

State of California

Before the State Water Resources Control Board

**Yuba River Project FERC No. 2246, Federally Licensed Hydroelectric Project
Yuba County Water Agency, Licensee**

**California Aqueduct Project No. 2426 (state pumps et al), Federally Licensed
Hydroelectric Project
California Department of Water Resources, Licensee**

**Central Valley Project (Tracy Pumps et al)
United States Bureau of Reclamation**

Petition to Modify Water Rights Permits 15026, 15027, and 15030

And

**Petition for Long Term Transfer of up to 200,000 Acre-feet of the People's
Water From Yuba County Water Agency to the California Department of Water
Resources and the United States Bureau of Reclamation under Permit 10506**

**Yuba River Watershed thence Feather River thence Sacramento River thence Delta
Estuary thence California Aqueduct Project thence the Central Valley Project**

State of California

**In the Matter of Hearing of December 5, 2007 Before the State Water Resources
Control Board**

Closing Brief by the Anglers Committee

The SWRCB Hearing For Said Petitions and Proposed Water Transfer

**The California State Water Resources Control Board held a hearing for said
petitions shown above on December 5, 2007. The Anglers Committee is a formal
protestant for the subject petitions. Dr. Henry H. Smith attended the hearing
representing the Anglers Committee, and he conducted cross-examination of
witnesses. The following is the closing brief of the Anglers Committee.**

California State Water Resources Control Board

**The State Water Resources Control Board (hereinafter known as "SWRCB") is a
state regulatory agency that held a hearing for the above shown petitions. The**

hearing was held on December 5, 2007. The decision whether to approve the petitions is to be decided by five members of the SWRCB. The five members of the SWRCB are political appointees that were selected by the Governor of California. The Hearing Officer is one of the members of the SWRCB.

The Anglers Committee believes that the SWRCB has a duty and responsibility to comply with all state and federal statutes, including the duty and responsibility to protect the people's public trust resources and assets from harm in all water right decisions and orders. In this instant case, the people's public trust assets are: (1) water; (2) water quality; (3) Delta Smelt species and their habitat; (4) Delta Estuary; (5) endangered and threatened Central Valley anadromous fish species and their habitat protected under the federal ESA; (6) Other Central Valley anadromous fish species not listed for protection under the federal ESA (7) Striped bass and their habitat; (8) All fish species and their habitat; and (9) public recreation in the state's waters of New Bullards Bar Reservoir.

Standing

The Anglers Committee filed a formal protest against said petitions in accordance with state statutes and regulations established for formal protests to be filed by any member of the public. The staff of the SWRCB accepted the formal protest by the Anglers Committee. However, Hearing Officer Baggett challenged the formal protest and required an explanation of the formal protest. Bob Baiocchi of the Anglers Committee provided Hearing Officer Baggett with a written explanation and reasons for their formal protest. Hearing Officer Baggett accepted the formal protest by the Anglers Committee. Dr. Henry Smith attended the hearing and cross-examined witnesses. Dr. Smith is not an attorney.

YCWA did not make an effort as the petitioner to consult with the Anglers Committee in an attempt to resolve the formal protest.

The Anglers Committee is part owners of the public trust resources and assets of the Yuba River Watershed and the Delta Estuary. The purpose of the formal protest by the Anglers Committee was to request and require the SWRCB to carry out state statutes and comply with federal statutes to protect the people's public trust fisheries resources and assets of the Yuba River Watershed and the Delta Estuary.

Yuba County Water Agency

The Yuba County Water Agency (hereinafter known as "YCWA") is the petitioner for said petitions. The YCWA is also the licensee of the Yuba River Project No. 2246, which is licensed with the Federal Energy Regulatory Commission. YCWA operates the project under a federal license issued by the Federal Energy Regulatory Commission, pursuant to the provisions of the Federal Power Act. Failure to comply with the terms and conditions of its FERC license and also the Federal Power Act may result in fines up to \$10,000 per day.

California Department of Water Resources

The California Department of Water Resources (hereinafter known as “CDWR”) manages the State Water Project for the benefit of the State Water Contractors. The CDWR is also the licensee of the California Aqueduct Project No. 2426, which is licensed with the Federal Energy Regulatory Commission. CDWR operates the project under a federal license issued by the Federal Energy Regulatory Commission, pursuant to the provisions of the Federal Power Act. Failure to comply with the terms and conditions of its FERC license and also the Federal Power Act may result in fines up to \$10,000 per day.

The CDWR will receive part of the people’s water diverted at the California Aqueduct Project 2426 (aka State Pumps) under said petitions for the long-term transfer of the people’s water for the benefits of some of the State Water Contractors.

The hearing record may not show, but public records clearly show the State Water Project and the California Aqueduct Project (aka State Pumps) has adversely affected the public trust environment of the Delta Estuary and the trust assets that the Delta Estuary supports such as Delta Smelt and their habitat, and other fish species entrained and harmed at the State Pumps.

United State Bureau of Reclamation

The United States Bureau of Reclamation (hereinafter known as “USBR”) manages the Central Valley Project for the benefit of the Central Valley Project water contractors.

The USBR will receive part of the people’s water diverted at the federal Tracy Pumps under said petitions for the long-term transfer of the people’s water for the benefits of some of the Central Valley Project water contractors.

The USBR is not a very good steward and trustee of the people’s public trust resources and assets in California. The hearing record for this hearing may not show, but the public records show that the USBR adversely harmed wildlife species in the Kesterson wildlife matter and recently adversely harmed the people’s public trust striped bass resources at Prospect Island.

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Statement of Reasons and Facts For Closing Statement

Approval of Federal License for Yuba River Project No. 2246

The proposed long-term water transfer involves two (2) project licensed by the Federal Energy Regulatory Commission (hereinafter known as “FERC”). The proposed water transfer will divert water stored at the New Bullards Bar Reservoir from the Yuba River Project No. 2246 and diverted said water to the California Aqueduct No. 2426. New Bullards Bar Dam and Reservoir is a federally licensed storage facility that produces electric power that is operated under a federal license issued by FERC.

The hearing records may not show, but the public records shown that the YCWA did not obtain an approved major amendment to its federal license with FERC for the proposed long-term water transfer, a major change to the operations of the Yuba River Project No. 2246.

