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STATE OF CALIFORNIA

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WATER RESOURCES CONTROL BOARD

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In re: Application Nos. 5632, 15204 &
15574)
12 Permit Nos. 15026, 15027 & 15030

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YUBA COUNTY WATER
14 AGENCY'S PETITION FOR
MODIFICATION AND FOR
15 LONG-TERM TRANSFER OF UP
TO 200,000 ACRE-FEET PER
16 YEAR

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) CORDUA IRRIGATION
) DISTRICT'S BRIEF IN
) OPPOSITION TO YUBA COUNTY
) WATER AGENCY'S PETITION FOR
) MODIFICATION OF WATER
) RIGHTS PERMITS AND PETITION
) FOR LONG-TERM TRANSFER OF
) UP TO 200,000 ACRE-FEET PER
) YEAR (Cal. Code Regs., Title 23,
) §791(e)

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I. INTRODUCTION.

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The State Water Resources Control Board's (hereafter "SWRCB") inclusion of language in Decision 1644 on pages 110 and 111 relating to waterfowl habitat and farming use for straw deterioration has now been clarified by the Chairman's letter of November 7, 2007. The language of that letter clarifying the meaning and role of that language must be included in the Decision in order to assure that the approval of transfers will not violate Section 5.2 of the Yuba County Water Agency (hereafter "YCWA") Act and that Water Code Section 1736 will be complied with.

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The SWRCB should include a condition suspending, until further SWRCB approval is given, YCWA's transfer approval of up to 200,000 acre-feet per year for ten (10) years if dewatered groundwater storage is in excess of levels experienced in North Yuba County in the

1 Fall of 1991. The evidence is clear that no mandatory limits are placed on groundwater pumping
2 by the terms of the purchase agreements by the Department of Water Resources (hereafter
3 “DWR”) and the U.S. Bureau of Reclamation (hereafter “Bureau”) and no mandatory
4 mechanism is in place to protect groundwater and to protect those users of groundwater who
5 have no supplies of surface water in the North Subbasin of Yuba County, including
6 approximately 10,000 acres of orchards and rural residences totally dependent upon wells. The
7 SWRCB should show true leadership and prevent conditions which will be blamed on the
8 SWRCB and set back conjunctive use of groundwater as a source of transfers for decades.

9 **II. DISCUSSION ISSUE NO. 1: THE CHAIRMAN OF THE SWRCB HAS**
10 **DOCUMENTED THE MEANING AND PURPOSE OF THE DISCUSSION AT**
11 **PAGES 110 AND 111 OF DECISION 1644. THE DECISION IN THIS**
12 **PROCEEDING SHOULD INCLUDE THAT EXPLANATION AND PROVIDE**
13 **FOR THE FULL BOARD TO ADOPT THAT EXPLANATION.**

14 Decision 1644 includes on pages 110 and 111 language which refers to usage of water for
15 waterfowl and wildlife habitat and farming uses such as straw decomposition to prepare the land
16 for the upcoming crop year. That language refers to a total use of one (1) acre-foot per acre for
17 the months of October, November and December and states in part, “. . . however, the SWRCB
18 concludes that the reasonable use of water for waterfowl habitat should not exceed an average of
19 1.0 acre foot per acre as assumed in the water demand analysis prepared by the YCWA
20 consultants, plus 10 percent for conveyance losses . . .” Cordua Irrigation District (hereafter
21 “CORDUA”) pointed out that approval of a transfer and approval of fish flows which would
22 result in limitations to this amount of water use in Yuba County would violate the requirement
23 that transfers not be approved unless sufficient water remains available for waterfowl and farming
24 uses under Water Code Section 136 and Section 5.2 of the Yuba County Water Agency Act
25 (Section 9407 of Uncodified Act).

