

REGULAR MEETING
OF
CACHUMA OPERATION AND MAINTENANCE BOARD
AND
CACHUMA CONSERVATION RELEASE BOARD
at Cachuma Operation and Maintenance Board Office
3301 Laurel Canyon Road
Santa Barbara, CA 93105

CACHUMA OPERATION AND MAINTENANCE BOARD

MONDAY, August 28, 2006

Approximate Start Time

3:15 P.M.

AGENDA

1. COMB CALL TO ORDER, ROLL CALL. (COMB Board of Directors.) *(1 minute)*.
2. [CLOSED SESSION: CONFERENCE WITH LEGAL COUNSEL TO DISCUSS PENDING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9 (a). ONE CASE: CRAWFORD-HALL V COMB, SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA BARBARA, CASE NO. 1171135.
3. PUBLIC COMMENT. (Public may address the Board on any subject matter not on the agenda and within the Board's jurisdiction. See "Notice to the Public" below.) *(5 minutes)*
4. CONSENT AGENDA. (For Board Action by Vote on One Motion Unless Member Requests Separate Consideration.) *(2 minutes)*
 - a. Minutes
 - July 24, 2006 Regular Board Meeting,
 - b. Investment of Funds
 - Financial Reports
 - Investment Reports
 - c. Payment of Claims
5. COMMITTEE APPOINTMENTS FOR FY 2006-07 (For Action by the President of the Board.) *(5 minutes)*
 - a. Capital Improvements
 - b. Finance
 - c. Legal Affairs
 - d. Operations
 - e. Management & Public Relations
6. REPORTS FROM THE MANAGER. (For information.) *(3 minutes)*
 - a. Water Storage
 - b. Water Production & Use, SWP Accounting
 - c. Operations Report

- d. **Verbal Report - Cachuma Reservoir Current Conditions**
7. **VERBAL REPORT - STATUS OF LAURO DAM SEISMIC SAFETY MODIFICATIONS PROJECT.** (For information.) *(5 minutes)*
 8. **VERBAL REPORT - RECLAMATION MEETING HELD JULY 26, 2006, FRESNO, CA.** (For information) *(10 minutes)*
 9. **LAURO DEBRIS BASIN REHABILITATION PROJECT- AD HOC COMMITTEE REPORT; RECOMMENDATION TO APPROVE PRELIMINARY DESIGN, ENVIRONMENTAL AND PERMITTING WORK.** (For Board action.) *(10 minutes)*
 10. **VERBAL REPORT - PROPOSITION 50 - INTEGRATED REGIONAL WATER MANAGEMENT PLAN.** (For information - See CCRB Item No. 10.) *(1 minute)*
 11. **RESOLUTION 450 IN SUPPORT OF PROPOSITION 84 – 2006 WATER BOND.** (For Board action – See CCRB Item No. 11.) *(2 minutes)*
 12. **MEETING SCHEDULE.**
 - TBD Joint Special COMB/CCRB Board Meeting 2:00-5:00 P.M., at COMB Office
 - September 25, 2006 Regular Board Meeting following CCRB at 2:00 P.M., COMB Office
 13. **COMB ADJOURNMENT.**

NOTICE TO PUBLIC

Public Comment: Any member of the public may address the Board on any subject within the jurisdiction of the Board that is not scheduled for a public hearing before the Board.

The total time for this item will be limited by the President of the Board. If you wish to address the Board under this item, please complete and deliver to the Secretary of the Board before the meeting is convened, a "Request to Speak" forms including a description of the subject you wish to address.

Americans with Disabilities Act: In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Cachuma Operation and Maintenance Board office at (805) 687-4011 at least 48 hours prior to the meeting to enable the Board to make reasonable arrangements.

[This Agenda was Posted at 3301 Laurel Canyon Road, Santa Barbara, CA at Santa Barbara City Hall, Santa Barbara, CA and at Member District Offices and Noticed and Delivered in Accordance with Section 54954.1 and .2 of the Government Code.]

Driving Drunk

Besides being charged with improperly asking a prosecutor why he filed papers to disqualify her from hearing a case, Hall, 56, also is charged with violating the Code of Judicial Ethics by driving drunk and deliberately covering up a donation to her 2002 re-election campaign.

Hall could not be reached for comment Friday. Her lawyer, Rebecca D. Lizarraga of Studio City, declined to discuss the report.

"I can't comment other than to say that these are findings that haven't yet been adopted by the commission," Lizarraga said.

The three judges released their 51-page finding July 26. In reviewing Hall's case, they sat as "special masters," judges appointed by the state Supreme Court to hear disciplinary matters and pass on their recommendations to the commission. The special masters' recommendations carry weight with the commission because they offer an outsider's view of the charges.

See Page 10 — PANEL

Panel Agrees With Findings Against Judge

Her Questioning Of Prosecutor Was Willful Misconduct

Removal From Bench?

By Jason W. Armstrong
Daily Journal Staff Writer

In a finding that could lead to a jurist's removal from the bench, a three-judge panel has agreed with state Commission on Judicial Performance charges that Santa Barbara County Superior Court Judge Diana R. Hall committed willful and prejudicial misconduct.

The willful-misconduct allegation is the most severe finding the panel could make. The charge involved Hall's allegedly improper questioning of a prosecutor.

Misused Authority

James A. Murphy, a San Francisco attorney who frequently represents judges facing misconduct charges, said Friday the finding that Hall willfully misused the authority of her office could lead to her dismissal.

"The Supreme Court, in several decisions, has said prejudicial misconduct can warrant removal," said Murphy, a name partner with Murphy Pearson Bradley & Feeny who is not involved in Hall's case. "When you have willful misconduct, there's some real problems for the judge with respect to the potential for being removed."

Panel Agrees With Findings Against Santa Barbara Judge

Continued from page 1

The judges heard Hall's case over three days in April. Hall and several other witnesses testified.

In their report, the masters said Hall committed willful misconduct in asking Kevin Duffy, a Santa Barbara County deputy district attorney, why he intended to file a 170.6 motion against her. Judicial ethics rules bar judges from asking lawyers why they want to file such a motion, which seeks to remove a judge from presiding over a case.

Hall, the panel found, "engaged in the conduct of bad faith by committing an act that she knew was beyond her lawful power, and she did so while acting in her judicial capacity."

The masters decided that the drunken-driving charge against Hall — stemming from a December 2002 incident that followed a domestic dispute with her ex-girlfriend — amounted to prejudicial misconduct. Hall got a misdemeanor criminal conviction for driving with a .18 percent blood-alcohol level, which exceeds the state's 0.08 legal limit. She admitted to violating judicial ethics by driving drunk.

Hall "had undoubtedly sentenced these types of offenders to jail and prison, and knew she was in violation of the law and drove impaired anyway," the panel said.

On the issue of the donation to her 2002 re-election campaign, the masters found that Hall committed prejudicial misconduct by failing to report \$20,000 from her then-girlfriend, Diedre Dykeman.

The masters didn't buy Hall's argument that she wasn't aware of the campaign finance reporting requirements and viewed the \$20,000 as belonging to both Dykeman and her.

The panel found that Hall lied in listing on campaign statements a \$25,000 loan from her own account while not disclosing that most of that came from Dykeman.

The masters said Hall deliberately covered up the fact the money came from Dykeman because she feared being exposed as a lesbian.

"She did not want to disclose the source of the money because she feared the reaction of the public," the masters wrote. "She believed she could avoid such a disclosure legally by running the money through her personal account."

"Her belief was unreasonable and based on her irresponsible ignorance of the law."

Not all the masters' findings were negative. The panel listed several "mitigating factors" for Hall's actions. Hall's desire to keep her relationship with Dykeman private "was not totally unreasonable or irrational," given the opposition of some people toward gays, the panel said.

Hall is remorseful, the masters added. She's also been a role model and mentor to several other judges and has a strong work ethic, the panel said.

Hall is a 16-year veteran of the Santa Barbara bench who hears civil matters in Santa Maria. Her case has taken a series of unusual twists since the commission charged her two years ago.

Hall's initial Commission on Judicial Performance hearing happened in November.

However, in an unprecedented move for the agency, the commission scrapped the hearing and dismissed the original three-judge disciplinary panel after allegations surfaced that one of the special masters made improper comments about Hall.

In an affidavit in an unrelated civil lawsuit, a former court clerk accused one of the initial panelists, Monterey County Superior Court Judge Michael Fields, of telling the clerk that he and the other masters thought Hall was guilty of the allegations.

Fields also allegedly disparaged Hall's sexuality.

Fields has declined to comment on the accusations.

Hall's new hearing was held April. The special masters who considered the commission's complaint and wrote the report are Tani Cantil-Sakauye, a justice on the 3rd District Court of Appeal; Dennis Cornell, of the 5th District Court of Appeal; and San Diego County Superior Court Judge Desir Bruce-Lyle.

Lizarraga and the commission's lawyers will get to respond to the masters' findings later this month. The commission will meet Oct. 10 in San Francisco to hear oral arguments and make its final decision on Hall's discipline.

The commission's discipline can range from private or public admonishment to censure or removal from the bench.

Hall's six-year term as a judge ends in 2008. She has the option of appealing any commission penalty to the state Supreme Court.

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GOVERNMENT CODE § 6103

6 Attorneys for Respondent and Real Party in Interest
7 CACHUMA OPERATION AND MAINTENANCE
8 BOARD and CACHUMA CONSERVATION
9 RELEASE BOARD

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SANTA BARBARA

12 NANCY CRAWFORD-HALL, an
13 individual, and SAN LUCAS RANCH,
14 INC., a California corporation,

15 Plaintiff,

16 v.

17 CACHUMA OPERATION AND
18 MAINTENANCE BOARD, and DOES 1-
19 20,

20 Respondents.

21 CACHUMA CONSERVATION
22 RELEASE BOARD, and DOES 21-50,

23 Real Parties in Interest.

Case No. 1171135
Hon. Judge: Diana R. Hall

**RESPONDENT AND REAL PARTY IN
INTEREST'S JOINT OPPOSITION TO
OPENING BRIEF OF PETITIONERS
NANCY CRAWFORD-HALL AND SAN
LUCAS RANCH, INC.**

Date: October 25, 2006
Time: 9:30 a.m.
Dept: SM4

[Filed concurrently with: (1) Request for Judicial
Notice; and (2) Excerpts of Record]

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27 ITEM # 2
28 PAGE 2

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I. INTRODUCTION

Most actions brought under the California Environmental Quality Act (“CEQA”) seek to stop projects that could have long-term *adverse* environmental impacts. By contrast, this lawsuit challenges actions that will substantially *improve* conditions for Southern California steelhead, native fish and other aquatic resources in the Santa Ynez River. Stated most simply, this is not a case about protecting the environment or about enforcing important public rights. Instead, this is a case about a single property owner trying to subvert the environmental review process to protect her own economic interests. Nancy Crawford-Hall and San Lucas Ranch, Inc. (“Crawford-Hall” or “Petitioner”) do not want a habitat conservation project intended to protect the endangered Southern California steelhead located near their property and are improperly using CEQA to try and stop it. In fact, this case represents Crawford-Hall’s third attempt to do so.

The Petition for Writ of Mandate (“Petition”) should be denied. The principal thrust of Crawford-Hall’s Petition is that the Cachuma Operation and Maintenance Board (“COMB”) acted as an improper lead agency and should not have prepared an Environmental Impact Report (“EIR”) for the purpose of implementing the locally prepared Lower Santa Ynez River Fish Management Plan (“FMP”) and Cachuma Project Biological Opinion (“BO”) issued by the National Marine Fisheries Service (“NOAA Fisheries”) to protect the steelhead (collectively, “Project”). This argument is a complete reversal from Crawford-Hall’s previous legal position in this Court, set forth in *Crawford-Hall v. Cachuma Operation and Maintenance Board*, Santa Barbara Superior Court Case No. 01045423. There she challenged components of the same Project and alleged that COMB was *required* to prepare an EIR. She was successful and in later proceedings, admitted that COMB’s preparation of an EIR for all of the projects contemplated by the FMP was “*precisely*” the relief she requested. Her self-serving reversal of position in the present case is not permitted under the law and illustrates the lengths to which Crawford-Hall will go to attempt to stop a Project she believes may inconvenience her – any benefit to an endangered species notwithstanding.

Further, despite the fact that Crawford-Hall’s previous litigation recognized that COMB and the United States Bureau of Reclamation (“Reclamation”) *would* shoulder the ultimate

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1 responsibility for implementing the Project, Crawford-Hall now argues that the State Water
2 Resources Control Board (“State Board”) – not COMB – has “principal responsibility” for
3 carrying out the Project and, thus must serve as the CEQA lead agency. Not only is this late
4 change in position legally impermissible and factually incorrect, it fails to recognize – or inform
5 the Court – that the State Board, itself, determined that, with the exception of downstream flow
6 releases, COMB is the appropriate CEQA lead agency for the Project and the State Board is not.

7 Second, Crawford-Hall’s arguments regarding the EIR’s environmental setting, Project
8 description and cumulative impact analyses are misplaced. In large part, these arguments contend
9 that COMB’s EIR is inadequate because it fails to speculate about the potential outcome and
10 impacts of an on-going water rights hearing before the State Board that may, or may not, result in
11 a change to Reclamation’s water rights permits for the Cachuma Project. The administrative
12 record shows, however, that COMB fully discussed the pending State Board decision in its EIR,
13 carefully and completely studied the potential environmental impacts of the proposed Project,
14 disclosed all data available to and relied upon by COMB, and that the EIR properly served as an
15 informational document that fully educated the public on all reasonably foreseeable potential
16 Project impacts. Crawford-Hall’s argument is flawed because the State Board has not selected a
17 preferred alternative and COMB is not required to speculate about how the State Board’s
18 undisclosed future decisions might or might not affect Cachuma operations.

19 Third, Crawford-Hall challenges the EIR’s conclusions regarding habitat in Hilton Creek.
20 This challenge ignores the fact that COMB *did not approve the Hilton Creek projects*. Instead,
21 these projects were approved by Reclamation pursuant to its Record of Decision on the FMP/BO
22 Environmental Impact Statement (“EIS”). That approval resulted in yet another legal challenge
23 brought by Crawford-Hall—this time in a federal court action against Reclamation. There, after
24 unsuccessfully seeking a temporary restraining order against the federal government regarding its
25 construction of one of the Hilton Creek Projects, Crawford-Hall dismissed her case on March 28,
26 2006. Thus, not only is there is no COMB project approval for Crawford-Hall to challenge in *this*
27 lawsuit with respect to the Hilton Creek projects, but Crawford-Hall has already *dismissed* the
28 case she brought against the federal entity that *is* responsible for those projects. However, even if

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1 COMB had approved the Hilton Creek projects, Crawford-Hall's arguments do not result in the
2 invalidation of the EIR. Although she cites heavily to pictures and "testimony" by her expert
3 regarding suitable habitat, she does nothing to refute the substantial evidence in the record
4 supporting the EIR's conclusions regarding the suitability of habitat for steelhead in the Hilton
5 Creek watershed. This evidence includes, but is not limited to, numerous observations of
6 steelhead making actual use of the habitat in Hilton Creek that Crawford-Hall now claims is
7 unsuitable. As the Court is well aware, a mere difference of opinion among experts is not
8 sufficient to invalidate an EIR.

9 Finally, Crawford-Hall contends that COMB cannot support its conclusion that impacts
10 related to surcharging will have a less than significant impact because the County of Santa
11 Barbara will relocate certain facilities that would be impacted by the surcharge (i.e., the raising of
12 the water level). Facilities were constructed a year ago that protect the County of Santa Barbara
13 and no potential impacts remain – a fact confirmed by the County's agreement earlier this year
14 that Lake Cachuma may be fully surcharged to elevation 753.0 feet above mean sea level. Any
15 further argument on this issue is moot. In short, Crawford-Hall's arguments are not only
16 procedurally defective and legally incorrect; they are also factually flawed, and her Petition for
17 Writ of Mandate should be denied.

18 **II. FACTS**

19 **A. The Cachuma Project is Operated Jointly by COMB and Reclamation**

20 The Cachuma Project consists of Bradbury Dam (the "Dam"), Cachuma Lake and various
21 associated water conveyance structures. (39 AR 371:17395.)¹ Reclamation constructed the
22 Cachuma Project in the early 1950s. (*Ibid.*) Water is provided to the Cachuma Project Member
23 Units² for irrigation, domestic, municipal and industrial water uses. (*Ibid.*) For more than 50
24 years, the Cachuma Project has been the main water supply for Santa Barbara County's South
25 Coast communities and portions of the Santa Ynez River Valley. (*Ibid.*)

26
27 ¹ Citations to the Administrative Record are formatted herein as follows: Volume AR Tab:Page. For the Court's
28 convenience, excerpts of relevant pages are included in the Excerpts of Record and filed concurrently herewith.
² The Member Units include the City of Santa Barbara, Goleta Water District, Montecito Water District, Carpenteria
Valley Water District, Santa Ynez River Water Conservation District-Improvement District #1. (39 AR 371:17380.)

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1 The Member Units and Reclamation share joint responsibility for operation of the
2 Cachuma Project. (39 AR 371:17395; Petition, ¶¶ 6, 43.) For this purpose, the Member Units
3 formed COMB, a joint powers authority, to carry out their responsibilities. (39 AR 371:17396;
4 Petition, ¶ 6.) Reclamation owns all Cachuma Project facilities and operates the Dam, while
5 COMB is responsible for operating and maintaining the water conveyance facilities. (*Ibid.*)

6 **B. The Fish Management Plan Improves Conditions for Native Fish**

7 The origins of the Lower Santa Ynez River Fish Management Plan are independent of,
8 and prior to, the listing of the Southern California steelhead along the Santa Ynez River as an
9 endangered species. (39 AR 371:17396.) In 1993, a cooperative program to investigate native
10 fisheries in the lower Santa Ynez River system below Bradbury Dam was initiated by numerous
11 local public agencies and non-governmental organizations in response to concerns about
12 balancing the allocation of Santa Ynez River water between public trust resources and
13 consumptive uses. (*Ibid.*) In June 1994, a Memorandum of Understanding for Cooperation in
14 Research and Fish Maintenance ("Fish MOU") was executed.³ The Fish MOU provided water
15 for fish studies and for the maintenance of fish habitat. (39 AR 371:17397.) A supplemental
16 Fish MOU provided for the implementation of the FMP/BO through an Adaptive Management
17 Committee ("AMC") comprised of biologists from each MOU signatory.⁴ (39 AR 371:17397,
18 17407; 31 AR 188:14349.) The AMC is overseen by the Consensus Committee which has
19 responsibility for prioritizing projects under the FMP/BO and resolving conflicts. (39 AR
20 371:17407.) Notably, the State Board is not a signatory to any of the Fish MOUs nor is it a
21 member of the AMC or the Consensus Committee.

