



# CITY OF SANTA BARBARA

## COUNCIL AGENDA REPORT

**AGENDA DATE:** August 2, 2016  
**TO:** Mayor and Councilmembers  
**FROM:** Water Resources Division, Public Works Department  
**SUBJECT:** Response To Grand Jury Report Regarding Lake Cachuma

**RECOMMENDATION:** That Council:

- A. Consider and adopt the findings and recommendations in a letter to the Honorable James Herman, Presiding Judge, Santa Barbara Superior Court (Attachment 1) as the City's response to the 2015-2016 Grand Jury report entitled "Lake Cachuma, Protecting a Valuable Resource, You Can't Drink Paper Water" (Attachment 2);
- B. Authorize the Mayor to sign the letter and forward the letter and responses to the Presiding Judge of Santa Barbara County Superior Court; and
- C. Determine, pursuant to the California Environmental Quality Act Guideline 15378(b)(5), that the above actions are not a project that is subject to the California Environmental Quality Act review, because they are organizational or administrative activities that will not result in direct or indirect physical changes to the environment.

### **DISCUSSION:**

This item is on the agenda in order to provide the City of Santa Barbara's response to the Grand Jury's report on Lake Cachuma.

On May 19, 2016, the Santa Barbara County Grand Jury (Grand Jury) released a report entitled "Lake Cachuma, Protecting a Valuable Resource, You Can't Drink Paper Water", which investigated the operation and agreement for the Cachuma Project and the distribution of water from Cachuma. The report concluded that the Grand Jury "found it difficult to unravel the complex web of water agencies, water contracts, water regulations, water purchases, water sales, water portfolios, and water management plan that are designed to supply a safe and secure water source to all people living on the South Coast. This report attempts to unravel portions of this web and to address those deemed most pressing and most able to be improved with a focus on the importance of Lake Cachuma."

Staff is recommending that Council consider the proposed response to the report, adopt their preferred response, and authorize the Mayor to sign the response letter. The City is required to respond in writing to the Presiding Judge of the Superior Court by August 17,

2016. The City is named as a responder to Findings 1-6 and 8-12, as well as Recommendations 1-6 and 8-12.

Background:

The Cachuma Project was constructed by the United States Bureau of Reclamation (Reclamation) between 1950 and 1956. The Santa Barbara County Water Agency (CWA) was established by the State Legislature for purposes of contracting with the federal government for both the Cachuma Project and a separate project called Twitchell Dam.

The CWA holds the master water supply contract with Reclamation for the Cachuma Project and, in turn, the CWA has subcontracts with each of the five Cachuma Member Units, which are the City of Santa Barbara, Goleta Water District, Montecito Water District, Carpinteria Valley Water District, and the Santa Ynez River Water Conservation District, Improvement District No 1.

The master water supply contract between the CWA and Reclamation was last amended in 1995 for a 25-year term and will be up for renewal in 2020. The current contract states that the renewal process should be requested two years prior to its expiration. At the County Board of Supervisors meeting on July 12, 2016, CWA was authorized to initiate discussions with Reclamation for contract renewal.

As such, important issues are being raised for consideration in the next Cachuma contract renewal. Attachment 1 provides findings and recommendations found to be important by the Grand Jury, along with proposed responses from the City of Santa Barbara as required. Attachment 2 is the full Grand Jury report on Cachuma.

1. Special Instructions: As per Recommendation B, please forward the original signed letter and responses to the Presiding Judge of Santa Barbara Superior Court.
2. Please send a copy of the signed letter and copy of the minute order to Kelley Dyer, Water Supply Manager, City of Santa Barbara Public Works Department/Water Resources Division

**ATTACHMENT(S):** 1. Response from the City of Santa Barbara to the Presiding Judge of Santa Barbara County Superior Court  
2. 2015-2016 Grand Jury Report entitled "Lake Cachuma, Protecting a Valuable Resource, You Can't Drink Paper Water"

**PREPARED BY:** Kelley A. Dyer, Water Supply Manager/KD/mh

**SUBMITTED BY:** Rebecca J. Bjork, Public Works Director

**APPROVED BY:** City Administrator's Office

City of Santa Barbara  
Response to the Santa Barbara County Grand Jury 2015-2016 Report  
“Lake Cachuma, Protecting a Valuable Resource, You Can’t Drink Paper Water”

**FINDING 1**

Siltation is continuing to decrease the storage capacity and the safe yield of Lake Cachuma as defined in *United States Department of the Interior; Bureau of Reclamation, Cachuma Project, California, Contract Between the United States and Santa Barbara County Water Agency Providing for Water Service from the Project, 1995*.

