



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

F/SWR:MC

SEP 19 2001

Harry M. Schueller, Chief
Division of Water Rights
State Water Resources Control Board
1001 I Street 14th Floor
Sacramento, California 95814

Dear Mr. Schueller:

Re: Hearing to Review the U.S. Bureau of Reclamation Water Rights Permits 11308 and 11310 (Applications 11331 and 11332) for the Cachuma Project on the Santa Ynez River in Santa Barbara County.

The purpose of this letter is to provide the State Water Resources Control Board (Board) with the National Marine Fisheries Service's (NMFS) preliminary comments on the Cachuma Project water rights hearing. This hearing is being conducted to determine whether any modifications to the U.S. Bureau of Reclamation's (Reclamation) water right permit terms and conditions are necessary to protect Public Trust values, including the endangered Evolutionarily Significant Unit (ESU) of Southern California steelhead (*Oncorhynchus mykiss*), and downstream water rights on the Santa Ynez River below Bradbury Dam. These comments focus specifically on the relationship between NMFS' recovery planning process for the Southern California steelhead ESU, the biological opinion that NMFS issued for Reclamation's Cachuma Project in September 2000, and the Cachuma Project water rights hearing. NMFS will provide additional technical comments to the Board in a separate letter on the draft Environmental Impact Report (EIR) for the Cachuma Project when it is released for public comment.

Background

Bradbury Dam is located approximately 48 miles upstream from the Pacific Ocean on the Santa Ynez River. Steelhead populations that are part of the endangered Southern California steelhead ESU occur in the Santa Ynez River mainstem and tributaries downstream of Bradbury Dam. Freshwater habitat and the associated riparian habitat in the mainstem and tributaries downstream of Bradbury Dam are also part of the designated critical habitat for this steelhead ESU. Prior to construction of the Cachuma Project in 1958, which included Bradbury Dam, the Santa Ynez River system supported one of the largest runs of steelhead in southern California, estimated by the California Department of Fish and Game to be approximately 20,000 adult fish per year. A majority of these fish are believed to have spawned and reared in the up-stream tributaries to the

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Santa Ynez River, above the current site of the Bradbury Dam within the Los Padres National Forest. The current run of adult steelhead in the Santa Ynez River system is believed to be less than 100 adult fish per year, and is limited to the mainstem and tributaries of the Santa Ynez River below Bradbury Dam.

On August 11, 1997, NMFS listed the Southern California steelhead ESU, which includes steelhead populations in the Santa Ynez River system, as an endangered species under the Federal Endangered Species Act (ESA). The Southern California steelhead ESU was listed as an endangered species because of the destruction and loss of habitat throughout its range that has caused the annual run size in the ESU to decline from historic estimates of 55,000 fish to less than 500 fish, a decline of more than 90%. As noted above, the current steelhead population in the Santa Ynez River system has also been severely depressed, largely as a result of the construction and operation of the Cachuma Project which includes Bradbury Dam.

NMFS' Recovery Planning

Under the Federal ESA, NMFS is required to prepare a recovery plan for species that it lists as threatened or endangered. For the purposes of the ESA, each salmon or steelhead ESU is considered a species for which a recovery plan must be prepared. The basic elements of each recovery plan are quantitative population recovery goals for the species or ESU, specific recovery measures which must be implemented to achieve these recovery goals, a monitoring program to assess the status of the species or ESU and its progress towards recovery, and an estimate of the cost and time required to carry out the identified recovery measures.

NMFS is just beginning this recovery planning process for the Southern California steelhead ESU. The first step in this process will be the establishment of a Technical Recovery Team (TRT) which will develop the quantitative population recovery goals for this ESU, as well as address other recovery planning issues such as the identification of factors responsible for the decline of the ESU as well as factors limiting recovery of the ESU, the development of research, monitoring, and evaluation needs, and the identification and evaluation of early recovery measures. At present, our plan is to appoint this TRT by late 2001 or early 2002. This process will include formal solicitation of nominations from interested parties, the review and screening of nominations, and finally the selection of the TRT. The population recovery goals developed for this ESU will be based on the guidelines established by NMFS in its Technical Memorandum entitled: "Viable Salmonid Populations and the Recovery of Evolutionary Significant Units". Following the establishment of these biologically derived recovery goals, the TRT will, in conjunction with a wide range of stake-holders, including public and private interests, identify and evaluate specific recovery measures which must be implemented to achieve the quantitative population recovery goals.

It is important to emphasize that NMFS is just now in the process of beginning this recovery planning process, and therefore, has not developed specific population recovery goals for the Southern California steelhead ESU which includes those populations that utilize the Santa Ynez

River system. Because recovery goals for this ESU do not yet exist, it is not possible at present to assess the adequacy of any mitigation or conservation measures in terms of the ultimate recovery objectives that will emerge from this process.