Also, the hearing records may not show, but the public records shown that the YCWA did not obtain a “new” federal license from FERC to re-operate the Yuba River Project 2246 as a result of the major change to the federal license for the Yuba River Project No. 2246 for the long-term water transfer that affects water storage and public recreation at Bullards Bar Dam and Reservoir. The existing license for the Yuba River Project 2246 expires in the year 2013. FERC normally commences the relicensing process for the new license from about two (2) or three (3) years before the expiration date of the former license.

Federal Energy Regulatory Commission licensing occupies the field of hydropower regulations. Preempting State water right requirements except to the extent the State’s requirements related to protection of proprietary rights. We reference *Sayles Hydro Associates v. Maughan* (9th Cir. 1993) 958 F.2d 451.

Clearly the SWRCB does not any authority to regulate the overall operations of the Yuba River Project No. 2246. That authority, including the duty and responsibility to enforce the provisions of the Federal Power Act, is that of FERC.

The proposed water transfer has the potential to affect the overall operations of the Yuba River Project No. 2246 and the people’s environments of New Bullards Bar Reservoir; the people’s environment of Lower Yuba River below New Bullards Bar Dam; and the people’s environment of the Delta Estuary resulting from the major change to the operations of the California Aqueduct Project No. 2426 resulting from the proposed long-term water transfer.

The SWRCB has the authority to issue water rights for said long-term transfer, but the issuance of a water right to YCWA does not authorize the YCWA to divert said water for the long-term transfer without the expressed authority of FERC in compliance with federal statutes and a conditioned federal license that mitigates the

direct, indirect, and cumulative effects to the human environments from said major change resulting from the proposed long-term water transfer.

Consequently the SWRCB must delay its decision for the proposed long-term water transfer until the YCWA complies with the provisions of the Federal Power Act, complies with the provisions of the Endangered Species Act, complies with the provisions of the federal Clean Water Act, and other provisions of federal statutes and receives a new or amended federal license from FERC that mitigates the results of the proposed water transfer to the public trust environments of New Bullards Bar Reservoir; North Yuba River; Lower Yuba River; and the Delta Estuary affected by the proposed long-term transfer.

Formal Complaint By The Anglers Committee With the Federal Energy Regulatory Commission Against Yuba County Water Agency

On October 12, 2007 the Anglers Committee filed a formal complaint with FERC regarding the proposed long-term transfer of the people's water. The complaint requested compliance of federal statutes. The chairperson of the SWRCB was provided with a copy of the formal complaint. Other parties that were provided with a copies of the Anglers Committee compliant were: YCWA; CDWR; USBR; US National Marine Fisheries Service; Tahoe National Forest; California Department of Fish and Game; and the South Delta Water Agency. The complaint is pending before FERC at this time.

Water Quality Certification – Section 401 of the Federal Clean Water Act

Clean Water Act Section 401 Certification states as follows, in part: “ (1) Any applicant for a Federal license or permit to conduct any activity including, but not limited to, construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of this title. In the case of such activity for which there is not an applicable effluent limitation or limitation under sections 301 (b) and 302 of this title, and there is not an applicable standard under sections 306 and 307 of this title, the State shall so certify, except that any such certification shall not be deemed to satisfy section 511(c) of this title. Such State or interstate agency shall establish procedures for public notice in the case of all application for certification by it and, to the extent it deems appropriate, procedures for public hearings in connection with specific applications. In any case where a State or interstate agency has no authority to give such a certification, such certification shall be from the Administrator. If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification

requirements of this subsection shall be waived with respect to such Federal application. No license or permit shall be granted until the certification required in the by this section has been or has been waived as provided in the preceding sentence. No license or permit shall be granted if certification has been denied by the State, interstate agency, or the Administrator, as the case.”

The water for the proposed water transfer will be released from the Yuba River Project No. 2246 and diverted to the California Aqueduct Project No. 2426 and also to the Central Valley Project at the Tracy Pumps. The Yuba River Project No. 2246 is licensed with the Federal Energy Regulatory Commission. The California Aqueduct Project No. 2426 is also licensed with the Federal Energy Regulatory Commission. The Central Valley Project is a federally managed project.

According to public records and also public notices that we have reviewed, YCWA has not filed an application for water quality certification with the SWRCB for the proposed long-term water transfer. In addition, according to the public records and public notices we have reviewed, the SWRCB has not noticed and held a hearing for YCWA water quality certification for the subject proposed water transfer. Further, the SWRCB has not provided YCWA with water quality certification for the proposed water transfer.

Because this is a major change to the operations of the Yuba River Project No. 2246 and water quality could be adversely effected in the lower Yuba River from diversions of water from New Bullards Bar Reservoir for the proposed long-term transfer, the SWRCB must require YCWA to file an application for water quality certification with the SWRCB and receive water quality certification from the SWRCB for the long-term water transfer. That would be reasonable and in the public interest. We believe the SWRCB has a duty and responsible to protect water quality in any order and decision it will issue. We reference the provision of Section 401 et al sections of the federal Clean Water Act and also the provisions of the Porter-Cologne Water Quality Act.

In PUD No. 1 v. Washington Department of Ecology, this case discusses the relationship between water quality and water quantity. States have authority under Section 401 of the Clean Water Act to require Federal Energy Regulatory Commission licensed hydropower projects to bypass flows to protect instream beneficial uses. We reference PUD No. 1 v. Washington Department of Ecology (1994) 114 S.Ct. 1900.

The water for the proposed water transfer will be diverted from New Bullards Bar Reservoir and will flow down the lower Yuba River thence the Feather River thence the Sacramento River thence the Delta Estuary to the California Aqueduct Project 2426 and also to the Central Valley Project Tracy Pumps. Some water may or may not be used for the protection of water quality in the Delta Estuary, including water that may or may not be used for to protect fresh water from salt-water intrusion. As stated beforehand, New Bullards Bar Reservoir is the key facility of Yuba River

Project No. 2246 and this project is licensed with the Federal Energy Regulatory Commission.

The hearing record should show that the US National Marine Fisheries Service is not a direct party to this hearing as a formal protestant nor did the representatives of the US National Marine Fisheries Service testify as witnesses. The US National Marine Fisheries Service does not need to file formal protests with the SWRCB to enforce the provisions of the federal Endangered Species Act. However, the SWRCB cannot dismiss the protection of listed species protected under the federal Endangered Species Act when the SWRCB issues a decision that potential could adversely affect these endangered and threatened anadromous fish species.