26 On November 7, 2007, the Chairman of the SWRCB wrote:

27 The relevance of Cordua’s proposed testimony apparently relies on
28 the assumption that RD 1644 created an enforceable limit on what
amount of water may be reasonably and beneficially used for

1 waterfowl habitat and rice straw decomposition north of the Yuba
2 River. This assumption is incorrect. The language explains our
3 usage estimates. Nothing in RD 1644 established a limit on these
4 uses, or mandates a reduction in use. The order portions of RD
5 1644 do not address the issue. The discussion on page 110-111 is
6 solely for the purpose of estimating YCWA's overall water needs,
7 and does not amount to any kind of mandate that water use be
8 limited in accordance with those assumptions. [emphasis added]

9 The language of the Chairman's letter explaining that the discussion is not a finding as to
10 the limit of reasonable and beneficial water use for waterfowl and farming purposes between
11 October 1 and December 31 of each year and that the language of Decision 1644 was only a
12 usage estimate not a finding of limits of reasonable and beneficial use should be included within
13 this Decision and, in fact, must be included as it was on this basis that evidence was unnecessary
14 and not presented.

15 **III. DISCUSSION ISSUE NO. 2: THE TRANSFER PETITION AND EIR/EIS CAN**
16 **ONLY BE APPROVED BY THE SWRCB IF IT CAN FIND THAT FOR THE**
17 **FULL TEN (10) YEAR TERM THE REQUIREMENTS OF LAW WILL BE MET.**
18 **FOR BOTH PUBLIC POLICY AND LEGAL SUFFICIENCY PURPOSES, THE**
19 **SWRCB SHOULD INCLUDE IN ITS ORDER A CONDITION THAT**
20 **APPROVAL OF TRANSFERS WILL TERMINATE DURING THE TEN (10)**
21 **YEAR PERIOD AND A FURTHER HEARING WILL BE REQUIRED IF**
22 **GROUNDWATER STORAGE IN THE AREA NORTH OF THE YUBA RIVER**
23 **FALLS BELOW THE FALL 1991 LEVELS OF DEWATERED GROUNDWATER**
24 **STORAGE.**

25 The SWRCB is vested with the power and the duty, in considering approval of a long-
26 term transfer under Water Code section 1736, . . ." and is required to find that a transfer would
27 not result in substantial injury to any legal user of water and would not unreasonably affect fish,
28 wildlife or other instream beneficial uses." Section 5.2 of the YCWA Act (Uncodified section
9407) requires that transfers not occur unless they ". . . will occur without unreasonably affecting
the overall economy of the area from which water is to be transferred." The evidence is that a
substantial portion of the agricultural use of water north of the Yuba River between the Union

1 Pacific Railroad and the Feather River is solely groundwater. In addition, the whole of the City
2 of Marysville is dependent on groundwater and a substantial population of rural residential
3 homes stretching from Marysville and through to Browns Valley are dependent on groundwater
4 in this area, yet the transfer proposal does not contain a condition requiring that groundwater
5 levels and quantities be maintained and transfers cease, be suspended, or subject to further
6 review by the SWRCB, or be reduced, if those protective levels are exceeded. In 1991, a plan
7 was conceived to pump groundwater within this area for transfer. Transfer pumping of
8 approximately 29,300 acre-feet occurred north of the Yuba River (Figure 6-17) and groundwater
9 storage was depleted by a like amount (Figure 6-16). The North Subbasin has an estimated
10 recharge rate of 11,000 acre-feet per annum (Page 6-41). Obviously, pumping for transfer
11 should have some limits.

12 CORDUA is located in the North Subbasin and attempted to restrict its questioning and
13 will restrict this Brief to the conditions in the North Subbasin. The questioning of DWR
14 representatives evidenced that there is nothing in the Water Purchase Agreements, nor any
15 mechanisms to require good judgment and discipline on the part of the YCWA, DWR and the
16 State and Federal Contractors desirous of the water. Without a firm "do not exceed" figure
17 where the SWRCB approval for long-term transfers is suspended until further hearings of the
18 Board or the groundwater storage levels rise, the inevitable damage to local users seen in other
19 groundwater basins will occur. YCWA is interested in money for its projects of levees and other
20 general purposes. Unless the SWRCB establishes points at which its approval of a long-term
21 transfer is in jeopardy, there is no deterrence and those decision-makers have absolutely no
22 motivation to do anything except hope for a wet year and plentiful recharge in the future.