NMFS' Biological Opinion for the Cachuma Project

On September 8, 2000, NMFS issued a biological opinion to Reclamation, pursuant to section 7 of the ESA, which addressed the effects of Reclamation's proposed operation and maintenance of the Cachuma Project on the Southern California steelhead ESU. NMFS' biological opinion concludes that Reclamation's proposed action, as described in the biological opinion, is not likely to jeopardize the continued existence of the endangered Southern California steelhead ESU or destroy or adversely modify the species' critical habitat. It is important to emphasize, however, that Reclamation's proposed action upon which the non-jeopardy biological opinion was based incorporated a number of specific elements that NMFS believed were necessary to avoid jeopardizing the species. Because Reclamation's proposed action was the foundation for our non-jeopardy conclusion in the biological opinion, NMFS believes any water rights permits issued by the Board should ensure that those elements of Reclamation's proposed action that are within the jurisdiction of the Board be implemented without delay so that operation of the Project does not jeopardize the continued existence of the Southern California steelhead ESU.

Because Reclamation's proposed action for the Cachuma Project was expected to result in the incidental take of listed steelhead, NMFS also issued an incidental take statement with its opinion that includes a wide range of mandatory terms and conditions that Reclamation must comply with to minimize and monitor the incidental take of steelhead, as well as authorize the incidental take of listed steelhead. These mandatory terms and conditions include, for example, designing and implementing a strategy to further refine supplemental flow releases for steelhead migration in the Santa Ynez River. In order to ensure that the incidental take of steelhead is minimized and monitored as required by the incidental take statement, NMFS believes any water rights permits issued by the Board should also ensure that any terms and conditions that are within the jurisdiction of the Board be implemented without delay.

In addition to the biological opinion and incidental take statement, NMFS also provided Reclamation with a specific list of conservation recommendations designed to further minimize or avoid impacts on listed steelhead, and also assist with recovery planning and the implementation of recovery measures. Although Reclamation is not required to implement these conservation recommendations, section 7(a)(1) of the ESA directs Federal agencies such as Reclamation to utilize their authorities to further the purposes of the ESA by carrying out conservation programs for the benefit of endangered and threatened species. NMFS provided these recommendations to Reclamation in light of this broader Federal agency obligation under the ESA. Although it is not mandatory for Reclamation to implement these conservation recommendations under section 7 of the ESA, NMFS believes implementation of these recommendations are important because they will either help to minimize the adverse effects of the Cachuma Project on listed steelhead, provide information necessary for the development of a

recovery plan, or assist in the eventual implementation of a recovery plan for this ESU. These additional conservation measures, which are discretionary on the part of Reclamation, include: (1) examination of alternative means of delivering water to downstream users of the Cachuma Project, (2) examination and evaluation of the means of providing passage for steelhead to and from the historic steelhead spawning and rearing habitat above Bradbury Dam, and (3) examination and evaluation of the ecological effects of reducing natural flood flows in the lower Santa Ynez River as a result of the operation of the Cachuma Project.

Finally, we would like to emphasize that NMFS' biological opinion for the Cachuma Project focused on the issue of whether or not Reclamation's proposed action, which included operation and maintenance of the Cachuma Project, would jeopardize the continued existence of the Southern California steelhead ESU. The biological opinion did not address and identify those specific conservation and management measures that would be necessary for recovery of the Southern California steelhead ESU, including those populations that occur in the Santa Ynez River system, because the section 7 consultation process under the ESA focuses solely on the issue of jeopardy rather than the broader issue of what is needed for recovery. Although NMFS's recovery planning efforts for this ESU are only now beginning, we feel strongly that the conservation recommendations that were included in our opinion need to be implemented as part of this broader recovery effort. Timely implementation of these conservation recommendations, as described above, will facilitate developing potential operation and maintenance alternatives for the Cachuma Project that further protect Public Trust values and contribute towards the recovery of the endangered Southern California steelhead ESU. For this reason, we urge the Board to ensure these recommendations are implemented as part of any water rights permit it issues.

