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preconceived ideas, of a reasonable range of feasible RMP alternatives and ultimately determine the scope of the EIS.

“An RMP should identify the issues, opportunities, and constraints that have the potential to influence land management and resource development.” (RMP Guidebook, III-4 (emphasis added).) “To accurately identify the issues, opportunities and constraints, a public... scoping process should be initiated.” (*Id.*) “Through the public involvement process, Reclamation should identify as many public issues as possible from a wide variety of users.” (*Id.*) “...the ID team should not have preconceived ideas of what the management alternatives may be for the management area. ...and should focus on an assessment of the existing condition and the management opportunities, constraints and limitations that are related to the identified planning issues and management concerns for the management area before arriving at a preferred management alternative.” (RMP Guidebook, III-8 (emphasis added).) “The basic goal in formulating alternatives is to identify various combinations of land uses and resources management practices that respond to the issues identified during the planning process.” “The alternatives should meet the purpose and need for the proposal while disclosing environmental effects.” (*Id.*) Finally, the RMP Guidebook provides that the following are some of the items to consider when formulating alternatives:

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“There should be a logical relationship between the issues, concerns, opportunities and constraints, and the formulation of alternatives.”

“Each alternative ... should address and resolve, in a different manner, the issues and concerns raised by the public and Reclamation.”

“Each alternative should be realistic and implementable within anticipated funding and staffing levels.” (RMP Guidebook, III-9 (emphasis added).)

Like the RMP Guidebook, the NEPA CEQ regulations also stress the importance of the identification of significant “issues” through the scoping process. (40 CFR 1501.7(a)(2); 1501.7(a)(3); 40 CFR 1502.1; 40 CFR 1502.2(b).) “...NEPA documents must concentrate on the issues that are truly significant to the action in question,...” (40 CFR 1500.1(b) (emphasis added).) “As part of the scoping process the lead agency shall: ...Invite the participation of affected Federal, State and local agencies...[and] Determine the scope (Sec. 1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.” (40 CFR 1507.1(a)(2) (emphasis added).) Each EIS shall contain a summary which stresses (among other things) “areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives).” (40 CFR 1502.12.) Finally, the CEQ regulations require that a draft EIS “be prepared in accordance with the scope decided upon in the scoping process.” (40 CFR 1502.9.)

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- a. Downstream Water Supply and Endangered Species Protection and Enhancement Should Have Been Identified as Significant Issues to Be Considered In Development of the RMP Alternatives

As mentioned, NEPA requires that there shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to the proposed action, which process is termed “scoping.” (40 CFR 1501.7.) The EIS explains that Reclamation held public scoping meetings in 2002 and 2003 to elicit comments from the public regarding the primary issue areas. According to Reclamation’s “Public Scoping Report Cachuma Lake Resource Management Plan Bureau of Reclamation June 2002” (“2002 Scoping Report”), several interested parties identified protection and enhancement of downstream water supplies and species as important issues to be considered in connection with development of the RMP.⁷ For example, Bruce Wales of SYRWCD commented that: “Water supply, water quality, and conducting safe reservoir operations to protect downstream life and property are the most important interests.” (2002 Scoping Report, B-1 (emphasis added).) Brian Tautwein of the Environmental Defense Center requested that the RMP “[a]nalyze all offsite impacts of any potential increases in recreation or resource use,” and “[p]lace greater emphasis on enhancing natural resources and mitigate the impacts of increased recreation.” (*Id.*, B-1, B-2.) Even user groups and individuals concerned about recreation at the Lake recognized that “recreation is an indirect benefit of the lake,” that “recreation should be compatible with water supply needs and natural resource protection,” and, thus, there is need for “thorough impact analysis” of “impacts that may result outside of the RMP plan [areal]” (EIS, 3-69 (emphasis added)).

The foregoing comments illustrate that scoping raised concerns about downstream impacts from increased recreation and the need to provide for water release protection and species enhancement downstream. Indeed, the EIS states that “[c]oncerned users agreed that a thorough impact analysis of any changes in recreation or resource use must be conducted, including any related impacts that may result outside the RMP plan.” (EIS, 3-69.) Thus, downstream water supply protection and species enhancement should have been identified as significant issues in the EIS.