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24 Conjunctive use, to be successful as a basis for transfers, requires care and discipline. If
25 the voters detect a lack of those elements, a groundwater ordinance prohibiting groundwater
26 pumping for transfers could be imposed in Yuba County. Without SWRCB oversight, the
27 SWRCB will sentence Yuba County to the same regulatory purgatory adopted by local voters
28 regarding conjunctive use that afflicts counties both north and south of Yuba County who have

1 experienced turning loose the decision-makers to make money with well pumping.

2 The SWRCB language implementing that condition, and included in the order, should
3 state:

4 “Condition 1: If during the period of November 1 through December 1,
5 the monitoring wells maintained by the DWR and YCWA in the North
6 Subbasin show a generalized decline in groundwater storage equal to or
7 greater than the levels of dewatered storage experienced in the same fall
8 period in 1991 within the area, the authority of YCWA to transfer further
9 amounts of water pursuant to this order shall be suspended. The authority
10 may be reinstated by (1) the conduct of a further hearing and further order
11 of the Board or (2) submission of evidence that dewatered groundwater
12 storage in the North Subbasin has returned to levels which with the
13 proposed groundwater pumping in the following water year would not
14 result in dewatered storage in the North Subbasin in excess of the amount
15 of dewatered storage experienced in the fall of 1991.

16 Condition 2: If an ordinance is adopted applicable to groundwater
17 pumping for the purposes of transfer in Yuba County during the term of
18 this transfer approval, the approval of transfers contained herein shall be
19 suspended until the Board can review and reconsider the terms of this
20 order.”

21 These conditions will serve to:

22 (1) avoid exploitation of groundwater in such a fashion that those landowners and
23 residents of North Yuba County may in fact be deprived of access to economic and plentiful
24 groundwater without being required to deepen and increase the capacity of wells or worse, go
25 without needed water;

26 (2) require the decision-makers of the YCWA and Member Units and the ultimate users
27 to focus not upon money available and sustainable groundwater use now, but money available on
28 a long-term basis;

(3) avoid the usual disjunctive decision-making process in which abuses occur, the
SWRCB gets blamed for not controlling or limiting the discretion of local water officials and
then ordinances or initiatives are passed which prevent all reasonable conjunctive use for transfer
purposes and prevent groundwater pumping within reasonable ranges; and

(4) require the recipients of transfer water south of the Delta to understand that if the
water is pumped from the underground in multiple years of drought and purchased, when the
worst drought year comes it will not be available for transfer but will be available only for the

1 local uses as required under Water Code section 1736 and section 5.2 of the YCWA Act.

2 **IV. CONCLUSION.**

3 The SWRCB seems often to be placed on the sidelines. Why it would allow the
4 “negotiators” to establish a blanket transfer of up to 200,000 acre-feet for ten (10) years with the
5 volumes of estimated or possible groundwater pumping set forth on 4-97 and 4-96 of the EIR
6 responses (attached for the convenience of the Board), which in the period of 1987 through 1992
7 would have exceeded 350,000 acre-feet in the North and South Basins (when the six (6) year
8 estimated recharge for both basins of 30,000 acre-feet per year, or only 180,000 (EIR p. 6-33)
9 would occur) points out the importance of the Board becoming engaged and maintaining, as the
10 Chairman stated, “enforceability”. The statutory requirements are that the local uses and
11 availability of groundwater for local uses may not be impaired during the ten (10) year period,
12 yet YCWA and the exporters, DWR, Bureau and the purchasers (agricultural users south of the
13 Delta) seem incapable of suggesting what criteria should be applied to prevent the often-proven
14 habit to overdraft groundwater basins for economic gain. Those purchasers and the YCWA
15 should not be allowed to place the SWRCB on the sidelines and leave the decision-making to
16 them. The law does not permit this. The SWRCB should come off of the sidelines by
17 incorporating the suggested language in its order.

