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April 22, 2022

Via Mail and Email

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Re: Parent District Comments on Draft Environmental Assessment (EA) for Central Coast Water Authority (CCWA) Temporary Warren Act Contract [CGB-EA-2022-023]

The Santa Ynez River Water Conservation District (Parent District) submits the following comments on the above-referenced EA for the CCWA Temporary Warren Act Contract (Project). The Parent District just learned of this EA and associated Biological Evaluation (BE) yesterday as they were included as part of CCWA's Board Packet¹ for its April 28, 2022 Board meeting. The Parent District is disappointed that it was not advised of the EA being out for public review and comment by the United States Bureau of Reclamation (Reclamation), and also notes that the BE is not referred to in the EA and has not been made publicly available by Reclamation during the EA comment period or otherwise. Be that as it may, as explained below, the Project appears to include additional restrictions on the mixing of CCWA's SWP supplies with downstream water rights releases contrary to the 2002 Settlement Agreement, the 2000 Biological Opinion

¹ Available at: <https://www.ccwa.com/files/acb8a110f/BoardPacket04282022.pdf>.

(Biological Opinion), WRO 2019-0148², and Reclamation's Cachuma Project water rights permits. As you know, mixing is critical to ensuring that the Cachuma Project is not impairing downstream water quality. There is no evidence that exclusion of November from the months in which mixing can occur – even when the flow is discontinuous in the mainstem, among other restrictions, is warranted³, and imposing such additional restrictions through the EA does not follow required procedures. Any modification to the Biological Opinion to add restrictions on mixing should be evaluated as part of the ongoing formal reinitiation of consultation – not by de facto amendment.⁴ If further pursued, any additional unmitigated restrictions on mixing should be discussed with relevant stakeholders and evaluated as part of the ongoing consultation before being approved or implemented.

The Parent District covers approximately 180,000 acres, principally downstream of the Cachuma Project. The Parent District's constituents rely upon regular water rights releases being made from the Project's Bradbury Dam of sufficient quality and quantity to serve downstream beneficial uses, which include agricultural and domestic users of Santa Ynez River water. Such releases replenish downstream alluvial aquifers and groundwater basins. The Parent District's constituents include Santa Ynez River Water Conservation District, Improvement District No. 1, the cities of Solvang, Buellton and Lompoc, and various communities. The City of Lompoc, in particular, consists of various disadvantaged communities, who rely on Santa Ynez River releases as their sole source of supply and replenishment. The City of Lompoc previously raised claims with the State Water Resources Control Board (State Water Board) regarding the Cachuma Project's impairment of downstream water quality.

On December 17, 2002, the Cachuma Conservation Release Board (CCRB), the Parent District, Improvement District No. 1 and the City of Lompoc entered into a Settlement Agreement relating to the operation of the Cachuma Project (Cachuma Project Settlement Agreement). The Cachuma Project Settlement Agreement resolved 50 years of disputes relative to operation of the Project, including litigation and claims regarding downstream water quality impacts raised by the City of Lompoc. The Cachuma Project Settlement Agreement's provisions are incorporated by reference, discussed in, and attached as Appendix 2 to the State Water Board's WR Order 2019-0148 (WRO 2019-1048 or Order) In the Matter of Permits 11308 and 11310 (Applications 11331 and 11332) held by the United States, Bureau of Reclamation for the Cachuma Project on the Santa Ynez River. (Order, §§ 6.1-6.5, pp. 100-110.)

As explained in WRO 2019-0148 (Order, § 6.2.1, pp. 102-103), the following recited provision (Subparagraph 1.5 – Deliveries During Releases) of the Settlement Agreement, which

² Available at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/cachuma/docs/wro2019_0148_withagreement_final.pdf

³ In fact, the EA indicates that per the draft 2016 biological opinion additional restrictions on mixing do not appear to be necessary: “*the effects of...Central Coast Water Authority state water project deliveries and releases are expected to be avoided by measures that are currently in place and are expected to continue.*” (Board Packet, pdf p. 106; BE, p. 12.)