However, these downstream issues appear to have been dismissed as insignificant without explanation as required by NEPA. (40 CFR 1501.7(a)(3).) In addition, by emphasizing that the RMP is to “enhance” recreational opportunities and only developing alternatives that “enhance” (and, even further, “expand”) recreation, and by de-emphasizing the importance of downstream interests and issues, the EIS gives the impression that Reclamation has impermissibly prejudged⁸ the outcome of the RMP to include increased recreational activities

⁷ The EIS refers to a scoping report referred to as “URS 2006a.” (EIS 2-6.) We were unable to locate that report from available sources, including on-line sources, so we requested a copy from a Mr. Epperson, with Reclamation, by phone and e-mail on October 8, 2008. To date, we have not received a copy of the report. Thus, we will refer to the 2002 Scoping Report that was provided to the District.

⁸ See, e.g., *International Snowmobile Mfrs Ass’n v. Norton*, 340 F.Supp.2d 1249, 1259-1261 (D.Wyo. 2004); 40 CFR 1500.1(b).

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even if decreased recreational activities are necessary to meet the over-riding RMP purpose of ensuring that it is compatible with "Reclamation's obligation to operate the reservoir for water delivery (EIS, 1-3)."

- b. The RMP Alternatives Were Developed Based on Outdated and Incomplete Information, and Several Years Before the Discovery in 2007 that Quagga and Zebra Mussels Had Invaded Several California Reservoirs North and South of Cachuma Lake

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NEPA requires that an EIS contain high quality information and accurate scientific analysis. (40 CFR 1500.1(b).) Relying on stale or lack of up-to-date information is grounds for setting aside an EIS. (*The Lands Council v. Powell*, 395 F.3d 1019, 1030-1031 (9th Cir. 2005); *Northwest Ecosystem Alliance v. Rey*, 380 F.Supp.2d 1175, 1195 (W.D. Wash 2005).) The EIS must also disclose if information is incomplete or unavailable. (40 CFR 1502.22.) "If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the [EIS]." (40 CFR 1502.22(a).) Finally, an agency is required by NEPA to consider new alternatives that come to light after issuance of the EIS if there are "substantial changes in the proposed action relevant to environmental concerns," or "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." (40 CFR 1502.9(c)(1); *see also*, 40 CFR 1502.14.)

The EIS states that the RMP alternatives were developed almost five years ago based on scoping that occurred in 2002 and 2003. (EIS, 2-5, 2-6.) Significant events have occurred since that time including the following: (1) approval and implementation of the 2004 FEIR/EIS for the FMP/BO providing for surcharging of Cachuma reservoir, the Hilton Creek Watering System and additional releases downstream for fish, in conjunction with Water Rights Releases as provided in the Settlement Agreement, and (2) NMFS's commencement of development of a Steelhead Recovery Plan and publishing of a "Recovery Plan Outline" in 2007.

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In addition, Quagga and Zebra mussels were first discovered in California reservoirs in 2007, and, since that time, massive amounts of new information has been developed and come to light relevant to the mussels, including their potential catastrophic impacts to California water delivery systems, ecosystems and economies and how they may be avoided and controlled. Quagga Mussels were discovered in early January 2007 in Lake Mead National Recreation Area a few miles upstream of Hoover Dam. (U.S. Fish & Wildlife Service, *Western Quagga Mussels* (March 25, 2007); 100th Meridian Institute, *Lake Mead FAQ* at: www.100meridian.org/MeadFAQ.asp (last visited 10/31/2008).)⁹ Populations of Quagga were also found throughout the Boulder Basin of Lake Mead and below Hoover Dam downriver in other Lower Colorado Lakes including Lake Havasu and Copper Basin in California. (*Id.*) Experts have characterized

⁹ Copies of the papers, articles and other matters referenced herein are enclosed.

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this migration as “an extremely large leap in their range and cause for much concern to limited water supplies and endangered fish in the southwestern US.” (USGS, *NAS-Nonindigenous Aquatic Species* at: <http://nas.er.usgs.gov/queries/FactSheet.asp?speciesID=95> (last visited 10/31/2008).)

