

B.4 COMMENTS FROM REGIONAL AGENCIES

R-1 Chris Dahlstrom, Santa Ynez River Water Conservation District, Improvement District No. 1



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October 31, 2008

Jack Collins, Resource Specialist
United States Bureau of Reclamation
1243 'N' Street
Fresno, CA 93721

**Re: Comments on Draft Environmental Impact Statement
for the Cachuma Lake Resources Management Plan**

Dear Mr. Collins:

Thank you for the opportunity to provide the United States Bureau of Reclamation ("Reclamation") with comments on its Draft Environmental Impact Statement (the "DEIS") for the Cachuma Lake Resources Management Plan (the "Plan" or "RMP"). This comment letter is submitted on behalf of the Santa Ynez River Water Conservation District, Improvement District No. 1, (ID. NO. 1) with respect to the Draft Environmental Impact Statement (the "DEIS") for the Cachuma Lake Resources Management Plan¹ (the "Plan" or "RMP").. This letter has been prepared through the joint effort of ID. NO. 1 management, staff and its legal counsel, Brownstein Hyatt Farber Schreck, LLP and Best Best & Krieger. Since these comments are submitted within the comment period established by Reclamation under the National Environmental Policy Act ("NEPA"), ID NO. 1 looks forward to reviewing Reclamation's responses.

¹ Approximately 6,200 acres of land immediately surrounding Cachuma Lake comprise the Plan Area of this RMP. The Plan Area consists of federal lands owned by the Reclamation, which are administered by the Santa Barbara County Parks Department (County Parks) under contract to Reclamation. Land use/land cover within the Plan Area includes recreation, undeveloped open space (open lands and open water), and agriculture (grazing). DEIS at p. 3-51.

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I. INTRODUCTION & OVERVIEW OF COMMENTS

A. ID NO. 1 Has a Substantial Interest in the DEIS and Plan

As Reclamation is aware, ID NO. 1² is one of several public agencies which provide water service to consumers within Santa Barbara County. Specifically, ID NO. 1 provides domestic, commercial, and agricultural water services to approximately 9,000 consumers within and around the towns of Santa Ynez, Ballard, and Los Olivos as well as to water users within the City of Solvang. ID NO. 1's service area includes over 10,850-acres, nearly 90-miles of water supply lines, and infrastructure improvements. The existing park area at Lake Cachuma is also included in ID NO. 1's service area and as part of its place of use in which domestic is supplied for those recreational uses. For nearly fifty years, ID NO. 1 has provided its consumers with a reliable, high quality water supply. The largest single source of this water supply is based upon ID NO. 1's contract for water from Lake Cachuma. Approximately 40% of the water provided by ID NO. 1 for consumptive uses is based upon its Cachuma Project water service and member unit contracts, with the rest of ID NO. 1's water coming from the Santa Ynez River, groundwater and other imported water sources. Because of ID NO. 1's substantial reliance on Lake Cachuma, any project which may prevent, limit, or otherwise adversely impact ID NO. 1's ability to utilize its water supply is of great importance to ID NO. 1 and the consumers who depend upon ID NO. 1 for water.

Additionally, ID NO. 1 has interests in the Santa Ynez River watershed that reach beyond water supply. ID NO. 1 has been involved with interagency cooperative efforts to study native fisheries in the lower Santa Ynez River system for well over a decade. In 1994, following the commencement of those studies, the Southern California Steelhead population below Bradbury Dam was listed as federally endangered pursuant to the federal Endangered Species Act. ID NO. 1, in cooperation with other agencies, incorporated this new information into its study efforts and, as Reclamation knows, a Fish Management Plan and associated Biological Opinion were prepared and approved which set forth a variety of projects and regulatory procedures that will benefit fish and other aquatic resources in the lower Santa Ynez River.

B. Summary of Comments

As set forth in greater detail below, ID NO. 1's comments focus on: (1) the assumptions behind the DEIS and Plan and the funding necessary for the Plan and its mitigation measures; and (2) the analysis of the Plan's environmental effects.

With regard to Reclamation's assumptions, the DEIS acknowledges the importance of Lake Cachuma to the area's water supply, stating that "[o]ver the past 45 years, the Cachuma Project has been the principal water supply for the Santa Ynez Valley and South Coast communities, delivering an average of 25,000 acre-feet [of water] per year." DEIS at p. 1-1. The DEIS also states that the original purpose for constructing Bradbury Dam and Lake

² I.D. NO. 1 was formed in 1960 pursuant to the Water Conservation Law of 1931, Division 21, Section 74000 et seq. of the California Water Code as an Improvement District of the Santa Ynez River Water Conservation District for the purposes of furnishing water within the Water District.