The City agrees with the finding.

**Recommendation 1**

That the safe yield from Lake Cachuma as defined in the *United States Department of the Interior; Bureau of Reclamation, Cachuma Project, California, Contract Between the United States and Santa Barbara County Water Agency Providing for Water Service from the Project, 1995*, be recalculated and used in the new master contract between the United States Bureau of Reclamation and the Santa Barbara County Water Agency, taking into account lost storage capacity due to siltation.

The City agrees that the safe yield should be recalculated for use in the new master contract between the United States Bureau of Reclamation and the Santa Barbara County Water Agency, taking into account lost storage capacity due to siltation. The Santa Barbara County Water Agency has initiated an updated analysis of the Cachuma safe yield. The current work effort is halted pending a potential redefinition of the critical drought period which depends on the duration of the current drought, and with the understanding that the severity and duration of the current drought is extremely important for evaluation of the Cachuma safe yield. With the current Cachuma Project contract expiring in 2020, it is expected that the safe yield analysis and report will be completed in time for a new master contract.

The City would also like to recommend that the Bureau, in conjunction with other agencies, develop a long-term strategy to minimize sedimentation (e.g. both watershed management and sediment removal strategies). The Zaca fire resulted in significant sediment loading and loss of storage capacity in Gibraltar reservoir as well as Cachuma reservoir. To protect our water resources, the City supports sediment management in the Cachuma watershed as part of its adopted 2011 Long Term Water Supply Plan policies.

Finally, the City would like to clarify that Project Yield includes storage at Lake Cachuma, plus groundwater inflows to Tecolote Tunnel, and this should be accounted for in the safe yield analysis. The City recommends that the Bureau distribute costs to member units proportional to the supply benefits they are allocated. Currently, only the South Coast member units are paying for the costs to operate and maintain the Tecolote Tunnel, even though all five Cachuma member units receive allocations from its water supply yield.

**FINDING 2**

Downstream water rights are protected in the *United States Department of the Interior, Bureau of Reclamation, Cachuma Project, California, Contract Between the United States and Santa Barbara County*

*Water Agency Providing for Water Service from the Project, 1995* and must be considered when calculating the safe yield.

The City agrees with the finding.

## **Recommendation 2**

That the new master contract between the United States Bureau of Reclamation and the Santa Barbara County Water Agency must continue to emphasize the importance of downstream water rights and be used in the calculations of the safe yield.

The City agrees with this recommendation.

The City also recommends the following considerations for the safe yield:

1. The new master contract must also emphasize the importance of the Settlement Agreement between the Cachuma Conservation Release Board, Santa Ynez River Water Conservation District, Santa Ynez River Water Conservation District Improvement District No. 1, and the City of Lompoc. The Settlement Agreement was adopted in 2002, although there are certain portions of the Settlement Agreement that do not go into effect until a pending Water Rights Order for the Cachuma Project is issued by the State Water Resources Control Board. Such portions of the Settlement Agreement include a clause in which Cachuma Member agencies receive “drought credits”, whereby the inflows during droughts are shared between downstream water rights holders and Cachuma Member units. Because the Water Rights Order has not been issued, all applicable inflows during a drought have been credited to downstream water rights holders, and the Cachuma Members have not received any “drought credits”.

The City recommends that all parties to the Settlement Agreement implement the terms in good faith and that all portions of the Settlement Agreement, including “drought credits” to Cachuma Member Units, be considered in the safe yield calculation.

2. The City also recommends that “bank storage” be included as part of Bureau of Reclamation’s Cachuma Project storage. Bank storage is water stored in the soil underlying the reservoir footprint and drains into the reservoir as water levels drop. As water levels in the reservoir rise, the water once again saturates the sediments underlying the reservoir and is stored by the Project.

