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September 11, 2019

Honorable Michael J. Carrozzo
Presiding Judge
Santa Barbara Superior Court
County Courthouse
1100 Anacapa Street
Santa Barbara CA 93101

Reference: Response to Santa Barbara Civil Grand Jury 2018-2019 report titled, *The Cachuma Project Contract and Management*

Dear Judge Carrozzo:

Please find attached the Goleta Water District response to the above-referenced Civil Grand Jury Report. As directed by the Grand Jury, all responses are provided in accordance with Section 933.05 of the California Penal Code.

Sincerely,

Lauren Hanson
President

cc: Robert R. Downer, Foreperson, 2018-2019 Santa Barbara County Grand Jury

Goleta Water District
Response to the Santa Barbara County Grand Jury 2018-2019 Report
The Cachuma Project Contract and Management

Finding 1

The current Contract does not fully address future water management problems such as will arise from climate and other rapid environmental changes.

The Goleta Water District agrees with this finding.

Recommendation 1

That the Directors of the Member Units and the Santa Barbara County Board of Supervisors, acting as Directors of the SBCWA, pursue the upcoming 2020 contract negotiations as an opportunity to create a completely new contract.

This recommendation will not be implemented because it is impractical and unnecessary.

The United States Bureau of Reclamation (USBR), the entity that built and owns the Cachuma Project pursuant to United States Congressional authorization, dictates the terms in its water supply agreements for various water supply projects throughout the West. The Cachuma Project Master Contract is fundamentally a water supply agreement, whereby USBR makes Cachuma Project water available to the Member Units. It is USBR's stated preference and practice to renew existing federal water supply contracts, rather than draft new contracts for the same project, and the Goleta Water District is unaware of any existing USBR water supply agreement that has been superseded and replaced by an entirely new contract.

Member Units and the Santa Barbara County Water Agency (SBCWA) also do not possess the authority to dictate to USBR the format of a federal water supply contract, which is mostly standardized and guided by USBR directive and policy. Specifically, United States Congressional authorization to USBR to extend long-term water supply contracts and the express terms of the existing Master Contract are provided for in section 2(a): "[...]this contract and each renewal thereof shall be renewed pursuant to the Act of July 2, 1956 (70 Stat 483) and the Act of June 21, 1963 (77 Stat 68); provided, that the request for renewal is given no later than two (2) years prior to the date on which the then-existing contract expires."

Finally, as discussed in response to Recommendations 4 and 5 below, the Goleta Water District believes that the current Master Contract serves its purpose well: to allow for long-term planning for the continued delivery to the Cachuma Member Units of Cachuma Project water consistent with federal Reclamation law and state water rights.

Should water management problems from changed conditions arise in the future, they would be best addressed in individual agencies' water supply and demand planning documents such as the Urban Water Management Plans that all Member Units prepare under state law. The Urban Water Management Plans require that agencies analyze their supply and demand in five-year periods through at least 2035, looking to normal, wet, and dry hydrologic scenarios. The Urban

Water Management Plans also include discussion of future water management challenges, projections, and require discussion of the potential impacts of climate change. The Goleta Water District utilizes the most conservative estimate of the impacts of climate change on its future water supply reliability analysis for State Water Project water in its Water Supply Management Plan and Urban Water Management Plan.

Finding 2

Public understanding and effective operation of the Cachuma Project would be enhanced if key terms in the Contract were defined and used more precisely.

The Goleta Water District disagrees partially with this finding. The terms in the Master Contract for the Cachuma Project are sufficiently defined. Although the terms may be considered archaic and confusing to the public, the terms and definitions are standardized, common legal terms in USBR water supply contracts.

Recommendation 2

That the Directors of the Member Units and the Santa Barbara County Board of Supervisors, acting as Directors of the SBCWA, require that key terms in the new Contract are defined clearly and used in a consistent manner.

The recommendation will not be implemented. Key terms will be defined clearly and used in a consistent manner, but within the constraints of the federal contract negotiation process. Most, if not all, of the key terms in the definitions section of the Master Contract are standardized USBR terms that USBR utilizes to manage its water supply projects throughout California and beyond. USBR policy dictates the standard terms included in water supply contracts, most of which are included in the Reclamation Manual Directives and Standards, promulgated by the Reclamation Law Administration Division (See PEC 06-01).

Under federal directive, water supply contracts and their terms are largely shaped by the Bases of Negotiation, or BON. A BON is a pre-decisional, deliberative document used to make and justify a recommendation to the USBR Commissioner that a proposed contract action be authorized. BONs, which are not available for public release, detail the material terms of the proposed contract, the negotiable terms, the parties' respective negotiating positions, and pertinent legal and practical boundaries (e.g., applicable legal and policy limits). Since most of the key terms and definitions are determined beforehand in the BON before negotiation of a contract, there is little to no opportunity for the Santa Barbara County Board of Supervisors or the Member Units to require how key terms are defined or used.

Finding 3

The roles and responsibilities of SBCWA and the Member Units are not clearly defined in the current Contract.