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Cont.**

Cachuma was “to provide irrigation, domestic, and municipal and industrial water supplies to” nearby water supply agencies. DEIS at p. 1-1.) Despite these acknowledgements, Reclamation *assumes* that expanded recreational uses around Lake Cachuma are desirable. Additionally, the *analysis* in the DEIS does not treat recreational uses as subordinate to those of providing a clean and reliable water supply to nearby communities. Reclamation’s assumptions regarding expanded recreation and its analysis of recreational impacts are inappropriate and result in an DEIS that is tipped in favor of expanded recreation rather than recognizing the principal need of a clean and reliable water supply. Additionally, the DEIS does not address ID NO. 1’s unique water service area boundary at the park and the Cachuma Project water supplies within that approved Place of Use area. Furthermore, the DEIS does not analyze the expanded recreational uses outside the service area and approved Place of Use and water supplies for those uses. Moreover, the development of the Plan alternatives is, in some cases, based on outdated and incomplete information. Finally, ID NO. 1 intends by this letter to make clear that it is not in a position to provide funding to mitigate for the environmental effects of Reclamation’s Plan. Should Reclamation approve its proposed Plan and should significant effects result from the Plan’s implementation, Reclamation or the local managing partner – not ID NO. 1 – will be held responsible for the costs of mitigating those effects.

R-1-2

With regard to Reclamation’s analysis of environmental effects, ID NO. 1 is concerned by Reclamation’s cursory treatment of the Plan’s adverse environmental impacts. First, there is a very real possibility that exotic and invasive aquatic species (*e.g.*, Quagga mussels) will be transferred from launched boats into Lake Cachuma and infest both the Lake and the water delivery infrastructure that is crucial to water supply in Santa Barbara County. Second, there is a significant risk that increased equestrian, bovine, and, particularly, human contact with the Lake will cause significant bacterial and pathogen loads to develop in a Lake that serves as the primary source of drinking water for thousands of Santa Barbara County residents. Third, the DEIS acknowledges that “as much as 30 percent of the fuel used by carbureted two-stroke engines is discharged unburned into the water” (DEIS at p. 3-6), yet the DEIS fails to grapple with the water quality impacts of allowing two-stroke engine boats to use Lake Cachuma. Fourth, the DEIS overlooks the possibility that increased recreational fish stocking will result in potentially significant impacts downstream of Lake Cachuma because stocked fish escape over spillways to downstream areas and (in the case of bass) prey upon or (in the case of stocked trout) interbreed with the federally endangered population of Southern California Steelhead that currently reside below Bradbury Dam. These issues must be analyzed in the DEIS, particularly given that Reclamation and ID NO. 1 are involved in a California State Water Resources Control Board proceeding that seeks to balance the protection of Southern California Steelhead with the need to protect long-standing water supplies.

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II. RECLAMATION'S OBLIGATIONS UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT

NEPA compels federal agencies to consider the consequences of their proposed activities on the human environment. 42 U.S.C. § 4331. The statute requires federal agencies to produce an DEIS when proposing to engage in any "major³ Federal actions" that will significantly affect the human environment. 42 U.S.C. § 4332(2)(C). A significance determination requires agencies to consider the context of an action and the intensity of its impacts. First, context refers to analyzing an action in several contexts such as the affected region, the affected interests, and the locality. Under the regulation, both short and long term effects are relevant. Second, intensity refers to the severity of impact which considers a series of factors:

- (a) Impacts both beneficial and adverse;
- (b) the degree to which the proposed action affects public health and safety;
- (c) Unique characteristics of the geographic area;
- (d) the degree to which effects on the environment are likely to be highly controversial;
- (e) the degree to which effects on the environment are highly uncertain or involve unique or unknown risks;
- (f) the precedential effects of an action;
- (g) whether the action is related to other actions with individually insignificant but cumulatively significant impacts;
- (h) adverse effects on historic resources;
- (i) adverse effects on an endangered or threatened species or its habitat;
- (j) whether the action threatens a violation of a federal, state or local environmental law.

R-1-3

Environmental Protection Information Center v. Blackwell (D. Cal. 2004) 389 F.Supp.2d 1174.

³ A major federal action is federal action that requires substantial planning, time, resources, or expenditure. *Natural Res. Def. Council, Inc. v. Grant* (E.D.N.C. 1972) 341 F.Supp. 356.

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An agency is then required to prepare an environmental impact statement if the proposed action has the potential to significantly affect the quality of human environment and the action cannot be modified to avoid such impacts. Under these circumstances, as here, NEPA requires an DEIS disclose:

- The environmental impact of the proposed action
- Any adverse environmental effects that will be unavoidable if the proposed action is implemented
- Alternatives to the proposed action
- The relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity
- Any irreversible and irretrievable commitments of resources resulting from implementation of the proposed action

42 U.S.C. § 4332(2)(c); *see also* 40 C.F.R. § 1508.11 (Defining EIS).

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In order for the DEIS to adequately justify the expense of taxpayer monies on a project that will cause significant environmental impacts, it must contain a purpose and need section explaining why the action is necessary and worthwhile. This section sets forth the parameters of the required reasonable range of alternatives, including the proposed action. 40 C.F.R. § 1502.13. Here, the Purpose and Need section in the DEIS states the RMP will include:

- Ensuring timely delivery of high-quality water to water users while enhancing natural resources and recreational opportunities;
- Providing recreational opportunities to meet the demands of a growing, diverse population;
- Ensuring recreational diversity and the quality of the recreational experience;
- Protection of natural resources, while educating the public to their value and good stewardship;
- Providing the framework for establishing a new management agreement with a managing partner.