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DATED: December 20, 2007.

Respectfully submitted,
MINASIAN, SPRUANCE,
MEITH, SOARES & SEXTON, LLP

By 
PAUL R. MINASIAN, Attorney for
CORDUA IRRIGATION DISTRICT

Table LA2-1. Estimates of Annual Groundwater Pumping During 1922-1994 Hydrological Conditions (continued)

| Water Year | Yuba River Index Year Type | North Yuba Index | Groundwater Pumping Volumes (AF) | | | | Total Pumping |
|-----------------------------------|----------------------------|------------------|--|--|------------------------------|-------------|---------------|
| | | | For Local Surface-Water Delivery Shortages | Component 2 and 3 for Schedule 6 Requirement | Additional Component 2 and 3 | Component 4 | |
| 1962 | Below Normal | 2 | 0 | 0 | 0 | 0 | 0 |
| 1963 | Wet | 1 | 0 | 0 | 0 | 0 | 0 |
| 1964 | Below Normal | 2 | 0 | 0 | 66,195 | 23,805 | 90,000 |
| 1965 | Wet | 1 | 0 | 0 | 0 | 0 | 0 |
| 1966 | Below Normal | 2 | 0 | 0 | 0 | 0 | 0 |
| 1967 | Wet | 1 | 0 | 0 | 0 | 0 | 0 |
| 1968 | Below Normal | 2 | 0 | 0 | 0 | 0 | 0 |
| 1969 | Wet | 1 | 0 | 0 | 0 | 0 | 0 |
| 1970 | Wet | 1 | 17,934 | 0 | 0 | 0 | 17,934 |
| 1971 | Wet | 1 | 2,375 | 0 | 0 | 0 | 2,375 |
| 1972 | Below Normal | 2 | 0 | 0 | 0 | 0 | 0 |
| 1973 | Above Normal | 1 | 0 | 0 | 0 | 0 | 0 |
| 1974 | Wet | 1 | 0 | 0 | 0 | 0 | 0 |
| 1975 | Wet | 1 | 0 | 0 | 0 | 0 | 0 |
| 1976 | Extremely Critical | 5 | 0 | 0 | 66,178 | 23,822 | 90,000 |
| 1977 | Extremely Critical | 7 | 120,000 | 0 | 0 | 0 | 120,000 |
| 1978 | Above Normal | 1 | 50,538 | 0 | 0 | 0 | 50,538 |
| 1979 | Below Normal | 2 | 0 | 0 | 0 | 0 | 0 |
| 1980 | Wet | 1 | 0 | 0 | 0 | 0 | 0 |
| 1981 | Dry | 3 | 0 | 0 | 15,000 | 75,000 | 90,000 |
| 1982 | Wet | 1 | 0 | 0 | 0 | 0 | 0 |
| 1983 | Wet | 1 | 0 | 0 | 0 | 0 | 0 |
| 1984 | Wet | 1 | 0 | 0 | 0 | 0 | 0 |
| 1985 | Below Normal | 2 | 0 | 0 | 15,000 | 53,063 | 68,063 |
| 1986 | Wet | 1 | 0 | 0 | 0 | 0 | 0 |
| 1987 | Critical | 4 | 0 | 0 | 54,612 | 35,388 | 90,000 |
| 1988 | Extremely Critical | 6 | 0 | 30,000 | 30,000 | 0 | 60,000 |
| 1989 | Below Normal | 2 | 0 | 0 | 30,000 | 0 | 30,000 |
| 1990 | Dry | 3 | 0 | 0 | 0 | 90,000 | 90,000 |
| 1991 | Critical | 4 | 0 | 0 | 52,801 | 7,199 | 60,000 |
| 1992 | Extremely Critical | 6 | 0 | 30,000 | 0 | 0 | 30,000 |
| 1993 | Above Normal | 1 | 0 | 0 | 0 | 0 | 0 |
| 1994 | Critical | 0 | 0 | 0 | 0 | 0 | 0 |
| Average of All Years (AF): | | | 3,701 | 1,233 | 12,519 | 10,576 | 28,029 |

