

# SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101  
(805) 568-2240

**Agenda Number:**  
**Prepared on:** 3/28/01  
**Department Name:** Public works  
**Department No.:** 054  
**Agenda Date:** 04/17/01  
**Placement:** Administrative  
**Estimate Time:** NA  
**Continued Item:** NO  
**If Yes, date from:**

**TO:** Board of Directors  
Santa Barbara County Water Agency

**FROM:** Phillip M. Demery  
Public Works Director

**STAFF CONTACT:** Robert Almy, Water Agency Manager (Ext. 3542)

**SUBJECT:** 2001 MEMORANDUM OF UNDERSTANDING TO SUPPORT  
IMPLEMENTATION OF THE NATIONAL MARINE FISHERIES SERVICE  
BIOLOGICAL OPINION AND THE SANTA YNEZ RIVER TECHNICAL  
ADVISORY COMMITTEE LOWER SANTA YNEZ RIVER FISH  
MANAGEMENT PLAN

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## **Recommendation(s):**

That the Board of Directors:

Approve the Water Agency's participation in "Memorandum of Understanding for Implementation of the Lower Santa Ynez Fish Management Plan", and authorize Chair to execute.

## **Alignment with Board Strategic Plan:**

This action would meet Goals I (an efficient government able to anticipate and respond effectively to the needs of the community) and V (A high quality of life for all residents).

## **Executive Summary and Discussion:**

From 1993 to present a number of parties, including the County, have participated in the cooperative development and sharing of information and in efforts to balance the needs of consumptive water users and the fishery downstream of Bradbury Dam. Pursuant to information accumulated under studies and research conducted by the parties through previous memoranda of understanding, the Santa Ynez River Technical Advisory Committee (SYRTAC) finalized the Lower Santa Ynez River Fish Management Plan, in October 2, 2000. (The Water Agency has participated in each of the previous MOUs, including a multi year agreement, which expired January 1, 2001.)

In 1997 the National Marine Fisheries Service (NMFS) listed the anadromous Southern California "Evolutionarily Significant Unit" of steelhead trout as an endangered species under the Federal Endangered Species Act (ESA). Included as potential habitat were all local streams below significant barriers to migration (e.g. Santa Ynez River downstream of Bradbury Dam). Reclamation prepared a Biological Assessment for Cachuma Project Operations. NMFS prepared a Biological Opinion, titled U.S. Bureau of

Reclamation Operation and Maintenance of the Cachuma Project on the Santa Ynez River in Santa Barbara County, California, dated September 11, 2000, under Section 7 of the ESA, determining that proposed Cachuma Project operations do not cause jeopardy to the fishery downstream of Bradbury Dam, to the extent that the Lower Santa Ynez River Fish Management Plan is implemented.

Through the proposed MOU (Attachment A) the Water Agency would continue to provide technical support and, through its cooperative program with the United States Geological Survey, maintain a gauging station below Bradbury Dam. In addition, the Agency would consider proposals (in conjunction with the Cachuma Member Units) for expenditure from the \$100,000 provided annually for various "project related purposes" pursuant to the contracts between the Member Units and the Agency executed in 1996 (Attachment B).

### **Mandates and Service Levels:**

In 1994 the State Water Resources Control Board (Order #94-5) required that the U.S. Bureau of Reclamation continue the existing Fish Studies Memorandum of Understanding or a program very similar to it with regard both technical studies and commitment of water to allow the studies of fish to continue. In addition, the National Marine Fisheries Services has "listed" the Steelhead as an endangered species south of the Santa Maria River. Activities pursuant to the Lower Santa Ynez Fish Management Plan are intended to satisfy near term requirements on the operation of Cachuma Reservoir due to this listing. In addition, the Plan could provide a framework for local landowners to address the species or its habitat that may occur on their property.

Finally, the Fish Management Plan provides a basis for addressing Endangered Species Act mandates (steelhead listing) and public trust issues to be considered by the state Water Resources Control Board as it considers water rights permits for the Cachuma Project, a process that began in December 2000.