DEIS at p. 1-3.

As set forth more fully below, the three (3) proposed alternatives limit the proposed action to expanding recreational opportunities in and around Lake Cachuma, which is the principal drinking and agricultural water supply for the Santa Ynez Valley and South Coast Communities. DEIS at pp. 1-1, ES-2. The lake also stores and releases water for steelhead/rainbow trout fishery below Bradbury Dam. DEIS at p. 1-1. While the DEIS states it will propose uses that will be compatible with Reclamation's obligation to operate the reservoir for water delivery, this is done without providing any alternative that demonstrates the difference in impacts. *Id.*

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Because changing and expanding these uses has the potential to negatively impact Cachuma Lake's water quality as well as the quantity of water may be available to serve the numerous consumptive water uses and releases for steelhead/rainbow trout dependent upon the Cachuma Project, preparation of an DEIS was appropriate. However, the DEIS does not comport with the requirements of NEPA, which requires that, "to the fullest extent possible . . . the policies, regulations and public laws of the United States . . . be interpreted and administered in accordance with the policies" set forth in the Act. 42 U.S.C. § 4332. As the Ninth Circuit Court of Appeals has recognized, "these are strong words directing our statutory interpretation." *Jones v. Gordon*, 792 F.2d 821, 826 (9th Cir. 1986). This language serves as the foundational statement of the "greatest importance to NEPA," which is "to require . . . agencies to consider environmental issues just as they consider other matters within their mandates." *Calvert Cliffs' Coord. Com. v. United States Atomic Energy Comm'n*, 449 F.2d 1109, 1112 (D.C. Cir. 1971) (emphasis in original).

A. Required Coordination with State and Local Agencies

In preparing its DEIS, Reclamation is governed not only by the text of the NEPA statute and the Council on Environmental Quality's implementing regulations, but also by the Department of the Interior's NEPA implementing procedures. See, e.g., 65 Fed. Reg. 52212 (Aug. 28, 2000). These procedures require that the underlying environmental analysis

"factually, objectively, and comprehensively analyze the environmental effects of the proposed actions and their reasonable alternatives. [Reclamation's management should] systematically analyze the environmental impacts of alternatives, and particularly those alternatives and measures that would reduce, mitigate or prevent adverse environmental impacts or which would enhance environmental quality." 65 Fed. Reg. at 55213.

R-1-5

Under NEPA, the Intergovernmental Coordination Act of 1968 (31 U.S.C. § 6506), and the Intergovernmental Coordination Executive Order (Exec. Order No. 12,372, reprinted in 31 U.S.C. § 6506), federal agencies are required to solicit and consider local views on their projects to the degree to which the potential impacts may produce serious conflicts with local entities and conditions.

Specifically, the Council on Environmental Quality (CEQA) NEPA Regulations "encourage" integration with state and local land use requirements (with the goal of "one project-one document"). As part of this process the lead agency can designate "cooperating agencies" that are involved in the NEPA document preparation and may use the document to satisfy their own environmental review requirements to the extent allowed by law. At the request of the lead agency, any federal, state, local or tribal agency with jurisdiction by law or special expertise can be a cooperating agency. Here, it is ID NO. 1's understanding from Santa Barbara County Parks Department ("County Parks") staff, that the County Parks declined to be a cooperating agency and instead will comment on the DEIS through the public review process.

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While County Parks has yet to comment, with respect to consistency with state and local regulations, the regulations state:

To the extent possible, all national, regional, State, and local viewpoints shall be considered in planning development programs and projects of the United States Government or assisted by the Government. State and local government objectives and the objectives of regional organizations shall be considered within a framework of national public objectives expressed in laws of the United States. Available projections of future conditions in the United States and needs of regions, States, and localities shall be considered in plan formulation, evaluation, and review (31 U.S.C. § 6506(c)).

Moreover, CEQA NEPA Regulations require federal agencies to address inconsistencies between a proposal and state/local laws or plans. The NEPA document should describe the extent to which the federal agency would reconcile the inconsistency (40 C.F.R. § 1506.2(d); see also *Village of Palatine v. U.S. Postal Service*, 756 F.Supp. 1079 (N.D.Ill., 1990) addressing the extent to which a federal agency must document compliance with the Intergovernmental Cooperation Act, explain a decision to conflict with local regulations, and consider project alternatives.)