According to the U.S Geological Survey, since January, 2007, Quagga and/or Zebra mussels have been found in the following 19 reservoirs in 6 different counties in California (both to the north and south of Cachuma Lake):

1. Lake Havasu – San Bernardino Co. – Jan. 2007
2. Colorado River at Parker Dam – San Bernardino Co. – Jan. 2007
3. Copper Basin Reservoir – San Bernardino Co. – March 2007
4. Colorado River Aqueduct at Hayfield – Riverside Co. – July 2007
5. Lake Matthews – Riverside Co. – Aug. 2007
6. Lake Skinner – Riverside Co. – Aug. 2007
7. Dixon Reservoir – San Diego Co. – Aug. 2007
8. Lower Otay Reservoir – San Diego Co. – Aug. 2007
9. San Vicente Reservoir – San Diego Co. – Aug. 2007
10. Murray Reservoir – San Diego Co. – Sept. 2007
11. Lake Miramar – San Diego Co. – Dec. 2007
12. Sweetwater Reservoir – San Diego Co. – Dec. 2008
13. San Justo Lake – San Benito Co. – Jan. 2008
14. El Capitan Reservoir – San Diego Co. – Jan. 2008
15. Imperial Dam – Imperial Co. – Feb. 2008
16. Lake Jennings – San Diego Co. – April 2008
17. Olivenhain Reservoir – San Diego Co. – Mar. 2008
18. Irvine Lake – Orange Co. – April 2008
19. Rattlesnake Reservoir – Orange Co. – May 2008

(Map of USGS, *Quagga and Zebra Mussel Sightings Distribution in California* (July 11, 2008).)

Quagga and Zebra Mussels do not just reside on boats. (Educational Alert—Invasive Mussels at: <http://motherlode.sierraclub.org/tahoe/body.html> (last visited 10/31/08).) The “mussels can reside on anything that touches a water body: kayaks, canoes, rafts, tubes, etc., including things we wear, such as scuba-diving shoes or beach shoes (even our pets).” (*Id.*) Thus, not all methods of transferring mussels to a body of water involve a boat launch.

Quaggas may spawn all year if conditions are favorable. (U.S. Fish & Wildlife Service, *Western Quagga Mussels, supra*; 100th Meridian Institute, *Lake Mead FAQ, supra*.) Quagga mussels can live for three to five years and can release thirty to forty thousand eggs in a breeding cycle and one million eggs in a year. (*Id.*) Embryos are microscopic and the larval stage is planktonic (free floating). (*Id.*) As evidenced by the Lake Mead experience, Quagga population can readily expand and prevention of downstream invasions is practically impossible. (*Id.*)

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Quagga mussels are primarily algae feeders that filter about a liter of water per day through a siphon. (U.S. Fish & Wildlife Service, *Western Quagga Mussels*, *supra*; 100th Meridian Institute, *Lake Mead FAQ*, *supra*.) As filter feeders, Quagga mussels remove food and nutrients from the water, leaving less or nothing for native aquatic species and potentially collapsing entire food webs. (*Id.*) The removal of significant amounts of phytoplankton from the water can cause a shift in native species and a disruption of the ecological balance of a water body. (*Id.*) Once Quagga mussels have been established in a water body, there is no known method of eradication other than poisoning. (*Id.*)

Quagga and Zebra mussels were first discovered in the United States in the Great Lakes. (Bill Hutcheson, *Aliens in the West – Quagga Mussels Invade Western Waters* at: [www.peregrine250.com/uploads/Aliens in the West By Bill Hutcheson.doc](http://www.peregrine250.com/uploads/Aliens_in_the_West_By_Bill_Hutcheson.doc) (last visited 10/31/08).) Studies have shown that Zebra and Quagga mussels are responsible for a 90 percent reduction in phytoplankton in Lake St. Clair, a 60 to 90 percent reduction in Lake Erie, and an 85 percent reduction in the Hudson River. (*Id.*) Nearly all fish species found in areas infiltrated by the Quagga have suffered due to the strain on the food chain. (*Id.*) Reportedly, fish populations in Lake Michigan and other Great Lakes are plummeting due to Quagga mussels. (The Muskegon Chronicle, *Big Lake's Fish Population Plummeting* (Saturday, January 5, 2008) at: http://www.mlive.com/news/index.ssf/2008/01/big_lakes_fish_population_plum.html (last visited 10/31/08).)