Water Rights Hearing Issues

The Notice of the Water Rights Hearing for the Cachuma Project indicates that the basic purpose of the hearing is to review Reclamation's Water Rights Permits 11308 and 11310 to determine whether any modifications in permit terms and conditions are necessary to protect the Public Trust values and downstream water rights on the Santa Ynez River below Bradbury Dam. A review of the original water rights permits for the Cachuma Project indicates that no specific measures were included in the terms and conditions to: (1) provide for fish passage over, around or through the Bradbury Dam, (2) provide for fish transportation flows between Bradbury Dam and the Pacific Ocean, or (3) maintain the riverine or estuarine habitat in the lower Santa Ynez River to support Public Trust values such as, but not limited to, steelhead populations. While the current water rights permits (under Water Rights Order 94-5 amending Water Rights Permits 11308 and 11310) provide for 2,000 acre feet of water from the Cachuma Reservoir which could potentially be used for maintenance of fish in the lower Santa Ynez River, the permits do not specifically provide for the provision of habitat conditions that would restore steelhead runs in the Santa Ynez River or the recovery of the Southern California steelhead ESU.

As noted previously, the Santa Ynez River historically supported one of the most productive steelhead runs in southern California and still contains substantial amounts of high quality spawning and rearing habitat within the watershed, with a majority of the spawning and rearing habitat located above Bradbury Dam. For these reasons, NMFS believes that the restoration of the Santa Ynez River steelhead populations to the point where they are viable and self-sustaining will be an important element of the recovery strategy for the larger Southern California steelhead ESU. Resolution of the Public Trust issues raised by the Cachuma Project water rights hearing is critical to steelhead recovery in the San Ynez River, and therefore, cannot be separated from the recovery planning process for the Southern California steelhead ESU. Consequently, NMFS believes that any order issued by the Board for the Cachuma Project should be framed so as not to prejudice the NMFS' recovery planning process for the Southern California ESU, or preclude the effective implementation of recovery conservation measures that are identified in the future.

Because the range of alternatives addressed and evaluated as part of the EIR for the Cachuma Project is relevant to the questions of jeopardy and recovery of steelhead, as well as the Public Trust values in the Santa Ynez River, the scope of alternatives is an important element of the Cachuma Project water rights hearing. In a letter dated December 11, 2000 to Reclamation, you indicated that the Board staff had determined that the range of alternatives for the EIR should be revised to reflect the biological opinion issued by NMFS for the Cachuma Project. However, all of the alternatives in the attachment to the December 11th letter ("Summary of SWRCB Alternatives for the Cachuma Water Rights EIR") deal primarily with a limited number of flow management options in the lower Santa Ynez River below Bradbury Dam. None of the proposed alternatives specifically address the fundamental issue of what river conditions (either above or below Bradbury Dam) must be restored, or maintained, to achieve restoration of the steelhead runs of the Santa Ynez River, or recovery of the Southern California ESU. Because these alternatives are based on Reclamation's proposed action which NMFS analyzed in its biological opinion, they address only the more limited issue of ensuring the continued existence of the Southern California steelhead ESU, rather than the larger issue of recovery of the ESU.

As discussed previously, NMFS believes that the restoration of the steelhead runs in the Santa Ynez River will be crucial to the recovery of the Southern California steelhead ESU, and this specific Public Trust value should be explicitly reflected in the alternatives analysis in the EIR for the Cachuma Project. Further, NMFS believes that a comprehensive EIR which addresses all the potential alternative measures for restoring steelhead in the Santa Ynez River as part of a larger recovery program for the Southern California steelhead ESU is essential to fully inform public and private stakeholders, as well as the decision makers, involved in the Cachuma Project water rights hearing.

Summary

The Board's water rights hearing on the Cachuma Project raises issues central not only to the general Public Trust interest in the water resources of the Santa Ynez River system, but also to the recovery of the endangered Southern California steelhead ESU. Any decision on the

disposition of the water rights and Public Trust values in the Santa Ynez River should, therefore, be made in a manner which does not prejudice the recovery planning process that NMFS is just beginning to initiate, or the effective implementation of recovery measures necessary to restore viable and self-sustaining steelhead populations in the Santa Ynez River and recovery of the larger Southern California steelhead ESU.

Because the Board's consideration and possible decision on this matter is likely to precede the completion of NMFS's Recovery Plan for the Southern California steelhead ESU, NMFS recommends that any water rights decision made prior to the completion and adoption of this plan be interim in nature so that recovery actions that are needed for steelhead can be implemented in the future once they are identified through our recovery planning process. Any interim decision by the Board should ensure timely implementation of: (1) Reclamation's proposed action for the Cachuma Project, as analyzed by NMFS in its biological opinion, and (2) the terms and conditions included in the incidental take statement NMFS issued to Reclamation with its biological opinion. These measures should be implemented in an expeditious manner without delay. Lastly, any interim decision by the Board should also include specific requirements that provide for continuing evaluation of the effects of the Cachuma Project on the recovery of the Southern California ESU, including implementation of the conservation recommendations set forth in NMFS' biological opinion for the Cachuma Project.