The hearing record may not have included testimony regarding the various environmental effects to the public trust anadromous fisheries in the lower Yuba River protected under the Endangered Species Act. However there is significant information in the public records that warm water can adversely affect cold-water species such as Chinook salmon and steelhead. The proposed water transfer will affect the flows in the Lower Yuba River being diverted from New Bullards Bar Dam and Reservoir, and may also affect federally protected Central Valley endangered spring-run Chinook salmon species and their habitat and threatened steelhead trout species and their habitat in the Lower Yuba River. Fluctuating flows resulting from the water transfer may also effect spawning (redds), rearing (juvenile fish, and resting (edge water) habitat and also harm these federally protected species when reductions in flows are made during the long-term water transfer period. (See reference list)

In addition there are no mandatory daily flow requirements directly from New Bullards Bar Dam into the North Yuba River. Consequently, the navigable waters of the North Yuba River directly below New Bullards Bar Dam will continue to be affected during the proposed water transfer in contravention of Section 401 of the federal Clean Water Act and in violation of California Fish and Game Code 5937.

The SWRCB has a duty under Section 401 of the Clean Water Act to protect the navigable waters and protect instream beneficial uses of the North Yuba River directly below New Bullards Bar Dam to the Delta Estuary. The SWRCB also has a duty to issue a timely water quality certification to YCWA and request the Federal Energy Regulatory Commission to include said water quality certification in the federal license for the Yuba River Project No. 2246 in accordance with the long-term water transfer.

Consequently, the approval of the proposed water transfer must be delayed until YCWA files an application for water quality certification pursuant to Section 401 of the Clean Water Act, and the SWRCB hold a hearing, and then issues a conditioned water quality certification to YCWA and advises the Federal Energy Regulatory Commission pursuant to the Section 401 of the federal Clean Water Act.

Salmon and other Cold-Water Species Studies – Fluctuating Flows and Water Temperatures

The SWRCB should not rely on witnesses from the YCWA to judge the effects to cold-water federally listed anadromous fish species and their habitat in the Lower Yuba River resulting from water being diverted from New Bullards Bar Reservoir into the Lower Yuba River. The public records show many salmon studies. We reference the studies shown in the references we have included in this closing brief.

Cold Water Outlets at New Bullards Bar Dam

The effects to water temperatures was discussed at the hearing.

The public records show that Oroville Dam has multi cold-water outlets for the release of cold water into the Feather River at various and reduced reservoir levels to protect and maintain in good condition at all times cold-water anadromous fish species in the Feather River below Oroville Dam. Those anadromous fish species are: endangered spring-run Chinook salmon species; threatened steelhead trout species; and fall-run Chinook salmon species.

The Anglers Committee request and the SWRCB must know the effects to water temperatures below New Bullards Bar Reservoir and also the resulting effects to cold-water federally listed Chinook salmon spring-run species (all life stages) and steelhead trout (all life stages) in the Lower Yuba River.

The effects to water temperatures below New Bullards Bar Dam in the Lower Yuba River relates directly to the location of the power outlet at the dam. Consequently the proposed water transfer will change the historic contents of the reservoir levels. The SWRCB must know the location of the power outlet at the New Bullards Bar Dam during all water year types, including back to back low water and drought conditions to evaluate the effects to water temperatures in the Lower Yuba River and resulting effects to federally listed spring-run Chinook salmon species (all life stages) and threatened steelhead trout (all life stages), and also fall-run and late fall-run Chinook salmon species. There is also the consideration of ambient heating of water flowing down the river coupled with the release of water from the reservoir during the period of the proposed water transfer. i.e. summer months.

We do not want the YCWA or the SWRCB to experiment with water temperatures and the resulting effects to federally listed endangered spring-run Chinook salmon species (all life stages) and threatened steelhead trout (all life stages), and also fall-run and late fall-run Chinook salmon species in the Lower Yuba River. The public records clearly show that Chinook salmon spring-run species were exterminated from the San Joaquin River Watershed because of the effects caused by water projects to their historic habitat. We need to learn from past mistakes so that Feather River and Yuba River endangered Chinook spring-run salmon species are

not exterminated and/or further harmed resulting from the proposed water transfer.

One alternative similar to the recent Delta Smelt Refuge alternative is to truck and haul spring Chinook salmon species to their historic resting, spawning, and resting grounds above New Bullards Bar Dam and Reservoir. Another alternative would be to retrofit the dam with a fish ladder that assures safe passage of the spring-run salmon from the confluence of the Yuba and Feather Rivers to their historic spawning and resting habitat above the dam and reservoir.

Section 7 of the Federal Endangered Species Act

The proposed water transfer has the potential to harm endangered Central Valley Chinook spring-run salmon species and their habitat in the Lower Yuba River. The proposed water transfer has the potential to harm threatened Central Valley steelhead species and their habitat in the Lower Yuba River. The proposed water transfer also has the potential to harm Central Valley Chinook fall-run and late fall-run species and their habitat in the Lower Yuba River. Central Valley Chinook fall-run and late fall-run species are salmon species of special concern under the federal ESA.

The hearing record may not show the following, but the public records show that the proposed water transfer will harmed threatened Delta Smelt and their habitat at the state and federal pumps. There is a significant potential to harm endangered Central Valley Chinook salmon species in the Delta Estuary at the state pumps for the California Aqueduct Project 2426. The proposed water transfer has the potential to harm endangered Central Valley steelhead species and their habitat in the Delta Estuary at the state pumps for the California Aqueduct Project 2426. The California Aqueduct has already harmed Delta smelt at the state pumps of the California Aqueduct Project No. 2426. The state pumps have also entrained and harmed Delta Estuary striped bass species and most likely other fish species.

As stated beforehand, the proposed water transfer involves two (2) federally licensed projects that are licensed by the Federal Energy Regulatory Commission. Federal agencies that permit an activity that affects listed salmonids that require an Endangered Species Act Section 7 consultation with the US National Marine Fisheries Service. The federal nexus is both the Yuba River Project No. 2246 and the California Aqueduct Project No 2426 are licensed with the Federal Energy Regulatory Commission. The federal licensing agency is the FERC.

