



September 25, 2019

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

TRUSTEES:

DIVISION 1
LOS OLIVOS
Harlan J. Burchardi

DIVISION 2
SOLVANG
Jeff Clay

DIVISION 3
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Lori Parker

DIVISION 4
SANTA YNEZ
Michael Burchardi

TRUSTEE-AT-LARGE
Brad Joos

GENERAL MANAGER
Chris Dahlstrom

RE: 2019 Santa Barbara Civil Grand Jury report titled, "Cachuma Project Contract and Management", (Published June 28, 2019)

Honorable Judge Carrozzo:

The Santa Ynez River Water Conservation District, Improvement District No. 1, ("ID No.1") appreciates the opportunity to respond and provide clarification to the Grand Jury Report ("Report") entitled "Cachuma Project Contract and Management". By this letter, and in compliance with Penal Code section 933.05(f), ID No.1 submits its comments on the Grand Jury's findings and recommendations in the Report within the specified ninety (90) day time period. ID No.1 takes the Grand Jury's comments seriously and will provide a thorough and constructive response to each of the applicable findings and recommendations. ID No.1's specific comments to the Report are included below.

Grand Jury 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.

ID No.1 Response to Finding 1: ID No.1 agrees with the finding. Renewal Contract No. 175R-1802r (Master Contract) that was enacted in 1995 between the United States Bureau of Reclamation ("Reclamation") and Santa Barbara County Water Agency (SBCWA) did not provide for certain recent environmental factors to be addressed in the contract terms.

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.

ID No.1 Response to Recommendation 1: This recommendation is unlikely to be implementable. The United States Bureau of Reclamation specifies the type of standardized contract then determines the terms and conditions-based contract language established by Federal law and Department of Interior policy. This language is then utilized as its' Basis of Negotiation (BON). There is an opportunity for the contracting parties to negotiate limited and certain terms and conditions within the USBR structured contracts. However, the Member Units and SBCWA

lack the authority to change the type of contract or create a completely new contract. That is dictated by Federal law and policy.

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.

ID No.1 Response to Finding 2: ID No.1 partially agrees with the finding. Although the public understanding of certain terms in the contract may be a concern, the Renewal Contract I75R-1802r was executed in 1995 with language defined by the United States Bureau of Reclamation using its standard articles and definitions which have been sufficiently defined to guide contract compliance and operation of the contracting parties.

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.

ID No.1 Response to Recommendation 2: Respectfully, this recommendation cannot be implemented. Neither the Member Units nor SBCWA have the authority to "require" the key terms of a renewal or new contract, as determined by USBR, be defined in any manner. As in past Cachuma Project contracts as well as USBR contracts executed west wide, the key terms, conditions, standardized articles, and contract document language are pre-determined and established by Federal law and USBR policy. However, certain language in the non-public Basis of Negotiation (BON) that is not pre-decisional may be subject to limited opportunity of negotiation by the contracting parties.

Finding 3

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

ID No.1 Response to Finding 3: ID No.1 respectfully disagrees with the finding. The roles, responsibilities, obligations and authority are clearly defined within the confines of the Renewal Contract I75R-1802r and concurrent Member Unit Contracts. Over the past 24 years of the 25-year term contracts, the Member Units have carried out all the responsibilities and obligations including meeting all the terms and conditions for capital repayment, water supply, water conservation and environmental compliance. Because these roles are clearly stated in the contracts, the five Cachuma Member Units are the sole contracting agencies that benefit from, fully utilize and manage the available supply of Cachuma Project Water as provided by USBR.

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.

ID No.1 Response to Recommendation 3: This recommendation will be implemented. As indicated in the response to Finding 3, this recommendation is unnecessary because the roles, responsibilities, obligations and authority associated with the Cachuma Project contracts are clearly defined and it is the expectation similar standardized language will be applicable in the Master Contract. Moreover, renewal or new contract language will be defined by USBR pursuant to Federal law and Reclamation Policy.

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, which the quantify of water in Cachuma for the next few months is highly unpredictable.

ID No.1 Response to Finding 4: ID No.1 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 similar period, to allow diversion requests to be made soon after the usual winter rain period.

ID No.1 Response to Recommendation 4: The recommendation to strongly urge a change to the Contract Year will be implemented. Prior to the Renewal Master Contract in 1995, the original Master Contract Water Year was May 15 to May 14 reflecting the hydrologic year for the Santa Ynez River Basin. USBR changed the Water Year to a Federal Fiscal Year which made the predictability of the water supplies uncertain because there was no correlation with rainfall, runoff and storage at the end of the rain season. USBR has considered this change for the 2020 contract.