22 Beginning in 1993, the Fish MOU studies have been directed by the Santa Ynez River
23 Technical Advisory Committee ("SYRTAC") which was composed of various biologists,
24 hydrologists, and resource agency personnel. (39 AR 371:17397.) As a part of those study
25 efforts, COMB and SYRTAC made numerous requests to Crawford-Hall to conduct certain

26 ³ Signatories to the MOU included: Reclamation, the Santa Barbara County Water Agency, California Department of
27 Fish and Game, U.S. Fish and Wildlife Service, Santa Ynez River Water Conservation District-Improvement District
28 #1, Cachuma Conservation Release Board, City of Lompoc and the Santa Ynez River Water Conservation District.
(39 AR 371:17397.) The MOU was renewed in 1995 and 1996.

⁴ The signatories to the supplemental Fish MOU were the same as those to the 1994 MOU. (39 AR 371:17397.)

1 studies on her property. However, these requests were routinely ignored or denied. (See, e.g., 32
2 AR 198:14569-14631.) In 2001, the AMC assumed SYRTAC's responsibilities.

3 In 1994, the State Board issued Water Rights Order 94-5 ("WR 94-5"), which requires
4 Reclamation to continue public trust releases of water from the Dam made under the 1994 Fish
5 MOU, or its successors, until the State Board takes action on the WR 94-5 hearings, which are
6 still on-going. (39 AR 371:17397; Opening Brief of Petitioners ("Opening"), 5:21-23.) WR 94-5
7 requires that all studies originating from the 1994 Fish MOU, or its successors, be submitted to
8 the State Board. (39 AR 371:17398.)

9 Consistent with the 1994 Fish MOU – which focused on the identification of management
10 actions to improve conditions for native fish – the SYRTAC prepared the Draft FMP in 1999,
11 which became final in October 2000. (39 AR 371:17397, 17405.) The stated goal of the FMP is
12 to "identify, evaluate, and recommend potential management actions that will benefit fish and
13 other aquatic resources in the lower Santa Ynez River." (39 AR 371:17380; 17397.) The FMP
14 projects are designed to benefit steelhead and other aquatic species by: (1) creating new habitat
15 and improving existing habitat in the lower river and its tributaries; (2) improving access to
16 spawning and rearing habitat in the lower River; and (3) increasing public awareness and support
17 for beneficial actions on private land. (39 AR 371:17397.)

18 **C. Reclamation is Required to Implement the Biological Opinion**

19 In August 1997, NOAA Fisheries designated the Southern California steelhead, including
20 the population along the lower Santa Ynez River, as an endangered species. (39 AR 371:17381.)
21 In 1999, pursuant to Section 7 of the federal Endangered Species Act (16 U.S.C. § 1536),
22 Reclamation requested initiation of formal endangered species consultation with NOAA Fisheries
23 regarding the effects of Cachuma Project operations on the steelhead and its critical habitat. (39
24 AR 371:17381.) Reclamation also submitted a Biological Assessment which described
25 downstream releases for steelhead and numerous proposed fish passage and habitat conservation
26 measures for tributaries and the mainstem of the Santa Ynez River. (39 AR 371:17398.) On
27 September 11, 2000 – shortly after the lower Santa Ynez River was designated as critical habitat
28 for the species – NOAA Fisheries issued a final Biological Opinion ("BO"), concluding that the

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1 proposed actions described in the Biological Assessment would not jeopardize the continued
2 existence of the steelhead. (39 AR 371:17381, 17399.) The BO incorporated the projects
3 described in the FMP with only very slight modifications. (39 AR 371:17399.) Furthermore,
4 the BO included mandatory terms and conditions that require Reclamation to implement some 15
5 specific reasonable and prudent measures to minimize “take” of the steelhead. Thus, to comply
6 with the federal Endangered Species Act, Reclamation must implement the actions described in
7 the BO, and by extension, the FMP. (*Ibid.*)

8 COMB and Reclamation are jointly responsible for the implementation of the FMP and
9 the BO. (40 AR 372:18239.) Specifically, the FMP/BO actions will be funded and implemented
10 by Reclamation and the Member Units through COMB. (39 AR 371:17399.) The State Board
11 has *no responsibility* for funding or implementing the FMP or the BO. (See, e.g., 39 AR
12 371:17400, 17407 [EIR identifying FMP/BO funding sources – none of which include the State
13 Board]; 31 AR 188:14352 [MOU establishing that COMB and Reclamation are primarily
14 responsible for funding].)

15 **D. Previous Environmental Review and Crawford-Hall’s First Lawsuit Against**
16 **the Project**

17 In 2001, Crawford-Hall challenged a mitigated negative declaration prepared by COMB
18 for the Hilton Creek cascade/chute project, a project identified in the FMP/BO. (Opening, 8.) In
19 that Petition for Writ of Mandate, Crawford-Hall *admitted* that COMB was the proper lead
20 agency. (64 AR 30455 [“The [p]roject is purportedly designed to implement in-stream
21 modifications to improve upstream passage of federally-endangered steelhead (*oncorhynchus*
22 *mykiss*) to spawning and rearing habitat by permanent removal and modification of the
23 streambed. *COMB is the lead agency responsible under CEQA for evaluating the environmental*
24 *impacts of the [p]roject.”] [emphasis added].) In fact, Crawford-Hall requested a writ of mandate
25 “commanding COMB to . . . prepare, circulate and consider a legally adequate Environmental
26 Impact Report.” (64 AR 30462.) However, Crawford-Hall did not seek an EIR for only the
27 cascade/chute project. Instead, Crawford-Hall argued that this project was “one in a series of
28 projects to remove barriers to migration of steelhead” and that *all* of these projects must be*

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1 contemplated by COMB in an EIR. (64 AR 30459.) Crawford-Hall stated that the specific relief
2 she sought by her lawsuit was to have COMB analyze all of the projects identified in the
3 FMP/BO in a single EIR. (See Request for Judicial Notice in Support of Respondent and Real
4 Party in Interest's Joint Opposition ["Opp. RJN"] filed concurrently, Exh. 11, Memorandum of
5 Points and Authorities in Support of Request for Attorneys Fees ["Memo of Ps & As for Atty
6 Fees"], 1:26- 2:1 ["COMB . . . publicly noticed its intent to prepare a complete EIR for the Fish
7 Management Plan, as opposed to the individual segments of the Plan. *This was precisely the
8 relief Crawford-Hall had sought.*"] [emphasis added]; see also 61 AR 29153-54 [comment letter
9 from Crawford-Hall stating that COMB's environmental document must analyze all of the
10 projects in the BO].)

11 Based on Crawford-Hall's arguments, the Court granted the writ petition and entered
12 judgment against COMB. (32 AR 220:14752-56.)

13 **E. COMB Prepares an EIR for the FMP/BO Project**

14 In response to Crawford-Hall's first lawsuit, on October 8, 2002, COMB and Reclamation
15 issued a Notice of Preparation ("NOP") of an Environmental Impact Report/Environmental
16 Impact Statement("EIR/EIS"). (32 AR 214:14735; see also Opp. RJN, Exh. 11, Memo of Ps &
17 As for Atty Fees, 6:26-7:1 ["As a direct result of Crawford-Hall's action, COMB is now
18 preparing a full environmental impact report for the Chute Project and the Fish Management
19 Plan."].) COMB, acting as the lead agency under CEQA, prepared a draft EIR. The United States
20 Department of the Interior agreed that COMB was the appropriate lead agency. (33 AR
21 238:14900-01.) As part of the EIR's preparation, COMB made numerous requests to Crawford-
22 Hall to conduct studies on her property. Again, however, these requests were routinely ignored or
23 denied. (See, e.g., 33 AR 245:15013; 33 AR 262:15158; 40 AR 372:18248.) Despite Crawford-
24 Hall's unwillingness to cooperate, COMB's EIR included an extensive discussion of the potential
25 steelhead habitat in Upper Hilton Creek. (See 39 AR 371:17531; 17534.)

26 The Draft EIR was circulated for public review on July 22, 2003. (45 AR 425:20415.)
27 COMB received 20 comment letters during the public review period and one late comment letter.
28

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1 (45 AR 425:20416.) COMB carefully reviewed all the comment letters and provided written
2 responses in the final EIR which was publicly circulated. (45 AR 425:20418.) In particular,
3 COMB provided detailed responses to comments received from Crawford-Hall's biological
4 expert, Dr. Alice Rich. (40 AR 372:18298-18304.) On November 22, 2004, COMB certified the
5 EIR and approved the Project. COMB specifically did not approve the cascade/chute project on
6 lower Hilton Creek and a fish passage barrier modification to the culvert on Hilton Creek where
7 the creek passes under Highway 154. (Petition, ¶ 57.) COMB also approved a Mitigation
8 Monitoring and Reporting Plan recognizing that Reclamation and COMB are jointly responsible
9 for the Project's mitigation measures. (See 45 AR 424:20388-20404; see also Petition, ¶ 57.)

10 **F. Petitioner's Current Lawsuit Against COMB**

11 On December 23, 2004, Petitioner filed this lawsuit seeking to set aside the entire Project,
12 including all approvals related to the implementation of the FMP and BO. (Petition, ¶ 1; Prayer, ¶
13 1.) The lawsuit recognizes that COMB is responsible for operating and maintaining the Cachuma
14 Project facilities (Petition, ¶ 6) and requests that "COMB and its agents [] be enjoined from
15 implementing any part of the Project" (Petition, ¶ 1).

16 The lawsuit does not name Reclamation, yet Crawford-Hall's allegations challenge
17 Reclamation's role in Project approval and Reclamation's reliance on the EIR/EIS. Accordingly,
18 COMB filed a demurrer on May 5, 2005 arguing that Reclamation was a necessary and
19 indispensable party to this action. Crawford-Hall opposed the motion, arguing that "Reclamation
20 is neither a necessary nor an indispensable party to this action." (Opp. to Demurrer, 5:24-25.)
21 Further, Petitioner stated that "Reclamation is not necessary to provide complete relief." (Opp. to
22 Demurrer, 10:5.) This Court denied the Demurrer agreeing with Crawford-Hall that Reclamation
23 was not a necessary party.

24 **G. Petitioner Unsuccessfully Challenged the United States Department of the**
25 **Interior and the Bureau of Reclamation on the Same Project**

26 On December 14, 2005, less than four months after arguing that their challenge to the EIR
27 was to "COMB's and only COMB's – failure to comply with state law" (Opp. to Demurrer, 1),
28 Crawford-Hall filed a Complaint for Declaratory Relief and Injunctive Relief ("Federal

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16

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1 Complaint”) against Gale Norton, Secretary of the United States Department of the Interior and
2 John Keys, Commissioner of the United States Bureau of Reclamation. (*Crawford-Hall v.*
3 *Norton*, Case No. CV 05-08708 GHK [U.S.D.C., Central Dist. Cal.].) The same day the case was
4 filed in the United States District Court, Crawford-Hall filed an Application for a Temporary
5 Restraining Order for the cascade/chute project on Hilton Creek, which was denied. (Opp. RJN,
6 Exh. 9.) The Federal Complaint and the Petition in this case are virtually identical. Both arise
7 out of the same facts and both seek to set aside all approvals related to the EIR/EIS and the
8 FMP/BO. (Compare Opp. RJN, Exh. 1 with Petition for Writ of Mandate filed December 23,
9 2004 [for example, Federal Complaint paragraphs 29-38 and 43-73 are virtually indistinguishable
10 from Petition paragraphs 2-11 and 14-47]; see also Opp. RJN, 2.)

11 Moreover, even though Crawford-Hall previously informed this Court that Reclamation’s
12 presence was not necessary to obtain relief, the Prayer for Relief in her Federal Complaint
13 specifically asked that Reclamation’s Project approvals be set aside. (Opp. RJN, Exhs. 1 and 2.)
14 The federal court denied Crawford-Hall’s Application for a restraining order, and on March 28,
15 2006 Crawford-Hall dismissed her federal case against the EIR/EIS.

16 **H. State Board Hearings Are On-Going**

17 In December 1994, the State Board issued WR 94-5 which required a future hearing to
18 determine if any modifications to Reclamation’s Cachuma Project water rights permits would be
19 necessary to protect downstream water rights or public trust uses of the Santa Ynez River. (39
20 AR 371:17402; 47 AR 445:21312.) In May 1999, the State Board issued an NOP for its Draft
21 EIR related to the Cachuma Project water rights permits proceedings. (39 AR 371:17402.) A
22 Draft EIR was originally issued in 2003. Subsequently, following hearings conducted in October
23 and November of 2003, the State Board decided to revise and recirculate its Draft EIR. To date,
24 it has not done so. The primary purpose of the State Board’s water rights hearing and related
25 Draft EIR is to address the adequacy of current fishery releases and to provide appropriate
26 protection for downstream water rights and public trust resources. (47 AR 445:21312.) The draft
27 State Board EIR released for public review in 2003 considered seven alternatives, including an
28 alternative that would not alter Reclamation’s existing operations. (47 AR 445:21350-21361.) It

1 is anticipated that the State Board will use its as yet unreleased EIR in determining whether or not
2 any modification is required to Reclamation's permits; notably, however, some of the alternatives
3 in the State Board's draft EIR released in 2003 include the same release requirements for
4 steelhead as provided for in the FMP/BO. (39 AR 371:17402.)

5 "After completion of the hearings, the State Board will issue a decision which may or may
6 not amend Reclamation's water rights and public trust resources affected by the [P]roject." (39
7 AR 371:17472.) However, nearly three years after concluding its hearings, the State Board has
8 yet to issue a decision, and it cannot be predicted which flow release alternative will be selected.
9 (*Ibid.*) Importantly, the preferred alternative will not be designated until after consideration of all
10 public testimony and after reviewing the results of the environmental impact assessment in the
11 Draft EIR. (*Ibid.*) Although the State Board began the environmental process in 1994, it has yet
12 to identify a preferred project or certify an EIR. The proposed releases for fish under the
13 FMP/BO do not affect the release requirements under the current water rights permits for the
14 Cachuma Project. (39 AR 371:17399.) Implementation of the non-flow FMP/BO projects will
15 not require modification of Reclamation's current water rights permits. (*Ibid.*; 40 AR 372:18230.)

16 **III. ARGUMENT**

17 **A. Standard of Review**

18 The standard governing this Court's review of Crawford-Hall's contentions is well settled.
19 In an "action or proceeding" challenging a public agency's certification of an EIR, the standard of
20 review "shall extend only to whether there was a prejudicial abuse of discretion. Abuse of
21 discretion is established if the agency has not proceeded in a manner required by law or if the
22 determination or decision is not supported by substantial evidence." (*Napa Citizens for Honest*
23 *Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 356-57; *Defend the*
24 *Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1265; Pub. Res. Code, §§ 21168, 21168.5.)
25 Indeed, the Supreme Court has held that,

26 The wisdom of approving this or any other development project, a
27 delicate task which requires a balancing of interests, is necessarily
28 left to the sound discretion of the local officials and their
constituents who are responsible for such decisions. The law as we
interpret and apply it simply requires that those decisions be

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1 informed, and therefore balanced. Concurrently, we caution that
2 rules regulating the protection of the environment must not be
3 subverted into an instrument for the oppression and delay of social,
4 economic, or recreational development and advancement.

5 (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 576.) Substantial evidence
6 supporting an agency's decision or determination is defined as:

7 [E]nough relevant information and reasonable inferences from this
8 information that a fair argument can be made to support a
9 conclusion, even though other conclusions might also be reached.
10 Whether a fair argument can be made that the project may have a
11 significant effect on the environment is to be determined by
12 examining the whole record before the lead agency. Argument,
13 speculation, unsubstantiated opinion or narrative, evidence which is
14 clearly erroneous or inaccurate, or evidence of social or economic
15 impacts which do not contribute to or are not caused by physical
16 impacts on the environment does not constitute substantial
17 evidence.

18 (Cal. Code Regs., tit. 14 ("State CEQA Guidelines"), § 15384(a).) Thus, the reviewing court
19 does not pass upon the correctness of the EIR's conclusions or substitute its own judgment of a
20 project for the policy decision of the public agency, but only evaluates the EIR's sufficiency as an
21 informative document. (*Citizens of Goleta Valley*, supra, 52 Cal.3d at 564; *El Dorado Union*
22 *High Sch. Dist. v. City of Placerville* (1983) 144 Cal.App.3d 123, 130.) In a CEQA lawsuit,
23 agency actions are presumed to comply with applicable law, *until proof is presented to the*
24 *contrary*. (*Al Larson Boat Shop, Inc. v. Bd. of Harbor Commissioners* (1993) 18 Cal.App.4th
25 729, 740.) The substantial evidence standard is applied to conclusions, findings and
26 determinations and "to challenges to the scope of an EIR's analysis of a topic, the methodology
27 used for studying an impact and the reliability or accuracy of the data upon which the EIR relied
28 because these types of challenges involve factual questions." (*Bakersfield Citizens for Local*
Control v. City of Bakersfield (2004) 124 Cal.App.4th 1184, 1198.)

Here, Crawford-Hall challenges the *reliability and accuracy* of the environmental setting
and project description, COMB's *findings* and determinations, the *scope* of COMB's Hilton
Creek habitat and cumulative impacts *analyses*, and COMB's *conclusion* that impacts from
surcharging would be less than significant. Thus, the only inquiry should be whether COMB had
substantial evidence before it to support its decision to approve the Project and certify the EIR.

1 For Crawford-Hall to succeed, she must identify how the EIR's failure to include more
2 detailed information misled public agencies or the public, omitted or understated any problem or
3 was prejudicial in any way. (*Al Larson Boat Shop*, supra, 18 Cal.App.4th at 749.) "There is 'no
4 presumption that error is prejudicial.'" (*Id.* at 748 [quoting Pub. Res. Code, § 21005(b)].)