Potential inconsistencies with both existing land uses and failure to consider state law presently exist.

1. Existing Land Uses

The County's Comprehensive Plan Land Use Element assigns a land use designation of "Other Open Lands" to the Lake Cachuma RMP area, which is applied to areas where "lands are subject to environmental constraints on development [and] have no agricultural potential or have outstanding resource value." Santa Barbara County Comprehensive Plan Land Use Element, revised 2002, page 167.

R-1-6

The DEIS states that "[a]ll applicable Santa Barbara County land use policies have been reviewed and are consistent with the RMP planned activities." DEIS at p. 3-51. The DEIS also describes existing land uses such as land use designations, campgrounds, paved roads, and other on-ground facilities (e.g., DEIS at pp. 3-50 through 3-56), but does not address any inconsistency with current County zoning.

While the southern portion of the RMP area (where the campgrounds are) is designated "Recreation/Open Space", the Plan area is also zoned AG-100 under the County's old zoning ordinance⁴ (Ordinance 661). The AG-100 zone district does not allow the current or proposed

⁴ A new zoning code replaced Ord. 661 for most of the land in the County but some remote and/or agricultural land is still under what remains of Ord. 661. Most of the contents of Ord. 661, including the administrative section, was repealed in 1984 leaving a skeleton ordinance with little direction or information for whether the County requires

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recreation type uses—insofar as the County has jurisdiction over the area zoned. In short, depending on the location(s) of the proposed expansion area, the County may insist that the historic land uses be amended, and therefore the existing zoning cannot be found to be consistent.

2. County Parks' Contract with Reclamation Likely Triggers CEQA Analysis

County Parks currently manages the Plan area pursuant to the Agreement to Administer Recreational Area ("Agreement") with Reclamation. The Agreement expired in 2003 but was extended until the RMP is completed. According to the DEIS, "Reclamation will develop a new management contract with the County using the RMP for guidance on future land, resource, and recreation management". (DEIS at p. 1-1.)

R-1-7

Unless contract renewal is automatic, without action by the County, it will likely require the County's discretionary approval and will be a project for CEQA purposes. When this happens, or when the County (or other selected agency) seeks to take any discretionary action in the course of managing the project, even without a renewed contract, the action or approval should be subject to CEQA review.

In point of fact, the original notification of circulation of this document was indeed for a joint NEPA/CEQA document. The news release announcing the release of the DEIS for comment (originally setting the September 22 deadline) read in part: "The Draft EIS was prepared in accordance with the National Environmental Policy Act and the California Environmental Quality Act and is available for a 30-day public review."

It is unclear why CEQA analysis was severed from the proposed DEIS, but should be accomplished prior to entering into a new management contract or extension

B. Deferred Analysis of Foreseeable Impacts is Inappropriate

The DEIS defers environmental analysis of new or expanded activities to the future, upon implementation of the plan by the "managing partner" (i.e., County Parks):

R-1-8

It should be noted that the local managing partner will be required to conduct an appropriate site specific environmental review for most of the new or expanded recreational activities identified in the RMP such as new day use or camping facilities at Live Oak Camp or new boat launches. The environmental documentation would be prepared to meet NEPA requirements because the projects would occur on federal land, and may need to satisfy California Environmental Quality Act (CEQA) requirements if the projects are partially funded or managed by the local managing partner.

zoning consistency under the zoning ordinance applicable to the area. However, the new zoning code for the rest of the County specifically states that it does not apply to development by the Federal Government on leased or Federally owned land.)

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Some of the new recreational uses and most of the natural resource management actions identified in the RMP may not require additional environmental review because (1) the environmental analyses of these actions are adequately addressed in this EIS, or (2) such actions are exempt from environmental review. (emphasis added).

DEIS at p. 2-9.

The DEIS only defines the anticipated “management actions and projects...at a conceptual or programmatic level” and defers site specific environmental review of “most of the new or expanded recreational activities identified in the RMP” to be done later by the County. DEIS at p. 2-9. The DEIS admits that the new or expanded uses it identifies will require CEQA review to the degree that the managing entity funds or manages them, but again it defers CEQA review to the “managing entity”. *Id.*

R-1-8,
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But then, in contradiction, the DEIS reveals Reclamation’s intent to forego future environmental review on “most of the natural resource management actions identified in the RMP” based on potential exemptions. *Id.* The programmatic nature of an DEIS does not insulate the DEIS from attack for failing to evaluate impacts from uses known at the time the programmatic DEIS is prepared. Indeed, a failure to address site specific impacts has been repeatedly held as a basis for challenging the adequacy of a programmatic DEIS that skims too broadly over the surface and attempts to improperly defer analysis. See *Salmon River Concerned Citizens v. Robertson* 798 F.Supp. 1434 (Dist. E.D. Cal. 1992); *Idaho Conservation League v. Mumma* 956 F.2d 1508 (9th Cir.1992). “To the extent that the plan pre-determines the future, it represents a concrete injury that plaintiffs must, at some point, have standing to challenge. That point is now or it is never.” *Salmon River* at p. 1439.