### **Fiscal and Facilities Impacts:**

Participation in the Consensus Committee is part of the approved Water Agency work program; thus development of the plan would have no fiscal impacts. Thus far no elements of the Fish Management Plan would directly effect ongoing or anticipated County programs. However, some elements of the plan may accelerate the growth of vegetation in the lower Santa Ynez River, increasing potential flood risk to certain downstream areas. Staff has not yet been able to evaluate the change in risk because relevant elements of the fish management plan remain general. Water Agency and Flood Control staff will continue to monitor the implementation of the plan closely.

### **Special Instructions:**

Direct the Clerk of the Board to send two originals of the signed MOU and the minute order to the Flood Control office, attn: Christina Lopez.

**Concurrence:** County Counsel, Auditor-Controller



**2001 MEMORANDUM OF UNDERSTANDING TO SUPPORT IMPLEMENTATION OF THE NATIONAL MARINE FISHERIES SERVICE BIOLOGICAL OPINION AND THE SANTA YNEZ RIVER TECHNICAL ADVISORY COMMITTEE LOWER SANTA YNEZ RIVER FISH MANAGEMENT PLAN**

**THIS MEMORANDUM OF UNDERSTANDING**, effective December 1, 2000, is made and entered into by and between:

**SANTA YNEZ RIVER WATER CONSERVATION DISTRICT, IMPROVEMENT DISTRICT NO. 1** (ID No. 1),

**CACHUMA CONSERVATION RELEASE BOARD (CCRB)** (as a representative of Goleta Water District, City of Santa Barbara, Montecito Water District, and Carpinteria Valley Water District),

**SANTA YNEZ RIVER WATER CONSERVATION DISTRICT (SYRWCD)**,

**CITY OF LOMPOC** (Lompoc),

**CALIFORNIA DEPARTMENT OF FISH AND GAME (DFG)**,

**UNITED STATES BUREAU OF RECLAMATION** (Reclamation),

**UNITED STATES FISH AND WILDLIFE SERVICE (USFWS)**, and

**SANTA BARBARA COUNTY WATER AGENCY** (County Water Agency).

Those entities which execute this Memorandum of Understanding are together referred to herein as the "Parties."

**RECITALS**

**WHEREAS**, from 1993 to present, many of the Parties have participated in the cooperative development and sharing of information and in the management of water resources, balancing the needs of consumptive water users and the fishery downstream of Bradbury Dam; and,

**WHEREAS**, pursuant to State Water Resources Control Board Order WR 94-5 (WR 94-5), Reclamation has engaged in the preparation of an Environmental Impact Report (EIR) under the California Environmental Quality Act to evaluate the environmental impacts downstream of

Bradbury Dam, if any, associated with a change in the operating regimen for the Cachuma Reservoir, as provided by water right permit numbers 11308 and 11310; and,

**WHEREAS**, in 1997 the National Marine Fisheries Service (NMFS) listed the anadromous Southern California Evolutionarily Significant Unit (ESU) of steelhead trout, which inhabits the Santa Ynez River downstream of Bradbury Dam, as an endangered species under the Federal Endangered Species Act (ESA); and, Reclamation prepared a Biological Assessment for Cachuma Project Operations and the Lower Santa Ynez River, dated April 7, 1999 (B.A.) and a Revised Section 3 of the Biological Assessment for Cachuma Project Operations and the Lower Santa Ynez River, dated June 13, 2000 (B.A., Revised Section 3); and, NMFS prepared a Biological Opinion, titled U.S. Bureau of Reclamation Operation and Maintenance of the Cachuma Project on the Santa Ynez River in Santa Barbara County, California, dated September 11, 2000 (NMFS B.O.), under Section 7 of the ESA, determining that proposed Cachuma Project operations do not cause jeopardy to the fishery downstream of Bradbury Dam; and,

**WHEREAS**, in connection with WR 94-5 and pursuant to information accumulated under studies and research conducted by reason of previous memoranda of understanding between many of the Parties and other entities, the Santa Ynez River Technical Advisory Committee (SYRTAC) finalized the Lower Santa Ynez River Fish Management Plan, dated October 2, 2000 (Fish Management Plan); and,

**WHEREAS**, the Parties wish to provide an institutional framework to support implementation of the NMFS B.O. and the Fish Management Plan, and to provide for governance and funding of activities arising thereunder;