5 **B. COMB is the Proper Lead Agency**

6 **1. Crawford-Hall is Estopped from Challenging COMB's Lead Agency**
7 **Status**

8 Crawford-Hall's lead agency argument represents a dramatic and impermissible change in
9 the position she took in her earlier litigation. Previously, she successfully delayed habitat
10 improvements for steelhead on Hilton Creek by arguing that COMB, as lead agency, was required
11 to prepare an EIR for the entire "series of projects to remove barriers to migration of steelhead."
12 (62 AR 29726.) Now that COMB *has* prepared and certified an EIR, Crawford-Hall has changed
13 tactics and argues that the State Board, and not COMB, is the appropriate lead agency to analyze
14 the Project – a process which could take several more years.⁵

15 "Where a party assumes a certain position in a legal proceeding, and succeeds in
16 maintaining that position, he may not thereafter, simply because his interests have changed,
17 assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in
18 the position formerly taken by him." (*People v. Torch Energy Services, Inc.* (2002) 102
19 Cal.App.4th 181, 189 [citing *Davis v. Wakelee* (1895) 156 U.S. 680, 689].) "The party invoking
20 judicial estoppel must show that: (1) the party against whom the estoppel is asserted took an
21 inconsistent position in a prior proceeding; and (2) that the position was adopted by the first
22 tribunal in some manner such as by rendering a favorable judgment." (*Ibid.*; see also *Jackson v.*
23 *County of Los Angeles* (1997) 60 Cal.App.4th 171, 181.)

24 Both of these requirements are met here. As Crawford-Hall has already noted, she
25 previously challenged critical components of the Project in a prior proceeding before the Santa
26 Barbara County Superior Court. (64 AR 30453 [Petition for Writ of Mandate]; see, e.g.,

27 ⁵ Crawford-Hall also argues that COMB should have named the State Board as a responsible agency. However,
28 there is no requirement in CEQA to include an exhaustive list of all responsible agencies in the EIR and failure to do
so does not invalidate a CEQA document.

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1 Petitioner’s Opp. to Demurrer, 4:13-14; Petition, ¶¶ 19-21.) In this proceeding, Crawford-Hall
2 admitted and alleged that COMB was the proper lead agency for analyzing impacts associated
3 with steelhead habitat projects. (64 AR 30455.) In fact, she repeatedly argued that COMB was
4 required to prepare an EIR. (64 AR 30462 [asking for a writ of mandate “commanding COMB to
5 . . . prepare circulate and consider a legally adequate Environmental Impact Report”].)⁶
6 Crawford-Hall even argued that the EIR must consider the *entire FMP* – the very project at issue
7 here. (64 AR 30459; see also Opp. RJN, Exh. 11, Memo of Ps & As for Atty Fees, 1:26- 2:1.)

8 In response to these arguments, the Court granted Crawford-Hall’s writ petition and
9 rescinded COMB’s approvals. (32 AR 220:14752.) As a result, COMB was required to conduct
10 additional environmental review. (See Opp. RJN, Exh. 11, Memo of Ps & As for Atty Fees, at
11 6:26-7:1 [“As a direct result of Crawford-Hall’s [first] action, COMB is now preparing a full
12 environmental impact report for the Chute Project and the Fish Management Plan.”].) As
13 Crawford-Hall herself has said, “COMB initially tried to implement the Fish Management Plan
14 without environmental review, but was ordered by the Court to prepare an Environmental Impact
15 Report.” (Opening, 7:14-15.)⁷

16 Notably, Crawford-Hall did not argue in that first lawsuit - and the Court did not rule -
17 that COMB was an improper lead agency or that COMB should allow the State Board to prepare
18 an EIR or any other environmental review document for any of the projects in the FMP/BO.
19 Instead, she unequivocally stated in that first lawsuit that “COMB should have prepared an EIR”
20 and she did not identify or otherwise mention the State Board. (Opp. RJN, Exh. 12, Petitioner’s
21 Reply Brief in Support of Petition [“Reply Brief”], 2:23-24.)

22 In response to the Court’s judgment and in deference to Crawford-Hall’s demands,
23 COMB prepared an EIR for the Project. Crawford-Hall extolled this fact in her motion for
24

25 ⁶ See also Opp. RJN, Exh. 11, Memo of Ps & As for Atty Fees, 3:21-23 (“A representative of Crawford-Hall . . .
again urged the [COMB] Board to prepare an EIR.”); Opp. RJN, Exh. 12, Petitioner’s Reply, 4:9-10 (“the purported
26 environmental benefits of the Project do not excuse COMB from having to prepare an EIR.”).

27 ⁷ Notably, Crawford-Hall states that COMB was “ordered by the Court to prepare an Environmental Impact Report.”
28 (Opening, 7:14-15) Although, the court rescinded COMB’s approvals, Crawford-Hall’s statement that an EIR was
required evidences her intent in the first lawsuit to force COMB to prepare an EIR for the entire FMP – which
COMB did. Moreover, this statement is tantamount to a judicial admission and Crawford-Hall cannot now argue that
she did not intend for COMB to prepare an EIR for the FMP.

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1 attorney's fees on the first lawsuit, stating, "In compliance with the judgment, COMB rescinded
2 its approval of the negative declaration and thereafter publicly noticed its intent to prepare a
3 complete EIR for the Fish Management Plan, as opposed to the individual segments of the Plan.
4 *This was precisely the relief Crawford-Hall had sought.*"⁸ (Opp. RJN, Exh. 11, Memo of Ps &
5 As for Atty Fees, 1:26- 2:1 [emphasis added].)

6 In short, it was most beneficial for Crawford-Hall to take the position in her first lawsuit
7 that COMB was the appropriate lead agency to prepare an EIR for the FMP. The Court adopted
8 this position by rendering Crawford-Hall a favorable judgment. COMB then prepared an EIR –
9 which was, as Crawford-Hall put it – "precisely the relief Crawford-Hall had sought." These
10 events satisfy the requirements for judicial estoppel with the consequence that Crawford-Hall is
11 now precluded from changing her legal position. Indeed, to allow Crawford-Hall to maintain her
12 current, contrasting legal position does no less than place COMB in the position of defending its
13 preparation of the very EIR which Crawford-Hall previously demanded that COMB prepare.
14 Judicial estoppel prevents Crawford-Hall from arguing to one department of this Court that
15 COMB must prepare an EIR for its project and then later arguing to another department of the
16 same Court that COMB erred in preparing an EIR for the very same project.

17 **2. The Law Demonstrates that COMB Is the Proper Lead Agency**

18 As Crawford-Hall argued in her previous lawsuit, "the plain language of CEQA and the
19 CEQA Guidelines, as well as controlling case law, *dictate that COMB prepare an EIR.*" (Opp.
20 RJN, Exh. 12, Petitioner's Reply Brief, 8:9-10 [emphasis added].) The State CEQA Guidelines
21 establish criteria for selecting a single lead agency among two or more contenders. First, if the
22 project will be "approved" or "carried out" by a public agency, that agency shall be the lead
23 agency even if the project would be located within the jurisdiction of another public agency.

24 _____
25 ⁸ Generally, a petitioner is bound by the allegations it makes in a pleading. (*Electronic Equipment Express, Inc. v.*
26 *Donald H. Seiler & Co.* (1981) 122 Cal.App.3d 834, 850; *Malone v. Roy* (1897) 118 Cal. 512, 514.) Here, Crawford-
27 Hall is bound by her previous statements and cannot claim a mistake of law or fact to excuse her change in position.
28 Crawford-Hall's current lawsuit admits that the NOP for the State Board's Draft EIR was available before the Court
rendered its decision in the previous litigation. If there was an issue of who was the proper lead agency for the FMP,
she should have made that argument in her prior lawsuit. Crawford-Hall knew exactly what COMB intended to
analyze and its relationship to the State Board's Draft EIR when she said that the preparation of an EIR for the entire
FMP was "precisely the relief Crawford-Hall sought" in her first lawsuit.

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1 Second, if two or more public agencies have a "substantial claim" to serve as lead agency for a
2 project, the agencies may designate one agency as lead agency by agreement. Third, in the
3 absence of an agreement to the contrary, the agency which is to act first on the project will be the
4 lead agency. Disputes regarding the appropriate lead agency can also be directed to the Office of
5 Planning and Research ("OPR"). COMB is the proper lead agency under each of these criteria.

6 a. **COMB and Reclamation have Principal Responsibility for**
7 **Approving and Carrying Out the Project**

8 Public Resources Code section 21067 defines a "lead agency" as "the public agency which
9 has the principal responsibility for carrying out or approving a project which may have a
10 significant effect upon the environment." (See also *City of Redding v. Shasta County Local*
11 *Agency Formation Com.* (1989) 209 Cal.App.3d 1169, 1174.) Crawford-Hall argues that the
12 State Board should be the lead agency because it has "principal responsibility" for preserving
13 steelhead. (See, e.g., Opening, 15:1-6.) However, as explained above, "principal responsibility"
14 for the environment is not one of the criteria for determining the lead agency. Instead, the proper
15 designation of lead agency first turns on which public entity will "approve" or "carry out" a
16 project. (State CEQA Guidelines, §§ 15051(a); 15378.)

17 The FMP/BO includes numerous management actions and projects to improve habitat
18 conditions for steelhead on the Santa Ynez River below Bradbury Dam. (45 AR 425:20413.)
19 COMB and Reclamation have the primary responsibility for approving most of the projects in the
20 FMP/BO. (39 AR 371:17399-400.) It is Reclamation and the Member Units who will be
21 building the physical projects described in the FMP/BO. (40 AR 372:18362.) Under the terms of
22 the Joint Exercise of Powers Agreement by which the Member Units formed COMB, COMB will
23 directly undertake many of the non-flow FMP/BO projects. (39 AR 371:17400; 40 AR
24 372:18241.) COMB is also required to administer the day-to-day management of the non-flow
25 FMP/BO projects, conduct the required monitoring, and prepare any necessary reports. (39 AR
26 371:17407.) Moreover, the non-flow FMP/BO projects will be implemented by Reclamation and
27 COMB using funds from the Cachuma Contract Renewal Fund, the Warren Act Trust Fund, grant
28 funding from other sources, and direct assessment of the Member Units. (31 AR 188:14352; 39

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1 probably could have been clearer. We did not intend to imply that
2 these impacts could not be mitigated at all.

3 (40 AR 372:18359.) Accordingly, rather than asserting a conflict with COMB, the State Board
4 *agreed* with COMB that impacts could be reduced to below a level of significance provided
5 adequate funding was available. Thus, on a full reading of the record, it is apparent that the
6 purported “conflicts” alleged by Crawford-Hall were resolved before COMB’s EIR was certified.

7 Additionally, it is important to note that, at the time COMB certified the EIR/EIS, the
8 State Board’s Draft EIR was neither finalized nor certified. In fact, two years after COMB
9 certified its EIR, the State Board has *still* not certified its document. There is no requirement in
10 CEQA that COMB consider consistency with unapproved plans.

11 4. ***Planning and Conservation League v. Department of Water Resources Does***
12 ***not Support Crawford-Hall’s Position***

13 Crawford-Hall relies on *Planning and Conservation League v. Dept. Water Resources*
14 (2000) 83 Cal.App.4th 892 (“*PCL*”), to support her lead agency argument. This decision,
15 however, not only fails to support Crawford-Hall’s argument; it in fact demonstrates that the State
16 Board is *not* the appropriate lead agency for analyzing the non-flow FMP/BO projects.

17 In *PCL*, the issue presented was whether the Department of Water Resources (“DWR”)
18 was required to serve as the CEQA lead agency for purposes of analyzing the so called
19 “Monterey Agreement.” The Monterey Agreement revised long-term water supply contracts
20 between DWR and over two-dozen regional water suppliers; included an affirmation that DWR
21 would build and operate the State Water Project; and required DWR to transfer its control of
22 certain water banking facilities to agricultural water contractors. (*PCL*, supra, 83 Cal.App.4th at
23 904.) Despite DWR’s wide-ranging obligations to execute the amended water supply contracts
24 and implement the Monterey Amendment, DWR and the regional water contractors agreed that
25 one of the regional water suppliers would serve as the lead agency under CEQA. (*Id.* at 906.)

26 The court held that the regional water supplier was not the appropriate lead agency under
27 CEQA. The court pointed out that it was DWR that had committed to build and operate the State
28 Water Project; it was DWR that had invested in and established the water banking facilities

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1 involved in the Monterey Agreement; and it was DWR that had the primary task of negotiating
2 and executing each of the more than two dozen amended water contracts with the various
3 signatories to the Monterey Amendment. (*PCL*, supra, 83 Cal.App.4th at 904.) Accordingly, the
4 court held that the Monterey Agreement was DWR's project because it was DWR "*which ha[d]*
5 *the principal responsibility for carrying out or approving* [the] project which may have a
6 significant effect upon the environment." (*Ibid.* [emphasis in original].) As such, DWR was the
7 appropriate lead agency for purposes of analyzing the potential environmental impacts associated
8 with the Monterey Agreement.

9 Here, in distinct contrast to the substantial responsibilities held by DWR and identified in
10 the *PCL* decision, the State Board does not have *any* particular responsibilities, expertise or
11 perspective related to the fishery management physical improvement projects contemplated by
12 the FMP/BO. Indeed, the facts here are that the State Board lacks *any* responsibility to approve,
13 fund, or implement the FMP or the BO. (39 AR 371:17399-407; see also 40 AR 372:18274.)
14 Unlike DWR's execution of the amended water contracts and duty to construct the project
15 facilities described in the *PCL* decision, the State Board is not a party to the FMP or the BO.
16 Instead, it is COMB and Reclamation - not the State Board - who agreed to be contractually
17 responsible for funding and implementing the FMP/BO. (39 AR 371:17407-17410, 17414-
18 17415.) The State Board is under no such mandate. With respect to the FMP, the State Board
19 has no authority over, or responsibility for, implementing its physical enhancement projects.
20 (*Ibid.*) Indeed, the State Board's sole connection to the FMP/BO is the State Board's jurisdiction
21 over water releases from the Dam and Reclamation's water rights permits, and the authority to
22 protect public trust resources through the imposition of requirements on those permits. (40 AR
23 372:18202, 18274.)

24 In sum, Crawford-Hall's reliance on *PCL* for the proposition that the State Board – an
25 entity with no control over, nor responsibility for, the FMP or the BO – must serve as the CEQA
26 lead agency responsible for analyzing the FMP/BO's potential impacts is entirely unsupported.

27 **5. Public Policy Supports COMB as Lead Agency**

28 CEQA requires local agencies to integrate CEQA with "planning and environmental

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1 review procedures otherwise required by law” so that procedures can “run concurrently, rather
2 than consecutively.” (Pub. Res. Code, § 21003(a).) Indeed, it is the Legislature’s intent to avoid
3 unnecessarily “prolonging the [CEQA] process so that the process deters development and
4 advancement.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993)
5 6 Cal.4th 1112, 1132.) Further, and to facilitate efficient environmental review, CEQA states that
6 the decision-making body responsible for approving a project is also responsible for reviewing
7 and approving the accompanying environmental documents. (State CEQA Guidelines, §
8 15025(c).) CEQA thus ensures that decision-makers are informed of the environmental
9 consequences of their actions while also streamlining the environmental review process so as to
10 avoid “the oppression and delay of social, economic, or recreational development and
11 advancement.” (*Citizens of Goleta Valley*, supra, 52 Cal.3d at 576.) Crawford-Hall would have
12 this Court violate that reasoning by instituting an environmental review process that divorces
13 responsibility for a project’s analysis from the agency which will actually carry out the project.
14 That turns CEQA on its head.

15 Under CEQA, the lead agency is the entity with primary responsibility for *carrying out*
16 *and approving* the project. (Pub. Res. Code, § 21067.) This ensures that the agency that is
17 capable of modifying or altering the project to avoid environmental impacts is also responsible
18 for the environmental review. Although the State Board is responsible for protecting water
19 resources, Crawford-Hall fails to point to any law authorizing the State Board to usurp the power
20 of cities, counties or other public agencies, which often approve projects that impact water
21 resources. (Cf. *Sierra Club v. The West Side Irrigation District* (2005) 128 Cal.App.4th 690 [city
22 serving as lead agency for purposes of analyzing water transfers; *County Sanitation Dist. No. 2 of*
23 *Los Angeles Co. v. County of Kern* (2005) 127 Cal.App.4th 1544 [requiring county to analyze
24 water-related impacts of project involving sewage sludge].) Here, the State Board has no
25 responsibility to approve, implement, or fund the FMP/BO Project. Nonetheless, Crawford-Hall
26 seeks to foist full responsibility for analyzing the Project onto the State Board as lead agency.
27 Under her logic, the State Board would be the lead agency responsible for *all* CEQA analyses of
28 all projects affecting water resources – even if the State Board is not the agency carrying out the

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1 project. Even if the State Board were efficient in dealing with its current workload, this is
2 untenable and violates CEQA. Crawford-Hall's reasoning creates a situation where the agency
3 responsible for approving and implementing a project could be removed from the environmental
4 review process altogether. This is antithetical to the purposes of CEQA.

5 Finally, CEQA's policies and the Legislature's intent both support COMB's designation
6 as lead agency because they allow for expedited and streamlined environmental review of the
7 FMP/BO Project. Deferring to the State Board's lengthy process creates uncertainty. Despite
8 Crawford-Hall's initial lawsuit and COMB's subsequent preparation and certification of an EIR
9 for the Project, COMB's environmental review process was still completed nearly two years ago.
10 In contrast, and despite the two additional years that this suit has been pending, the State Board's
11 Draft EIR remains unfinished. In fact, a revised draft has not yet been publicly circulated.
12 COMB is not required to wait for the State Board's Draft EIR to be completed and certified at
13 some unknown future date to determine if the State Board's project may or may not have an
14 effect on Cachuma Project operations. To do so would jeopardize COMB's timely compliance
15 with the deadlines set forth in the BO and the grant funding already secured by COMB to
16 implement the FMP/BO. (40 AR 372:18362.)

17 **C. The Environmental Setting Discussion in the EIR is Accurate and Crawford-**
18 **Hall Fails to Provide any Substantial Evidence to the Contrary**

19 When a party challenges an EIR's description of a project's environmental setting, the
20 court applies "a standard of review that requires [it] to defer to the [decision-maker's] exercise of
21 discretion if supported by substantial evidence." (*Fat v. County of Sacramento* (2002) 97
22 Cal.App.4th 1270, 1277.)