The seminal case, directly on point is *California v. Block* where the Court held the Forest Service programmatic DEIS was insufficient because it deferred analysis of impacts from policy change to expand uses of “Nonwilderness” lands when the decision to manage the land for uses other than wilderness had already been made. *California v. Block* 690 F.2d 753, 761–62 (1982). Essentially, a programmatic DEIS must include site specific analyses of impacts and alternatives when a critical decision has been made to act which practically means when the agency proposes to make an “irreversible and irretrievable commitment of the availability of resources” to a project on a particular site. *Id.* at p. 761.

Like *Block*, that committed the Forest Service to managing nonwilderness lands for expanded uses, here the RMP proposes a substantial expansion of recreational uses, elevating them above the public’s need for a clean and safe water supply. Just as the programmatic DEIS in *Block* was found inadequate for failing to analyze the impacts of the Forest Service’s commitment to expansion, here the DEIS may likewise be vulnerable challenge unless the foreseeable impacts described below are analyzed.

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In light of the above, it is of paramount importance that the public, local agencies, and federal decision-makers be provided with sufficient information as to all of the potential environmental and other effects of the Plan. Currently, the DEIS lacks sufficient information and support related to the Plan's environmental and other effects. Further, parts of the analysis, including much of the alternatives analysis, were prepared several years ago and have not been updated to reflect the events of the past few years – including and information and environmental concerns that have emerged during that time. Because these facts and events are not acknowledged or analyzed, the mitigation measures described in the document will likely be insufficient to reduce the impacts of the action alternatives. Consequently, significant impacts could remain for the action alternatives, contrary to the conclusions of the DEIS.

III. THE DEIS AND PLAN NEED ADDITIONAL INFORMATION TO SATISFY THEIR INFORMATIONAL PURPOSES

A. The Analysis in the DEIS and Plan Are Inconsistent With the Foundational Premise of the Cachuma Project: Recreation is Subordinate to Water Supply

R-1-9

As Reclamation acknowledges in the first few pages of its DEIS, the primary purpose of Cachuma Lake is to store and deliver water for municipal, industrial, and agricultural uses. DEIS at p. 2-4. This purpose is of particular importance to ID NO. 1 and the members of the public it serves. Indeed, in places the DEIS specifically notes that “[t]he original Project purpose recognized that public recreation was an incidental benefit of the Project.” *Id.* (emphasis added); DEIS at p. 1-2 (first objective of the RMP is to “[p]rotect the water supply and water quality functions of Cachuma Lake”). However, despite the importance of protecting the Lake's water quality, the RMP and DEIS alternatives analysis imply that “enhancing recreational opportunities” has in practice been elevated to a purpose equal to or greater than the provision of safe, high quality drinking water. This is demonstrated by the fact that the foremost objective of the RMP is described as doing both; that is: “protect water quality . . . while enhancing natural resources and recreational opportunities.” DEIS at p. 1-3 (emphasis added). The fact that these goals may be in conflict is not addressed. ID NO. 1 believes that the need to protect the water quality of a reservoir used for drinking water by its domestic customers, including hundreds of thousands of residents and transient visitors to the lake must take primacy and that the DEIS must recognize that primacy throughout its analysis, not just in its introduction.

R-1-10

The RMP's “Purpose and Need” section also identifies recreational opportunities as in need of “enhancing.” DEIS at p. 1-3. This fundamental assumption is never explained.⁵ Indeed, it seems to contradict other portions of the DEIS, which state that population growth in the surrounding counties is expected to be “low” and that “growth in recreational demand for Cachuma Lake is somewhat unknown.” DEIS at p. 4-58. Furthermore, boat usage on Cachuma Lake has decreased (DEIS at p. 4-40), and “the annual number of vehicles visiting the Plan Area is decreasing . . .” DEIS at p. 3-77. Despite this, and without explanation, “growth is assumed”

⁵ Failure to explain the assumptions underlying an DEIS may violate NEPA. *California v. Block*, 690 F.2d 753, 767 (9th Cir. 1982).

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by Reclamation. DEIS at p. 4-58. It is essential that data demonstrating a need for increased recreational opportunities be provided, if such data in fact exists.