Pursuant to all pertinent permits and agreements, inflows to Cachuma that are considered flood flows are credited to Cachuma Member Units. Since water in bank storage was captured during flood flow events, there should be consideration that water in bank storage is Project Water available to the Cachuma Member Units. Under current methods, the bank storage is automatically credited to downstream water rights without regard for flood flow conditions that contribute to bank storage.

An example of this occurred during downstream water releases in August-September 2015. During this time, the calculated inflow to Cachuma doubled from about 450 acre-feet in July to about 1,000 acre-feet in August. Because there were no significant rain events, the increased inflow was from

bank storage draining to the reservoir, and the entire inflow was credited to downstream water rights under current methods.

The City recommends that the Bureau of Reclamation consider inclusion of bank storage as part of the Cachuma Project storage, given that bank storage consists of water captured during flood flows and is available for use during droughts.

### **FINDING 3**

The *United States Department of the Interior; Bureau of Reclamation, Cachuma Project, California, Contract Between the United States and Santa Barbara County Water Agency Providing for Water Service from the Project, 1995*, was written prior to the 2000 National Marine Fisheries Service Biological Opinion and does not include the requirement to release water under the auspices of the Endangered Species Act.

The City agrees with the finding.

### **Recommendation 3a**

That the new master contract between the United States Bureau of Reclamation and the Santa Barbara County Water Agency include the required water releases for the protection of fish habitat under the 2000 National Marine Fisheries Service Biological Opinion.

The City does not agree that the new master water supply contract include language requiring water releases for fish habitat, since protection of fisheries is governed by the Federal Endangered Species Act, which is implemented by the United States Bureau of Reclamation. Language regarding required fish releases is neither warranted nor reasonable since the Cachuma Member Units are not the responsible parties to ensure compliance with the Federal Endangered Species Act. Rather, it is the Bureau of Reclamation’s responsibility to ensure compliance with the Biological Opinion under the Federal Endangered Species Act.

Furthermore, inclusion of terms for fish water releases in the master water supply contract is not reasonable, because the master water supply contract should not be the binding agreement that determines fish releases. As experienced in the current drought, the 2000 Biological Opinion did not contemplate certain conditions and required re-consultation efforts. Therefore, including language in water supply contracts would not allow the necessary flexibility and adaptability, should future re-consultation for fish habitat be required.

The City recommends that the best information available for required water releases for the protection of fish habitat needs to be considered in determining the available yield for water supply purposes and should be incorporated into the safe yield analysis being conducted by the Santa Barbara County Water Agency. If a revised Biological Opinion has not been released, the requirements from the 2000 Biological Opinion will serve as the best information available for the safe yield analysis.

### **Recommendation 3b**

That the new master contract between the United States Bureau of Reclamation and the Santa Barbara County Water Agency add language to include the amount of water that will be required to be released by the new Biological Opinion from the National Marine Fisheries Services when it is released.

The City does not agree that the new master water supply contract include language requiring water releases for fish habitat, since protection of fisheries is governed by the Federal Endangered Species Act which is implemented by the United States Bureau of Reclamation. Language regarding required fish releases is neither warranted nor reasonable, since the Cachuma Member Units are not the responsible parties to ensure compliance with the Federal Endangered Species Act. Rather, it is the Bureau of Reclamation’s responsibility to ensure compliance with the Biological Opinion under the Federal Endangered Species Act.

Furthermore, inclusion of terms for fish water releases in the master water supply contract is not reasonable, because the master water supply contract should not be the binding agreement that determines fish releases. As experienced in the current drought, the 2000 Biological Opinion did not contemplate certain conditions and required re-consultation efforts. Therefore, including language in water supply contracts would not allow the necessary flexibility and adaptability should future re-consultation for fish habitat be required.

The City recommends that the best information available for required water releases for the protection of fish habitat be considered in determining the available yield for water supply purposes, and it should be incorporated into the safe yield analysis that is conducted by the Santa Barbara County Water Agency. If a revised Biological Opinion has not been released, the requirements from the 2000 Biological Opinion will serve as the best information available for the safe yield analysis.