**NOW THEREFORE, THE PARTIES ENTER THIS MEMORANDUM OF UNDERSTANDING** to cooperatively share work and information necessary for a mutually satisfactory resolution of their respective concerns related to the protection of the fishery below Bradbury Dam and the protection of domestic, agricultural, and recreational water uses, in connection with Cachuma Reservoir operations, in accordance with the following provisions:

**1. CONSENSUS COMMITTEE**

In order to implement this Memorandum of Understanding (MOU) and to direct cooperative efforts with regard to the fishery within the Santa Ynez River and its tributaries below Bradbury Dam, the Parties shall maintain a Consensus Committee to provide oversight for the work and activities of an Adaptive Management Committee (as provided in Section 2) and to provide policy advice on fishery issues and activities beyond those required by the NMFS B.O. Any signatory Party to this MOU is entitled to appoint one representative to the Consensus Committee. Reclamation shall provide a Chair to preside over and conduct the meetings of the Consensus Committee. Reclamation shall also prepare agendas and minutes for the meetings of the Consensus Committee. The Consensus Committee shall attempt to operate by unanimous approval. It shall have the following responsibilities:

**a. Semi-annual Meetings.** The Consensus Committee shall meet at least semi-annually, or more often if necessary, to provide policy, financial, legal, engineering, technical, and other assistance to the Adaptive Management Committee (as provided in Section 2), which may include technical recommendations provided to the Consensus Committee by the Technical Advisory Committee (as provided in Section 3).

**b. Fish Management Oversight.** The Consensus Committee may analyze, evaluate the feasibility of, and provide policy oversight on fishery resource management actions or recommendations of the Adaptive Management Committee, considering the need for consensus, the potential impacts to water supply, costs, and potential benefits.

**c. Water Accounting.** Reclamation shall provide to the Consensus Committee a quarterly accounting of all water held in and released from Cachuma Reservoir, including surcharge water used for target flows/fish releases, other water accounts administered under the NMFS B.O. and the Fish Management Plan, and of all other water released for fishery protection. The Consensus Committee may review the water accounting and make recommendations to the Adaptive Management Committee concerning fishery related water releases from the Cachuma Project.

**d. Review and Comment on Budget.** The Consensus Committee may review and comment upon the annual budget provided by CCRB and ID No. 1.

## **2. ADAPTIVE MANAGEMENT COMMITTEE**

The Parties shall establish and maintain an Adaptive Management Committee (AMC) to support implementation of the NMFS B.O. and the Fish Management Plan. In accordance with the NMFS B.O., Reclamation, NMFS, DFG, CCRB, SYRWCD, and ID No. 1 may each appoint one technical representative to the AMC. In addition, USFWS may appoint one technical representative to the AMC. Reclamation's representative shall serve as Chair to the AMC.

**a. Technical Review.** The AMC may review results of all monitoring and study of the fishery, fishery habitat, and hydrology of the Santa Ynez River and its tributaries below Bradbury Dam that is administered by CCRB and ID No. 1 under Section 4 of this MOU or by Reclamation with the goal of developing information to refine management actions described in the NMFS B.O. and the Fish Management Plan that will benefit the fishery resources in that reach of the Santa Ynez River and its tributaries. The AMC may provide scientific information/data to NMFS and the Consensus Committee for use in the design, development, construction and implementation of fish conservation and protectionary measures arising under the NMFS B.O. and the Fish Management Plan.

**b. Fishery Monitoring Program.** The AMC shall oversee fishery monitoring duties that are carried out by CCRB/ID No. 1 and Reclamation for the Santa Ynez River and its

tributaries below Bradbury Dam, and shall submit all resulting monitoring data and reports to NMFS.

**c. Adaptive Management.** As more data on fish passage supplementation is gathered, the AMC may make modifications to the fish management release protocols set forth in the NMFS B.O., subject to paragraph (e) of this Section. (NMFS B.O., pgs. 8-9).

**d. Adaptive Management Account.** The AMC will oversee the use of the 500 acre foot adaptive management account, as set forth in the NMFS B.O., subject to paragraph (e) of this Section. (NMFS B.O., pg. 9).