The SWRCB has no authority under the federal Endangered Species Act. However, the SWRCB cannot ignore the federal ESA and also must comply with the provisions of the federal ESA when issuing decision affecting federal listed anadromous fish species and their habitat. The YCWA has a duty and responsibility to comply with the provisions of the federal Endangered Species Act. The US National Marine Fisheries Service has a duty and responsibility to carry out the

provisions of the federal Endangered Species Act. Other programs administered by the US National Marine Fisheries Service include the Marine Mammal Protection Act, Clean Water Act, Federal Power Act, US Fish and Wildlife Coordination Act, and the Magnuson-Stevens Act.

The SWRCB must delay the approval of the proposed transfer until the Federal Energy Regulatory Commission consults with the US National Marine Fisheries Service pursuant to Section 7 of the federal ESA and obtain recommendations from the US National Marine Fisheries Service to protect listed Central Valley Chinook salmon and Central Valley steelhead species affected by the “cumulative effects” from the proposed water transfer at the Yuba River Project No. 2246 and also at the California Aqueduct Project No. 2426 (state pumps).

The failure of the SWRCB to delay the approval of proposed water transfer would violate the provisions of the federal Endangered Species Act and place the listed species and their critical habitat in danger of being harmed.

We believe the US National Marine Fisheries Service must prepared a Biological Opinion for the proposed water transfer at the California Aqueduct Project 2426 (state pumps). The nexus is that the US Fish and Wildlife Service is preparing a Biological Opinion for Delta Smelt concerning state and federal pumping at the federal and state pumps. Also another federal nexus is that the Yuba River Project No. 2246 and the California Aqueduct Project No. 2426 are both licensed with FERC, a federal agency.

Mitigation For New Bullards Bar Reservoir

The Anglers Committee filed a formal complaint with FERC. That formal complaint is part of the public records, regardless if the complaint was discussed or not discussed at the hearing on December 5, 2007. We reference the formal complaint against YCWA for the Yuba River Project No. 2246.

The SWRCB has water rights and water quality authority. The SWRCB also has the authority to order mandatory terms and conditions in water right permits. The SWRCB issued YCWA a water right to store the people’s water in New Bullards Bar Reservoir. The YCWA is attempting to put off the relicensing process until the year 2013, which may led to the new license being issued in 2016 or must later. That is unreasonable and not in the greater public interest because the people should not have to wait several years or more until the new license is issued to receive mitigation for the state’s water stored at the New Bullards Bar Reservoir while YCWA may receives millions of dollars immediately, should YCWA be allowed by the SWRCB to divert water for the proposed water transfer from the reservoir.

Consequently, we recommend and urge the SWRCB to order terms and conditions in the amended water right permits that includes mitigation measures for public recreation for the storage of the state's waters at New Bullards Bar Reservoir as follows:

- 1. The Anglers Committee request the SWRCB to regulate overall public recreation at the New Bullards Bar Reservoir affected by the proposed water transfer of up to 200,000 acre-feet of water and the reduction to reservoir levels;**
- 2. The Anglers Committee request the SWRCB to regulate public boating at the New Bullards Bar Reservoir affected by the proposed water transfer of up to 200,000 acre-feet of water and the reduction of reservoir levels;**
- 3. The Anglers Committee request the SWRCB to regulate public boating safety and navigation at the New Bullards Bar Reservoir affected by the proposed water transfer of up to 200,000 acre-feet of water and the reduction of reservoir levels;**
- 4. The Anglers Committee request the SWRCB to regulate boat ramps used by the public at the New Bullards Bar Reservoir affected by the proposed water transfer of up to 200,000 acre-feet of water and the reduction of reservoir levels;**
- 5. The Anglers Committee request the SWRCB to regulate the fisheries and sport fishing in New Bullards Bar Reservoir and protect the fisheries and their habitat resulting from the proposed water transfer of up to 200,000 acre-feet of water and the reduction of reservoir levels;**
- 6. The SWRCB in cooperation with the US Forest Service must require YCWA to develop, fund, and implement new public campgrounds at New Bullards Bar Reservoir. The new campground must be accessible for the disabled pursuant to the federal American for Disabilities Act;**
- 7. The SWRCB in cooperation with the US Forest Service must require YCWA to have the existing campgrounds to be accessible for the disabled pursuant to the American With Disabilities Act;**
- 8. The SWRCB should require YCWA to develop, fund, and implement new free public boat ramps at New Bullards Bar Reservoir. The new boat ramps must be accessible for the disabled pursuant to the federal Americans for Disabilities Act;**
- 9. The SWRCB should require YCWA to have the existing boat ramps to be accessible for the disabled pursuant to the American With Disabilities Act;**
- 10. The existing boat ramps should be paved and improved to provide for boating launching during low water conditions as part of the operations of the project and also as part of the proposed water transfer of 200,000 acre-feet of water from New Bullards Bar Reservoir.**
- 11. The SWRCB should require YCWA to develop, fund, and implement a boating and navigation plan that includes measures to remove floating debris from New Bullards Bar Reservoir to protect public boating safety. Said plan should also include a plan for the management of the reservoir during**

- conditions as the water levels at the reservoir are reduced, which includes buoys at hazardous locations in the reservoir for boating;
12. The SWRCB should require YCWA to study the effects to drawing down the reservoir for flood control purposes and also for project operation because of the potential effects to the bass fishery in the reservoir during the spawning season;
 13. The SWRCB should require YCWA to fund the stocking of trout species into the reservoir annually for the purposes of public angling;
 14. The SWRCB should require YCWA to develop, fund, and implement a fishery habitat improvement (spawning, rearing of juvenile fish, resting areas, food sources, et al) plan that provides man-made habitat (dead trees parts, rocks, old tires, reefs, et al) for the fisheries in the reservoir when the shoreline is reduced to mud due to reductions in reservoir levels;
 15. Others not noted at this time.

Proposed Lower Yuba River Accord Agreement

The Federal Energy Regulatory Commission must approve or may not approve the proposed Lower Yuba River Accord Agreement because this agreement affects the Yuba River Project No. 2246, a federally licensed project that operates under a federal license. The proposed Lower Yuba River Accord Agreement also is part of the proposed water transfer.