The Goleta Water District disagrees partially with this finding. The Goleta Water District believes that the responsibilities of the Member Units and of SBCWA as pertains to roles and authority under the Master Contract are clearly defined, including the clear delineation of roles and responsibilities contained in the individual sub-contracts each Member Unit holds with

SBCWA. SBCWA's main role under the Master Contract and sub-contracts with the Member Units is for the most part limited to serving as the financial and contractual vehicle whereby the Cachuma Project could be financed by the Member Units, and the capital portion of the Project was paid off as of September 30, 2015. Under the existing contractual arrangements, the Member Units as the sole recipients and beneficiaries of Cachuma Project water may delegate the authority to themselves to carry out most of the roles and responsibilities contained in the Master Contract to the extent they are not already carrying them out.

Additional roles and responsibilities of SBCWA and the Member Units are clearly defined in each governmental agencies' founding legislation and enabling acts, which are outside the scope of the Master Contract because the Master Contract is merely a water supply agreement and is not intended to define authorities over water management decisions.

Recommendation 3

That the Directors of the Member Units and the Santa Barbara County Board of Supervisors, acting as Directors of the SBCWA, ensure their roles and responsibilities are clearly defined in the new Contract.

This recommendation will not be implemented. As discussed in finding 3, the roles and responsibilities associated with the Cachuma Project are clearly defined in the existing Master Contract and sub-contracts held between the Member Units and SBCWA. Furthermore, as a water supply agreement with the USBR, the Master Contract is an improper vehicle to define the roles and responsibilities of SBCWA and each of the separate governmental entities comprising the Member Units, many of which have different functions. Such roles and responsibilities are described in governmental agencies' respective founding legislations and codes, ordinances and regulations.

Finding 4

The current Water Year, October 1 to September 30, makes diversion recommendations and decisions difficult because it comes just before the rainy season, when the quantity of water in Cachuma for the next few months is highly unpredictable.

The Goleta Water District agrees with this finding.

Recommendation 4

That the Directors of the Member Units and the Santa Barbara County Board of Supervisors, acting as Directors of the SBCWA, strongly urge in negotiations for the new Cachuma Project Contract that the Water Year should run from May 1 to April 30, or a similar period, to allow diversion requests to be made soon after the usual winter rain period.

This recommendation has been implemented. In discussing contract renewal with USBR staff, the Member Units and SBCWA requested that USBR consider altering the Water Year to run from May 1 to April 30 to allow for more certainty regarding what available supply may be in Cachuma when making requests for allocations for the coming water year. USBR informed the Member Units and SBCWA that it would consider such request, and will present proposed

options on the Water Year dates when presenting its BON and subsequent draft contract language for the Master Contract renewal.

Finding 5

Provisions in the 2020 Contract will need more frequent updating than those in previous Contracts due to rapid climate change altering the natural conditions affecting water supply.

The Goleta Water District disagrees wholly with this finding.

Recommendation 5

That the Directors of the Member Units and the Santa Barbara County Board of Supervisors, acting as Directors of the SBCWA, propose to the Bureau of Reclamation that the new Cachuma Project Contract require a meeting between them and the Bureau every five years, with a public agenda, to consider changes to Contract provisions which have become outdated.

This recommendation will not be implemented. As discussed in response to findings 1 and 2, the Santa Barbara County Board of Supervisors and the Member Units do not have the authority to dictate to the USBR non-standard schedules on contract renewal. Goleta Water District understands that it is USBR policy to avoid short-term contracts for water supply and interim contract renewals, and most contracts are renewed between 25-50 years. In so doing, Member Units are provided with more certainty in their water supply planning and are afforded the ability to plan for long-term capital investments and appropriate levels of demand management.

The existing Master Contract provides necessary flexibility for USBR to respond to supply fluctuations between wet, normal and dry years, since USBR makes water allocations each year based upon its determination of how much supply is available within the defined contract project yield amount. For example, at the height of the drought in 2016, the Member Units received zero allocation as a response to dwindling water supplies and were subsequently faced with operational challenges. Consequently, the Member Units worked collaboratively with SBCWA and USBR to develop protocols that allowed for the importation and storage of State Water Project water in a manner that precluded unwarranted and punitive evaporative loss reductions.

To the extent that operational modifications need to be made regarding how the Cachuma Project is physically managed in matters of evaporation, siltation, spill operations and critical drought operational modes, such decision-making can and already does occur in a collaborative manner outside of the purview of the Master Contract. During the drought, the Cachuma Member Units and SBCWA met frequently to address these types of issues. Indeed, the substantive terms have not changed since 1949, and the Cachuma Project has been successfully operated and the contract administered through three periods of significant drought as well as during multiple wet periods.

Finding 6

Under the 1995 Contract, Article 9(g), the required five-year meetings cannot result in increased water diversion to Member Units.

The Goleta Water District agrees with this finding.

Recommendation 6

That the Directors of the Member Units and the Santa Barbara County Board of Supervisors, acting as Directors of the SBCWA, propose to the Bureau of Reclamation that the required five-year meetings allow changes to the operations of the new Contract, including increased diversions, provided they are consistent with Federal law, State law, and Project Water Rights, and do not negatively affect the environment or the groundwater quality downstream of Bradbury Dam.