### **FINDING 4**

The 2011-2016 drought is far worse than the "design drought" of 1947-1952, used in the *United States Department of the Interior; Bureau of Reclamation, Cachuma Project, California, Contract Between the United States and Santa Barbara County Water Agency Providing for Water Service from the Project, 1995*, for Lake Cachuma.

The City agrees with this finding.

### **Recommendation 4**

That the new master contract between the United States Bureau of Reclamation and the Santa Barbara County Water Agency calculate new water entitlements for member units using the current 2011-2016 worst-case drought as its "design drought".

The City agrees with this finding. If the drought persists beyond 2016, the City recommends the new design drought be extended for a longer duration as well.

## **FINDING 5**

The *United States Department of the Interior, Bureau of Reclamation, Cachuma Project, California, Contract Between the United States and Santa Barbara County Water Agency Providing for Water Service from the Project, 1995*, extending from 1995 to 2020 (25 years) is too long a period and includes no review and revision clauses to recalculate the "safe yield" of the Cachuma Project.

The City partially disagrees with this finding. Water supply contracts often require extensive technical and legal resources and are costly and time consuming to renegotiate. However, the City agrees that, if a new 25-year water supply contract is executed, it should include clauses for periodic recalculation of the “safe yield”.

### **Recommendation 5a**

That the term of the new contract between the United States Bureau of Reclamation and the Santa Barbara County Water Agency be less than 25 years in length.

Because of the extensive resources and costs required to negotiate agreements, the City recommends a term of at least 25 years, with a clause that safe yield be revisited every 10 years, and recalculated only if new information becomes available that has the potential to significantly affect reservoir operations.

### **Recommendation 5b**

That the new contract between the United States Bureau of Reclamation and the Santa Barbara County Water Agency include periodic mandatory review and revision clauses on the order of every five or six years to recalculate the "safe yield" of Lake Cachuma and to make any other necessary contract changes.

The City supports periodic review and revision clauses to recalculate the “safe yield” and make any other necessary contract changes. However, the City understands that changes will only be made if there is new information available to update the contract.

## **FINDING 6**

Safe yield from Lake Cachuma in the current *United States Department of the Interior; Bureau of Reclamation, Cachuma Project, California, Contract Between the United States and Santa Barbara County Water Agency Providing for Water Service from the Project, 1995*, is based on a static volume per year.

The City agrees with this finding.

### **Recommendation 6**

That the new master contract between the United States Bureau of Reclamation and the Santa Barbara County Water Agency include a new safe yield in Year One after Lake Cachuma spills, and, in subsequent years, use either a sliding scale or specify mandatory reductions.

The City supports evaluation and review of alternative reservoir management strategies and encourages the Bureau and County to work with the member units to define operational objectives and evaluate alternatives.

The City would also encourage the Bureau to evaluate strategies that encourage storage of water in the reservoir that results from water conservation. Currently, all of the reservoir evaporative losses are allocated to carryover (water saved in the reservoir from conservation) and imported water storage. The City would like the Bureau to consider strategies that encourage storage of carryover and imported water and minimize loss of critical water supply to evaporation.

#### **FINDING 8**

Conservation policies and drought declarations differ from one member unit to another, possibly confusing water users.

The City agrees with this finding.

#### **Recommendation 8a**

That the member units, in conjunction with the Santa Barbara County Water Agency, create consistent policies and procedures that govern conservation efforts, especially during times of a severe drought, and that these are documented in the subcontracts between the Santa Barbara County Water Agency and the member units.

The City disagrees with this recommendation because it is neither warranted nor reasonable. Each of the member units is a separate legal entity, governed by an entity of specific members whose goals and policies may not be the same as those of the other member units. In addition, each entity has a unique customer base, service area characteristics, water supply portfolio, and water conservation program. Therefore, a one-size-fits-all approach will not be effective.

In cooperation with other agencies, the City works closely with the Santa Barbara County Water Agency on regional messaging, where there is overlap in water conservation programs and activities. The City is a sponsor of the WaterWise program ([www.waterwisesb.org](http://www.waterwisesb.org)) which provides a consistent regional brand for water conservation.

#### **Recommendation 8b**

That the policies and procedures in Recommendation 8a be announced to the community by all member units at the same time.