R-1-11

Despite the uncontroverted importance of the Lake as a drinking water reservoir, the DEIS does not examine any alternatives that enhance the protection of water quality. Instead, the only two alternatives that are analyzed relate to increasing recreation at Lake Cachuma. Both of these alternatives generate more impacts than the No Project alternative even with the mitigation measures discussed in the DEIS, many of which are acknowledged as inadequate to fully mitigate potential impacts to the Lake's water quality. Because of the importance of Lake Cachuma's use as a drinking water source of supply, this is unacceptable. Basing a broad-ranged plan that will shape the resource area for decades on an assumed need for expanded recreation, a goal that may be fundamentally at odds with the primary purpose of the reservoir, is worrisome. The public – including the hundreds of thousands who depend on the Lake for their water supply – need to be provided with additional facts and analysis regarding the Plan that will direct development at Lake Cachuma.

1. Adding Information in Compliance with Reclamation's RMP Guidebook Directives Will Improve the DEIS

As discussed in Reclamation's Resource Management Plan Guidebook ("RMP Guidebook"), "[e]ach alternative . . . should address and resolve, in a different manner, the issues and concerns raised by the public" RMP Guidebook at III-9 (Feb. 2003). The vital importance of the need, first and foremost, to protect the water quality of Lake Cachuma was pointed out during the scoping process. DEIS at p. 2-24. Despite this comment and the RMP Guidebook directive, however, concerns about the need to protect the Lake are given short shrift.

R-1-12

The RMP Guidebook further states that "[e]ach alternative should be realistic and implementable within anticipated funding and staffing levels." RMP Guidebook at III-9. However, the alternatives and mitigation measures contain unrealistic provisions, including building a water treatment plant to allow for body contact swimming. DEIS at p. 4-8. Furthermore, the DEIS contains no discussion of the source of funding for the actions under the RMP or the amount. How much staffing will be required and its costs are likewise not discussed. Without this information, it is impossible to comprehend which actions discussed in the DEIS are truly feasible within existing budgetary constraints.

It must also be recognized that, in selecting the preferred alternative, the RMP Guidebook states that Reclamation should select those alternatives or combinations of land uses and management actions that are "widely accepted by the public and entities" and "without serious conflicts." RMP Guidebook at III-10. As discussed throughout this letter, several of the actions under Alternative 2 and Alternative 3 entail "serious conflicts" with the use of Lake Cachuma as a drinking water reservoir. Furthermore, ID NO. 1 cannot accept expansion of recreational activities on or adjacent to the Lake without assurance that the impacts of expanded recreational activities will be fully and completely mitigated. For these reasons, Reclamation should exclude expanded recreation from its preferred alternative.

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2. Possible Additional Alternatives to Be Considered

In order to give the public, Reclamation, and affected public agencies the ability to make a reasoned decision about the actions that should be included in the RMP, it would be helpful if additional alternatives were added and analyzed. NEPA's requirements regarding analysis of alternatives indicate that the inclusion of additional alternatives, including ones that would not have any negative impacts to the water quality of Lake Cachuma and downstream water bodies, would strengthen the environmental analysis and allow for more complete disclosure of the pros and cons of the different actions the Project could entail. Under NEPA, "all reasonable . . . alternatives" include those that would achieve only some of the federal lead agency's objectives. *Natural Resources Defense Council, Inc. ("NRDC") v. Morton*, 458 F.2d 827, 836 (D.C. Cir. 1972) ("It is not appropriate to disregard alternatives merely because they do not offer a complete solution to the problem"); *NRDC v. Callaway*, 524 F.2d 79 (2d Cir. 1975). This suggests that alternatives which would protect the water supply, but that would not necessarily expand recreation, should be studied. An alternative that shows different ways of meeting the objective to enhance recreation that could be accomplished without damaging the reservoir's water quality should also be studied. See *Dubois v. U.S. Dept. of Agriculture*, 102 F.3d 1273 (1st Cir. 1996).

R-1-13

Possible alternatives that should be studied include ones that protect the water supply and include all beneficial aspects of the action alternatives without the negative environmental impacts. For example a proposed Alternative 4 could be added in which only those actions with beneficial environmental impacts would be implemented. This could include, for example, existing recreation plus the Trails, Vegetation, and Fisheries Management Plans, as well as banning or phasing out 2-cycle motors in boats and instituting a strict Quagga mussel containment program limiting boat use to residential boats. While this would not necessarily "enhance" recreational activities, it would meet most of the other Project objectives and avoid potentially significant impacts.

A proposed Alternative 5 could also be considered, which would implement the previously mentioned plans and beneficial measures and also implement a program of restoring and upgrading existing recreation infrastructure. This could "enhance" the Lake's recreational opportunities without "increasing" them, while fully preserving the Lake's water quality. In addition, a proposed Alternative 6 could be studied that implements the Plans' beneficial actions and maintenance activities, and proposes a limited amount of expanded recreation opportunities outside the Lake, such as expanding the hiking trail system and building new dry camps, as long as those activities are all well away from the Lake.