In addition to ecological damage, Quagga mussels can and have caused substantial economic damage by, among other things, clogging water delivery structures. (California Department of Fish & Game, *Frequently Asked Questions Quagga/Zebra Mussels* PDF at: <http://www.dfg.ca.gov/invasives/quaggamussel> (last visited 10/31/08)); Annie Flanzaich/North Lake Tahoe Bonanza, *One Mussel, One World of Trouble* (Friday, May 23, 2008) at: [www.nevadaappeal.com/article/ TD/20080523/ NEWS/ 662340821/-1/REGION](http://www.nevadaappeal.com/article/TD/20080523/NEWS/662340821/-1/REGION) (last visited 10/31/08).) Examples of major water resource damage and costs involved with mitigating the impacts include:

- In 1989 the town of Monroe, Michigan lost its water supply for three days due to massive numbers of zebra mussels clogging the city's water-intake pipeline.
- Swimming areas in Lake Erie have had increased costs associated with removing tons of mussel shells that wash up on beaches during storms.
- Maintenance of pipes clogged with zebra mussels costs the power industry up to \$60 million per year and temporary shutdowns due to insufficient water flow can cost over \$5000 per hour.
- The U.S. Fish and Wildlife Service estimates the potential economic impact at \$5 billion from 2000 to 2010 to U.S. and Canadian water users within the Great Lakes region alone.

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-U.S. Congressional researchers estimated that an infestation of the closely-related zebra mussel in the Great Lakes area...[creates] economic impact to industries, businesses, and communities of more than \$5 billion.

-California could spend hundreds of millions of dollars protecting the state's water system from a quagga/zebra infestation. (<http://www.dfg.ca.gov/invasions/quaggamussel/>)."

(Educational Alert—Invasive Mussels, *supra*.)

The California Science Advisory Panel issued recommendations, in a May 2007 report, to several California agencies. (California Incident Command, *California's Response to the Zebra / Quagga Mussel Invasion in the West* (May 2007) PDF at: <http://www.dfg.ca.gov/invasives/quaggamussel/> (last visited 10/31/08)) The executive summary highlights the magnitude and severity of the threat:

"Zebra mussels, in the form of *Dreissena bugensis*, also known as quagga mussels, have now, for the first time, established a beachhead west of the continental divide. The significance and potential impact of this event cannot be overstated. Zebra mussels are harmful fouling organisms: they attach by millions to submerged objects, fill and block water pipes, and clog protective screens. Zebra mussels are efficient filter feeders: they strip food from the water that is needed to sustain other aquatic life. Direct economic costs are on the order of \$100 million a year in eastern North America; unquantified secondary and environmental costs could be substantially larger. Impacts in California and the West could be as great or greater than those in the East. California cities, industries and farms depend on the transport of huge quantities of water across very large distances through a complex and vulnerable system of canals, pipes, reservoirs and pumping stations. It is thus critical that aggressive, concerted efforts be undertaken immediately to eradicate, contain and monitor the zebra mussel infestation in the lower Colorado River system." (*Id.*, p. i.) (Underlining added.)

Given the seriousness of the threat, including evidence of the mussels damaging and choking off water delivery systems and causing fish declines, the Advisory Panel recommended that aggressive measures including closing lakes to boating until eradication efforts are completed. (*Id.*, p. ii.) In fact, several infested reservoirs have been closed to boating, including San Justo Reservoir following the discovery of Zebra mussels. (California Department of Fish & Game, *Frequently Asked Questions, Quagga/Zebra Mussels*, *supra*; Calfishing.com, *California Quagga / Zebra Mussel Issue Tracking* (March 29, 2008) at: www.calfishing.com/freshwater/quagga_mussel_tracker/index.html (last visited 10/31/2008).) Lake Casitas, Western Lake in eastern Ventura County and Lake Wolford have also been closed to nonresident

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(recreational) boat use¹⁰ even though they are considered prime fishing lakes, to keep Quagga from adversely impacting drinking water supplies and threatening fish populations. (LA Times, *Clamping Down on Quaggas* (Thursday, March 20, 2008) at: <http://articles.latimes.com/2008/mar/20/local/me-quagga20.com> (last visited 10/31/08).) Reportedly, the Metropolitan Water District of Southern California has spent about \$10 million on control measures so far, and at least one water official representing an agency responsible for operating and maintaining certain Cachuma-related facilities has expressed concern that Quagga mussels will damage waterworks there and the steelhead trout downstream of Bradbury Dam and cost hundreds of thousands of dollars per year in damages. (*Id.*)

The EIS provides a summary of issues raised during public comment. (EIS, Table 2-1.) However, there is nothing in the EIS or the 2002 Public Scoping Report that indicates that the catastrophic threat posed by Quagga and Zebra mussels was on the radar screen (indeed, it appears to not have been appreciated as a potentially significant issue in California until the discovery in 2007), or that Reclamation appreciated or took into consideration the threat when it developed the RMP alternatives in 2003. Rather, the EIS only mentions the mussel issue in connection with the County of Santa Barbara ("County") protocols of March, 2008. (EIS, 2-12.)