The SWRCB should not approve the Yuba River Accord which would allow public money to be paid to a dam owner for providing water for the protection of endangered and threatened Chinook salmon and their habitat, threatened steelhead species and their habitat, fall-run and late fall-run Chinook salmon species and their habitat; and also other fish species and macro invertebrate species and their habitat in the Lower Yuba River below New Bullards Bar Dam. Why? Section 5937 of the California Fish and Game Code require YCWA to release water daily from New Bullards Bar Dam to keep fish species below the dam in good condition at all times. It has been standard government procedures to require water from dams to protect fish species and their habitat without the people paying for said daily flow requirement. i.e. Oroville Dam; Shasta Dam; Trinity Dam, Folsom Dam; and other dams in California. It would be highly unreasonable and not in the public interest for the SWRCB to approve the Yuba River Accord that would pay YCWA for releasing water from New Bullards Bar Dam to protect the fishery resources and their habitat below the dam that state law requires released without payment or compensation.

Also, the proposed Lower Yuba River Accord Agreement provides no protection measures for Delta Smelt and endangered and threatened anadromous species at the state pumps at the California Aqueduct Project No. 2426.

The Force Majeure in the proposed Lower Yuba River Accord Agreement, if signed by state and federal regulatory agencies, would undermine their authority, their duty and responsibilities to the people under numerous provisions of state and federal law to protect the public trust federally listed anadromous fisheries and their habitat affected by the proposed water transfer resulting from the operations of the Yuba River Project 2246 and the California Aqueduct Project 2426 proposed Lower Yuba River Accord Agreement.

Draft and Final Yuba River Accord Agreement EIS/EIR

The Final Environmental Impact Report and the Environmental Impact Statement for the proposed water transfer et al is grossly deficient as follows:

- (1) Judge Wanger’s Decision has been finalized. This is new information that must be included in a supplemental EIR/EIS for the proposed long term water transfer et al;**
- (2) The US Fish and Wildlife Service have not finalized the Delta Smelt Biological Opinion for the state and federal pumps. This is new information that must be included in a supplemental EIR/EIS for the proposed long-term transfer of the people’s water;**
- (3) The US National Marine Fisheries Service have not prepared or finalized the Central Valley Endangered and Threatened Chinook salmon and steelhead Biological Opinion for the state and federal pumps. This is new information that must be included in a supplemental EIR/EIS for the proposed long-term transfer of the people’s water;**
- (4) The US National Marine Fisheries Service have not prepared or finalized the Central Valley Endangered Chinook spring-run salmon species and Threatened steelhead (all life stages-fluctuating flows; heated water quality – cold water species; dewatering critical spawning, rearing, and resting habitat – screened and unscreened diversions [entrainment]) Biological Opinion for the long-term transfer of water affecting the Lower Yuba River. This is new information that must be included in a supplemental EIR/EIS for the proposed long-term transfer of the people’s water;**
- (5) The final EIR/EIS did not disclose and evaluate or mitigate the following environmental effects in the service area of the State Water Project water contractors resulting from the long term transfer of water:**
 - (a) The direct and cumulative effects resulting from growth;**
 - (b) The direct and cumulative effects to air quality;**
 - (c) The direct and cumulative effects to infrastructure;**
 - (d) The direct and cumulative effects to utilities’**
 - (e) The direct and cumulative effects to transportation services;**
 - (f) The direct and cumulative effects to wastewater drainage and energy.**
- (6) The final EIR/EIS did not disclose and evaluate or mitigate the following environmental effects in the service area of the Central Valley Project water contractors resulting from the long term transfer of water:**
 - (a) The direct and cumulative effects resulting from growth;**

- (b) The direct and cumulative effects to water quality;
- (c) The direct and cumulative effects to infrastructure;
- (d) The direct and cumulative effects to utilities;
- (e) The direct and cumulative effects to transportation services;
- (f) The direct and cumulative effects to wastewater drainage and energy;
- (g) The direct and cumulative effects to groundwater recharging and groundwater pumping.

The SWRCB is the permitting agency under its water right authority that involves about a 500 million plus dollars long-term long transfer. The SWRCB is also responsible to the public for spending public money and time on this proposed long-term transfer of the people's water. Consequently, clearly it would be in the public best interest and also in compliance with CEQA and NEPA to require the preparation of a "supplement EIR/EIS" that includes all of the new information shown above that was not in the final EIR/EIS for the long-term water transfer et al. We reference *Vineyard Area Citizens v. Rancho; Long Term Water Supply; CEQA Case Law; Sunrise Douglas Community Plan; 2007*.

Project Flexibility – New Bullards Bar Reservoir and Other Project Reservoirs

The final EIR/EIS discloses project flexibility, but the document does not disclose, evaluate, and mitigate the direct and cumulative effects to other projects located on other rivers that are managed by the CDWR and the USBR that have water rights under the authority of the SWRCB. Full disclosure regarding project information and project operations to the public is very important. CEQA and NEPA require full disclosure. Consequently there must be information regarding how the long-term water transfer will be carried out daily with other projects managed by the CDWR and USBR. The following information must be disclosed by CDWR and the USBR in a "supplemental EIR/EIS" regarding the direct and cumulative effects to the human environments at projects that are operated by CDWR and the USBR in conjunction with the proposed long-term water transfers:

Oroville Project FERC Project 2100 – Oroville Facility of the State Water Project

- (1) The direct and cumulative effects to storage levels at Oroville Reservoir;
- (2) The direct and cumulative effects to storage levels in conjunction with public recreation (public marina(s), public boat ramps; public boating, boating safety, navigation, camping, fishing, et al) at Oroville Reservoir;
- (3) The direct and cumulative effects to the local economy resulting from the effects to storage levels and public recreation at Oroville Reservoir;
- (4) The direct and cumulative effects to endangered spring-run Chinook Salmon species and their habitat in the Feather River below Oroville Dam to the Sacramento River during all water years types;

- (5) The direct and cumulative effects to fall-run Chinook Salmon species and their habitat in the Feather River below Oroville Dam to the Sacramento River during all water years types;**
- (6) The direct and cumulative effects to threatened steelhead species and their habitat in the Feather River below Oroville Dam to the Sacramento River during all water years types;**
- (7) The direct and cumulative effects to the aquatic environment (American Shad runs, striped bass, black bass, sturgeon, et al) of the Feather River below Oroville Dam to the Sacramento River during all water year types;**
- (8) The direct and cumulative effects to water quality and salinity of the Sacramento River below Shasta Dam to the Delta Estuary in all water year types.**