Conversely, if there are data to support the notion that expanded recreation activities are needed in the area, a proposed Alternative 7 could be added to study non-Cachuma Lake recreational options. See 40 Code Fed. Regs., § 1502.14(c). For example, recreational activities similar to those proposed for Lake Cachuma in Alternatives 2 and 3 could be analyzed for Lake Casitas, Lake Piru, or Lopez Lake instead. Or, because the proposed recreational opportunities are partially for the benefit of Los Angeles County residents [see, e.g., DEIS at p. 3-62], expanded recreation in a lake in that County could be analyzed. Because Lake Cachuma is first

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and foremost a drinking water reservoir, while other area lakes are not, this would have the possibility of meeting both the objective to protect Lake Cachuma's water quality and enhancing recreational opportunities in the geographic area. Without analyzing these or similar alternatives,⁶ which would have no negative impacts on Lake Cachuma's water quality, the benefits and drawbacks of the current alternatives cannot fully be understood or evaluated.

3. Some Mitigation Measures Are Insufficiently Defined or Infeasible, and All Appear to Lack Funding

The DEIS currently concludes that there will be no significant impacts to the Lake or its water quality with the implementation of proposed mitigation measures. However, some potential impacts, such as the possible, disastrous introduction of Quagga mussels to the Lake, have no mitigation measures. In other situations, the DEIS contains mitigation measures but does not adequately explain how they will fully mitigate some of the potential impacts.⁷ When necessary mitigation measures are not identified or described, it makes it impossible to understand what mitigation is necessary and how effective it would be.

R-1-14

ID NO. 1 is also concerned that some proposed measures necessary to mitigate particular impacts are illusory. An example is the proposed mitigation for allowing body contact swimming in Lake Cachuma: the construction of a new potable water treatment facility. DEIS at p. 4-8. Therefore, funding is an issue. Because of the State-level budget problems and a shortage of funds in relevant local governments, even a much smaller, less expensive proposal is unlikely to be implemented. As noted in the DEIS, even "[m]aintaining roads within the Cachuma Park area has been deferred over the last 10-15 years due to the lack of available funds." DEIS at p. 3-77. For this reason, any action that may have a significant impact without mitigation should be rejected because, unless Reclamation is proposing to carry out the mitigation responsibilities itself, the entities that ultimately implement these actions under the RMP will likely not have the necessary funds.

Part of the problem with the mitigation measures described in the DEIS may be that the Plan is being prepared by an entity different than that which is expected to implement it and pay for mitigation. In order for the mitigation to be effective, Reclamation must take responsibility for it by performing and/or funding the mitigation itself. In order to determine the feasibility of the mitigation, Reclamation must calculate how much the implementation of the proposed

⁶ For example, instead of creating new alternatives, Reclamation may instead elect to select parts of the No Project and action alternatives to implement, as allowed under the RMP Guidebook at page III-11. Even if Reclamation elects to do this, however, additional data would be needed, in the DEIS or Appendices, supporting the underlying assumptions and analysis of the proposed actions. Additional environmental analysis may also be warranted. *Id.* at p. III-11. I.D. NO. 1 is concerned that implementation of parts of the alternatives currently discussed in the DEIS could damage the Lake, especially body contact swimming, increasing equestrian activities near the Lake, use of carbureted 2-cycle boat engines, and, because of the Quagga mussel situation, any expansion of boating. Accordingly, I.D. NO. 1 requests that, no matter what preferred alternative is eventually adopted, these activities be excluded.

⁷ For example, in its discussion on the impacts of construction and maintenance activities associated with facilities, roads, and trails, the mitigation measure states that "[m]easures in addition to BMPs may be required for Alternatives 2 and 3." DEIS at p. 4-7. No other information is given.

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Cont.

actions under all of the alternatives would cost, as well as how much the mitigation would cost to reduce the impacts to a level of less than significant. To the extent Reclamation does not then make such funding available, this local agency will not have a choice but to refuse to implement many of the RMP programs. To be clear, should Reclamation decide to proceed with a Plan that increases recreational uses at Lake Cachuma to the detriment of local water supplies, Reclamation or the Local Managing Partner must be prepared to mitigate for any impacts.

B. Additional Studies or Data Should Be Added Because the Alternatives Are Based on Outdated Information

If relevant information about the proposed action or alternatives is “outdated, [it] renders the overall conclusions uncertain,” and this likely leaves the DEIS inadequate. *Klamath-Siskiyou Wildlands Center v. U.S. Forest Service* (E.D.Cal. 2004) 373 F.Supp.2d 1069, 1081; *City of Carmel-By-The-Sea v. U.S. Dept. of Transp.* (9th Cir. 1997) 123 F.3d 1142, 1151 (“Accurate scientific evidence remains essential to an [EIS], and . . . an agency [cannot] rely on ‘stale’ scientific evidence”). Thus, even when an DEIS has been completed, when new or updated information on a project becomes available, the agency cannot disregard the new information; it must take a “hard look” (*Village of Grand View v. Skinner* (2d Cir. 1991) 947 F.2d 651) at the new developments and possibly prepare a supplemental DEIS. *Marsh v. Oregon Natural Res. Council* (1989) 490 U.S. 360, 373–74. In a situation such as this, when the DEIS is still in its draft form, it is even more important that the DEIS be based on complete, current, and correct data.