⁴ U.S. Fish & Wildlife Service and NMFS, Consultation Handbook (March 1998 Final), p. 4-63, 64; 50 CFR §402.16.

provides for commingling of SWP water imported by CCWA, is a key component of resolving the City of Lompoc's Cachuma Project water quality concerns, returning the groundwater quality in the Lompoc Plain Groundwater Basin to a no project condition, and avoiding impairment to senior groundwater rights:

“The parties to this Agreement will, as provided in Exhibit D, make best efforts to maximize the delivery by ... [CCWA of SWP] water with lower concentrations of total dissolved solids ('TDS') into the outlet works at Bradbury Dam during WR 89-18 water rights releases consistent with the NMFS BO. This will be accomplished through the commingling of SWP water with WR 89-18 water rights releases in the Outlet Works at Bradbury Dam when downstream water rights releases are being made. Generally, SWP deliveries by CCWA are of lower TDS concentrations compared to water releases from Lake Cachuma under WR 89-18. The objective of such commingling operations is to maximize the delivery of SWP Water to lower the TDS in the lower Santa Ynez River and at the Narrows. Such coordinated program shall be carried out as set forth in Exhibit “D” hereto.” (Emphasis added.)

Reclamation approved of and supported the Cachuma Project Settlement Agreement in the WRO 2019-0148 proceedings as a way of resolving 50 years of disputes between the Cachuma Project Member Units and the downstream parties, including the Parent District and the City of Lompoc, with respect to the operation of the Project. This included disputes relating to water rights and water quality issues among them, including key hearing issues 4, 5 and 6, and resolution of the City of Lompoc's litigation and claims regarding the Project's injury to its senior water rights including water quality impairment caused by the Project. (Order, p. 100.)

Key Hearing Issue 4 was:

“Has any senior, legal user of water been injured due to changes in water quality resulting from the operation of the Cachuma Project? (Order p. 101.)”

According to the Order, the City of Lompoc owns 9 domestic wells providing the sole source of water to 39,000 people including disadvantaged communities. (*Ibid.*) Lompoc asserted that historic operation of the Cachuma Project impaired the water quality in the groundwater basin in such a manner as to injure the city's senior downstream water rights. (*Ibid.*) In WRO 2019-0148, the State Water Board concluded that under the current operating regime under the **2000 Biological Opinion**, “which includes the **downstream water rights releases as required by Order WR 89-18 and the commingling of SWP water that is imported by the CCWA**, the groundwater quality in the eastern portion of the Lompoc Plain Groundwater Basin will return to a no project condition, and should ensure that the Cachuma Project does not impair the City of Lompoc's senior groundwater rights.” (Order, pp. 102-103, emphasis added.)

The State Water Board found that “operation of the Cachuma Project in accordance with the Settlement Agreement will protect senior water right holders from injury due to either changes in **water quality** or a reduction in the quantity of water available to serve prior rights.” (Order, p.

109, emphasis added.) The State Water Board further found that “Reclamation should operate the Cachuma Project pursuant to the new accounting, monitoring, and operating procedure set forth in the Settlement Agreement, and the Permits should be amended as proposed by Reclamation and agreed to by the parties to the agreement.” (*Ibid.*) In making these findings, the State Water Board recognized that the 2000 Biological Opinion (Biological Opinion) limited the amount of SWP water that can be “mixed” and referenced the only other restrictions related to the delivery of SWP water as stated in the Final EIR for the Order, as follows:

“2.4.4.3 Restrictions of State Water Project Releases

The Biological Assessment described restrictions on the delivery of SWP water to the reservoir. SWP water will not exceed 50 percent of the amount of water released from Bradbury Dam at any given time. In addition, SWP water will not enter the stilling basin with a temperature over 18 degrees Celsius. Finally, the Biological Opinion requires that releases of SWP water to the mainstem in conjunction with water rights and fish enhancement releases shall not occur during the migration period of **December through June, unless flow in the mainstem is discontinuous**. This requirement has been met since 2001. (Order, p. 102, fn. 65; FEIR, Vol. II⁵, p. 2.0-38, emphasis added.)