American River Project – Facility of the Central Valley Project

- (1) The direct and cumulative effects to storage levels at Folsom Reservoir;**
- (2) The direct and cumulative effects to storage levels in conjunction with public recreation (public marina(s), public boat ramps, public boating, boating safety, navigation, camping, fishing et al) at Folsom Reservoir;**
- (3) The direct and cumulative effects to the local economy resulting from the effects to storage levels and public recreation at Folsom Reservoir;**
- (4) The direct and cumulative effects to endangered spring-run Chinook Salmon species and their habitat in the American River below Folsom Dam to the Sacramento River during all water year types;**
- (5) The direct and cumulative effects to fall-run Chinook Salmon species and their habitat in the American River below Folsom Dam to the Sacramento River during all water year types;**
- (6) The direct and cumulative effects to threatened steelhead species and their habitat in the American River below Oroville Dam to the Sacramento River during all water year types;**
- (7) The direct and cumulative effects to the aquatic environment (American Shad runs, striped bass, black bass, sturgeon, et al) of the American River below Folsom Dam to the Sacramento River during all water year types;**
- (8) The direct and cumulative effects to water quality and salinity of the Sacramento River below Shasta Dam to the Delta Estuary in all water year types.**

Shasta Project – Facility of the Central Valley Project

- (1) The direct and cumulative effects to storage levels at Shasta Reservoir;**
- (2) The direct and cumulative effects to storage levels in conjunction with public recreation (public marina(s), public boat ramps, public boating, boating safety, navigation, camping, fishing et al) at Shasta Reservoir;**
- (3) The direct and cumulative effects to the local economy resulting from the effects to storage levels and public recreation at Shasta Reservoir;**

- (4) The direct and cumulative effects to endangered spring-run Chinook salmon species and their habitat in the Sacramento River below Shasta Dam to the Delta Estuary during all water year types;**
- (5) The direct and cumulative effects to fall-run Chinook salmon species and their habitat in the American River below Shasta Dam to the Delta Estuary during all water year types;**
- (6) The direct and cumulative effects to threatened steelhead species and their habitat in the Sacramento River below Shasta Dam to the Delta Estuary during all water year types;**
- (7) The direct and cumulative effects to the aquatic environment (American Shad runs, striped bass, black bass, sturgeon, et al) of the Sacramento River below Shasta Dam to the Delta Estuary during all water year types;**
- (8) The direct and cumulative effects to water quality and salinity of the Sacramento River below Shasta Dam to the Delta Estuary in all water year types.**

Trinity Project – Facility of the Central Valley Project

- (1) The direct and cumulative effects to storage levels at Trinity Reservoir, Lewiston Lake, and Whiskeytown Reservoir during all water year types;**
- (2) The direct and cumulative effects to storage levels in conjunction with public recreation (public marina(s), public boat ramps, public boating, boating safety, navigation, camping, fishing et al) at Trinity Reservoir, Lewiston Lake and Whiskeytown Reservoir during all water year types;**
- (3) The direct and cumulative effects to the local economy resulting from the effects to storage levels and public recreation at Trinity Reservoir, Lewiston Lake and Whiskeytown Reservoir during all water year types;**
- (4) The direct and cumulative effects to Chinook salmon species and their habitat in the Trinity River below Trinity Dam and Lewiston Lake to the Klamath River during all water year types;**
- (5) The direct and cumulative effects to steelhead species and their habitat in the Trinity River below Trinity Dam and Lewiston Lake to the Klamath River during all water year types;**
- (6) The direct and cumulative effects to the aquatic environment of the Trinity River below Trinity Dam to the Klamath River during all water year types;**
- (7) The direct and cumulative effects to water quality in the Trinity River below Trinity Dam during all water years types.**

The operations of the above projects by CDWR and the USBR may also affect water transfer flows in the Lower Yuba River that may cause numerous fluctuating flows events affecting cold water species such as endangered spring-run Chinook salmon species (all life stages) and their habitat; threatened steelhead species (all life stages) and their habitat; and fall-run and late fall run Chinook salmon species (all life stages) and their habitat, and also food producing habitat (macro invertebrate species).

Clearly the SWRCB must require the CDWR and USBR to prepare a supplemental EIR/EIS to disclose, evaluate, and mitigate the above shown effects under each project and the affected river environments.

Board Order D-1644

Board Order D-1644 has a fisheries agreement. However, the fisheries agreement is in violation of the provisions of the federal ESA because of the lack of Section 7 consultation between the FERC and the US National Marine Fisheries and the US Fish and Wildlife Service concerning the protection of listed endangered and threatened fish species and their habitat in the Lower Yuba River and also in the Delta Estuary at the state and federal pumps resulting from the long-term water transfer.

Unreasonable Effects to Fish and Wildlife Resources and Trust Assets

The proposed long-term water transfer violates Article X, Section 2 of the California Constitution because the proposed long-term water transfer is the unreasonable method of diversion of the people's water that fails to provide protection for the people's endangered Delta Smelt species and their habitat affected by the state and federal pumps in the Delta Estuary, including significant potential effects to listed anadromous fish species that have not been mitigated by the US National Marine Fisheries Service under the federal ESA at the state and federal pumps and also in the Lower Yuba River Watershed.

The proposed long-term will unreasonably affect the following people's public trust resources and assets:

- (1) The proposed long-term transfer will unreasonably affect Delta Smelt species at the state and federal pumps;**
- (2) The proposed long-term transfer will unreasonably affect and entrain Striped Bass species at the state pumps;**
- (3) The proposed long-term transfer has the potential to unreasonably affect and harm Central Valley endangered and threatened Chinook Salmon species at the state pumps until a conditioned "incidental take permit" is issued by the US National Marine Fisheries Service to the CDWR;**
- (4) The proposed long-term transfer has the potential to unreasonably affect and harm Central Valley threatened Steelhead species at the state pumps until a conditioned "incidental take permit" is issued by the US National Marine Fisheries Service to the CDWR;**
- (5) The proposed long-term transfer has the potential to unreasonably affect and harm Central Valley endangered Chinook salmon spring-run species in the Lower**

Yuba River resulting from water quality (heated water) and water quantity (fluctuating flows) conditions during the period of the long-term water transfer until a conditioned “incidental take permit” is issued by the US National Marine Fisheries Service to the YCWA;

(6) The proposed long-term transfer has the potential to unreasonably affect and harm Central Valley threatened species in the Lower Yuba River resulting from water quality (heated water) and water quantity (fluctuating flows) during the period of the long-term water transfer until a conditioned “incidental take permit” is issued by the US National Marine Fisheries Service to the YCWA;

(7) The proposed long-term transfer has the potential to unreasonably affect and harm Central Valley endangered Chinook salmon spring-run species in the Lower Yuba River resulting from entrainment at YCWA screened and unscreened diversions in the Lower Yuba River during the period of the long-term water transfer until a conditioned “incidental take permit” is issued by the US National Marine Fisheries Service to the YCWA;

(8) The proposed long-term transfer has the potential to unreasonably affect and harm Central Valley threatened steelhead species in the Lower Yuba River resulting from entrainment at YCWA screened and unscreened diversions in the Lower Yuba River during the period of the long-term water transfer until a conditioned “incidental take permit” is issued by the US National Marine Fisheries Service to the YCWA.

