



September 23, 2019

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

**Board of Directors**

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**General Manager  
and Board Secretary**  
Nick Turner

Re: Response to Santa Barbara County Grand Jury Report titled *The CACHUMA PROJECT CONTRACT AND MANAGEMENT*, Published June 27, 2019.

Dear Honorable Judge Carrozzo,

Please find attached the Montecito Water District's (District's) response to the Grand Jury Report titled, *The CACHUMA PROJECT CONTRACT AND MANAGEMENT*. During its regular meeting of August 27, 2019, the District's Board of Directors reviewed and approved the attached Board response. Per the Grand Jury's letter to the Board dated June 25, 2019, a copy is also being provided to the Grand Jury Foreperson.

Sincerely,

Floyd Wicks  
Board President

cc: Santa Barbara County Grand Jury Foreperson  
Bob Cohen, District Counsel

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## **GENERAL COMMENTS**

The District applauds the Grand Jury for tackling the complex matter of the Cachuma Project contract renewal. Upon review of the findings and recommendations included in the Grand Jury report, the Montecito Water District believes the Grand Jury neglected to address the underlying, and important, matter of the contracting structure to be used for this contract renewal.

The original Cachuma Project Contract I75r-1802R (Master Contract) is between the United States Bureau of Reclamation and Santa Barbara County Water Agency and provides for water service from the Cachuma Project. The Montecito Water District, City of Santa Barbara, Goleta Water District, Carpinteria Valley Water District and the Santa Ynez River Water Conservation District Improvement District No. 1, collectively referred to as the Cachuma Project Member Units (Member Units), are not signatories to the Master Contract nor its subsequent renewals. The Member Units have separate water supply contracts with the County of Santa Barbara for delivery of Cachuma Project water. The Member Units are the beneficiaries of the Cachuma Project's water supply and together have borne and will continue to bear all the project's capital, operation and maintenance costs.

The current structure was established with the County of Santa Barbara as a signatory, rather than the Member Units, because in the 1950's, the County of Santa Barbara held taxing authority and the Member Units did not. The need for the contracting entity to hold taxing authority drove the selection of the contracting structure. Since that time, developments in California law have provided the Member Units with taxing authority. Therefore, the County of Santa Barbara's role as the signatory to the Cachuma Project contract renewal based on taxing authority is anachronistic, as the power to tax has been expanded to include Member Units.

The purpose of the Cachuma Project is to capture flood waters on the Santa Ynez River and to use that water as a supplemental water source for irrigation, municipal and industrial purposes for the South Coast, and portions of the Santa Ynez Valley. Each Member Unit manages a variety of water supplies, including water from the Cachuma Project and delivers that water to meet the needs of its residential, commercial, and agricultural customers. Unlike the Member Units, the County of Santa Barbara is not a water purveyor, does not have water use customers, and does not perform water supply planning. In fact, the County of Santa Barbara's interest in the Cachuma Project is recreational use, which is not an original intended purpose of the project and is in conflict with the interests of the Member Units.

This conflict became evident most recently in 2018 with the County of Santa Barbara's decision to oppose the Member Units request for a 40% allocation. The Member Units utilize scientific modeling of Lake Cachuma to establish the annual allocation request. The Master Contract requires the County of Santa Barbara to deliver to the United States Bureau of Reclamation the allocation request of the Member Units. But, instead of complying with the terms of the Master Contract, the County of Santa Barbara submitted its own recommendation, which substantially differed from that of the Member Units. Not only was this action contrary to the terms of the Master Contract but the recommendation was not supported by data, and expressly disapproved by the Member Units. This action was likely influenced by the conflicting interests as previously described. The less water allocated to Member Units, the more water remained in Lake Cachuma for recreational uses, with benefits inuring to the County of Santa Barbara.



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The Member Units have expressed an interest in becoming a signatory to the contract, whether through a joint signatory contract between the Member Units and including the County of Santa Barbara, or a contract directly between the Member Units and the Bureau of Reclamation, and excluding the County of Santa Barbara. The County of Santa Barbara has stated specifically that it intends on remaining the contracting party for purposes of contract renewal and has disregarded requests for consideration of alternative contracting arrangements. The Montecito Water District is of the opinion that the best governance structure is one that emphasizes water supply decision making closest to the people served.