In contrast to the above, the Project adds significant additional restrictions on mixing of SWP deliveries with downstream water rights releases. In particular, the EA adds the following restrictions on CCWA deliveries through the Bradbury Dam outlet works:

“Releases of CCWA water to the mainstem only occurs during water right releases from **May to October**, with the bulk of releases occurring July through September;” (EA, p. 4, emphasis added.)

These additional restrictions are not part of the Biological Opinion’s reasonable and prudent measures, and they are not referenced in the Settlement Agreement or WRO 2019-0148. Neither the EA nor any other relevant document, to our knowledge, evaluates the need for such additional restrictions on mixing. Presently, there is no limit on mixing during any particular months whatsoever when the mainstem flow is discontinuous, and when it is not discontinuous mixing can still occur in **November**, as is sometimes necessary and as may be necessary more often in the future due to climate change.

The Parent District was not consulted regarding the need for these additional unmitigated mixing restrictions, which represent a significant departure from the baseline and will cause water quality impacts to the Parent District’s constituents, including the City of Lompoc and its disadvantaged citizens. These additional restrictions are conflict with the Biological Opinion and WRO 2019-0148, including its underlying environmental review and the State Water Board’s

⁵ Available at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/cachuma/feir/cachuma_feir_vol2.pdf.

conclusions regarding water quality impacts of the Project meant to be addressed by the Cachuma Project Settlement Agreement.

If these additional restrictions are not removed the Project, they represent a new impairment to water quality and possible injury to downstream water rights. To our knowledge, no evaluation whatsoever of the environmental impacts of adding such additional restrictions and making associated changes to Project's release operations has been performed, as would be necessary for the Project to comply with NEPA and CEQA, as applicable. CCWA's approval of the Project, along with the significant new additional unmitigated restrictions on mixing, would represent a substantial change to existing conditions and constitute a Project as defined by CEQA that may result in significant water quality impacts to downstream resources including groundwater in the Lompoc Plain Groundwater Basin; thus, a mitigated negative declaration or environmental impact report (or subsequent or supplemental EIR) would be required prior to consideration of Project approval. (Public Resources Code, § 21065; Cal Code Regs, § 15064.)

For the above reasons, the Parent District urges that Reclamation delete the additional restrictions on mixing from the Project. The Parent District does not support the Project with such additional restrictions for the reasons expressed herein. These additional restrictions will likely degrade water quality conditions downstream, without any environmental analysis (or mitigation) and at the worst possible time – during a multi-year drought emergency. All the while, downstream GSAs have to comply with SGMA including avoidance of undesirable results including significant and unreasonable degraded water quality. The Parent District also fears that modifying Cachuma Project operations so as to impair downstream water quality and possibly injure downstream water rights, contrary to the Cachuma Project Settlement Agreement, the Biological Opinion, WRO 2019-1048 and **Reclamation's water rights permits**, presents a significant risk of resumption of litigation and/or regulatory or administrative proceedings regarding the Project's impact on downstream water quality and water rights. This would be very unfortunate after decades were spent resolving disputes regarding Cachuma Project operations and on development of appropriate downstream release permits terms and conditions.

The Parent District recognizes the importance of and supports CCWA obtaining a temporary Warren Act Contract and has no desire to obstruct, complicate or delay that worthy endeavor. The simple solution here is to delete the additional restrictions on mixing from the Project, and if Reclamation desires to pursue them further, they should be considered and evaluated as part of the ongoing reinitiation of consultation as required by the federal Endangered Species Act.

Sincerely,



Kevin Walsh
General Manager

Ms. Rain L. Emerson, M.S.

April 22, 2022

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