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In conclusion, lead agencies have a continuing obligation to consider new information that comes to light, even after the issuance of a draft EIS. (*See*, 40 CFR 1502.9(c)(1)(ii).) As provided above, and in ID#1's comments, there is significant new circumstances and information relevant to environmental concerns and bearing on the RMP and its impacts that came to the fore after the development of the out-dated alternatives developed about 5 years ago in 2003. Thus, Reclamation should re-develop the alternatives in light of such new information. As explained in more detail below, in light of this substantial new evidence, including the potential for Quagga and Zebra mussels to clog vital Cachuma water supply facilities (which must remain operable for continuation of Water Rights Releases and Fish Releases downstream of Bradbury Dam) and cause substantial adverse impacts to the food supply and ecosystem downstream of Bradbury

¹⁰ According to the website for the Lake Casitas Recreation Area, on March 4, 2008, the Casitas Municipal Water District adopted Resolution #08-08 "temporarily restricting outside boats, including canoes, kayaks and float tubes, (those not stored or moored at the Recreation Area as of that date) from entering the Lake Casitas Recreation Area." (*Boat Access Temporary Restrictions at Lake Casitas to Prevent Invasive Species Contamination* at: <http://www.lakecasitas.info/documents/BoatQuarantine091208.pdf> (last visited 10/27/08).) The website for the Westlake Lake Management Association states that: "Lake Casitas voted to close their lake to all boat launching.... Other lakes have restricted, or plan to restrict boat launching. This strand of mussel [Quagga] has the ability to wreak havoc on the lake and there are no known chemical treatments or natural predators. ...This is a very serious issue that our [Westlake] lake is facing. The Executive Board of Westlake Lake Management Association (WLMA) took action on this issue at their recent Executive Committee meeting. The decision was made to restrict access to our lake immediately in hopes of averting a disaster taking place in our lake." (*Help Westlake Lake Avoid Mussel Infestation* at: <http://www.westlake-lake.com/default.asp?contentID=598> (last visited 10/27/08).) The website goes on to state that WLMA would "[i]ninstall a temporary fence and gate across the launch ramp to keep out transient boats and kayaks...[and] [a] more permanent fence is being planned." (*Id.*) We were unable to locate a website for Lake Wolford.

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Dam necessary to sustain the endangered steelhead, one or more alternatives should be developed that provide for reduced recreational activities at the Lake and for protection and enhancement of downstream water supplies and species. (*See, e.g., Hughes River Watershed Conservancy v. Glickman*, 81 F.3d 437, 444-445 (4th Cir.1996) (holding that the agency violated NEPA by failing to take a “hard look” at new information regarding zebra mussel infestation).)

2. Notwithstanding the Flawed, Outdated and Incomplete Process, the EIS Still Does Not Include or Evaluate a Reasonable Range of RMP Alternatives

As explained above, alternatives are the “heart” of the NEPA process. (40 CFR 1502.14.) The EIS must explore and evaluate a reasonable range of alternatives that sharply define the issues “providing a clear basis for choice among options by the decision maker and the public.” (*Id.*) This includes alternatives not within the jurisdiction of Reclamation. (*Id.*)

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The range of the alternatives is, in effect, driven by the significant issues (developed through the scoping process) and the purposes of the RMP. The broader the purpose and need statement, the broader the range of alternatives that must be analyzed to permit an informed and reasoned choice. (40 CFR 1502.14.) The stated purpose of the RMP is not limited to management actions that only provide for increased recreational activities in the vicinity of the Lake. Rather, the purpose of the RMP is defined broadly to cover both the primary obligation of the Lake as a water supply facility and the subordinate function of the Lake as a recreational facility. For example, the 2002 Public Scoping Report stated that the environmental review in the EIS for the RMP would address “the potential for management actions to cause adverse environmental impacts to natural and cultural resources such as water quality, endangered species, and historic resources.” (2002 Public Scoping Report, p. 3.) The EIS provides that the RMP is a “long-term plan that will guide future actions...and is based on a comprehensive inventory of environmental resources and facilities and input from local, state and federal agencies, Santa Barbara County, and the general public.” (EIS, ES-1 (emphasis added).) The EIS recognizes that recreational uses at the Lake are “incidental” to and “must be compatible with the primary obligation to operate the reservoir for storage and delivery of high-quality water.” (*Id.*) The EIS states that the RMP “will provide outdoor recreational opportunities, enhanced by Cachuma Lake and its shoreline, compatible with the surrounding scenic, environmental, and cultural resources.” (*Id.* (emphasis added).)