We reference 1736 of the California Water Code.

New Bullards Bar Reservoir – History and Questions

The attorney for YCWA at the hearing on December 5, 2007 refused to have witnesses for the YCWA answer questions under cross-examination regarding the construction of New Bullards Bar Dam and Reservoir. The hearing records do not show, but the public records show the following:

“New Bullards Bar Dam is a [dam](#) in [California](#) on the [Yuba River](#) and forms the [New Bullards Bar Reservoir](#), which has a capacity of 996,103 acre feet (1.23 km³). It is located near the town of [Dobbins](#) in [Yuba County](#). The dam is operated by the Yuba County Water Agency for irrigation, drinking water and [hydroelectric](#) power production. The dam is a variable radius concrete arch design and has a height of 645 feet (195 m). It is in the top 40 dams in the world for height and in the top 50 for reservoir size.

New Bullards Bar Dam was constructed by the [Yuba County Water Agency](#). The agency was created through an act of the state legislature in 1959 specifically to construct a flood control reservoir in response to the flood of 1955. The bulk of the

financing for the dam came from the issuance of revenue bonds. The dam was completed in 1969.”

We reference New Bullards Bar Dam; Wikipedia Encyclopedia; Internet (2007).

We believe the history of the construction, operations, and maintenance of New Bullards Bar Dam and Reservoir is central to the SWRCB approving petitions for a water right to YCWA for a long term transfer of the people’s water from a dam constructed, in major part, with the people’s money, must be examined closely by the SWRCB before approving said petitions and the long-term transfer of water. YCWA, a collection of small irrigation districts, will receive hundreds of millions of dollars for a dam build with the people’s money for the long-term water transfer of the people’s water. Consequently, the following pertinent questions need to be raised by the SWRCB and answered by the YCWA before the SWRCB considers approving said petitione and a long-term transfer of water worth hunderds and hundreds of million of dollars.

The YCWA must answer the following questions pursuant to Section 6250 et seq. of the California Public Information Act and provide said information to the SWRCB and the public.

- (a) How much public money from the revenue bonds was spend for the construction of the New Bullards Bar Dam and Reservoir?
- (b) How much money was spent by the YCWA and/or the private irrigation districts for the construction of the New Bullards Bar Dam and Reservoir?
- (c) What were the terms and condition of the revenue bonds, including the terms and conditions of the Californias Legislature with respect to the construction, operations, and maintenace of New Bullards Bar Dam and Reservoir?
- (d) What are the terms and conditions of the purchase-power agreement between YCWA and the party purchasing the power?
- (e) Under the terms and conditions of the revenue bond and the approval of the California Legislature can YCWA sell or transfer water stored in New Bullards Bar Reservoir to third parties?
- (f) Is YCWA still receiving bond revenue money to operate and maintain the dam and reservoir?
- (g) Must YCWA have the expressed approval of the California Legislature to sell and/or transfer water stored in New Bullards Bar Reservoir to third parties for monetry profits that benefit YCWA?
- (h) Public money was used for the construction of New Bullards Bar Dam and Reservoir. Shouldn’t the SWRCB request and review YCWA’s profit and loss statements since the reservoir became operational to determine whether the dam and reservoir is being operated in a manner consistent with the bond revunue money and the mandates of the California Legislature?
- (i) The California Legislature created the YCWA through an Act in 1959. What were the terms and conditions established by the California Legislature for

the conduct of public business by YCWA for the operation and maintenance of the New Bullards Bar Dam and Reservoir?

- (j) Will YCWA reimburse the State of California for the construction costs et al of building New Bullards Bar Dam and Reservoir with money received by YCWA for the long-term water transfer?**

YCWA is a public agency. Clearly the SWRCB must ask the above questions and receive specific information from the YCWA before the SWRCB considers approving said petitions and approving the long-term transfer of the people's water. We have raised the question of the construction of the dam and reservoir at the hearing and they were not answered by the YCWA. We believe the above questions must be raised by the SWRCB.

New Information – Delta Smelt Decision

On or about December 11, 2007 following the hearing of December 5, 2007 for the proposed long-term water transfer using the state and federal pumps, US District Judge Oliver Wanger made a preliminary ruling. On December 14, 2007 Judge Wanger made a final ruling.

The Anglers Committee requests that the final ruling by Judge Wanger be included into the hearing record.

We have not read the ruling. But it is our understanding based on news releases that the managers of the state and federal pumps must scale back pumping during the winter, when the Delta smelt typically spawn, and in the spring when young Delta smelt move into areas with better habitat. Judge Wanger previously ruled that the pumping by state and federal authorities harmed the Delta smelt. The court has specified that reduced operations will last until September 15, 2008, while federal agencies develop a revised federal biological opinion for Delta smelt that would ensure the projects' compliance with Endangered Species Act requirements. We reference Smelt program timeline set; Sacramento Bee, December 12, 2007; page A4. Also we reference Court Orders State Water Project to Cut Water Deliveries to Protect Delta Fish; Sacramento, December 14, 2007, PRNewswire via COMTEX.

At a bare minimum, the SWRCB must hold off a decision on the long-term water transfer until the final Biological Opinion is issued by September 15, 2008, subject to the requirements in said Biological Opinion, subject to court challenges.