23 An EIR "must include a description of the physical environmental conditions in the
24 vicinity of the project as they exist at the time the notice of preparation is published . . . from both
25 a local and regional perspective." (State CEQA Guidelines, § 15125.) The emphasis should be
26 placed on sensitive environmental resources on the project site as well as on those nearby that
27 might be adversely affected by the project. (*Ibid.*) Other characteristics of the environmental
28 setting need only be discussed to the extent necessary to understand the significant effects of the

1 project and its alternatives. (*Ibid.*; see also *County of Amador v. El Dorado County Water Agency*
2 (1999) 76 Cal.App.4th 931, 955.) The environmental setting is not a description of what might
3 be, instead it is a snapshot in time of the existing environmental conditions.

4 Pending future proposals need not be included in the environmental setting because
5 proposals, by their very nature, are not a part of the physical environment. Instead:

6 The description of the environmental setting *should not* be confused
7 with future cumulative conditions. The EIR's description of the
8 environmental setting serves as the baseline against which changes
9 that will result from the project are measured. An EIR may also
10 include a discussion of the projected future cumulative conditions
11 in order to assess the project's impacts in light of potential future
12 cumulative conditions. Such a discussion should, however, be
13 described as a component of the EIR's analysis of potential future
14 cumulative impacts rather than as part of its discussion of the
15 existing environmental setting.

12 (Kostka and Zischke, 2005, *Practice Under the California Environmental Quality Act* (hereinafter
13 "Kostka and Zischke,") § 12.26, p. 600.) Crawford-Hall relies heavily on the court's decision in
14 *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, to support
15 her argument that COMB should have more thoroughly discussed possible changes to the Project
16 that might result from the State Board's potential, future modification of Reclamation's permits.
17 (Opening, 20-22.) As Kostka and Zischke explain, however, the *Eel River* decision "erroneously
18 refer[ed] to [the] omission of potential effects of [a] related proposed future project as [an]
19 incomplete description of environmental setting." (§ 12.26, p. 600.) As this confirms, *Eel River*
20 properly concerns cumulative impacts and not a project's environmental setting.

21 However, even assuming that *Eel River does* properly relate to the issue of environmental
22 setting, it is readily distinguishable from the present case. In *Eel River*, supra, 108 Cal.App.4th at
23 865, the Sonoma County Water Agency prepared an EIR to analyze increasing the agency's
24 diversions from the Russian River water system. The Eel River is a crucial part of the agency's
25 Russian River water supply system and also provides most of the summer flow to the Russian
26 River. (*Id.* at 865-66.) As more water is diverted from the Russian River, more water is also
27 pulled from the Eel River. This diversion of water from the Eel River to the Russian River
28 resulted in a decline in the population of fish species in the Eel River and led the Federal Energy

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1 Regulation Commission (“FERC”) and other state and federal agencies to create a “Consensus
2 Recommendation” to decrease the amount of water diverted. (*Id.* at 866.) Other
3 recommendations were also proposed – all of which suggested *decreased* water diversions.

4 Despite the recommendations to *decrease* water diversions, the Sonoma County Water
5 Agency prepared an EIR to analyze a proposal to *increase* the agency’s diversions of water from
6 the Russian River water system – and by necessity – increase diversions from the Eel River as
7 well. (*Id.* at 865.) As the Appellate Court noted, the agency “did not include in this EIR, which
8 contemplated an increase in water withdrawn from the Russian River, any discussion of the
9 potential curtailments in Eel River diversions. Instead, the agency made only a summary
10 reference to the pending FERC proceedings.” (*Id.* at 866-67.) Appellants, an environmental
11 group, contended that the EIR’s description of the environmental setting was deficient because
12 the agency failed to reveal that Eel River diversions actually harmed fish species. (*Id.* at 873.)

13 In ruling on this issue, the court noted that the description of the project setting merely
14 stated that most of the stream flow in the Russian River during the summer came from water
15 “imported” from Eel River. (*Id.* at 874.) There was *no discussion* of the harm to the
16 environment caused by Eel River diversions or the pending proposals to decrease the amount of
17 water available from Eel River in order to reduce that harm. (*Id.* at 874-75.) Thus, the court
18 concluded, “the EIR must disclose to the public and decision makers that, because of the harm
19 caused by Eel River diversions to salmon species in that river, proposals are pending before
20 FERC to curtail these diversions, on which the Agency depends.” (*Ibid.*) It was not simply the
21 fact that the project setting failed to mention pending proposals that might impact the project at
22 some later date that rendered the description defective, as Crawford-Hall alleges. Rather, the
23 agency’s project setting was inadequate because it failed to acknowledge an *existing problem* that
24 was actually harming the *physical environment*. As the court recognized, if the harm associated
25 with current diversions was not disclosed, how could the public or the decision-makers
26 adequately analyze the impact of increasing those diversions? Thus, it was the failure to
27 acknowledge the existing harm caused by diversions or the fact that proposals were pending to
28 alleviate that situation, that rendered the project setting invalid – not the mere fact that pending

1 proposals were omitted from the discussion.

2 In this case, the situation is dramatically different. First, COMB's EIR adequately
3 describes the existing environment. Unlike the plaintiff in *Eel River*, Crawford-Hall does not
4 allege that the EIR misrepresents any actual physical environmental conditions that existed at the
5 time the NOP was issued. Nor are the on-going State Board hearings designed to alleviate a
6 known environmental problem. In fact, Reclamation's current permits require *greater* flow
7 releases than are required by the non-flow FMP/BO projects. (See 40 AR 372:18230.)

8 Second, and again unlike the situation in *Eel River*, there is no consensus recommendation
9 regarding any change to Reclamation's operation. The State Board has several proposals pending
10 before it: some include increased flow releases, and some anticipate the permits remaining
11 unchanged. (39 AR 371:17472; 40 AR 372:18230.) The State Board has not made any
12 commitment to a particular alternative. In fact, in September 2003, the State Board informed
13 COMB that, "[a]t this time, the Division cannot predict the final release requirements or other
14 measures that will be included in [Reclamation's] permits." (40 AR 372:17888.) It is thus not
15 clear that the State Board will make *any* changes to Reclamation's permits; to the contrary, it is
16 equally possible that it will maintain Reclamation's permits as they currently exist.

17 Third, while Crawford-Hall suggests that the State Board may alter Reclamation's permits
18 to reduce Reclamation's diversions to storage at Lake Cachuma and that that reduction might
19 impact the FMP/BO, this argument is speculative. There is no indication what the State Board
20 will ultimately decide with respect to Reclamation's permits and no indication of when it might
21 make that decision. Unlike the situation in *Eel River*, there is no reasonably foreseeable
22 correlation between the on-going State Board hearings and any *existing* environmental issues that
23 should be addressed in the environmental setting.

24 Finally, unlike the agency in *Eel River*, which failed to accurately discuss the pending
25 FERC hearings in its EIR, COMB repeatedly referred to and discussed the State Board Draft EIR
26 and the State Board's hearings. (See, e.g., 39 AR 371:17402-03, 17472.)

27 Accordingly, it is entirely proper for COMB to identify Reclamation's existing permits
28 (which remain operative to this day) in the environmental setting section of the EIR. In these

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1 circumstances, it would be inappropriate and confusing for the Project setting to discuss future
2 changes that may or may not happen at some undisclosed point in the future.

3 **D. The Project Description is Accurate and Crawford-Hall Fails to Provide any**
4 **Substantial Evidence to the Contrary**

5 The EIR described all the technical components of the Project as required by CEQA and
6 fully analyzed its potential impacts. CEQA requires that the project description state the precise
7 location and boundaries of the project, the project's objectives, the project's technical, economic
8 and environmental, and the list of intended uses of the EIR. (State CEQA Guidelines, § 15124.)
9 Accordingly, the Project description in the EIR included discussion of the Project's purpose,
10 location, and objectives, as well as a detailed discussion of the Project's characteristics. (See 39
11 AR 371:17396-400; see also 39 AR 371:17405-411.)

12 Crawford-Hall claims nonetheless that COMB should have included the potential impacts
13 associated with the various State Board alternatives as part of the Project description. (Opening,
14 24:26-28.) However – although courts have expressly required that an EIR analyze all aspects of
15 a project that are a reasonably foreseeable consequence of the project – not all future actions are
16 necessary parts of the analysis. In *Laurel Heights Improvement Ass'n v. Regents of University of*
17 *California* (1988) 47 Cal.3d 376, 396, the Supreme Court set forth the standard for determining
18 when a future activity must be analyzed in an EIR:

19 [A]n EIR must include an analysis of the environmental effects of
20 future expansion or other action if: (1) it is a reasonably foreseeable
21 consequence of the initial project; and (2) the future expansion or
22 action will be significant in tht it will likely change the scope or
23 nature of the initial project ora its environmental effects. Absent
24 these two circumstances, the future expansion need not be
25 considered in the EIR for the proposed project.

26

27 This standard is consistent with the principle that 'environmental
28 considerations do not become submerged by chopping a large
project into many little ones -- each with a minimal potential impact
on the environment -- which cumulatively may have disastrous
consequences.' The standard also gives due deference to the fact
that premature environmental analysis may be meaningless and
financially wasteful. Under this standard, *the facts of each case* will
determine whether and to what extent an EIR must analyze future
expansion or other action.

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(Internal citations omitted; emphasis added.) Accordingly, an EIR is not required to analyze potential future projects which are speculative or are not likely to change the scope of the project being analyzed. Here, the facts show that the State Board has not identified a preferred alternative. As a consequence, the speculative alternatives described in a draft EIR that is subject to further revision and which has not yet been completed, are not required to be analyzed in COMB's EIR.

Further, and as the Supreme Court noted, "The more important and difficult question is what circumstances require consideration in an EIR of future action related to the proposed project." (*Id.* at 395.) A basic tenet of CEQA is that the environmental analysis "should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment." (State CEQA Guidelines, § 15004(b).) "Where future development is unspecified and uncertain, no purpose can be served by requiring an EIR to engage in sheer speculation as to future environmental consequences." (*Lake County Energy Council v. County of Lake* (1977) 70 Cal.App.3d 851, 854-855.) In attempting to answer the question of when future development is too speculative for meaningful consideration, the Supreme Court stated:

The correct answer to the question of how to balance these competing concerns is suggested by our opinion in *No Oil v. City of Los Angeles* [(1974)] 13 Cal.3d 68, in which the plaintiffs contended the trial court had erred in limiting the scope of the project at issue to the drilling of two exploratory oil wells and that the project should have been defined to include commercial oil production that would likely commence if the test wells were successful. The defendants argued that geologic information obtained from the two test wells was essential to the preparation of a meaningful EIR on the effect of future commercial production. Because we decided the case on other grounds, we did not determine whether the project had been properly defined, but we framed the issue as whether the public agency had "sufficient reliable data to permit preparation of a meaningful and accurate report on the impact of commercial production."

(*Laurel Heights*, supra, 47 Cal.3d at 395-6 [internal citations omitted] [emphasis added].)

Thus, under the Supreme Court's analysis and two part test, future related actions should be analyzed where: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will *likely* change the scope or nature of

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1 the initial project or its environmental effects; and where there is “sufficient reliable data to
2 permit preparation of a meaningful and accurate report.”

3 Crawford-Hall fails to satisfy either prong of the Supreme Court’s test. First, she does not
4 suggest, nor is there any evidence in the record to suggest, that the State Board’s decision is
5 linked to or dependant on the approval of the FMP or certification of the EIR. Instead, both the
6 State Board and COMB have made clear that COMB’s approval of the Project does not impact
7 the State Board or interfere with its jurisdiction over water releases. (See, e.g., 40 AR 372:18359;
8 see also 40 AR 372:18358-18367.) Additionally, even if one of the proposed State Board
9 alternatives were to be adopted at some unknown time in the future, the only possible impacts - if
10 there are any- would be to flow related projects. There would be absolutely no impact to non-
11 flow projects like those on Hilton Creek. (See, e.g., 40 AR 372:18358 [letter from State Board
12 agreeing that COMB and State Board can concurrently process separate EIRs and any concerns
13 could be addressed in the public comment period]; 39 AR 371:17397-98 [explaining relationship
14 of FMP to WR 94-5].)

15 Second, whereas *Eel Creek* involved several alternatives which each contemplated
16 *reduced* water diversions, here the State Board’s alternatives do not exhibit any consensus.
17 Finally, while there was a substantial amount of information regarding the proposals before the
18 State Board, there was no indication of which, if any, of the proposals are “likely.” (39 AR
19 371:17472; 40 AR 372:18230.) In fact, and as Crawford-Hall has explained, the State Board has
20 not made *any* decision regarding Reclamation’s permits and is still in the process of “evaluating
21 several alternatives.” (Opening, 16:18-21.) Analysis of a *possible* State Board decision would
22 require COMB to speculate both as to the ultimate set of alternatives that may be included in the
23 State Board’s Draft EIR and the proposal that would ultimately be adopted. This is contrary to
24 CEQA and public policy. (*Towards Responsibility in Planning v. City Council* (1988) 200
25 Cal.App.3d 671, 681 [“sheer speculation” not required]; *Residents Ad Hoc Stadium Committee v.*
26 *Bd. of Trustees* (1979) 89 Cal.App.3d 274, 286 [“crystal ball” inquiry not required].)

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1 E. **The Cumulative Impacts Analysis is Adequate and is not Required to Include**
2 **Speculative Impacts**

3 “A change which is speculative or unlikely to occur is not reasonably foreseeable.” (State
4 CEQA Guidelines, § 15064(d)(3).) Due to the significant time, money, and planning involved, a
5 project is generally looked on as “probable” rather than merely “possible” once environmental
6 review has begun. (*Friends of the Eel River*, supra, 108 Cal.App.4th at 870.) Crawford-Hall,
7 however, once again overstates the decision in *Eel River* in arguing that *all* projects undergoing
8 environmental review are probable projects which must be cumulatively analyzed.

9 In *Eel River*, discussed above in more detail in Section III (C), infra, the Sonoma County
10 Water Agency acknowledged that “modifications” to flows from the Eel River were under
11 consideration by FERC. (*Id.* at 869) The court concluded that the agency’s description of
12 FERC’s potential “modifications” was intentionally “euphemistic” because “every proposal
13 before FERC – including the agency’s own – posits a *decrease* in the amount of water available
14 to the agency.” (*Ibid.*) Accordingly, the court concluded that the cumulative impact of FERC’s
15 potential future action was not speculative, but could be “reasonabl[y] and practic[ally]” seen to
16 involve a decrease in diversions. (*Id.* at 870.) Despite the agency’s knowledge of this fact, the
17 agency’s EIR “completely fail[ed] to alert the public and the decision makers to the cumulative
18 impact” of FERC’s potential reductions in Eel River flows. (*Ibid.*) Accordingly, the court ruled
19 that the agency failed to adequately analyze the project’s cumulative impacts under CEQA.

20 Here, to the contrary, substantial evidence in the administrative record supports COMB’s
21 conclusion that the State Board’s project is not a reasonably foreseeable probable future project.
22 Unlike the situation in *Eel River*, the alternatives pending before the State Board could result in
23 an increase, a decrease, or no change to Reclamation’s entitlements. (39 AR 371:17472; 40 AR
24 372:18230.) Further, only “[a]fter completion of the hearings, [will] the State Water Board []
25 issue a Decision *which may or may not amend* Reclamation’s water rights permits and minimum
26 release requirements to provide for downstream water rights and public trust resources affected
27 by the project.” (39 AR 371:17472 [emphasis added]; 40 AR 372:18230.) Hence, COMB was
28 not obligated to speculate as to the State Board’s potential future decision and the potential

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1 cumulative impacts of the State Board’s various alternatives. Further, unlike *Eel River*, COMB
2 did not intentionally conceal or “euphemize” the State Board’s concurrent environmental review.
3 Instead, COMB openly described the State Board’s proceeding and discussed the alternatives
4 which could be analyzed by the State Board in any future final EIR. (39 AR 371:17402, 17472;
5 40 AR 372:18230.) Accordingly, and based on the evidence before it, COMB reasonably
6 concluded the State Board’s project had not reached a point that would transform it from a
7 “possible” to a “probable” project. Indeed, because even now it is impossible to predict what
8 action the State Board will take, or even when the State Board will act, it would have been
9 premature and utterly speculative for COMB to attempt to explain how the State Board’s hearing
10 might or might not affect the Project.

11 **F. Hilton Creek is Suitable Habitat for Steelhead**

12 Crawford-Hall devotes almost a quarter of her Opening Brief to the argument that
13 “removing the existing Highway 154 culvert barrier to lure fish up Hilton Creek is tantamount to
14 trout murder.” (Opening, 31:12-13; 31-38.) As an initial matter, this argument is entirely
15 misplaced because *COMB did not approve this project*.¹⁰ However, even if this issue were
16 incapable of judicial review, here Crawford-Hall’s claims are not supported by law or fact.

17 **1. Crawford-Hall’s Arguments are Not Ripe Because COMB Did Not Approve the Highway 154 Culvert Project**

18 It is undisputed by Crawford-Hall that COMB is not implementing the Highway 154
19 Culvert fish passage project on Hilton Creek. (Petition, ¶ 91:2-3; ¶ 57.) An EIR does not violate
20 CEQA when the lead agency approves a smaller project than that described in the EIR, or when
21 an agency approves only part of the project that was initially analyzed in the EIR. (See *Dusk v.*
22 *Redevelopment Agency* (1985) 173 Cal.App.3d 1029, 1041 [where lead agency approved only a

23 _____
24 ¹⁰ Crawford-Hall also suggests that it was “contradictory” of COMB to approve the Project without the Highway 154
25 Culvert project because COMB had rejected an alternative that eliminated the Highway 154 Culvert project. This
26 accusation reflects a misunderstanding of the Project. (Opening, 37 fn 20.) By not approving the Highway 154
27 Culvert project COMB did not eliminate it. Caltrans – not COMB – is responsible for the Highway 154 Culvert
28 project. (39 AR 371:17434.) As such, that agency will make the final determination on whether to pursue this
project. Nothing in COMB’s approval of the Project with, or without, the Highway 154 Culvert project, usurps that
responsibility. In fact, Caltrans still needs to adopt the EIR to approve the Highway 154 Culvert project. (39 AR
371:17435.) In contrast, the No Upper Hilton Creek Alternative assumes that “Caltrans would not modify the
Highway 154 culvert” at all. (39 AR 371:17734.) Thus, because Caltrans can implement the Highway 154 Culvert
project, COMB’s approval of the Project without the Highway 154 Culvert project is not contrary to the findings.