In addition, the EIS includes a purpose and need section as required by NEPA (EIS, 1-3). (40 CFR 1502.13.) The EIS states there is a “need” for “ensuring timely delivery of high-quality water to water users while enhancing natural resources and recreational opportunities.” (*Id.*) However, the EIS makes it clear that the “purpose” of the RMP is to propose uses that “will be compatible with Reclamation’s obligation to operate the reservoir for water delivery.” (*Id.*)

In light of the broad purposes of the RMP -- to provide for incidental recreational uses that are compatible with Reclamation’s primary obligation to operate the Lake for water delivery and surrounding environmental resources including endangered species – the EIS should have

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considered a broad, balanced range of action alternatives. However, the EIS only considers action alternatives that “enhance” (Alternative 2) and “expand” (Alternative 3) recreation at the Lake (EIS, 2-8). These alternatives, each of which presents additional recreation activities at the Lake, are very similar to one another in terms of substance and additional adverse environmental impacts. To sharply define the relevant issues and provide a clear basis for choice among all reasonable options by Reclamation and the public (as required by NEPA), additional alternatives should be considered.

The significant information about Quagga and Zebra mussel is sufficient, alone, to support the need for additional alternatives. In light of the clear and present danger posed by the mussels -- including their potential to be transported to the Lake by boats and clog water facilities, and ruin ecosystems downstream of Bradbury Dam and damage endangered steelhead populations – there should be an alternative that prohibits boats and other vessels and means of mussel transport to the Lake at least until a means of eradication is developed compatible with a drinking water reservoir.

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There should also be an alternative that provides for “reduced” (in contrast to “enhanced” or “expanded”) recreational activities proximate to the Lake including, for example, only resident boats, an immediate ban of 2-cycle engines and improvement of recreational facilities to (among other benefits) ensure that Reclamation can continue to meet its obligation to release water downstream as required by State Board orders and surcharge the Lake as required by the FMP/BO. Given that Quagga and Zebra mussels have been shown to reduce fish populations, it may be that management alternatives that more aggressively seek to prevent mussel infestation actually will serve in the long-run to “enhance” fishing (one of the main recreational activities at the Lake) over the course of the 20-year RMP period and beyond. In addition, improvement and relocation of facilities at the Lake will “enhance” recreational experience at the lake without necessarily increasing recreational activities or adverse environmental impacts.

Furthermore, because the primary purpose of the RMP should be to protect natural resources, the environment and the Lake’s water supply function (which must continue to provide for continued Water Rights Releases and Fish Releases), there should be an alternative that is specifically designed to provide for only recreational activities that have only beneficial impacts and protect the downstream water supply and environment including species. Finally, because there is an alternative for “enhanced” recreation, for balance, there should only be an alternative for “enhanced” water supply and species protection.

In conclusion, the myopic range of alternatives – which only emphasize increased recreational activities – is unreasonable and should be balanced out with alternatives that emphasize water supply and downstream environment protection along the lines suggested above. Only then will the EIS have a full suite of a reasonable range of alternatives from which Reclamation can make an informed choice on an appropriate RMP for Cachuma Lake. The current range of alternatives resemble that which was invalidated in a recent case involving an EIS for an RMP designating areas for off-road vehicle (“ORV”) use on BLM lands. There, the court ruled the ORV analysis was deficient because all alternatives provided for “increased”

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ORV areas and there was no alternative that “closed” areas to ORV use. As the 9th Circuit Court of Appeal put it, “It is precisely this sort of ‘uncritical’ privileging of one form of use over another that we have held violates NEPA. (See *Block*, 690 F.2d at 767.) Closures, not just ‘limited’ designations, must be considered to comply with NEPA.” (*Oregon Natural Desert Ass’n v. Bureau of Land Management*, 531 F.3d 1114, 1144-1145 (9th Cir. 2008); see also, *Friends of Yosemite v. Kempthorne*, *supra* (action alternatives too similar/not varied enough from real, informed choice).)

