business address is 1800 30th Street, Fourth Floor, Bakersfield, California, 93301.

On February 13, 2004, I served the document(s) titled: **CLOSING BRIEF OF SANTA YNEZ RIVER WATER CONSERVATION DISTRICT** on the interested parties in this action, as listed on the Mailing List attached hereto.

X (BY MAIL) I am readily familiar with the firm's practice of collection and processing of documents for mailing. Under that practice, if would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Bakersfield, California, in the original course of business.

\_\_\_ (BY FACSIMILE TRANSMISSION) A transmission report (copy attached hereto) was properly issued by the sending facsimile machine, and the transmission was reported was completed and without error.

\_\_\_ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee(s).

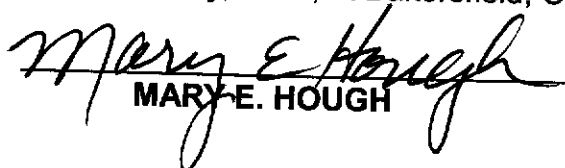
X (BY OVERNIGHT COURIER) I caused such envelope with delivery fees fully prepaid to be sent by Federal Express/Express Mail to:

**Original & 6 Copies to:**  
**State Water Resources Control Board**  
**Division of Water Rights**  
**1001 I Street, 14<sup>th</sup> Floor**  
**Sacramento, CA 95814**

X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

\_\_\_ (FEDERAL) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed this 13th day of February, 2004, at Bakersfield, California.

  
**MARY E. HOUGH**

Cachuma Project Hearing  
Phase-2 Hearing  
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