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1 part of a project (demolition of a hotel), the court rejected a challenge contending that the
2 project's EIR description was misleading[.] Accordingly, despite Crawford-Hall's allegations to
3 the contrary (Opening, 37 fn. 20), the fact that COMB approved the Project without the Highway
4 154 Culvert project does not invalidate the EIR and is not a violation of CEQA.

5 Moreover, Crawford-Hall's challenge to a project that COMB did not approve is not ripe
6 for adjudication; any ruling by this Court would serve only as an advisory opinion. "The ripeness
7 requirement prevents courts from issuing purely advisory opinions, or considering a hypothetical
8 state of facts in order to give general guidance rather than to resolve a specific legal dispute."
9 (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 998.) The advisory opinion doctrine "is rooted in
10 the fundamental concept that the proper role of the judiciary does not extend to the resolution of
11 abstract differences of legal opinion." (*Pacific Legal Foundation v. California Coastal Com.*
12 (1982) 33 Cal.3d 158, 170.) Accordingly, it would not be appropriate to render an advisory
13 opinion, regarding the intrinsic merits of a project that has been rejected. (See, e.g., *Trancas*
14 *Property Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th 172, 183.) Because Crawford-
15 Hall's arguments regarding the Highway 154 Culvert project are not ripe for adjudication, the
16 Court should not expend valuable judicial resources considering them.

17 **2. Disagreement Among Experts is Not Grounds for Reversal**

18 Crawford-Hall makes much of the "testimony" submitted by her biologist, Dr. Alice Rich,
19 and heavily cites to Dr. Rich's comment letters. (Opening, 31-37.) However, a disagreement
20 among experts regarding potential impacts of a project does not make an EIR inadequate. (State
21 CEQA Guidelines, § 15151.) To the contrary, if a disagreement among experts arises, the EIR
22 should summarize the main points of the disagreement and explain why the agency chose to
23 follow one set of opinions over another. (*Ibid.*; see also § 15362 [the final EIR includes responses
24 to comments].) Even "the failure to reflect disagreement among the experts, [however,] does not
25 per se constitute a prejudicial abuse of discretion." (*Kings County Farm Bureau v. City of*
26 *Hanford* (1990) 221 Cal.App.3d, 692, 712.)

27 Crawford-Hall's claim that Dr. Rich's "testimony" that Upper Hilton Creek does not have
28 suitable habitat for steelhead was "unrebutted" is simply wrong. First, COMB carefully reviewed

1 Dr. Rich's written comments and responded to each and every point in COMB's Final EIR. (See
2 generally, 40 AR 372:18298-18304.) However, COMB did not find Dr. Rich's "comments"
3 credible due to many of her statements being conclusory and unsubstantiated. For example,
4 Crawford-Hall makes reference in her Opening Brief to photographs and a DVD of alleged
5 conditions at Hilton Creek submitted by Dr. Rich. (Opening, 31:20-23; 32:32:3-11.) COMB did
6 not find these photographs persuasive because the photos only showed select portions of Upper
7 Hilton Creek, including a photo of a dry channel. (40 AR 372:18299.) Instead, COMB
8 determined that these photos provided only a snapshot in time of specific locations and did not
9 provide any substantial evidence regarding the ability of Upper Hilton Creek to support
10 populations of steelhead. (40 AR 372:18299.) Thus, the fact that Upper Hilton Creek runs dry
11 during the summer months does not necessarily preclude the existence of steelhead habitat.
12 Steelhead have adapted to these conditions. (40 AR 372:18234.) Indeed, "fish that travel to the
13 [upper] reach of [Hilton] Creek on private property would most likely move downstream as
14 conditions worsen in the early summer. Hence, the probability and extent of fish stranding along
15 this reach are considered very low." (39 AR 371:17624.) COMB also explained that the
16 photographic documentation was not sufficient to substantiate Dr. Rich's conclusory comments
17 regarding habitat structure, water quality, and water temperature, given that habitat conditions
18 vary between seasons and water year types. (40 AR 372:18302.)

19 Additionally, many of Dr. Rich's statements were unsupported by available scientific
20 evidence. COMB considered the temperature data submitted by Dr. Rich and her suggestion that
21 COMB use temperature data from the Pacific Northwest, but ultimately decided that the
22 "available body of evidence suggests that the CDFG criteria are more appropriate than those
23 suggested by Dr. Rich." (40 AR 372:18301; see also 40 AR 372:18222-18225.) Furthermore,
24 COMB noted that Crawford-Hall's consultant only studied Upper Hilton Creek during an
25 extremely dry year and a below normal year when habitat conditions are typically less suitable for
26 steelhead. (40 AR 372:18303.) Hilton Creek exhibits dry summer and fall conditions similar to
27 other north facing tributaries of the Lower Santa Ynez River which support steelhead habitat. (40
28 AR 372:18332.) Southern California steelhead persist in these upstream tributaries by finding

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1 seasonal refuge in pools. Therefore the conditions observed by Dr. Rich are not found to be
2 typical of Upper Hilton Creek. (40 AR 372:18299.)

3 Additionally, it is noteworthy that Crawford-Hall seemed to expect COMB to accept Dr.
4 Rich's "testimony" and her conclusory statements without any independent investigation. COMB
5 gathered as much data as possible regarding Upper Hilton Creek given Crawford-Hall's repeated
6 access prohibitions and limitations. (40 AR 372:18259.) Except for a half-day visit in 2003 to
7 specific sites selected by Crawford-Hall, she refused to give COMB any opportunity to study the
8 Upper Hilton Creek area in its entirety. (32 AR 198:14631; 33 AR 243:15006-7; 33 AR
9 253:15092.) Instead, Crawford-Hall routinely denied COMB any access to the Upper Hilton
10 Creek area; thus, COMB had no method or opportunity to "verify" any of the information
11 submitted by Dr. Rich. (See, e.g., 32 AR 198:14569-31; 33 AR 245:15013; 262:15158.)

12 Finally, COMB's consultant indicated, after talking with Dr. Rich, that her "comments
13 indicated a general lack of knowledge regarding the life-cycle and yearly conditions
14 of steelhead/rainbow trout in Southern California nearly every summer." (45 AR 440:20580.)
15 Thus, COMB appropriately identified the potential conflict between the experts in the Final EIR
16 and responded extensively to every one of Dr. Rich's issues.

17 **3. Substantial Evidence Supported the EIR's Conclusion that Suitable**
18 **Habitat Existed in Upper Hilton Creek**

19 As explained above, the mere fact that there is some dissenting information in the record
20 is not sufficient to invalidate an EIR. (State CEQA Guidelines, § 15151.) Instead, the lead
21 agency's determination *must* be upheld if *any* substantial evidence supports its conclusions. In
22 *Barthelemy v. Chino Basin Municipal Water Dist.* (1995) 38 Cal.App.4th 1609, 1620, the
23 Appellate Court held that:

24 Determinations in an EIR must be upheld if they are supported by
25 substantial evidence; the mere presence of conflicting evidence in
26 the administrative record does not invalidate them. A project
27 opponent cannot obtain a more favorable standard of review by
28 arguing that the EIR failed to disclose the conflicting evidence, and
therefore the lead agency has not proceeded in a manner required
by law; the project opponent must also show that the failure to
disclose the conflicting evidence precluded informed decision-
making or informed public participation. However, even in

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determining the prejudicial effect of the failure to disclose, a court must resolve any factual issues in favor of the lead agency, if supported by substantial evidence.

(See also Kostka and Zischke, §§ 23.37; *Al Larson Boat Shop*, supra, 18 Cal.App.4th at 748; *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477.)

Here, substantial evidence supports the conclusion that suitable habitat for steelhead exists in Upper Hilton Creek in the area above Reclamation's water system. As noted in the EIR, "[a]bove this open reach to the Highway 154 culvert (about 2,400 feet total), habitat conditions are good to excellent." (40 AR 372:18302.) The EIR set forth numerous factors in concluding that Hilton Creek has suitable habitat for steelhead. Among other things, the EIR relied on studies conducted by SYRTAC and Entrix (39 AR 371:17531) which determined that both reaches of Hilton Creek were a high priority for restoration actions for the following reasons:

- There is evidence of a seed population of steelhead in Hilton Creek as demonstrated by the fish rescues conducted in 1995 and 1998, observations of steelhead in a pool downstream of the Highway 154 culvert by the Project Biologist and a CDFG biologist, as well as a steelhead observed by Dr. Rich in Upper Hilton Creek during her studies. (31 AR 190:14367; 40 AR 372:18298, 18259.) The State Board's Draft EIR reached similar conclusions. (47 AR 445:21438-39.)
- On August 22, 2000, two steelhead were observed immediately downstream of the Highway 154 culvert. (31 AR 190:14367-68; 31 AR 193:14391.) The State Board's Draft EIR recognized that spawning in Upper Hilton Creek had been observed. (47 AR 445:21438.)
- There is suitable habitat because there is year-round water in most years. (39 AR 371:17436.) The State Board's Draft EIR recognized that, with the addition of the supplemental watering system, lower Hilton Creek contains "consistent, cool water from Lake Cachuma to support several hundred young-of-the-year." (47 AR 445:21439.) Even Dr. Rich noticed "abundant water" in Hilton Creek in 2003. (40 AR 372:18166 A [DVD 10:50-11:10].)
- In the winter of 2000 and 2001, fish studies demonstrated that steelhead were successful in negotiating the passage impediment. In fact, on January 13, 2001 a large steelhead (estimated to be approximately 16-20 inches long) was observed upstream of the passage impediment. (31 AR 190:14367-68.)
- COMB's Project biologist studied the Upper Hilton Creek area in Spring 2001 and reported observations of several steelhead in the pool immediately below the highway 154 Culvert. (31 AR 190:14367.)
- Fish were observed in the stilling basin and Long Pool portions of the Highway 154 Reach. Specifically, data from snorkel surveys conducted in 2001 demonstrate that steelhead successfully rear in the Highway 154 Reach. (40 AR 372:18260.)

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- The decline in steelhead has been caused by extensive loss of habitat. Reconnecting habitat through the removal of barriers, such as those on Hilton Creek, restores access to potential habitat. (40 AR 372:18228.)
- COMB’s Project biologist, with Crawford-Hall’s permission, visited selected sites on Upper Hilton Creek in 2003 and observed rearing habitat. (45 AR 440:20577-80.)
- The tributary is immediately downstream of Bradbury Dam and therefore steelhead that migrate as far as the dam will be looking for nearby spawning and rearing habitat which can be found in Hilton Creek. (40 AR 372:18298.)
- Upper Hilton Creek has perennial habitat in many years in portions of the tributary as evidenced by observations from the Highway 154 easement and by inference based on comparison of other south-side tributaries which maintain perennial flow in the headwaters. (31 AR 190:14367-68; 40 AR 372:18298.)
- Hilton Creek has a gradient that precludes inhabitation by predatory fish such as bass and catfish while providing spawning and rearing habitat for steelhead. (40 AR 372:18298.)
- Pool habitat in Upper Hilton Creek is greater than those in lower Hilton and old growth sycamore dominate the vegetation providing dense canopy cover for habitat. (39 AR 371:17531, 17532, 17534.)

As summarized above, “the Cachuma Project Biologist and his team have observed [steelhead] rearing in the pool immediately downstream of the Highway 154 Culvert in all years since 2000.” (40 AR 372:18299; see also 31 AR 190:14367; 47 AR 445:21438 [State Board Draft EIR finding that steelhead have been documented migrating into Hilton Creek in all years that SYRTAC observations have been made].) Moreover, steelhead observed in multiple size classes have actually been observed. The conclusions drawn by the Cachuma Project Biologist are based on numerous surveys of lower Hilton Creek, observations of Upper Hilton Creek and a survey in January 2003, and nine years of experience conducting fisheries studies on the Lower Santa Ynez River and its tributaries. (40 AR 372:18302.) Additionally, it is important to note that SYRTAC, which was responsible for numerous studies of the area since 1993, is composed of several biologists, hydrologists and resource agency personnel. (39 AR 371:17397.)

Finally, Crawford-Hall’s assertion that the EIR “inconsistently and confusingly” refers to potential steelhead migration as both “periodic” and “more frequent” is based on a selective reading of the EIR. (Opening, 37, fn 19.) When the entire passage quoted by Crawford-Hall is read, it is evident that COMB’s EIR is completely consistent regarding the potential for increased migration of steelhead to Upper Hilton Creek. First, COMB’s EIR readily admits that “the

1 increase in the frequency and number of steelhead [i]n Upper Hilton Creek on San Lucas Ranch
2 due to both passage impediment projects cannot be accurately predicted . . . without more
3 information about the hydrologic and habitat conditions along the upper creek, which is not
4 available due to landowner prohibition on access.” (39 AR 371:17629.) The EIR concludes that,

5 there is an assumption the steelhead *periodically* migrate up Hilton
6 Creek seeking spawning habitat. Completion of the proposed
7 modifications to the culvert would improve hydrologic conditions
8 for steelhead passage allowing passage during both low and high
9 flows. As a result, it is expected that there will be *more* frequent
10 and *more* abundant steelhead [i]n Upper Hilton Creek *compared to*
11 *current conditions*.

12 (*Ibid.*) Hence, the current periodic migration will be more frequent.

13 Thus, the EIR data were compiled not just by one biologist studying one abnormally dry
14 year, as did Dr. Rich, but rather by a team of biologists, hydrologists and resource agency
15 personnel who studied the area extensively and continuously since 1993. These data are
16 supported by actual observations of several steelhead species on-site. Accordingly, the EIR’s
17 conclusion that Upper Hilton Creek is suitable habitat is supported by substantial evidence in the
18 record and Crawford-Hall’s difference of opinion was properly considered and rejected.

19 **G. Substantial Evidence Supports COMB’s Finding that Impacts From**
20 **Surcharging will be Reduced to Below a Level of Significance**

21 A writ of mandate should not issue to enforce an abstract or moot right. (*Slater v. City*
22 *Council of the City of Los Angeles* (1965) 238 Cal.App.2d 864, 868.) A writ may not issue when
23 an event that occurs after the proceeding begins would make issuance of the writ of no practical
24 benefit to the petitioner. (*Clementine v. Board of Civil Service Comm’rs.* (1941) 47 Cal.App.2d
25 112, 114; *County of San Luis Obispo v. Superior Court* (2001) 90 Cal.App.4th 288, 293.)

26 In *Slater*, supra, a city commissioner approved the petitioners’ application to divide their
27 parcel. Some time later, the city enacted a new ordinance, under which the application was a
28 violation, and the commissioner reversed his decision. (*Slater*, supra, 238 Cal.App.2d at 865.)
Although the trial court ordered the city council to grant the petitioners’ application (*Id.* at 868),
the Court of Appeal reversed, determining that the writ petition was moot once the ordinance
prohibiting the proposed property division was enacted. (*Ibid.*)

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Here, Crawford-Hall alleges that the mitigation measure requiring the relocation of Lake Cachuma recreational facilities is unenforceable. (Opening, 39:1-4.) But, the County and the COMB Member Units have already taken appropriate steps to protect Cachuma recreational facilities. The County Parks Department modified the main boat launch ramp in early 2004 to accommodate the surcharge of Lake Cachuma to 751.8 feet without impacting the ramp. (40 AR 372:18319.) Subsequently, the County agreed to complete additional modifications of the main boat launch ramp to accommodate any additional surcharge to Lake Cachuma. (Opp. RJN, Exh. 13.) The County was also required to relocate the water treatment plant to avoid impacts from surcharging. (40 AR 372:18319.) In addition to the requirement of relocation of the water treatment plant and associated facilities, the County of Santa Barbara and the COMB Member Units executed an Amended MOU in 2005 which provided that the Santa Ynez River Water Conservation District, I.D. No. 1 would complete a rock barrier to protect the County's existing water treatment plant from inundation, and I.D. No. 1 has done so. (See Opp. RJN, Exh. 13.)

Subsequently, COMB completed the construction of improvements to the Dam facilities that allowed a 3.0 foot surcharge to occur at Lake Cachuma. (*Ibid.*) Following the completion of the project and the protection of the County's water treatment plant, the County and the COMB Member Units entered into an interim agreement that authorizes a full 3.0 foot surcharge of Lake Cachuma.¹¹ (Opp. RJN, Exh. 14.) As a consequence of the implementation of these agreements between the Member Units and the County, no further impacts to the public boat launching ramp or other recreational activities remain. Thus, just as in *Slater*, Crawford-Hall is seeking an advisory opinion determining rights that have long since expired and from which she cannot benefit. A writ of mandate should not issue in these circumstances.

¹¹ COMB is permitted to rely on its MOU with the County in determining that any impacts to the recreational structures operated by the County resulting from the surcharging of Lake Cachuma will be less than significant. The fact the full surcharge of Lake Cachuma has been *completed* demonstrates that the County and the Member Units did in fact adhere to their obligations. (See 39 AR 371:17598, 17609-10; Opp: RJN, Exhs. 13, 14.)