E. The EIS Does Not Adequately Evaluate the Direct, Indirect and Cumulative Environmental Impacts of the RMP Alternatives, Including Potential Impacts to Cachuma Water Supply Facilities and Environment Resources Beyond the Plan Area and Downstream of Bradbury Dam

NEPA requires that an EIS discuss the environmental impacts, and alternatives, to proposed actions that affect the quality of the “human environment.” (42 USC 4332(2)(C).) “Human environment” is defined “comprehensively to include the natural and physical environment and the relationship of people with that environment.” (40 CFR 1508.14.) The scope of the environment to be considered is not limited to jurisdictional waters of Reclamation (i.e., water at Cachuma Lake), but, instead, the impacts of the proposed action (the RMP) on the environment at large determines the scope of impact analysis. (*Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1122 (9th Cir. 2005).)

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The environmental impact analysis must study both direct and indirect environmental impacts and their significance. (40 CFR 1502.16.) “Direct” effects are caused by the proposed action and occur at the same time and place. (40 CFR 1508.8.) “Indirect” effects are effects that are caused by the proposed action and are later in time or farther removed in distance, but are still reasonably foreseeable. (*Id.*) An EIS must also address cumulative impacts. (40 C.F.R. § 1508.7.)

An EIS must contain a “full and fair discussion” of significant environmental impacts that is “supported by evidence that the agency has made the necessary environmental analyses.” (40 CFR 1502.1.) In other words, NEPA requires that the agency take a “hard look” at the environmental consequences of the proposed action. (*E.g.*, *Ocean Advocates v. United States Army Corps of Eng’rs*, 402 F.3d 846, 864 (9th Cir. 2005); *Idaho Sporting Cong., Inc. v. Rittenhouse*, 305 F.3d 957, 973 (9th Cir. 2002) (quoting *Marsh*, 490 U.S. at 374).) Even if a programmatic EIS is not be required to look at impacts of future site-specific projects until a critical decision has been made to commit to particular site development (triggering the need for a project-specific EIS), a programmatic EIS cannot defer analysis of impacts, including site-specific impacts, that will result from plan or policy change that commits resources to particular uses including, for example, expanded uses. (*E.g.*, *California v. Block*, 690 F.2d 753, 761-762 (9th Cir. 1982) (involving decision to manage lands for uses other than wilderness).)

To comply with NEPA’s “hard look” mandate, courts have held that agencies are obligated to maintain a current inventory of resources so that an adequate baseline exists to

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evaluate the environmental impacts of a proposed action. (*Center for Biol. Diversity v. Bureau of Land Mgmt.*, 422 F.Supp.2d 1115, 1163 (N.D.Cal.2006) (“CBD ”); *see also Oregon Natural Desert Ass’n v. Rasmussen*, 451 F.Supp.2d. 1202, 1212-13 (D.Or.2006).) The environmental baseline is an integral part of an EIS, because it is against this information that environmental impacts are measured and evaluated; therefore, it is critical that the baseline be accurate and complete. (*American Rivers v. Fed. Energy Regulatory Comm’n*, 201 F.3d 1186, 1195 & n. 15 (9th Cir.2000); *CBD*, 422 F.Supp.2d at 1163.)

1. The EIS Should Not Have Been Confined to a Study of Only Plan Area Impacts – The EIS Should Have Also Considered Environmental Impacts of the RMP Alternatives on Cachuma Water Supply Facilities at and the Environmental Resources (including endangered steelhead) Downstream of Bradbury Dam¹¹

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The EIS describes existing conditions of the affected environment. (EIS, Chapter 3.) The EIS contains a short discussion under the “Santa Ynez River Watershed Surface Water Resources.” (EIS, 3-3.) That discussion, however, only makes passing reference to the fact that the River passes below Bradbury Dam through the Santa Ynez Valley and Lompoc Plain and empties into the ocean (*id.*), even though the EIS concedes that “[e]ncouraged users agree” there is need for “thorough impact analysis” of “impacts that may result outside of the RMP plan [area]” (EIS, 3-69 (emphasis added)). Unfortunately, the EIS’s discussion of the environmental impacts of the RMP alternatives fails to consider the impacts of recreation or other RMP activities at the Lake outside the RMP “Plan Area” including downstream of Bradbury Dam. (EIS, Chapter 4, *passim*.) Rather, the analysis of impacts to water and fish (at least) appears to have been confined to impacts in the so-called “Plan Area,” defined as the Lake and its surrounding shores and rugged hillsides consisting of about 9,250 acres (EIS, ES-1), and the downstream environment was not part of the baseline conditions as required by NEPA. (*E.g.*, EIS, § 4.1, 4-2 [Water Resources], § 4.4.1 [Biology—“Four categories of biological resources exist in the Plan Area”].)