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.

ID No.1 Response to Finding 5: ID No.1 respectfully disagrees with this finding.

The purpose of the Master Contract is to establish a long-term, contractual water supply and service payment agreement. USBR policy is to engage in 25 to 50-year contracts to provide certainty for the use of its water storage facilities and water supplies to its contracting agencies while protecting the downstream water right interests and public trust resources. The operations of the Project and available supply is a function of the hydrology of the Santa Ynez River basin which the Master Contract allows the flexibility for USBR to respond and determine those allocations based on the natural changing conditions.

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.

ID No.1 Response to Recommendation 5: This recommendation will not be implemented. ID No.1 cannot support re-opening a Master Contract on a five-year basis nor does the SBCWA or the Member Units have an ability to demand USBR provide non-standardized terms. Furthermore, it is unlikely that USBR would re-open and re-negotiate a long-term contract given the cost and Federal contract processing requirements. However, USBR must operate and maintain the Cachuma Project subject to the continuing jurisdiction and pursuant to Water Right Orders issued by the State Water Resources Control Board and Biological Opinion conditions of the National Marine Fisheries Service.

Finding 6

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

ID No.1 Response to Finding 6: ID No.1 respectfully partially disagrees with this finding. Article 9 (g) provides for USBR, SBCWA and the Member Units to meet not more frequently than five years in an open process with a view to reach agreement on any changes to the Project operations that might further protect the environment and groundwater quality downstream of Bradbury Dam, conserve Project water, and promote efficient water management. Modifying operational changes must be consistent with Federal and State law, Project water rights, and not reduce available supply in any water year. There is no reference in this Article restricting an increase in water diversion. However, water diversions under permits 11308 and 11310 are subject to the continuing jurisdiction of the State Water Resources Control Board; thus, Water Rights Orders dictate the operations of the Project.

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.

ID No.1 Response to Recommendation 6: This recommendation will not be implemented such that SBCWA and the Member Units do not have the authority to demand changes inconsistent with Federal and State law and water rights orders under the continuing jurisdiction of the State Water Resources Control Board.

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.

ID No.1 Response to Finding 7: ID No.1 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.

ID No.1 Response to Recommendation 7: This recommendation will not be implemented because a management level meeting format already exists among the Member Units as well as between the Member Units and SBCWA. Although the SBCWA does not participate in many meeting opportunities between the Member Units, the Member Units consistently confer on many topics including drought, water supply modeling, environmental, water efficiency and water management. These forums create solution and compromise-based opportunities and collaboration as well as respectful understanding of differences and positions.

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.

ID No.1 Response to Finding 8: ID No.1 respectfully partially agrees with this finding. The meetings between SBCWA and the Member Units are valuable with scheduling and attendance always being a factor due to various agency demands. There are missed opportunities for attendance due to other matters taking higher priority. It is important when critical issues, such as Master Contract meetings, that involve SBCWA and Member Unit participation, those opportunities should not be lost.

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 staffs to discuss Cachuma Project operations, including upcoming diversions, and to report major points of potential agreement or disagreement to their Boards.

ID No.1 Response to Recommendation 8: This recommendation will not be implemented because management level meetings between SBCWA and Member Units are scheduled on a monthly and as-needed basis. The elected Board officials should not be scheduling technical staff level discussions or managing technical staff. This undermines the underlying premise of delegation of responsibility by the agency management to staff.

Finding 9

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

ID No.1 Response to Finding 9: ID No.1 partially disagrees with this finding. Frequently requested information is available on Member Unit websites, and Cachuma Project history and operational information is located on the Reclamation website. Additional information is available upon request. Each month, ID No.1 provides a detailed summary of Cachuma Project history, actions and activities on its website within the Board agenda materials.

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.

ID No.1 Response to Recommendation 9: The recommendation has already been implemented with links to a variety of sources and websites. ID No.1 does not use its website as a depository of all documents and records, but additional information is available upon request.

The ID No.1 Board of Trustees and Management again sincerely thank those individuals serving on the Grand Jury for volunteering their time, trying to gain an understanding of the very complicated and complex issue of the Cachuma Project, and preparing this report in a short amount of time. By incorporating the submitted comments, this report will then accurately reflect these complex water matters and provide the community an informative document. Thank you for the opportunity to respond to the Grand Jury Report.

Please let us know if there is anything further that you require.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Dahlstrom", with a large, sweeping flourish at the end.

Chris Dahlstrom
General Manager

cc: Board of Trustees
Santa Barbara County Grand Jury