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1 H. COMB Properly Considered a Reasonable Range of Alternatives
2 Crawford-Hall argues that COMB had an obligation under CEQA to consider and
3 evaluate an alternative which implemented only non-flow related measures. (Opening, 17, fn 7.)
4 This argument fails as a matter of law and fact.
5 As Crawford-Hall points out, an “EIR must ‘describe a range of reasonable alternatives.’”
6 (Opening, 17, fn 7.) However, there is no requirement to consider every possible potential
7 alternative, and a “crystal ball” inquiry is not required. (*Foundation for San Francisco’s*
8 *Architectural Heritage v. City & County of San Francisco* (1980) 106 Cal.App.3d 893, 910; State
9 CEQA Guidelines, § 15126.6(a).) Instead, the selection of alternatives is governed by the rule of
10 reason. (*Laurel Heights, supra*, 47 Cal.3d 376.) An alternatives analysis is sufficient if it assesses
11 the relative merits of the project and the alternatives. (State CEQA Guidelines, § 15126.6.)
12 When an agency makes a good faith effort to identify a reasonable range of alternatives,
13 “the burden shifts to the party challenging the EIR to show that an alternative it claims should
14 have been studied must be included in the document to provide a reasonable range of
15 alternatives.” (Kostka and Zischke, § 15.40, p.769.) A reviewing court will not presume that
16 other environmentally superior alternatives exist simply because project opponents suggest that
17 they do. (*Save San Francisco Bay Ass’n v. San Francisco Bay Conservation & Dev. Comm’n*
18 (1992) 10 Cal.App.4th 908, 919-23 [project opponents offered no evidence showing that their
19 proposed alternative offered substantial environmental advantages compared with project or
20 similar alternative that was studied].)
21 Here, COMB’s EIR extensively studied 20 alternatives, including several alternatives that
22 would primarily implement only the non-flow related actions. (39 AR 371:17659; 17657-17754.)
23 This demonstrates a good faith effort on COMB’s part to consider all feasible alternatives. The
24 relative merits and impacts of the alternatives were extensively discussed and even summarized in
25 chart form for easy reference. (39 AR 371:17663-17668; 40 AR 372:18209.)
26 First, COMB’s EIR for the FMP/BO considered and discussed several Lower Target Flow
27 Alternatives. COMB determined that these alternatives would partially meet the Project
28 objectives because they would improve rearing habitat for fish below Bradbury Dam, as

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1 compared to historic conditions, and would implement all other non-flow FMP/BO actions on the
2 mainstream and tributaries. (39 AR 423:17685-17698.) However, COMB found that these
3 alternatives “would not be consistent with the FMP/BO because they would not provide the
4 rearing flows required in the BO.” (44 AR 423:20323.)

5 Similarly, the Reduced Passage Flow Alternative would only partially meet the Project
6 objectives because it would improve rearing habitat for fish below Bradbury Dam, as compared to
7 historic conditions, and all other non-flow FMP/BO actions would be implemented on the
8 mainstream and tributaries. (39 AR 371:17709-717.) However, COMB again determined that
9 this alternative would not be consistent with the FMP/BO because it would not provide the
10 passage flows determined to be appropriate under the FMP/BO. (*Ibid*; 44 AR 423:20324.)
11 Specifically, this alternative would reduce the passage opportunities, such that COMB determined
12 that it was not preferable to the proposed Project. (44 AR 423:20324.)

13 Second, COMB considered the No Passage Alternative, under which no passage flows
14 would be provided and only a 1.8-foot surcharge would be implemented. (39 AR 371:17727-
15 17734.) Again, COMB found that this alternative would only partially meet the Project
16 objectives – even though a portion of the FMP/BO would be implemented – because the elements
17 of the FMP/BO that would not be implemented were necessary to improve the habitat conditions
18 for Southern California steelhead in the lower watershed, as compared to historic conditions. (44
19 AR 423:20325-326.) However, COMB determined that this alternative would be inconsistent
20 with the FMP/BO because it would not provide the passage opportunities included in the FMP
21 and as required by the BO. (*Ibid*.)

22 Third, Crawford-Hall has not demonstrated how the alternative suggested in her Opening
23 Brief differs from, or is substantially environmentally better than, any of the almost two dozen
24 alternatives considered by COMB. Nor is Crawford-Hall’s unsubstantiated opinion that a non-
25 flow alternative would have satisfied the BO and been more feasible than the proposed Project
26 sufficient to meet her burden under CEQA to demonstrate an inadequate alternatives analysis.

27 Finally, this argument was never properly exhausted as required by CEQA. Public
28 Resources Code section 21177(a) bars a CEQA petitioner from proceeding on the basis of

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1 objections that were not raised at the administrative level. The "essence of the exhaustion
2 doctrine is the public agency's opportunity to receive and respond to articulated factual issues and
3 legal theories *before* its actions are subject to judicial review." (*Coalition for Student Action v.*
4 *City of Fullerton* (1984) 153 Cal.App.3d 1194, 1198 [emphasis in original].) Indeed, the
5 exhaustion requirement is a jurisdictional prerequisite to a lawsuit, not a matter of judicial
6 discretion. (*Park Area Neighbors v. Town of Fairfax* (1994) 29 Cal.App.4th 1442, 1447.)
7 Notably, neither the State Board nor any other party suggested that COMB consider any
8 additional non-flow related alternatives than those already analyzed.¹² Because this issue was
9 never raised before COMB at the administrative level, Crawford-Hall's allegations regarding
10 Project alternatives are now barred.

11 Accordingly, the evidence in the administrative record shows that COMB properly
12 considered a reasonable range of alternatives to the approved Project. In addition, Crawford-
13 Hall's argument was never properly exhausted during the administrative process and is, therefore,
14 procedurally defective. As such, Crawford-Hall's argument must be disregarded.

15 **IV. CONCLUSION**

16 For the reasons set forth above, Respondent and Real Party respectfully request that the
17 Petition for Writ of Mandate be dismissed with prejudice.

19 Dated: July __, 2006

BEST BEST & KRIEGER LLP

21 By: _____
22 GREGORY K. WILKINSON
23 MICHELLE OUELLETTE
24 MEGAN K. STARR
25 Attorneys for Respondent and Real Party in
26 Interest CACHUMA OPERATIONS AND
27 MAINTENANCE BOARD and
28 CACHUMA CONSERVATION
RELEASE BOARD

12 In the comment letter cited by Crawford-Hall, the State Board asked COMB to change the Project description to evaluate only non-flow related measures in order to avoid a lead agency conflict. (40 AR 372:17888.) The State Board never suggested that COMB include an additional alternative. As described previously, the lead agency conflict with the State Board was resolved. (See *infra*, § III.B.2.b.)

MINUTES OF A REGULAR MEETING
of the
CACHUMA OPERATION & MAINTENANCE BOARD
held at the
Cachuma Operation & Maintenance Board Office
3301 Laurel Canyon Road, Santa Barbara, CA
Monday, July 24, 2006

1. Call to Order, Roll Call

The meeting was called to order at 4:15 p.m. by President Matt Loudon, who chaired the meeting. Those in attendance were:

Directors present:

Matt Loudon	SYR Water Conservation Dist., ID#1
C. Charles Evans	Goleta Water District
Jan Abel	Montecito Water District
Robert Lieberknecht	Carpinteria Valley Water District
Das Williams	City of Santa Barbara

Others present:

Kate Rees	Charles Hamilton
William Hair	Steve Mack
Chris Dahlstrom	Gary Kvistad
Janet Gingras	Bob Roebuck

2. Public Comment

There were no comments from the public.

3. Consent Agenda

- a. **Minutes:** June 26, 2006 Regular Board Meeting
- b. **Investment of Funds**
Financial Report
Investment Report
- c. **Payment of Claims**

Director Williams moved to approve the Consent Agenda, seconded by Director Lieberknecht. Motion carried, 7/0/0.

4. Cachuma Reservoir Current Conditions

Date 07/24/2006

Lake elevation	751.03 feet
Storage	191.18 acre feet

ITEM # 4a
PAGE 1

Rain (for the month to date)	0.00 inches
Rain YTD (for the season to date)	0.00 inches
Fish Release-Hilton Creek	20 acre feet per day
Month to Date Fish Release	480.4 acre feet
Month to Date Spill	0.00 acre feet

5. Annual Reorganization of Cachuma Operation & Maintenance Board

a. Election of President

Director Abel nominated Director Evans as Board President, seconded by Director Williams, passed 5/0/2, with Director Evans abstaining.

b. Election of Vice-President

Director Williams nominated Director Loudon as Vice-President, seconded by Director Lieberknecht, passed 6/0/1, with Director Loudon abstaining.

c. Appointment of Secretary, Treasurer and Auditor-Controller

Director Abel moved to affirm the appointment of the General Manager to serve for another year as the Secretary of the Board and the Administrative Manager to serve as the Acting Secretary of the Board in the General Managers absence, seconded by Director Evans, passed 7/0/0.

d. Appointment of ACWA/JPIA Representative and Alternate

Director Evans moved to affirm the appointment of Director Lieberknecht to serve as the ACWA/JPIA Representative, and the General Manager to serve as the alternate, seconded by Director Williams, passed 6/0/1, Director Lieberknecht abstaining.

e. Appointment of General Counsel

Director Williams moved to affirm the appointment of Nordman, Cormany, Hair & Compton to serve another year as General Counsel, seconded by Director Evans, passed 7/0/0.

6. Proposed Annual Resolutions

- a. Resolution No. 441 Adopting an Annual Statement of Investment Policy
- b. Resolution No. 442 Establishing a Supplemental Account Agreement for Telephone Transfers
- c. Resolution No. 443 Authorizing Signatories for Revolving Fund Account at Santa Barbara Bank and Trust
- d. Resolution 444 Authorizing Signatories for General Fund Account at Santa Barbara Bank & Trust
- e. Resolution No. 445 Establishing a Check Signing Policy for General Fund Account for Payment of Claims
- f. Resolution No. 446 Authorizing Signatories for General Fund Account at Santa Barbara Bank & Trust
- g. Resolution No. 447 Establishing a Check Signing Policy for Cachuma Project Trust Fund and Master Contract Renewal Fund Accounts for Payment of Claims
- h. Resolution No. 448 Authorizing Signatories for Trust Fund and Renewal Fund Accounts at Washington Mutual Bank
- i. Resolution No. 449 Establishing Time and Place for Board Meetings

Director Evans moved adoption of Resolutions 441, 442, 443, 444, 445, 446, 447, 448, and 449, seconded by Director Abel, passed 7/0/0.

7. Appointment of Outside Auditor to Prepare Financial Statements for the Fiscal Year Ending June 30, 2006 and the Independent Auditor's Report

Ms Gingras reported that McFarlane, Faletti & Co., the firm previously engaged as outside auditor, is no longer performing special district financial audits. A request for proposals was sent to four firms and three submitted proposals for consideration. Staff recommendation was to engage Bartlett, Pringle, Wolf, LLP to perform the FY 2005-2006 audits for COMB and CCRB.

Director Evans asked for a comparison of the qualifications between Bartlett, Pringle, Wolf, LLP and Gary Smith, CPA. Following the discussion, Director Evans moved to approve staff recommendation to engage Bartlett, Pringle, Wolf, LLP to perform the COMB and CCRB audits for the FY 2005-2006, seconded by Director Abel, passed 7/0/0. The Board requested that Ms Gingras follow up with the accounting firm to discuss if a multi-year contract might result in a cost savings.

8. Water Accounting Reconciliation of Cachuma Melded Water Rates for Orders vs. Deliveries

At the June 26, 2006 Board meeting, the Board decided that for WY 2005 and in future, the melded rates for water orders should be reconciled using revised melded rates for actual water deliveries at the end of the water year. Three options, regarding reconciliation of the melded rates prior to 2005 were presented to the Board at the June meeting. The Directors were to discuss these options with their individual Boards in order to bring a recommendation to the July 24th COMB Board meeting. Staff sought direction regarding how far back reconciliation of the melded rates calculations should go.

COMB received letters from the Carpinteria Valley Water District and SYR Water Conservation District, ID#1 Boards supporting the reconciliation of water orders compared to actual deliveries from the beginning of the Renewal Master Contract, and to make adjustments among the Member Units for any under payments or over payments for Cachuma water. Directors Abel, Evans, and Williams verbally supported the same action.

Reclamation's Finance Department has decided that an evaluation of water orders vs. actual deliveries for irrigation and M&I will be needed from 1997 through 2005 in order to determine if adjustments need to be made to the Cachuma water rates. Actual deliveries need to be reported to Reclamation from 1997 through 2005 for each of the Member Units. Staff will accumulate information from the Member Units and provide it to Reclamation.

Director Abel moved that reconciliation of the melded rates take place back to the year 1997, seconded by Director Lieberknecht, passed 7/0/0.

9. Status of Lauro Dam Seismic Safety Modifications Project

Two Reclamation progress reports were included in the board packet. Ms Rees reported that the modification project is moving forward on schedule, and that the total amount spent to date was \$4,174, 842.

10. Lauro Debris Basin Project

Ms Rees noted the Lauro Debris Basin Rehabilitation Project had been removed from the FY 2006-2007 budget. The Board determined at the June meeting that the project would be brought back to the Board for discussion and consideration prior to the September board meeting. Goleta Water District was of the opinion that the standard entitlement cost allocation formula for this project was not appropriate because it was a water quality project and of less benefit to GWD than the other south coast Member Units. The other Member Units disagreed with that position. It was recommended that an Ad Hoc committee be appointed to negotiate an equitable cost allocation for this project. The committee will also consider the use of unexpended funds from FY 2005-2006 that could be allocated to the debris basin project.

President Loudon appointed Director Evans, Director Williams, and the managers of Goleta Water District and the City of Santa Barbara to the Ad Hoc Committee. They will bring a recommendation back to the Board at the August 28, 2006 meeting.

11. Consideration of Memorandum of Understanding Among Cooperating Partners for Integrated Regional Water Management Plan Development

This was fully discussed during the CCRB meeting and there was nothing further to add.

Director Evans moved approval of the MOU for the Integrated Regional Water Management Plan Development, seconded by Director Lieberknecht, passed 7/0/0.

12. Certificate of Appreciation for William H. Luce, Area Manager, South-Central California Area Office, Upon His Retirement from the Bureau of Reclamation.

Ms Rees reported Bill Luce would be retiring at the end of this month, and that she planned to attend the retirement luncheon being held in his honor and present the Certificate of Appreciation to him on behalf of the COMB Board. The Board asked that she convey their congratulations on his retirement and their thanks for many years of outstanding service to the Cachuma Project.

13. Meeting Schedule

August 2, 2006 Joint Special COMB/ Board Meeting at 2:00-5:00 P.M., at COMB Office
August 28, 2006 Regular Board Meeting following CCRB at 2:15 p.m., COMB Office

14. COMB Adjournment

There being no further business, the meeting was adjourned at 4:50 p.m.

Respectfully submitted,

Secretary of the Board

APPROVED:

Chair

sec.comb/boardminutes/07.24.06COMB Minutes.doc

Approved _____
Unapproved _____ ✓

ITEM # 4a
PAGE 4

comb2
Balance Sheet
 As of July 31, 2006

	<u>Jul 31, 06</u>
ASSETS	
Current Assets	
Checking/Savings	
1050 · GENERAL FUND	154,887.60
1100 · REVOLVING FUND	5,907.83
TRUST FUNDS	
1220 · RENEWAL FUND	5,043.85
1210 · WARREN ACT TRUST FUND	9,921.38
Total TRUST FUNDS	<u>14,965.23</u>
Total Checking/Savings	175,760.66
Other Current Assets	
1010 · PETTY CASH	400.00
1200 · LAIF	433,868.37
1300 · DUE FROM CCRB	57,105.00
1302 · ASSESSMENTS RECEIVABLE-CARP	114,268.23
1303 · SOD Act Assessments Receivable	47,141.25
1400 · PREPAID INSURANCE	9,108.00
Total Other Current Assets	<u>661,890.85</u>
Total Current Assets	837,651.51
Fixed Assets	
1500 · VEHICLES	231,647.84
1505 · OFFICE FURN & EQUIPMENT	113,041.13
1510 · TRAILERS	97,803.34
1515 · FIELD EQUIPMENT	284,119.52
1525 · PAVING	22,350.00
1550 · ACCUMULATED DEPRECIATION	-469,875.93
Total Fixed Assets	<u>279,085.90</u>
Other Assets	
1910 · LT SOD Act Assess Receivable	5,447,243.07
Total Other Assets	<u>5,447,243.07</u>
TOTAL ASSETS	<u><u>6,563,980.48</u></u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
2200 · ACCOUNTS PAYABLE	96,105.35
Total Accounts Payable	96,105.35
Other Current Liabilities	
2505 · ACCRUED WAGES	27,650.33
2550 · VACATION/SICK	36,412.07
2561 · BRADBURY DAM SOD ACT	47,141.25
2590 · DEFERRED REVENUE	14,965.23
Payroll-DepPrm Admin	50.00
Payroll-DepPrm Ops	9.24
Total Other Current Liabilities	<u>126,228.12</u>
Total Current Liabilities	222,333.47
Long Term Liabilities	
2600 · Lease Obligation Payable	43,846.38
2601 · Note Payable SBB&T	114,406.02
2602 · SOD Act Liability-Long Term	5,447,243.07
Total Long Term Liabilities	<u>5,605,495.47</u>
Total Liabilities	5,827,828.94
Equity	
3000 · Opening Bal Equity	0.95

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08/17/06
Accrual Basis

comb2
Balance Sheet
As of July 31, 2006

	<u>Jul 31, 06</u>
3901 - Retained Earnings	798,279.63
Net Income	<u>-62,129.04</u>
Total Equity	<u>736,151.54</u>
TOTAL LIABILITIES & EQUITY	<u><u>6,563,980.48</u></u>

comb2
Profit & Loss Budget vs. Actual
 July 2006

2:24 PM
 08/17/06
 Accrual Basis

	Jul 06	Budget	\$ Over Budget	% of Budget
Income				
3000 REVENUE				
3001 - O&M Budget	90,825.79			
3010 - Interest Income	7,014.31			
Total 3000 REVENUE	97,840.10			
Total Income	97,840.10			
Gross Profit	97,840.10			
Expense				
3100 LABOR				
3150 - Health & Workers Comp	13,820.21	141,391.00	-127,570.79	9.8%
3155 - PERS	5,356.02	69,869.00	-64,512.98	7.7%
3160 - Payroll Comp FICA Ops	2,308.34	30,449.70	-28,141.36	7.6%
3165 - Payroll Comp MCARE Ops	539.87	7,121.30	-6,581.43	7.6%
3100 LABOR - Other	0.00	456,501.00	-456,501.00	0.0%
Total 3100 LABOR	55,934.19	705,332.00	-649,397.81	7.9%
3200 VEH & EQUIPMENT				
3201 - Vehicle/Equip Mtce	1,451.91	30,000.00	-28,548.09	4.8%
3202 - Fixed Capital	643.35	50,000.00	-49,356.65	1.3%
3203 - Equipment Rental	1,416.05	23,000.00	-21,583.95	6.2%
3204 - Miscellaneous	33.91	15,000.00	-14,966.09	0.2%