As mentioned above, Quagga larvae are microscopic, flow downstream, and are not captured by screens. From just the information presented above relating to Reclamation’s obligation to operate Cachuma facilities (e.g., the Dam’s outlet works and the Hilton Creek Watering System) for Water Rights Releases and Fish Releases and the potential of Quagga and Zebra mussels to clog water supply facilities, harm fish and ruin ecosystems, it is reasonably foreseeable that the mussels could clog such Cachuma facilities, as has occurred in other reservoirs, and thereby adversely affect or prevent downstream Water Rights Releases and Fish Releases (not to mention SWP flows to the South Coast), and have negative impacts on the ecosystem, water quality and food supply below Bradbury Dam necessary for maintenance of endangered steelhead. In particular, the Hilton Creek Watering System intake is a small pipeline

¹¹ While an RMP may be focused on “resources and environmental factors within the management area,” a NEPA document is not confined to such area and must describe the “resources and environmental factors that may be impacted by the proposed action.” (RMP Guidebook, III-8.)

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(not adequately described in the EIS) under relatively low pressure that could easily become clogged by mussels and become inoperable. Not only is this important because the Hilton Creek Watering System supplies Fish Releases for the endangered species below Bradbury Dam, but also because, assuming the outlet works would have to be used instead, that could result in reduced quantities of SWP water to the South Coast. Of course, if both the Hilton Creek Watering System *and* the outlet works were to become clogged by mussels, there would be zero Fish Releases, zero Water Rights Releases and zero SWP deliveries to the South Coast.

The EIS states that “[t]o date, [Quagga and Zebra mussels] have not been observed in Cachuma Lake.” (EIS, 3-28.) However, NEPA requires a “hard look,” and there is nothing in the EIS indicating there has been any investigation into whether Cachuma has already become infested with Quagga or Zebra mussels. At a minimum, the potential for the Quagga and Zebra mussel invasion into Lake Cachuma should be described in the EIS document to be a high risk, and all reasonably foreseeable consequences of environmental damage should be presented (including those mentioned herein) so that Reclamation makes an informed choice about whether or not to commit Lake resources to even more (or less) recreational activity. Based on published reports of the species’ preferred habitats and needs for survival, research funded in part by the EPA found that the area encompassing Cachuma Lake would be classified as high risk (Science Daily, Dec. 10, 2007, at: <http://www.sciencedaily.com/releases/2007/12/071203103358.htm> (last visited 10/31/08)). The pernicious nature of the Quagga and Zebra mussels and ability to spread quickly should also be described in the EIS. The already high risk of mussel damage will only become greater with the additional recreational activities proposed, including the introduction of additional boats and kayaks into the Lake, which are known means of transport for the mussels. The EIS does at least acknowledge that “under all alternatives” impacts to aquatic habitat and infrastructure could occur if boats entering the lake were to transport Quagga or Zebra mussels or their larvae into the waters of the Lake, and the risk of such impacts occurring could increase with additional boat densities proposed by Alternative 3. (EIS, 4-37.) However, the EIS simply did not adequately study or evaluate the environmental impacts of actual or potential Quagga and Zebra mussel infestation including on the outlet works, the Hilton Creek Watering System and downstream water right interests and endangered steelhead, which is clearly reasonably foreseeable to occur.

In conclusion, neither Reclamation nor the public can make an informed decision about an appropriate RMP for the Lake or its environmental impacts until there has been meaningful analysis and consideration of the potential environmental impacts of recreational activities at the Lake on water supply facilities necessary to allow for continued downstream flow of Water Rights Releases, Fish Releases and SWP supplies, and on interests downstream beyond the “Plan Area,” including SYRWCD’s constituents and the endangered steelhead. Unfortunately, however, instead of the “hard look” and “full and fair discussion” mandated by NEPA, there was “no look” at or discussion of such potential impacts. Thus, the EIS does not comply with NEPA. The EIS should evaluate impacts on water supply facilities and downstream environmental resources, and discuss appropriate mitigation.