NMFS understands the additional complexity which has been added to this hearing as a result of the Federal listing of Southern California steelhead ESU since the initiation of these water rights proceedings. However, we hope that these comments clarify the status of the recovery planning process, and in particular the relationship of the NMFS' biological opinion for the Cachuma Project to the recovery planning process and to the Cachuma Project water rights hearing. As noted previously, NMFS intends to also supply more specific comments on the draft EIR being prepared for the Cachuma Project water rights hearing as soon as the draft EIR becomes available.

Thank you for the opportunity to provide these preliminary comments on the Cachuma Project water rights hearing. Should you or your staff have any questions regarding these comments or wish to discuss these issues further, please feel free to contact Jim Lecky at (562) 980-4015.

Sincerely,



Rebecca Lent, Ph.D.
Regional Administrator

cc:

Kirk Rogers, Acting Regional Director, Bureau of Reclamation
Janine Derby, Forest Supervisor, Los Padres National Forest
Arthur Baggette, State Water Resources Control Board

Robert Hight, Director, California Department of Fish and Game
Mike Higgins, Regional Water Control Board, Central Coast Region
Charles Raysbrook, Regional Director, Region 5, California Department of Fish and Game
Arthur Kidman, Cachuma Conservation and Release Board
Robert Wignot, Cachuma Operation and Maintenance Board
Michael Jackson, Chairperson, Santa Ynez River Technical Advisory Committee
Robert Almy, Water Agency Manager, Santa Barbara Co. Water Management Agency

CODE	ACTION	SUPNAME & DATE
418		Dhw
414		SC
400		ZGJ
DATE ACTION TAKEN:		
COPIES TO:		

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Mr. Robert Wignot -Manager
Cachuma Operations and Maintenance Board
3301 Laurel Canyon Road
Santa Barbara, California 93101-2058

Subject: Contract No. I75r - 1802R

Dear Mr. Wignot:

The purpose of this letter is to inform you that several Member Agencies are not in compliance with the Water Conservation provision of the Water Service Contract No. I75r-1802R.

Under the contract between the United States and Santa Barbara County Water Agency, Providing for Water Service From the Project, contract No. I75r - 1802R, Article 20, Section (d) (1) states:

If at any time the Contracting Officer concludes that the Contractor's or a Cachuma Member Unit's water conservation plan is inconsistent with any water conservation criteria adopted by the Contracting Officer pursuant to Reclamation law and then in effect, the Contracting Officer shall promptly notify the Contractor or Cachuma Member Unit of this conclusion and the reasons for it. Thereafter, the Contracting Officer and the Contractor or Cachuma Member Unit shall promptly confer for the purpose of reaching agreement as to any changes that will be made to the water conservation plan in light of such criteria.

Section 210(b) of the Reclamation Reform Act of 1982 required the preparation and submittal of a Water Conservation Plan (Plan) from certain entities that have entered into a repayment contract or water service contract with Reclamation. These Plans are required to be revised every 5 years. In addition, the Central Valley Project Improvement Act of 1992 required Reclamation to develop criteria to evaluate Water Conservation Plans, and to evaluate these Plans by those criteria. Reclamation developed the "Criteria for Evaluating Water Conservation Plans" (Criteria) in 1993, and revised these Criteria in 1996 and 1999.

According to our records, Carpinteria Valley Water District (CVWD) has submitted a revised Plan, but several areas remain to be completed before the Plan can be submitted for final approval. Montecito Water District (MWD) has also submitted a draft Plan that also requires additional data for it to be submitted as final. Santa Ynez River Water Conservation Improvement District #1 (SYWCD#1) has yet to submit a 5-year update. These plans were due in September 2000 for MWD, September 2000 for CVWD and September 2001 for SYWCD#1.

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Therefore, in order to comply with provisions of Article 20, we recommend that you contact Mr. David Woolley, SCCAO Water Conservation Specialist, at 559-487-5049 or Lucille Billingsley, Regional Office, at 916-978-5215 or for the hearing impaired at 916-978-5608 to set up a schedule for completing these plans.

Sincerely,

M. Kathleen Wood

Kathy Wood
Chief Resource Management Division
South-Central California Area Office

cc: Goleta Water District
4699 HOLLISTER AVE
GOLETA, California 93111-1999

City of Santa Barbara
P.O. BOX 1990
SANTA BARBARA, California 93102-1990

Carpinteria Valley Water District
P.O. Box 578
Carpinteria, California 93014

Montecito Water District
583 San Ysidro Road
Santa Barbara, California 93108-2124

Santa Ynez Water Conservation Improvement District #1
P.O. Box 157
Santa Ynez, California 93460

cc: S. Carter (SCC-414), K. Moore (MP-440), L. Billingsley (MP-400)

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