Table LA2-1. Estimates of Annual Groundwater Pumping During 1922-1994 Hydrological Conditions

| Water Year | Yuba River Index Year Type | North Yuba Index | Groundwater Pumping Volumes (AF) | | | | |
|------------|----------------------------|------------------|--|--|------------------------------|-------------|---------------|
| | | | For Local Surface-Water Delivery Shortages | Component 2 and 3 for Schedule 6 Requirement | Additional Component 2 and 3 | Component 4 | Total Pumping |
| 1922 | Wet | 1 | 0 | 0 | 0 | 0 | 0 |
| 1923 | Above Normal | 1 | 0 | 0 | 0 | 0 | 0 |
| 1924 | Extremely Critical | 5 | 54,631 | 0 | 37,017 | 20,931 | 112,578 |
| 1925 | Below Normal | 2 | 7,422 | 0 | 30,000 | 0 | 37,422 |
| 1926 | Below Normal | 2 | 0 | 0 | 30,000 | 0 | 30,000 |
| 1927 | Wet | 1 | 0 | 0 | 0 | 0 | 0 |
| 1928 | Above Normal | 1 | 0 | 0 | 0 | 0 | 0 |
| 1929 | Dry | 4 | 0 | 0 | 69,547 | 20,453 | 90,000 |
| 1930 | Below Normal | 2 | 0 | 0 | 55,000 | 5,000 | 60,000 |
| 1931 | Extremely Critical | 6 | 15,175 | 30,000 | 0 | 0 | 45,175 |
| 1932 | Below Normal | 2 | 2,062 | 0 | 54,000 | 0 | 56,062 |
| 1933 | Dry | 3 | 0 | 0 | 64,512 | 25,488 | 90,000 |
| 1934 | Extremely Critical | 5 | 0 | 0 | 17,969 | 18,031 | 36,000 |
| 1935 | Above Normal | 2 | 0 | 0 | 0 | 0 | 0 |
| 1936 | Above Normal | 1 | 0 | 0 | 0 | 0 | 0 |
| 1937 | Above Normal | 2 | 0 | 0 | 0 | 0 | 0 |
| 1938 | Wet | 1 | 0 | 0 | 0 | 0 | 0 |
| 1939 | Dry | 4 | 0 | 0 | 55,000 | 35,000 | 90,000 |
| 1940 | Above Normal | 1 | 0 | 0 | 0 | 0 | 0 |
| 1941 | Wet | 1 | 0 | 0 | 0 | 0 | 0 |
| 1942 | Wet | 1 | 0 | 0 | 0 | 0 | 0 |
| 1943 | Wet | 1 | 0 | 0 | 0 | 0 | 0 |
| 1944 | Below Normal | 2 | 0 | 0 | 42,627 | 47,373 | 90,000 |
| 1945 | Above Normal | 1 | 0 | 0 | 0 | 0 | 0 |
| 1946 | Above Normal | 1 | 0 | 0 | 0 | 0 | 0 |
| 1947 | Dry | 2 | 0 | 0 | 1,792 | 88,208 | 90,000 |
| 1948 | Above Normal | 2 | 0 | 0 | 0 | 0 | 0 |
| 1949 | Below Normal | 2 | 0 | 0 | 0 | 90,000 | 90,000 |
| 1950 | Above Normal | 1 | 0 | 0 | 0 | 0 | 0 |
| 1951 | Wet | 1 | 0 | 0 | 0 | 0 | 0 |
| 1952 | Wet | 1 | 0 | 0 | 0 | 0 | 0 |
| 1953 | Wet | 1 | 0 | 0 | 0 | 0 | 0 |
| 1954 | Above Normal | 1 | 0 | 0 | 0 | 0 | 0 |
| 1955 | Dry | 3 | 0 | 0 | 52,999 | 37,001 | 90,000 |
| 1956 | Wet | 1 | 0 | 0 | 0 | 0 | 0 |
| 1957 | Above Normal | 1 | 0 | 0 | 0 | 0 | 0 |
| 1958 | Wet | 1 | 0 | 0 | 0 | 0 | 0 |
| 1959 | Dry | 3 | 0 | 0 | 0 | 0 | 0 |
| 1960 | Below Normal | 2 | 0 | 0 | 73,743 | 16,257 | 90,000 |
| 1961 | Critical | 3 | 0 | 0 | 0 | 60,000 | 60,000 |