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08/17/06
Accrual Basis

comb2 Profit & Loss Budget vs. Actual July 2006

	Jul 06	Budget	\$ Over Budget	% of Budget
Total 3200 VEH & EQUIPMENT	3,545.22	118,000.00	-114,454.78	3.0%
3300 · CONTRACT LABOR				
3301 · Conduit, Meter, Valve & Misc	510.85	10,000.00	-9,489.15	5.1%
3302 · Buildings & Roads	2,258.12	15,000.00	-12,741.88	15.1%
3303 · Reservoirs	1,379.00	50,000.00	-48,621.00	2.8%
3304 · Engineering, Misc Services	0.00	20,000.00	-20,000.00	0.0%
Total 3300 · CONTRACT LABOR	4,147.97	95,000.00	-90,852.03	4.4%
3400 · MATERIALS & SUPPLIES				
3401 · Conduit, Meter, Valve & Misc	266.69	20,000.00	-19,733.31	1.3%
3402 · Buildings & Roads	2,052.41	20,000.00	-17,947.59	10.3%
3403 · Reservoirs	0.00	10,000.00	-10,000.00	0.0%
Total 3400 · MATERIALS & SUPPLIES	2,319.10	50,000.00	-47,680.90	4.6%
3500 · OTHER EXPENSES				
3501 · Utilities	323.69	6,300.00	-5,976.31	5.1%
3502 · Uniforms	126.04	6,500.00	-6,373.96	1.9%
3503 · Communications	1,046.04	18,190.00	-17,143.96	5.8%
3504 · USA & Other Services	331.35	4,000.00	-3,668.65	8.3%
3505 · Miscellaneous	313.02	6,000.00	-5,686.98	5.2%
3506 · Training	0.00	7,000.00	-7,000.00	0.0%
Total 3500 · OTHER EXPENSES	2,140.14	47,990.00	-45,849.86	4.5%
4999 · GENERAL & ADMINISTRATIVE				
5000 · Director Fees				
5001 · Director Mileage	109.73	856.00	-746.27	12.8%
5000 · Director Fees - Other	1,280.00	9,984.00	-8,704.00	12.8%
Total 5000 · Director Fees	1,389.73	10,840.00	-9,450.27	12.8%
5100 · Legal				
5101-1 · Audit	0.00	72,000.00	-72,000.00	0.0%
5150 · Unemployment Tax	0.00	20,000.00	-20,000.00	0.0%
5200 · Liability Insurance	0.00	6,500.00	-6,500.00	0.0%
5201 · Health & Workers Comp	36,713.00	38,000.00	-1,287.00	96.6%
5250 · PERS	6,529.05	47,399.00	-40,869.95	13.8%
5260 · Comp FICA Admin	2,166.98	28,632.00	-26,465.02	7.6%
5265 · Comp MCARE Admin	900.74	12,156.05	-11,255.31	7.4%
5300 · Manager Salary	210.66	2,842.95	-2,632.29	7.4%
5301 · Administrative Manager	3,176.94	42,993.00	-39,816.06	7.4%
5306 · Administrative Assistant	5,839.42	77,615.00	-71,775.58	7.5%
5310 · Postage/Office Exp	3,956.96	51,441.00	-47,484.04	7.7%
5311 · Office Equip/Leases	590.10	9,000.00	-8,409.90	6.6%
5312 · Misc Admin Expenses	456.25	5,750.00	-5,293.75	7.9%
5313 · Communications	972.78	10,000.00	-9,027.22	9.7%
5314 · Utilities	364.61	5,000.00	-4,635.39	7.3%
5315 · Membership Dues	650.57	5,300.00	-4,649.43	12.3%
	346.50	6,150.00	-5,803.50	5.6%

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08/17/06

Accrual Basis

comb2 Profit & Loss Budget vs. Actual July 2006

	Jul 06	Budget	\$ Over Budget	% of Budget
5316 · Admin Fixed Assets	0.00	7,000.00	-7,000.00	0.0%
5320 · Admin Facilitator Consultant	0.00	20,000.00	-20,000.00	0.0%
5325 · Emp Training/Subscriptions	325.00	4,500.00	-4,175.00	7.2%
5330 · Admin Travel/Conferences	-20.00	5,000.00	-5,020.00	-0.4%
5331 · Public Information	17.43	2,000.00	-1,982.57	0.9%
5332 · Transportation	45.70	1,200.00	-1,154.30	3.8%
Total 4999 · GENERAL & ADMINISTRATIVE	64,632.42	491,319.00	-426,686.58	13.2%
5510 · Integrated Reg. Water Mgt Plan	0.00	10,000.00	-10,000.00	0.0%
6000 · SPECIAL PROJECTS				
6062 · SCADA	626.73	60,000.00	-59,373.27	1.0%
6090-1 · COMB Bldg/Grounds Repair	5,174.36	50,000.00	-44,825.64	10.3%
6092 · SCC Improv Plan & Design	15,630.60	300,000.00	-284,369.40	5.2%
6095 · SCC Valve & Cntrl Sta Rehab	4,199.69	600,000.00	-595,800.31	0.7%
6096 · SCC Structure Rehabilitation	1,021.88	400,000.00	-398,978.12	0.3%
6097 · GIS and Mapping	596.88	100,000.00	-99,403.12	0.6%
Total 6000 · SPECIAL PROJECTS	27,250.14	1,510,000.00	-1,482,749.86	1.8%
6400 · STORM DAMAGE				
6401 · Storm Damage 2005	0.00	100,000.00	-100,000.00	0.0%
Total 6400 · STORM DAMAGE	0.00	100,000.00	-100,000.00	0.0%
7000 · LEGAL & LITIGATION				
7002 · Spec Counsel-FMP-BO EIS/R	0.00	100,000.00	-100,000.00	0.0%
Total 7000 · LEGAL & LITIGATION	0.00	100,000.00	-100,000.00	0.0%
PAYROLL				
Gross	0.00			
Gross-CCRB	-0.04			
Total PAYROLL	-0.04			
Total Expense	159,969.14	3,227,641.00	-3,067,671.86	5.0%
Net Income	-62,129.04	-3,227,641.00	3,165,511.96	1.9%

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OFFICE OF THE TREASURER

SACRAMENTO

Local Agency Investment Fund
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CACHUMA O&M BOARD



July, 2006 Statement

CACHUMA OPERATION AND MAINTENANCE BOARD

Account Number : 70-42-001

Attn: GENERAL MANAGER

3301 LAUREL CANYON ROAD

SANTA BARBARA CA 93105-2017

Transactions

Effective Date	Transaction Date	Tran Type	Confirm Number	Authorized Caller	Amount
07-12-2006	07-12-2006	RW	1080811	KATHLEEN REES	- 308,000.00
07-14-2006	07-13-2006	QRD	1083101	SYSTEM	7,014.31
07-19-2006	07-18-2006	RW	1084130	KATHLEEN REES	- 5,000.00

Account Summary

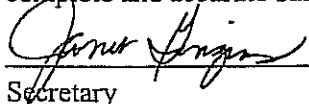
Total Deposit :	7,014.31	Beginning Balance :	739,854.06
Total Withdrawal :	- 313,000.00	Ending Balance :	433,868.37

MEMO TO: Board of Directors
 Cachuma Operation & Maintenance Board

FROM: Kathleen Rees, Secretary

SUBJECT: COMB INVESTMENT POLICY

The above statement of investment activity for the month of July, 2006, complies with legal requirements for investment policy of government agencies, AB 1073. I hereby certify that it constitutes a complete and accurate summary of all LAIF investments of this agency for the period indicated.


 Secretary

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comb2
Payment of Claims
 As of July 31, 2006

Date	Num	Name	Memo	Split	Amount
1050 - GENERAL FUND					
7/5/2006	15206	ACWA Services Corp. (ASC)	Cov period 7/1-8/1/06	2200 · ACCO...	-8,843.64
7/5/2006	15207	ACWA Services Corporation...	Jul EAP	2200 · ACCO...	-47.46
7/5/2006	15208	County News Clipping Service	News clipping service 7/06-6/07	2200 · ACCO...	-693.00
7/5/2006	15209	ECHO Communications	Answering service-Jul	2200 · ACCO...	-56.60
7/5/2006	15210	PBCC	Qrtly inv. 7/10-10/10/06	2200 · ACCO...	-442.86
7/12/2006	15211	Aqua-Flo Supply		2200 · ACCO...	-1,087.28
7/12/2006	15212	AT&T	Jun 27, 2006 statement	2200 · ACCO...	-169.21
7/12/2006	15213	Ben Meadows Company		2200 · ACCO...	-601.51
7/12/2006	15214	Best, Best & Krieger, LLP	Crawford-Hall CEQA Jun 2006	2200 · ACCO...	-6,902.65
7/12/2006	15215	Boyle Engineering Corp.		2200 · ACCO...	-9,264.00
7/12/2006	15216	CDW Government, Inc.	Linksys-cisco 16 pt PO#8635	2200 · ACCO...	-306.40
7/12/2006	15217	Channel City Lumber	Tie plates/drywall metal	2200 · ACCO...	-5.81
7/12/2006	15218	CIO Solutions, Inc.		2200 · ACCO...	-3,058.71
7/12/2006	15219	City of Santa Barbara-Centr...	Insoles/knee boots/gloves	2200 · ACCO...	-74.26
7/12/2006	15220	City of SB-Refuse	Refuse acct 5/31-6/30/06	2200 · ACCO...	-143.65
7/12/2006	15221	Coastal Copy		2200 · ACCO...	-225.15
7/12/2006	15222	Coastline Equipment Co.	Impeller-pump repair	2200 · ACCO...	-117.90
7/12/2006	15223	COMB-Petty Cash	Replenish petty cash	2200 · ACCO...	-122.30
7/12/2006	15224	Cushman Contracting Corp.		2200 · ACCO...	-125,061.25
7/12/2006	15225	Das Williams	6/26/06 Reg mtg	2200 · ACCO...	-131.65
7/12/2006	15226	Dell Marketing L.P.	Dell Dimension 5150c Computers	2200 · ACCO...	-3,483.06
7/12/2006	15227	ESRI	ArcGIS Spatial Analyst/ArcGIS 3D A...	2200 · ACCO...	-4,848.76
7/12/2006	15228	Flowers & Associates, Inc.	Jun chrgs Lauro Res Rd mtce impro...	2200 · ACCO...	-253.00
7/12/2006	15229	GE Capital	Mita copier lease Bill ID#901336031...	2200 · ACCO...	-427.71
7/12/2006	15230	Halsell Builders, Inc.	Draw 4 start drywall PO#05-06-32	2200 · ACCO...	-18,250.00
7/12/2006	15231	Harry DeWitt	6/26/06 Reg mtg	2200 · ACCO...	-132.45
7/12/2006	15232	Home Depot Credit Services		2200 · ACCO...	-1,228.07
7/12/2006	15233	Interactive Planning and Ma...	Facilitator services 6/10-30/06	2200 · ACCO...	-1,980.00
7/12/2006	15234	J&C Services	6/9,23 office cleaning	2200 · ACCO...	-250.00
7/12/2006	15235	Jan Abel	6/26/06 Reg mtg	2200 · ACCO...	-136.90
7/12/2006	15236	June Van Wingerden	6/26/06 Reg mtg	2200 · ACCO...	-140.55
7/12/2006	15237	MarBorg Industries		2200 · ACCO...	-254.80
7/12/2006	15238	Matt Loudon	6/26/06 Reg mtg	2200 · ACCO...	-153.20
7/12/2006	15239	Nordman, Cormany, Hair & ...		2200 · ACCO...	-4,560.00
7/12/2006	15240	Onset Computer Corporation	Coupler for Hobo water temp unit	2200 · ACCO...	-10.00
7/12/2006	15241	Orchard Supply Hardware		2200 · ACCO...	-794.80
7/12/2006	15242	Paychex, Inc.	6/16 & 30/06 payrolls/taxes	2200 · ACCO...	-203.90
7/12/2006	15243	PG&E		2200 · ACCO...	-203.80
7/12/2006	15244	Praxair Distribution	Cylinder rental	2200 · ACCO...	-34.50
7/12/2006	15245	Safety-Kleen Systems, Inc.	Regular service	2200 · ACCO...	-124.10
7/12/2006	15246	Sansum-SBMFC Occupatio...	Pre-employment physical-D.Segal C...	2200 · ACCO...	-186.00
7/12/2006	15247	Sound Billing LLC	Oil change/service CCRB Colorado	2200 · ACCO...	-51.60
7/12/2006	15248	Southern California Edison		2200 · ACCO...	-1,189.40
7/12/2006	15249	Staples Credit Plan	Ofc supplies	2200 · ACCO...	-144.20
7/12/2006	15250	State Compensation Insuran...	Payroll report-Jun 2006	2200 · ACCO...	-7,471.20
7/12/2006	15251	Tesco Controls, Inc.	Service Contract May 05-Jun 06	2200 · ACCO...	-10,020.00
7/12/2006	15252	Tri-County Locksmiths	Locks for addition re-key	2200 · ACCO...	-45.00
7/12/2006	15253	Verizon California		2200 · ACCO...	-345.20
7/12/2006	15254	Verizon Wireless	Cellular	2200 · ACCO...	-174.50
7/12/2006	15255	ACWA Services Corp. (ASC)	Cov period 8/1-9/1/06	2200 · ACCO...	-8,843.60
7/12/2006	15256	Caterpillar Financial Service...	Backhoe lease Contract #001-02586...	2200 · ACCO...	-1,294.00
7/12/2006	15257	Cedant Web Hosting	Web hosting 7/24-8/23/06 Reg#249...	2200 · ACCO...	-14.90
7/12/2006	15258	COMB - Revolving Fund	Jul 14 & 28, 2006 payrolls/taxes	2200 · ACCO...	-92,588.10
7/12/2006	15259	Culligan Water	RO system Jul	2200 · ACCO...	-20.90
7/12/2006	15260	Draganchuk Alarm Systems	Alarm/lease-monitoring Jul-Sep 2006	2200 · ACCO...	-82.50
7/12/2006	15261	McMaster-Carr Supply Co.		2200 · ACCO...	-1,085.60
7/12/2006	15262	Republic Elevator	Scheduled mtce	2200 · ACCO...	-208.30
7/12/2006	15263	Reserve Account	Postage refill	2200 · ACCO...	-400.00
7/12/2006	15264	Underground Service Alert	56 new tickets	2200 · ACCO...	-88.00
7/13/2006	15265	AC Ramirez Floor Coverings...	Install carpet KR ofc	2200 · ACCO...	-820.00
7/13/2006	15266	Crocker Refrigerator Heatin...	Repair wall mount air cond main imp...	2200 · ACCO...	-119.10

2:20 PM
08/17/06
Accrual Basis

comb2
Payment of Claims
As of July 31, 2006

Date	Num	Name	Memo	Split	Amount
7/13/2006	15267	Fleet Fueling	Fuel/fuel cards	2200 · ACCO...	-2,042.91
7/13/2006	15268	AC Ramirez Floor Coverings...	Install carpet tiles-new ops ofc 50% ...	2200 · ACCO...	-2,107.00
7/13/2006	15269	BEC Electric Contractors	Progress billing-PO#05-06-31	2200 · ACCO...	-6,203.11
7/14/2006	15270	Prudential Overall Supply		2200 · ACCO...	-355.81
7/17/2006	15271	Shawn O'Callahan	Reimb-SCADA training/meals/lodging	2200 · ACCO...	-626.71
7/17/2006	15272	Verizon California	SCADA	2200 · ACCO...	-515.71
7/18/2006	15273	Adele Capponi	Safety boots reimb	2200 · ACCO...	-126.01
7/18/2006	15274	BEC Electric Contractors	Progress bill-Crew bldg rough-in of e...	2200 · ACCO...	-2,590.01
7/19/2006	15275	Coastal Copy	Monthly mtce KM5035 6/4-7/3/06	2200 · ACCO...	-130.71
7/25/2006	15276	Acorn Landscape Managem...	Deposit (50%) weed work-Ortega Ri...	2200 · ACCO...	-1,379.01
7/25/2006	15277	MNS Engineers, Inc.	Lauro Res-topo mapping 5/16-6/15/...	2200 · ACCO...	-4,745.01
Total 1050 · GENERAL FUND					-340,840.21
TOTAL					-340,840.21

2:21 PM
08/17/06
Accrual Basis

comb2
Payment of Claims-Warren Act Trust Fund
July 2006

<u>Date</u>	<u>Num</u>	<u>Name</u>	<u>Memo</u>	<u>Split</u>	<u>Amount</u>
Jul 06 7/26/2006	1016	Cachuma Conservation Re...	Funds transfer CCWA ...	-SPLIT-	-23,399.00
Jul 06					<u>-23,399.00</u>

CACHUMA OPERATION AND MAINTENANCE BOARD

MEMORANDUM

DATE: August 28, 2006
TO: Chuck Evans, President of the Board
FROM: Kate Rees, Interim General Manager *KR*
RE: **Committee Appointments for Fiscal Year 2006-2007**

RECOMMENDATION:

It is recommended that the President of the Board make appointments for Fiscal Year 2006-2007 to the following committees: Capital Improvements, Finance, Management, Operations, and Public Relations.

DISCUSSION:

COMB has a number of activities and projects planned for Fiscal Year 2006-2007. It would be of benefit for each of these to be discussed first at the committee level and then to be brought to the Board of Directors with the committee's recommendation for action.

As was done in FY 2005-2006 at the August 2005 board meeting, it is proposed that the five committees consist of two board members each; ideally, each board member would agree to serve on two committees. It may be of benefit also to have an alternate appointed to serve on some or all of the committees. The committees would meet during the course of the fiscal year, on an as-needed basis, together with COMB staff and also Member Unit staff, if necessary.

The proposed committees with examples of activities or projects are as follows:

1. Capital Improvements Committee - Long Term Capital Improvement Plan Projects
2. Finance Committee - Preparation of COMB Budget for FY 2006-2007.
3. Management & Public Relations - Updating the Employee Handbook, Promoting Water Awareness & Conservation, Website Development, Publishing Op-Ed Pieces & Newsletters.
4. Operations Committee - SCC Operations, Encroachment Issues.
5. Legal Affairs – Review, Strategy, and Policy Considerations for Pending Lawsuits.

The attached sheet shows the committee appointments made for FY 2005-2006 and President Evans' suggested appointments for the new fiscal year.