This recommendation will not be implemented. The Goleta Water District fully incorporates its response to Recommendation 5, above, in response to this recommendation. Increasing diversions from Lake Cachuma would require changes in state and federal law.

The terms of the water rights permits for the Cachuma Project issued by the State Water Resources Control Board limit the annual yield of the Cachuma Project and thus the maximum amount of Project Water USBR may deliver to the Member Units in a given year. The Member Units' share of annual yield specified in the Master Contract is determined by a careful balance between downstream water rights holders' prior rights, environmental considerations, and Reclamation law. This balance took nearly 30 years to achieve, and is governed in part by a landmark 2002 settlement agreement involving all governmental agencies with direct interests in the Santa Ynez River as a water source. The foundational documents of Cachuma, including all environmental review on the existing water rights permits and agreements, are all predicated upon the current Cachuma Project yield. Altering such yield would require that nearly every aspect of the Cachuma Project be revised and recalibrated, which is outside of the scope of USBR's own contracting authority.

Finding 7

Member Units and SBCWA have expressed support for formal, quantitative methods of decision-making under uncertainty which can identify sources of disagreement, and thus facilitate compromise solutions.

The Goleta Water District agrees with this finding.

Recommendation 7

That the Directors of the Member Units and the Santa Barbara County Board of Supervisors, acting as Directors of the SBCWA, establish a format for quantitative decision-making under uncertainty; and seek to narrow their differences on such components as probabilities of future rainfall patterns and criteria for desirable outcomes.

This recommendation will not be implemented because a format already exists for quantitative decision-making under conditions of uncertainty through Member Unit monthly meetings as well as meetings between the Member Units and SBCWA. As an example, during the height of the drought, the traditional formula used by USBR, Cachuma Operation & Maintenance Board (COMB), SBCWA and the Member Units to apply evaporative losses on the water stored in the Lake broke down when water levels dropped below elevation 660, and the previous formula

began resulting in negative losses (an absurd result). Consequently, a disincentive was created for agencies to import State Water Project water into the Lake, since large evaporative losses would be disproportionately charged to such water. Recognizing that the Master Contract did not directly address this uncertainty, the Member Units and SBCWA proposed a revised methodology whereby evaporative losses would be proportionately allocated to unallocated water remaining in the Cachuma Project. USBR approved this proposal, known as “Scenario B-3” in December of 2015, and it continued to be used until lake levels increased in 2017 and evaporative losses could be applied using the traditional formula. This compromise and creative solution was developed directly through SBCWA and Member Unit managers’ monthly meetings and discussions, which is indicative of the successful existing format for quantitative decision-making.

Finding 8

SBCWA and the Member Units agree that meetings of their technical staffs are valuable but disagree over the organizational concerns of past meetings, such as claims of infrequency, non-attendance, nonresponse and cancellation without notice.

The Goleta Water District disagrees partially with this finding. The Goleta Water District agrees that meetings between staff from SBCWA and the Member Units are valuable, but does not believe there is disagreement about meeting schedule and attendance. The Member Units conduct monthly scheduled meetings to discuss updates and pertinent issues common to the Member Units related to Cachuma, and such meetings have been attended by representatives from all Member Units. Additionally, the SBCWA is invited to participate in Member Unit meetings as necessary to address operational issues, contractual matters and related contractual roles and responsibilities of all agencies. All meetings held have been well attended and cancellations have only occurred when the agencies collectively agree there are no updates or need for a meeting due to a lack of pertinent issue to discuss.

Recommendation 8

That each year the Directors of the Member Units and the Santa Barbara County Board of Supervisors, acting as Directors of the SBCWA, determine a schedule of multiple meetings of key technical staff to discuss Cachuma Project operations, including upcoming diversions, and to report major points of potential agreement or disagreement to their Boards.

This recommendation will not be implemented because a schedule of meetings already exists. Member Unit managers and staff meet monthly and ongoing monthly invitations are extended to SBCWA to discuss operational matters, contractual matters and related contractual roles and responsibilities of all agencies.

Finding 9

The websites of the Member Units and SBCWA lack clarity and detail on the Cachuma Project.

The Goleta Water District disagrees partially with this finding. The Goleta Water District website now offers the public detailed information concerning the Cachuma Project, including various links to pertinent related documents from the State Water Resources Control Board, the Cachuma Operation and Maintenance Board, and the Cachuma Conservation Release Board.

Recommendation 9

That the Directors of the Member Units and the Santa Barbara County Board of Supervisors, acting as Directors of the SBCWA, set up and maintain a specific website for detailed information on the Cachuma Project's history, structure, governance, and operations, with links to additional historical documents and records.

This recommendation will not be implemented because the Goleta Water District has already updated its website to include detailed information on the Cachuma Project's history, structure, governance and operations, with links to a variety of websites that contain historical documents, rainfall and water storage records, exhibits and testimony related to the Cachuma Project, and other relevant materials.