**e. NMFS Approval.** Any decisions made by the AMC which deviate from operations approved in the NMFS B.O., which could reasonably be expected to affect steelhead, must be approved by NMFS before being implemented. NMFS will require 30 working days to review such AMC decisions and any supporting data available. (NMFS B.O., pg. 78).

### **3. TECHNICAL ADVISORY COMMITTEE**

A Technical Advisory Committee (TAC), consisting of interested public members, may be formed and maintained to provide a public forum to assist in implementation of the NMFS B.O., the Fish Management Plan, and this MOU.

**a. Meetings.** Any TAC meetings shall be open public meetings with notices and agendas provided to all interested public members who request such notice. Interested public members are encouraged to participate in this forum and shall be afforded the opportunity to comment on agenda items of the TAC. The TAC shall make a good faith effort to provide notice of TAC meetings to owners of property containing Rainbow trout/ steelhead habitat. TAC meetings may coincide with meetings of the Consensus Committee.

**b. Technical Recommendations.** The TAC may provide technical recommendations to the Consensus Committee or the AMC regarding biologic and hydrologic resources within the Santa Ynez River watershed.

### **4. FINANCIAL ARRANGEMENTS**

The Parties shall provide, in accordance with the following provisions, funding required to conduct activities arising under this MOU.

**a. Project Budgets.** CCRB and ID No. 1 shall annually prepare a budget to implement the NMFS B.O., the Fish Management Plan, and this MOU, including provision of administrative and monitoring support as required by Section 5 below. The draft budget

shall be submitted to the Consensus Committee and the AMC for review and comment prior to its adoption. The Parties agree to negotiate in good faith through the Consensus Committee to achieve unanimity in regard to the annual budget; provided that CCRB and ID No. 1 shall retain exclusive discretion to adopt the annual budget and to approve all expenditures of CCRB and ID No. 1 funds, respectively, including funding obtained by CCRB and ID No. 1 pursuant to paragraph 4(b) below. Any Party, by separate written instrument, may agree to contribute funding to any annual budget.

**b. Funding.** The projects and activities carried out under the NMFS B.O., the Fish Management Plan, and this MOU shall be funded to the greatest extent feasible by (i) grants obtained from federal government, state government and private foundation programs and (ii) funds provided by the Cachuma Project Contract Renewal Fund, the Warren Act Trust Fund, and the County Water Agency pursuant to the Cachuma Project Member Unit Contract, effective May 15, 1995. CCRB and ID No. 1 shall diligently pursue, and the Parties shall cooperate reasonably in seeking, such grants and funds, and the Parties agree that those grants and funds may be exclusively devoted, except as set forth below, to carrying out the projects and activities under the NMFS B.O., the Fish Management Plan, and this MOU. The parties recognize that funds provided by the Cachuma Contract Renewal Fund, the Warren Act Trust Fund, and the County Water Agency, as set forth above, may be used for purposes other than those outlined in this MOU, pursuant to established decision making procedures. Any expenditures by Reclamation under the NMFS B.O., the Fish Management Plan, or this MOU shall be subject to the terms of Article 27 of the Contract No. I75r-1802R Between the United States and Santa Barbara County Water Agency Providing for Water Service from the Project, effective May 15, 1995.

**c. Supplemental Funding.** To the extent that funds obtained pursuant to paragraph 4(b) are insufficient to carry out the projects and activities under the NMFS B.O., the Fish Management Plan, and this MOU, CCRB and ID No. 1 shall separately consider, in their sole discretion, providing supplemental funding for those projects and activities. If CCRB and ID No. 1 contribute supplemental funding pursuant to this paragraph in any fiscal year, such funds shall be contributed 89.7% from CCRB and 10.3% from ID No. 1, subject to separate written approval by each agency as to its respective share.