The City disagrees with this recommendation because it is neither warranted nor reasonable. Each of the member units is a separate legal entity, governed by an entity of specific members whose goals and policies may not be the same as those of the other member units. In addition, each entity has a unique customer base, service area characteristics, water supply portfolio, and water conservation program. Therefore, a one-size-fits-all approach will not be effective, since different agencies may need to take different actions.

In cooperation with other agencies, the City works closely with the Santa Barbara County Water Agency on regional messaging where there is overlap in water conservation programs and activities. The City is a sponsor of the WaterWise program ([www.waterwisesb.org](http://www.waterwisesb.org)), which provides a consistent regional brand for water conservation.

#### **FINDING 9**

The City of Santa Barbara has started to rebuild its desalination facility and has been in intermittent discussions with the Montecito Water District on sharing use of the facility.

The City agrees with this finding.

#### **Recommendation 9**

That the City of Santa Barbara and the Montecito Water District continue discussions on options that could optimize the desalination facility as a regional one.

The City supports the optimization of its desalination facility within the permitted capacity to the extent that excess water can be made available in the form of a water sales agreement.

#### **FINDING 10**

The Carpinteria Valley Water District no longer participates in the Cachuma Conservation Release Board, yet continues to reap the benefits of negotiations paid for by the remaining agencies.

The City agrees with this finding.

#### **Recommendation 10**

That the Carpinteria Valley Water District, as a benefitting party, rejoin and participate in the Cachuma Conservation Release Board.

The City would welcome the Carpinteria Valley Water District’s participation in the Cachuma Conservation Release Board, which was established to represent its members in protecting their water supply from the Cachuma Project or other related interests in which the member agencies have common interests.

#### **FINDING 11**

Member units approve new water service by issuing Can And Will Serve Letters, Intent To Serve Letters, water service availability documents or other documents, without expiration dates to citizens and developers.

The City disagrees with this finding. The City has a 2-year expiration on its Can and Will Serve Letters. If an applicant does not receive a building permit for their project within two years of the date of the Can and Will Serve Letter, the letter expires and the applicant must receive a new letter. During a drought emergency, the

City reserves the right to terminate the commitment before the two-year period after issuing the letter, as long as the applicant has not received their building permit.

### **Recommendation 11**

That all member units include expiration dates for their water service approval documents.

This recommendation is already standard practice for the City.

### **FINDING 12**

Member units utilize Can And Will Serve Letters, Intent To Serve Letters, water service availability documents, or other documents to grant new water services that are approved based on water availability during a "normal" year 's water supply.

The City disagrees with this finding. The City approves Can and Will Serve Letters, depending on whether the project is consistent with the City’s General Plan policies. Adoption of the City’s General Plan required an Environmental Impact Report that assessed water supply during droughts according with the City’s Long Term Water Supply Plan.

### **Recommendation 12**

That member units change their policies to begin approving new water service on the water available during a "worst case" drought year.

The City is already implementing this recommendation. The City approves Can and Will Serve Letters, depending on whether the project is consistent with the City’s General Plan policies. Adoption of the City’s General Plan required an Environmental Impact Report that assessed water supply during droughts, according with the City’s Long Term Water Supply Plan. In the City’s drought planning, the policy is for all customers to participate in planned demand reductions, given the costly expense of providing 100 percent water supply reliability during droughts.

The City’s Water Shortage Contingency Plan requires the City to consider suspension of development approvals. The City considered this issue in spring 2015, at the time of the Stage Three Drought declaration, and subsequently considered the suspension of development approvals again, in spring 2016. Based on the General Plan, the average annual demand from new development projects was found to represent 0.27 percent of the City’s total normal water demand, and 0.41 percent of the City’s current annual drought water demand. Because the City’s service area is mostly developed, many projects are redevelopment projects that are required to install drought tolerant landscaping and efficient indoor plumbing fixtures, in order to help meet long-term water conservation goals.

Given that the community has been consistently meeting or exceeding this required demand reduction of 35 percent through other measures, suspension of development approvals is not necessary for the City of Santa Barbara at this time. The City continues to monitor water supply and demand closely and will re-consider suspension of development approvals as needed.