## **FINDINGS AND RECOMMENDATIONS**

**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 Montecito Water District agrees with this finding, that the current Master Contract does not fully address future water management problems such as climate and other rapid environmental changes.

**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. The Master Contract for the Cachuma Project is a water supply agreement establishing water rights for the Member Units and the associated terms of repayment of Project related costs. Addressing future water management problems such as climate and other rapid environmental changes are more appropriately suited for an Operations Plan and/or other Montecito Water District water supply planning documents. For example, water supply management problems related to climate and other rapid environmental changes are incorporated into the Montecito Water District Urban Water Management Plan.

The terms of the Master Contract are determined by USBR using contract language previously developed and adopted by USBR as its standard water related contract articles. Revisions of these standard contracting articles will likely be limited.

The terms of the existing Master Contract contemplate future contract renewals rather than entirely new contracts, as recommended by the Grand Jury. Negotiating a completely new contract in lieu of a Contract renewal would add unnecessary complexity, challenges and cost to an already arduous process. It is the Montecito Water District's understanding that USBR is currently working towards a renewal of the Master Contract for the Cachuma Project, which the Montecito Water District supports. The District intends on working closely with the County and USBR on a Contract renewal meeting the needs of the Member Units.

**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.*

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The Montecito Water District partially disagrees with this finding. The key terms in the Master Contract should be appropriately defined for purposes of a water supply contract and used consistently for effective operation of the Cachuma Project. The Montecito Water District disagrees that precisely defining key terms in the Contract will necessarily enhance public understanding of the Cachuma Project contract. The terminology used in a water supply contract may be appropriate and necessary, but may not be easily understood by the public without a general understanding of water supply planning and operations.

**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.*

While the Montecito Water District supports the Grand Jury recommendation, the decision to implement the recommendation is ultimately subject to the determination of the contracting parties during the contract renewal process.

As previously noted, much of the language included in federal water supply contracts like the Master Contract for the Cachuma Project, including definitions of key contracting terms, has been standardized by USBR and made a part of its standard water related contract articles. Revisions of these standard contracting articles, including the definition of key terms and their use, will likely be limited.

**FINDING 3** - *The roles and responsibilities of SBCWA and the Member Units are not clearly defined in the current Contract.*

The Montecito Water District respectfully disagrees with this finding.

**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.*

While the Montecito Water District supports the Grand Jury recommendation, the decision to implement the recommendation is ultimately subject to the determination of the contracting parties during the contract renewal process.

The Montecito Water District believes that the roles and responsibilities of both the County and Member Units pertaining to the roles and responsibilities under the Master Contract are clearly defined in the existing Master Contract, as well as in other existing contractual arrangements such as the Member Unit Contract between the Montecito Water District and the County. The contracting parties and Member Units may choose to revisit these roles and responsibilities during the contract renewal process and may consider refining or improving them in the updated contract.



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**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 Montecito Water District respectfully disagrees with this finding. The Montecito Water District has not identified any significant benefits supporting this proposed change.

**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.*

The Montecito Water District will not implement this recommendation. Section 3(a) of the Master contract requires that three months prior to the beginning of each Water Year, the County provide USBR with a copy of the Member Units' allocation request for the quantity of available supply to be delivered for the next Water Year. If the Water Year begins May 1, this will require the County and Member Units to deliver an allocation request to USBR by February 1. This is problematic in that the typical annual rainy season runs from January through April. From a water supply and management standpoint, the allocation request is most effectively made after the rainy season has concluded. With the Water Year beginning October 1, the Member Units allocation request is made in late spring or early summer when the impacts from the previous rainy season are fully known. If during the next Water Year, the rainy season results in a change to the available supply, the Master Contract allows for mid-year adjustments.