## **5. ADMINISTRATIVE AND MONITORING SUPPORT**

The Parties agree that administrative and monitoring support for this MOU shall be provided by CCRB and ID No. 1., and funding for such support shall be included in the annual budget. The term “administrative and monitoring support” includes: project/construction management for physical projects carried out under this MOU; administration of the contracts for consultants and contractors hired to perform the work arising under this MOU; carrying out monitoring, studies, and surveys regarding the fishery, fishery habitat, and hydrology of the Santa Ynez River and its tributaries below Bradbury Dam through contractors, agency



employees, a project biologist, and such other means as deemed appropriate; reporting the results of such monitoring, studies, and surveys, and of compliance under the NMFS B.O., the Fish Management Plan, and this MOU to Reclamation, and to the Consensus Committee and to the Technical Advisory Committee for distribution at public meetings; and giving notices, distributing documents, providing for meeting space, and performing such other administrative and coordination needs as the Consensus Committee and the AMC may, from time to time, require. CCRB and ID No. 1 shall keep records of financial transactions on a generally recognized accounting basis and such records shall be maintained for a period of five (5) years following the completion of the work. Any and all costs incurred under this Section are subject to the provisions of Section 4 of this MOU.

## **6. IMPLEMENTATION**

The activities under this MOU, including activities identified in Exhibit "A" to this MOU, incorporated herein by this reference, shall be carried out in accordance with the NMFS B.O., the Fish Management Plan, the applicable orders of the State Water Resources Control Board, and in consideration of the recommendations provided by the Consensus Committee, the TAC, and the AMC.

## **7. TARGET FLOW/FISH RELEASES (FISHERY PROTECTIVE MEASURES)**

To maintain the fishery in the Santa Ynez River below Bradbury Dam, Reclamation shall operate the Cachuma Reservoir in a manner consistent with the target flow/fish release provisions provided for in the NMFS B.O., the Fish Management Plan, applicable orders of the State Water Resources Control Board, and the applicable recommendations of the AMC, subject to NMFS approval, as necessary.

## **8. CACHUMA CONSERVATION RELEASE BOARD**

For all purposes set forth in this MOU, CCRB is a Party to this MOU as a representative of Goleta Water District, City of Santa Barbara, Montecito Water District, and Carpinteria Valley Water District, collectively referred to herein as the South Coast Member Units. The South Coast Member Units have delegated their respective duties and responsibilities under this MOU to CCRB and, in the event that CCRB shall dissolve or cease to operate during the term of this MOU, such duties and responsibilities may be assumed by the South Coast Member Units or assigned thereby to another representative agency.

## **9. FEDERAL ENDANGERED SPECIES ACT RESPONSIBILITIES**

Activities under this MOU shall be coordinated with NMFS and USFWS for technical expertise and assistance in developing information and implementing actions which will maintain the fishery below Bradbury Dam, subject to their respective funding capabilities and annual appropriations. Nothing in this MOU shall be interpreted to supersede or interfere with the jurisdiction and responsibilities of NMFS, Reclamation or USFWS under Section 7 of the Endangered Species Act and other applicable federal laws to evaluate independently the effects of federal agency actions connected with the Cachuma Project on federally listed threatened and endangered species and other fish and wildlife resources. Nothing in this MOU shall be interpreted to supersede or interfere with the jurisdiction and responsibilities of NMFS and Reclamation, as set forth in federal law, regulations, and policies.

## **10. DEPARTMENT OF FISH AND GAME**

Activities under this MOU shall be coordinated with DFG for technical expertise and assistance in developing information and implementing actions which will maintain the fishery below Bradbury Dam, subject to its funding capabilities and its annual appropriations. Nothing in this MOU shall be interpreted to supersede the jurisdiction and responsibilities of DFG under existing state laws, regulations, codes, and policies of DFG and the Fish and Game Commission.

## **11. TERM, WITHDRAWAL AND RENEWAL**

This MOU shall remain in full force and effect as to all signatory Parties, effective December 1, 2000, for the period in which the Cachuma Project is operated pursuant to the NMFS B.O.; provided, however, that any Party may provide notice to all of the other Parties that it intends to withdraw from this MOU. Withdrawal will be effective only upon full discharge of the withdrawing Party's obligations under this MOU. Upon receipt of a notice of intent to withdraw, CCRB and ID No. 1 shall place the notice of intent to withdraw on the agenda for the next meeting of the Consensus Committee to determine whether, and under what terms and conditions, this MOU should be continued, amended or terminated in light of the notice of intent to withdraw.