1 **PROOF OF SERVICE**

2 I, **DENISE M. FORDE**, declare that:

3 I am employed with the law firm of MINASIAN, SPRUANCE, MEITH, SOARES &
4 SEXTON, LLP, whose address is 1681 Bird Street, Post Office Box 1679, Oroville, California
5 95965-1679. I was, at the time of service hereinafter mentioned, over the age of 18 years and not
6 a party to the below-entitled cause.

7 On **December 26, 2007**, I served the within **CORDUA IRRIGATION DISTRICT**
8 **BRIEF IN OPPOSITION TO YUBA COUNTY WATER AGENCY'S PETITION FOR**
9 **MODIFICATION OF WATER RIGHTS PERMITS AND PETITION FOR LONG-TERM**
10 **TRANSFER OF UP TO 200,000 ACRE-FEET PER YEAR** on the following by one of the
11 following methods:

12 ☒ Via e-mail transmission to the following persons at the electronic address indicated:

13 Ernie Mona, Hearings and Special Projects Section
14 State Water Resources Control Board
15 emona@waterboards.ca.gov

16 Yuba County Water Agency
17 C/O Alan B. Lilly, Esq.
18 abl@bkslawfirm.com

19 United States Bureau of Reclamation
20 Ray Sahlberg, R. Colella
21 rsahlberg@mp.usbr.gov
22 rcolella@mp.usbr.gov

23 California Department of Water Resources
24 Cathy Crothers
25 ccrothers@water.ca.gov

26 Westlands Water District
27 Jon D. Rubin
28 jrubin@diepenbrock.com

The San Luis & Delta-Mendota Water Authority
Jon D. Rubin
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State Water Contractors and
Kern County Water Agency
Clifford W. Schulz
cschulz@kmtg.com

Anglers Committee / Bob Baiocchi
rbaiocchi@gotsky.com

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1 ☒ Placing for collection and deposit in the United States mail a copy/copies of the
2 documents(s) at: MINASIAN, SPRUANCE, MEITH, SOARES & SEXTON, LLP, in
3 Oroville, Butte County, California in a sealed envelope, with postage fully prepaid,
4 addressed to:

5 **Curt Aikens, General Manager**
6 **Yuba County Water Agency**
7 **1220 F Street**
8 **Marysville, CA 95901**

9 **Alan B. Lilly, Esq.**
10 **Bartkiewicz, Kronick & Shanahan**
11 **1011 22nd Street**
12 **Sacramento, CA 95816-4907**

13 I am familiar with the practice of MINASIAN, SPRUANCE, MEITH, SOARES & SEXTON,
14 LLP for the collection and processing of correspondence for mailing with the United States
15 Postal Service. In accordance with the ordinary course of business, the above-mentioned
16 document(s) would have been deposited with the United States Postal Service on **December**
17 **26, 2007**, the same day on which it/they were placed at MINASIAN, SPRUANCE, MEITH,
18 SOARES & SEXTON, LLP for deposit.
19

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct and that this declaration is executed on **December 26, 2007**, at
22 Oroville, California.
23

24 _____
25 DENISE M. FORDE
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27
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