Additionally, the current October 1 Water Year is commonly used in other water supply related contracts and agreements. Changing the Water Year for the Cachuma Project Master Contract could have supply and management implications as related to those contractual arrangements.

**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 Montecito Water District respectfully disagrees 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. The Montecito Water District's response to this recommendation is similar to that of Finding and Recommendation 1. The Master Contract for the Cachuma Project is a water supply agreement establishing water rights for the Member Units and the associated terms of repayment of Project related costs. Changed conditions such as rapid climate change are more appropriately suited for an Operations Plan and/or other Montecito Water

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District water supply planning documents. Changed conditions are also addressed in the Montecito Water District's Urban Water Management Plan which is updated every five years and projects water supply availability for a twenty years period.

The Montecito Water District favors a long-term contract over a short-term (5-year) contract for a variety of reason. Long term contracts provide increased certainty for water supply planning. Renegotiating a water supply contract every five years would add unnecessary complexity, challenges and cost to an already arduous process. In addition, short term contracts would result in increased uncertainty in Montecito Water District long term water supply planning efforts and would likely subject the Cachuma Project to increased environmental review, adding cost, time and uncertainty. The Montecito Water District is currently negotiating a water supply contract with the City of Santa Barbara to participate in its Charles E. Meyer Desalination Facility. Similar to the Cachuma Project contact, the Montecito Water District desires a long-term contact with the City, 50 years, to ensure water supply reliability and certainty into the future.

**FINDING 6** - *Under the 1995 Contract, Article 9(g), the required five-year meetings cannot result in increased water diversion to Member Units.*

The Montecito Water District disagrees 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.*

The recommendation will not be implemented. A review of Article 9g of the Master Contract demonstrates that the provision does not use the term “increased water diversion to Member Units”. However, the provision does require that after any 5-year meeting that changes in operations must be consistent with Federal law, State law, Project Water Rights, and this contract, and do not reduce the Available Supply in any Water Year.

**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 Montecito 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.*



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The Montecito Water District will not implement this recommendation. A format for quantitative decision-making under uncertainty already exists. Water supply planning experts from both the County and Member Units meet on a regular basis and utilize technical analyses and computerized system modeling to facilitate quantitative decision making on a variety of contractual matters. For example, the County and Member Units developed and used a revised evaporation model during the recent drought after the lake dropped below a level not contemplated in the existing Contract provisions. The District will look to enhance this process in the future in concert with the County and other Member Units.

**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, non-response and cancellation without notice.*

The Montecito Water District agrees with this finding.

**RECOMMENDATION 8(a) & 8(b)** – *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.*

The Montecito Water District will not implement this recommendation. Water supply planning experts from both the County and Member Units already meet regularly (monthly when necessary) to discuss a variety of topics pertaining to the operation of the Cachuma Project. The monthly meetings are typically well attended but may not include all parties depending on the topics of discussion. Typical topics of discussion include projected diversions, downstream releases, lake level accounting, coordination with USBR, various Contract related matters and the Master Contract renewal process. Similar discussions related to Cachuma Project operations also take place in other forums including at meetings of the Cachuma Operations and Maintenance Board (COMB), where lake level projections based on diversions are reported and modeled approximately quarterly. The outcome of all meetings are reported to the District's Board of Directors as needed.

**FINDING 9** - *The websites of the Member Units and SBCWA lack clarity and detail on the Cachuma Project.*

The Montecito Water District partially disagrees with this finding. General background information and frequently requested information is already available on the District's website as well as the websites of the United States Bureau of Reclamation (USBR), Cachuma Operations and Maintenance Board (COMB) and the Cachuma Conservation Release Board (CCRB). Additional information on the Cachuma Project is made available upon request.

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**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.*

The Montecito Water District will not implement this recommendation. In May, 2019, the District implemented a new website providing a better user experience, enhancing security and accessibility, and supporting more efficient internal operations. The District continues to maintain a dedicated section of its website for information related to its water sources, including the Cachuma Project. This section will be enhanced to include additional background information about the Cachuma Project as well as additional links to relevant documents and other websites. The District will continue to make additional information not found on its website available upon request.