## **12. PRIMARY FORUM**

All Parties shall use their best efforts and good faith to develop and maintain information concerning the fishery below Bradbury Dam pursuant to the provisions of this MOU and the recommendations of the AMC as provided herein. The Parties intend to have the arrangements in this MOU operate as the primary forum for resolution of issues related to maintaining the fishery below Bradbury Dam.

**13. ACCESS TO INFORMATION**

Each Party shall have access to, and the right to use and publish, any and all information, data, summaries, charts, programs and other material developed or maintained under this MOU. All information shall be gathered, distributed and maintained in a manner to assure freedom of access to and use of such material by the Parties. No Party shall be individually responsible to perfect or to defend such rights of use or access to any material developed or maintained hereunder. The data collected and material developed or maintained pursuant to this MOU may be referred to, used, and presented, to the extent it is timely available, as part of the normal course of public hearings associated with the use or operation of the Cachuma Project and/or Santa Ynez River resources.

**14. COUNTERPART ORIGINALS**

This MOU may be executed in one or more counterparts and each counterpart shall be evidence of participation by all signatories.

**15. NO WARRANTY FOR LEGAL DEFENSE**

No Party, nor any representative thereof, shall be responsible to provide a defense or other legal representation to any other Party by reason of any legal proceeding arising out of or in connection with this MOU. Each Party specifically reserves the right to participate or not participate in any such legal proceeding, at the sole discretion of that Party.

**16. AMENDMENT**

This MOU, and any Exhibits hereto, may be amended, from time to time, with the written consent of all Parties who have not withdrawn as provided in Section 11 hereof.

**17. NO INDEMNITY**

No Party, nor any representative thereof, shall be responsible for any damage or liability occurring by reason of any act or omission by any other Party or participant, or representative thereof, pursuant to or in connection with this MOU.

**18. CONTINGENT ON APPROPRIATION OF FUNDS**

The expenditure or advance of any money or the performance of any obligation of the United States under this MOU shall be contingent upon appropriation or allotment of funds in accordance with 31 U.S.C. 1341. No liability shall accrue to the United States for failure to perform any obligation under this MOU in the event that funds are not appropriated or allotted.

**IN WITNESS WHEREOF**, the Parties hereto have executed this MOU as of the day and year first above written.

SANTA YNEZ RIVER WATER  
CONSERVATION DISTRICT, IMPROVEMENT  
DISTRICT NO. 1

By \_\_\_\_\_

CACHUMA CONSERVATION  
RELEASE BOARD

By \_\_\_\_\_

CITY OF LOMPOC

By \_\_\_\_\_

SANTA YNEZ RIVER WATER  
CONSERVATION DISTRICT

By \_\_\_\_\_

ATTEST:

MICHAEL F. BROWN  
CLERK OF THE BOARD

By \_\_\_\_\_

APPROVE AS TO ACCOUNTING FORM  
ROBERT W. GEIS, CPA  
AUDITOR-CONTROLLER

By: \_\_\_\_\_

CALIFORNIA DEPARTMENT  
OF FISH AND GAME

By \_\_\_\_\_

UNITED STATES BUREAU  
OF RECLAMATION

By \_\_\_\_\_

UNITED STATES FISH  
AND WILDLIFE SERVICE

By \_\_\_\_\_

SANTA BARBARA COUNTY  
WATER AGENCY

By \_\_\_\_\_

APPROVED AS TO FORM:  
COUNTY COUNSEL

By: \_\_\_\_\_

# EXHIBIT A

## FLASHBOARD MODIFICATIONS

Reclamation shall proceed forthwith to evaluate the modification of the flashboards of Bradbury Dam for the purpose of capturing additional water in Cachuma Reservoir to be used for the Santa Ynez River fishery. The Cachuma Reservoir is currently capable of surcharging up to .75 feet. Environmental review has been completed for the 1.8 foot surcharge in the Contract Renewal EIR/EIS, and operations consistent with that surcharge may be implemented upon completion of the spillway modifications as set forth in the NMFS B.O. and the Fish Management Plan. Environmental review for the 3.0 foot surcharge will be completed and Project operations consistent with that surcharge will be implemented as provided in the NMFS B.O. and the Fish Management Plan. A separate agreement shall be developed for funding and modification of Bradbury Dam flashboards for a 3.0 foot surcharge.