CACHUMA OPERATION AND MAINTENANCE BOARD

COMMITTEE APPOINTMENTS

FY 2005-2006

(Revised 5-22-2006)

COMMITTEE NAME	COMMITTEE MEMBER	COMMITTEE MEMBER	ALTERNATE MEMBER
Capital Improvements	Jan Abel	Chuck Evans	Matt Loudon
Finance	Matt Loudon	Chuck Evans	Bob Lieberknecht
Management & Public Affairs	Matt Loudon	Bob Lieberknecht	Chuck Evans
Operations	Bob Lieberknecht	Chuck Evans	Matt Loudon
Legal Affairs	Jan Abel	Das Williams	Matt Loudon

COMMITTEE APPOINTMENTS (Proposed)

FY 2006-2007

COMMITTEE NAME	COMMITTEE MEMBER	COMMITTEE MEMBER	ALTERNATE MEMBER
Capital Improvements	Jan Abel	Chuck Evans	Das Williams
Finance	Matt Loudon	Das Williams	Bob Lieberknecht
Management & Public Affairs	Bob Lieberknecht	Matt Loudon	Chuck Evans
Operations	Bob Lieberknecht	Chuck Evans	Jan Abel
Legal Affairs	Jan Abel	Das Williams	Matt Loudon

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CACHUMA OPERATION AND MAINTENANCE BOARD
WATER STORAGE REPORT

MONTH: July 2006

GLENN ANNIE RESERVOIR

Capacity at 385' elevation:	518 Acre Feet
Capacity at sill of intake at 334' elevation:	21 Acre Feet
Stage of Reservoir Elevation	348.00 Feet
Water in Storage	94.74 Acre Feet

LAURO RESERVOIR

Capacity at 549' elevation:	600 Acre Feet
Capacity at sill of intake at 512' elevation:	84.39 Acre Feet
Stage of Reservoir Elevation	547.20 Feet
Water in Storage	553.95 Acre Feet

ORTEGA RESERVOIR

Capacity at 460' elevation:	65 Acre Feet
Capacity at outlet at elevation 440':	0 Acre Feet
Stage of Reservoir Elevation	448.20 Feet
Water in Storage	23.35 Acre Feet

CARPINTERIA RESERVOIR

Capacity at 384' elevation:	45 Acre Feet
Capacity at outlet elevation 362':	0 Acre Feet
Stage of Reservoir Elevation	380.50 Feet
Water in Storage	36.31 Acre Feet

TOTAL STORAGE IN RESERVOIRS

Change in Storage.	47.81 Acre Feet
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CACHUMA RESERVOIR

Capacity at 750' elevation:	188,030 Acre Feet
Capacity at sill of tunnel 660' elevation:	26,109 Acre Feet

Stage of Reservoir Elevation	750.61 Feet
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Water in Storage	189,896 AF
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Area	3,075
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Evaporation	2,174.9 AF
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Inflow	945.2 AF
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Downstream Release WR8918	0 AF
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Fish Release	620.0 AF
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Spill/Seismic Release	0 AF
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State Project Water	121 AF
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Change in Storage	-4,908 AF
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Tecolote Diversion	3,179.3 AF
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05-06 ENTITLEMENT

**CACHUMA OPERATION AND MAINTENANCE BOARD
WATER PRODUCTION AND WATER USE REPORT
FOR THE MONTH OF JULY 2006 AND THE WATER YEAR TO DATE**

(All in rounded Acre Feet)

			MONTH TOTAL			YTD TOTAL
WATER PRODUCTION:						
Cachuma Lake (Tec. Diversion)			3,179			18,706
Tecolote Tunnel Infiltration			180			1,837
Glen Anne Reservoir			0			0
Cachuma Lake (County Park)			10			57
State Water Diversion Credit			121			753
Gibraltar Diversion Credit			0			0
Bishop Ranch Diversion			0			0
Meter Reads			2,924			18,717
So. Coast Storage gain/(loss)			48			59
Total Production			3,370			20,599
Total Deliveries			3,092			19,529
Unaccounted-for			278			1,070
% Unaccounted-for			8.24%			5.19%
WATER USE:						
	GWD	SB CITY	MWD	CVWD	SYRWCD I.D. #1	TOTAL
M&I	930	648	480	186	10	2,254
Agricultural	411	0	56	202	0	670
TOTAL FOR MONTH	1,341	648	536	388	10	2,924
Same Mo/prev. yr	1,415	825	464	417	10	3,131
M&I Yr to date	6,407	4,696	2,120	1,030	57	14,310
Ag. Yr to date	2,831	0	490	972	0	4,294
TOTAL YTD	9,238	4,696	2,610	2,002	57	18,604
USAGE % YTD	57.2%	38.5%	66.9%	45.6%	5.9%	49.3%
Previous Year/YTD	8,888	7,720	1,854	2,497	45	21,004
Evaporation	0	0	0	0	0	0
Evaporation, YTD	60	115	8	21	7	211
Entitlement	9,322	8,277	2,651	2,813	2,651	25,714
Carryover	4,832	5,800	874	1,469	296	13,271
Carryover Balances Spilled YTD	0	(2,886)	0	(264)	(253)	(3,403)
Surplus^^	1,519	675	306	159	6	2,665
State Water Exchange^	582	385	385	260	(1,612)	0
Transfers*/Adjustment***	0	300	(300)	0	0	0
Passthrough H2O**	0	(48)	0	0	0	(48)
TOTAL AVAILABLE	16,254	12,503	3,916	4,437	1,088	38,198
REMAINING BALANCE	6,956	7,692	1,298	2,414	1,024	19,384

* Juncal Exchange Agrmt - MWD transferred 300 AF to City in July 2006.

** City relinquished 6 AF per "Passthrough" agrmt for July 2006 (No Passthrough during spill conditions).

State Water Deliveries for July to Lake Cachuma were MWD 0 AF; CVWD 0 AF
GWD 0 AF (Morehart 0 AF); City of S.B. 0 AF; and LaCumbre 66 AF; (Ratheon 55 AF).

^ Per SWP Exchange Agrmt GWD received 252 AF; MWD received 133;
City of SB received 81 AF; and CVWD received 90 AF from ID#1 in July 2006.

CCWA revised the June Exchange amounts in July and GWD & City totals reflect the adjustment.

PERCENT OF WATER YEAR ELAPSED: 83.3%

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COMB STATE WATER PROJECT ACCOUNTING - SOUTH COAST ONLY (Does not include SYRWCD, ID#1 or exchange water)

MONTH	DELVRD TO LAKE	Delvd CVWD		Delvd Transf to MW	Delvd MWD		Delvd Transf from CV	Delvd S.B.		Delvd GWD		Delvd LCMWC		Delvd to SC	Delvd RSYS		Delvd to SC	MLC Delvd to SC	
		to Lake	to SC		to Lake	to SC		to Lake	to SC	to Lake	to SC	to Lake	to SC		to Lake	to SC			
2005																			
Bal. Frwd		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
January	45	0	0	0	12	0	0	12	0	18	-32	3	-76	20	0	0	0	0	0
February		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
March		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
April		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
May		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
June		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
July		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
August		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
September		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
October		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
November	185	0	0	0	0	0	0	0	0	0	0	131	95	36	20	0	20	34	0
December	276	0	0	0	0	0	0	0	0	0	0	196	0	196	30	0	30	50	0
Total	506	0	0	0	12	0	0	12	0	18	0	330	95	252	50	0	50	84	0

COMB STATE WATER PROJECT ACCOUNTING - SOUTH COAST ONLY (Does not include SYRWCD, ID#1 or exchange water)

MONTH	DELVRD TO LAKE	Delvd CVWD		Delvd Transf to MW	Delvd MWD		Delvd Transf from CV	Delvd S.B.		Delvd GWD		Delvd LCMWC		Delvd to SC	Delvd RSYS		Delvd to SC	MLC Delvd to SC	
		to Lake	to SC		to Lake	to SC		to Lake	to SC	to Lake	to SC	to Lake	to SC						
2006																			
Bal. Frwd		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
January		0	0	0	0	0	0	0	0	0	0	0	-95	95	0	0	0	0	0
February	111	0	0	0	0	0	0	0	0	0	0	111	0	111	0	0	0	0	0
March		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
April		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
May		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
June	60	0	0	0	0	0	0	0	0	0	0	60	0	60	0	0	0	0	0
July	121	0	0	0	0	0	0	0	0	0	0	66	0	66	55	0	55	0	0
August		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
September		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
October		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
November		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
December		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	292	0	0	0	0	0	0	0	0	0	0	237	0	332	55	0	55	0	0

Operations Report – July 2006

Cachuma Project water usage for the month of July 2006 was 2,924 acre-feet, compared with 3,131 acre-feet for the same period in 2005. Cachuma Project water use for the 12 months ending 31 July 2006 was 23,974 acre-feet, compared with 25,070 acre-feet for the 12 months ending 31 July 2006

The average flow from Lake Cachuma into the Tecolote Tunnel was 94 acre-feet per day. Lake elevation was 752.20 feet at the beginning of the month and 750.61 feet at the end. Recorded rainfall at Bradbury Dam was 0.00 inches for the month and 24.52 inches for the rainfall season, which commenced on July 1, 2005. Rainfall for the season is 118% of normal.

A COMB Safety Committee has been assembled for the purpose of conducting quarterly facilities and project safety inspections; reviewing overall safety programs; and evaluating past and current safety records. This committee is a positive approach to moving ownership of everyday safety from management to the staff level. The final responsibility remains with management but improves involvement of staff. The initial inspection of facilities has been completed and the review of records and programs will begin in August.

COMB and CCRB are in the process of designing and instituting a geographic information system (GIS). We are in the process of collecting data from the field, assembling in-house documents, collecting information from outside agencies, designing the overall architecture of the system, and imputing the information. This system will improve staff access to COMB documents, organize all documents geographically, facilitate better knowledge of facilities, and improve staff ability to locate underground facilities. This project is a work in progress and will continue over the next few years.

Through the reworking of drainage in Lauro Yard, staff found 50 feet of culvert that was severely corroded and in the process of failing. The replacement of this culvert required a large area of our lower yard to be excavated. With the area disturbed staff took the opportunity to improve inter-building communication by installing new communication conduits in the disturbed area. New water lines were also installed. Next month work will begin in-front of the main office building to rework drainage in this area.

Miscellaneous work completed this month includes:

- Lauro Debris Basin Dewatering
- Structure Rehabilitation Planning
- Blow-off Riser Piping Replacement Planning
- Operation & Welding Shop Remodel
- FEMA – Project Facilitation
- SCADA Cross-training
- CDMT Electrical

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Routine operation and maintenance activities attended to during the month also included:

- Sample water at North Portal Intake Tower
- Complete Maintenance Management Program work orders
- Read anode rectifiers and monitor cathodic protection systems
- Monitor conduit right-of-way and respond to Dig Alert reports
- Read piezometers and underdrains at Glen Anne, Lauro and Ortega Dams
- Read meters, conduct monthly dam inspections, and flush venture meters



Brett Gray
Operations Supervisor

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CACHUMA OPERATION AND MAINTENANCE BOARD

MEMORANDUM

DATE: August 28, 2006
TO: Board of Directors
FROM: Kate Rees, Interim General Manager *KR*
RE: **Lauro Debris Basin Rehabilitation Project**

Recommendation:

That unexpended funds from FY 2005-2006 be allocated to the Lauro Debris Basin Rehabilitation Project during FY 2006-2007 using standard Cachuma entitlement percentages for the South Coast Member Units for preliminary design, environmental and permitting work.

Discussion:

The COMB FY 2006-2007 Budget was approved by the COMB Board at its June 26, 2006 meeting, with the exception of the Lauro Debris Basin Rehabilitation Project. Goleta Water District (GWD) was of the opinion that the standard Cachuma entitlement cost allocation formula for this project was not appropriate and should be calculated differently because it was a water quality project and of less benefit to GWD than the other south coast Member Units. CVWD, MWD and the City of Santa Barbara disagreed with GWD's position and were of the opinion that the project benefited all the south coast Member Units, so the cost should be allocated using the standard entitlement percentages.

At the July 24, 2006 meeting, the Board appointed an ad hoc committee to negotiate an equitable cost allocation for this project. The committee includes President Evans, Director Williams, and their respective managers, Kevin Walsh and Steve Mack. They will provide a verbal report to the Board about their preliminary discussions.

The Goleta Water District Board is not meeting until after the COMB Board meeting this month. So an in depth discussion and reconsideration of constructing the Lauro Debris Basin Project will be deferred until COMB's September 25th meeting.

It is anticipated that there will be approximately \$400,000 in unexpended funds from FY 2005-06. Because it is necessary to complete final engineering designs, environmental compliance and permitting for the project before construction can begin, or to be competitive for grant money, it is recommended that the Board allocate sufficient funds from unexpended FY 2005-2006 funds to complete this portion of the project. An estimated cost for these activities is attached. These funds were assessed using standard Cachuma entitlement percentages, so GWD would pay 40% of the cost.

Lauro Debris Basin Rehabilitation Project

Estimated Pre-Construction Costs

Engineering Design	\$22,000
CEQA Compliance	\$25,000
Permitting	5,000
Contingencies (10%)	<u>5,000</u>
Total	\$57,000

Estimated Construction Costs

2005 Estimated Construction	\$1,100,000
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***Note:** The estimated construction costs were provided by Flowers Engineering in 2005 based on preliminary estimates from three contractors. Therefore, staff was very comfortable with the 2005 estimate. The proposed cost in the FY 2006-07 budget maintained the 2005 construction cost estimate of \$1,100,000, albeit split over two years at \$550,000 per year. If the Board decides to begin construction on the project during FY 2006-07, that cost estimate needs to be reevaluated because construction costs have increased tremendously over the last year. If the project is delayed another year, the cost will further increase.*

KR.COMB/admin/board memos/082806_lauro debris basin.mmo

RESOLUTION NO. 450

A RESOLUTION OF THE CACHUMA OPERATION & MAINTENANCE BOARD DECLARING SUPPORT OF PROPOSITION 84, THE SAFE DRINKING WATER, WATER QUALITY AND SUPPLY, FLOOD CONTROL, RIVER AND COASTAL PROTECTION ACT OF 2006

WHEREAS, Proposition 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Act of 2006, will go before California voters on the November 2006 ballot; and

WHEREAS, if approved by voters, Proposition 84 would provide \$5.4 billion in funding for a wide range of water-and resources-related programs and projects throughout the state; and

WHEREAS, Proposition 84 would provide funding for local water agencies to carry out critical programs that will benefit all California water users, including \$525 million for projects to ensure safe drinking water and improve water quality around the state;

WHEREAS, Proposition 84 would provide \$1 billion for integrated regional water management efforts that will play a key role in meeting local and statewide needs for reliable water supplies, improved water quality and increased flexibility to deal with droughts, floods and other uncertain future conditions; and

WHEREAS, Proposition 84 would provide \$800 million for flood control projects and facilities to help protect communities and infrastructure from destructive floods; and

WHEREAS, Proposition 84 would provide \$65 million for statewide water planning activities to address climate change impacts, pursue surface storage studies and evaluate ways to better integrate groundwater and reservoir operations to improve flood protection and water supplies; and

WHEREAS, Proposition 84 would fund critical programs to protect the Bay-Delta ecosystem and ensure delivery of adequate Colorado River supplies for California, as well as coastal protection, forest and wildlife conservation and parks; and

WHEREAS, the measure would provide funding for virtually every one of the 12 actions outlined in ACWA's water policy document, "*No Time to Waste: A Blueprint for California Water*,"

NOW, THEREFORE BE IT RESOLVED that the Board of Directors of the Cachuma Operation & Maintenance Board formally supports Proposition 84 on the November 2006 ballot.

PASSED, APPROVED AND ADOPTED this 28th day of August 2006, by the following
vote:

AYES:

NAYES:

ABSENT/ABSTAIN:

President of the Board

ATTEST:

Secretary

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FYI

Kate Rees

From: Dan Keppen [kep@cvcwireless.net]
Sent: Monday, August 14, 2006 11:43 AM
To: 'Dan Keppen'
Subject: Reclamation Appoints Area Manager for South-Central California Area Office

Reclamation
Mid-Pacific Region
Sacramento, CA
MP-06-080

Media Contact: Jeffrey McCracken 916-978-5100
jmccracken@mp.usbr.gov

For Release On: August 14, 2006

Reclamation Appoints Area Manager for South-Central California Area Office

Mr. Michael Jackson has been selected to head the Bureau of Reclamation's South-Central California Area Office (SCCAO) in Fresno, California.

"Michael Jackson's expertise in working with stakeholders, his strong management skills, and his years of experience make him well-equipped to lead the South-Central California Area Office," said Kirk Rodgers, Regional Director for Reclamation's Mid-Pacific Region.

As Area Manager, Mr. Jackson is responsible for managing and directing a full range of program activities for an area encompassing the San Francisco Bay-Delta, San Joaquin Valley, and the south-coastal areas of Santa Barbara and Ventura Counties. SCCAO's program activities include a comprehensive operations and maintenance (O&M) program for the Central Valley Project's Friant Dam and Tracy Fish Collection Facility and the Cachuma Project's Bradbury Dam. Mr. Jackson is responsible for oversight of O&M contracts for 13 other dams and more than 275 miles of canals (ranging in capacity from 1,000-13,000 cubic feet per second) and water contracts for some 75 water districts and municipalities. The office oversees drainage-related water quality concerns in the San Joaquin Valley and also manages the implementation of several activities required under the Central Valley Project Improvement Act (Public Law 102-575).

Mr. Jackson became the SCCAO Deputy Area Manager in 1997. From 1995-1997, he served in Washington D.C. as the Mid-Pacific Regional Liaison and subsequently as the Reclamation Liaison, working with numerous Congressional representatives; stakeholders; and Department of the Interior, Reclamation, and other agency leadership. Mr. Jackson came to Reclamation in 1982 under the Rotation Engineer Program, serving in various offices to gain an understanding of the agency's mission. He replaces Mr. William "Bill" Luce, who retires from Reclamation this month after 32 years of service, the last 16 as the SCCAO Area Manager.

Mr. Jackson is a graduate of the University of the Pacific with a Bachelor of Science degree in Civil Engineering. He is also a registered Professional Engineer. He resides in Fresno and has a 12-year-old son.

#

Reclamation is the largest wholesale water supplier and the second largest producer of hydroelectric power in the United States, with operations and facilities in the

8/14/2006

17 Western States. Its facilities also provide substantial flood control, recreation, and fish and wildlife benefits. Visit our website at <http://www.usbr.gov>.

Dan Keppen