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As discussed in the RMP Guidebook, “[w]hen extracting information from current data, caution should be taken to ensure the accuracy, coverage, completeness, and current nature of such data.” RMP Guidebook at III-6 (emphasis added). ID NO. 1 is concerned that much of the analysis and underlying data regarding the alternatives is outdated – in some instances the studies on which the DEIS analysis is based are more than a decade old. For example, the DEIS cites a 1997 analysis of gasoline compounds in Lake Cachuma. DEIS at p. 3-6. Furthermore, while the Total Dissolved Solids in the Lake vary by season and over time, the DEIS references no information more current than 1997. See DEIS at p. 3-5. In addition, surveys for some types of listed species were performed more than ten years ago. DEIS at pp. 3-29 to 3-30. As noted in the RMP Guidebook, “it may be prudent” for Reclamation “in some instances to initiate studies to collect information that can fill data gaps” *Id.* Due to the outdated nature of these studies, it would be prudent for Reclamation to find more recent analyses, commission new studies, or perform other such actions to ensure the reliability of the data underlying the DEIS’s analysis.

As acknowledged in the document itself, the alternatives in the DEIS were developed in 2002 and 2003. DEIS at p. 2-6. The cause of the five to six year delay between the development of the alternatives and their evaluation in the DEIS is not explained. Such a gap is a long time in the events that affect water supply at Cachuma Reservoir. As described in the DEIS, the planning time-span for the RMP is 20 years – the alternatives developed in the planning process have a 20 year time-span. Given the six-year delay, 30% of the Project time span has already elapsed.

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Moreover, any planning process should not only address existing issues, but also anticipate future events, at least those future events occurring during the 20-year planning time span. Because of the delay in the creation of the RMP and DEIS, the planning process already fails to acknowledge “future” events that are already in the process of taking place. For example, the National Marine Fisheries Service (“NMFS”) Steelhead Recovery Plan has been in preparation for several years and a “Recovery Plan Outline” was published in 2007. Further, NMFS has already embarked upon a process of re-initiated consultation regarding Cachuma Project operations under Section 7(a)(2) of the federal Endangered Species Act. 16 U.S.C. § 1536. The DEIS fails to acknowledge these events much less incorporate them into its analysis.

IV. THE ANALYSIS OF PLAN IMPACTS PRESENTED IN THE DEIS SHOULD BE SUPPLEMENTED TO ADDRESS FORESEEABLE EFFECTS

As discussed above, Reclamation has an obligation to analyze the environmental effects that its approval of the Plan may cause. This obligation is not vitiated by the assertion that the DEIS is “programmatic.” Although ID NO. 1 agrees that Reclamation cannot be expected to foresee the future in terms of determining every possible environmental impact, there remain several readily foreseeable major environmental effects that require analysis and mitigation in Reclamation’s DEIS.

A. Effects Related to Exotic Mollusks

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In recent years, the Quagga mussel (*Dreissena bugensis*) and its closely related cousin the Zebra mussel have become a major concern for water supply agencies around the nation. These species were inadvertently transplanted to the Great Lakes area of the United States in the ballast water of ships traveling from certain Eastern European sea drainages and river systems. Recommendations of the California Science Advisory Panel, “California’s Response to the Zebra/Quagga Mussel Invasion in the West” at p. 2 (May 2007); California Department of Fish and Game, “Frequently Asked Questions Quagga/Zebra Mussels”. These fresh water mollusks, less than an inch long, have now spread throughout the Great Lakes region, the Mississippi River system, and were most recently discovered in Lake Mead and adjacent portions of the Colorado River system. “California’s Response to the Zebra/Quagga Mussel Invasion in the West” at p. 29 (May 2007) (Appendix A); California Department of Fish and Game, “Frequently Asked Questions Quagga/Zebra Mussels.”

These mollusks wreak havoc on water supply and water pipeline facilities, covering every inch of available surface in layers up to a foot thick. California’s Response, *supra*, at p. 6. They consume vast quantities of nutrients from the water bodies they infest, leaving little in the way of food for native fish and other aquatic species and causing devastating impacts to natural ecosystems. California’s Response, *supra*, at pp. 6-7; California Department of Fish and Game, “Frequently Asked Questions Quagga/Zebra Mussels”. Additionally, these mollusks can completely fill water pipelines, block filtration facilities, and cause increased corrosion of water conveyance facilities. California’s Response, *supra*, at p. 6; Statement of Karl Wirkus, Deputy Director of Operations, Bureau of Reclamation, to the Natural Resources Committee Subcommittee on Water and Power (U.S. House of Rep. June 24, 2008). Their removal often