One alternative for the proposed long-term water transfer is also for water quality control. The problem with that alternative is that the duty to meet those water quality control requirements for the Bay Delta Estuary et al is that of the CDWR and the USBR, and not all of the people paying YCWA for the people's water for said water quality control requirements. Water quality control requirements must be part of the terms and conditions of the water rights permits held by the USBR and the CDWR for the storage and direct diversion of the state's water at all USBR

and CDWR projects that affect water quality in the Bay Delta et al. Further YCWA's Yuba River Project No. 2246 also has a cumulative effects to water quality to the Bay Delta Estuary et al. Collectively, the USBR, CDWR, and the YCWA projects have a storage capacity of about 10 million acre-feet of water or more, which does not consider direct diversion rights at the point of storage and also direct diversion rights in the Bay Delta Estuary.

Clearly the SWRCB has a duty and responsibility to order water quality control requirements from the CDWR and the USBR projects (Sacramento River watershed and the San Joaquin River watershed). The SWRCB must order water quality control requirements for the Bay Delta Estuary et al from the CDWR and the USBR projects under water right permits held by them. That would be reasonable and in the greater public interest.

Conjunctive Relief by the Anglers Committee

(1) Before considering the approval of the proposed long-term, the SWRCB must require a Supplemental EIR/EIS that discloses and evaluates the direct and cumulative environmental effects in the State Water Project service area resulting from the proposed water transfer to growth inducing effects; air quality effects; infrastructure effects; transportation effects; waste water effects; drainage effects; and energy effects.

(2) Before considering the approval of the proposed long-term, the SWRCB must require a Supplemental EIR/EIS that discloses and evaluates the direct and cumulative environmental effects in the Central Valley Project service area resulting from the proposed water transfer to growth inducing effects; air quality effects; water quality effects; infrastructure effects; transportation effects; waste water effects; drainage effects; energy effects, and the effects to ground water pumping and recharge.

(3) Before considering the approval of the proposed long-term, the SWRCB must require a Supplemental EIR/EIS that discloses and evaluates the direct and cumulative effects to the human environments during all water year types where other projects are managed by CDWR and the USBR resulting from project flexibility in managing all of the projects and managing the proposed long-term water transfer. i.e. See above – Oroville Reservoir; Shasta Reservoir; Folsom Reservoir; Trinity Reservoir; Lewiston Lake; Whiskeytown Reservoir; and new Bullards Bar Reservoir.

(4) Before considering the approval of the proposed long-term, the SWRCB must require the YCWA to file an application for amendment to its FERC license and also receive a conditioned or new license from FERC before the SWRCB approves the proposed long-term water transfer.

(5) Before considering the approval of the proposed long-term, the SWRCB must require the YCWA to file an application for water quality certification with the SWRCB for the Yuba River Project 2246 and also receive water quality certification from the SWRCB before the SWRCB approves the proposed long-term water transfer.

(6) Before considering the approval of the long-term water transfer, the SWRCB must require the YCWA to submit evidence that the New Bullards Bar Dam has power outlets that releases cold water from the dam that will not affect cold water temperatures for cold water species in the Lower Yuba River and will not adversely affect endangered Chinook salmon species (all life stages) and steelhead trout species (all life stages) in the Lower Yuba River.

(7) Before considering the approval of the proposed long-term, the SWRCB must require the YCWA to consult with the US National Marine Fisheries Service in accordance with the provisions of the federal Endangered Species Act regarding the direct and cumulative effects to listed salmonid species resulting from the operations of the Yuba River Project No. 2246 and the long-term water transfer.

(8) Before considering the approval of the proposed long-term, the SWRCB in cooperation with the US Forest Service must require YCWA to mitigate for the effects to public recreation at New Bullards Bar Reservoir from the proposed long term water transfer by requiring a recreation management plan for the reservoir that includes: public boating improvements; public boating navigation and boating safety measures; improvements to existing boat ramps and parking facilities to accommodate low water conditions; new boat ramps and parking areas to accommodate low water conditions; new and existing boat ramps and docks, and parking areas that accommodate disabled persons pursuant to the ADA; restrooms at all boat ramp facilities that accommodate the public and disabled persons pursuant to the ADA; improvements (enlargement) to existing public campgrounds facilities; new public campground facilities; existing and new public campgrounds must accommodate disabled persons; road improvements; et al. The SWRCB must notify the YCWA to commence the recreation management plan and planning immediately.

(9) The SWRCB should not approve the proposed long-term water transfer because the proposed long-term transfer will unreasonably affect Delta Smelt species at the state and federal pumps. The SWRCB must wait until Judge Wanger's final Decision is resolved and the US Fish and Wildlife Service completed its Delta Smelt Biological Opinion for the state and federal pumps by September 15, 2008;

(10) The SWRCB should not approve the proposed long-term water transfer because the proposed long- term transfer will unreasonably affect and entrain Striped Bass species at the state pumps until a Striped Bass Delta Management Plan is prepared by the CDWR and the USBR, and approved by the SWRCB;

(11) The SWRCB should not approve the proposed long-term water transfer because the long-term transfer has the potential to unreasonably affect and harm Central Valley endangered and threatened Chinook Salmon species at the state pumps until a conditioned “incidental take permit” is issued by the US National Marine Fisheries Service to the CDWR;

(12) The SWRCB should not approve the proposed long-term water transfer because the proposed long-term transfer has the potential to unreasonably affect and harm Central Valley threatened Steelhead species at the state pumps until a conditioned “incidental take permit” is issued by the US National Marine Fisheries Service to the CDWR;

(13) The SWRCB should not approve the proposed long-term water transfer because the proposed long-term transfer has the potential to unreasonably affect and harm Central Valley endangered Chinook salmon spring-run species in the Lower Yuba River resulting from water quality (heated water) and water quantity (fluctuating flows) conditions during the period of the long-term water transfer until a conditioned “incidental take permit” is issued by the US National Marine Fisheries Service to the YCWA and/or its member irrigation district;

(14) The SWRCB should not approve the proposed long-term water transfer because the proposed long-term transfer has the potential to unreasonably affect and harm Central Valley threatened species in the Lower Yuba River resulting from water quality (heated water) and water quantity (fluctuating flows) during the period of the long-term water transfer until a conditioned “incidental take permit” is issued by the US National Marine Fisheries Service to the YCWA;

(15) The SWRCB should not approve the proposed long-term water transfer because the proposed long-term transfer has the potential to unreasonably affect and harm Central Valley endangered Chinook salmon spring-run species in the Lower Yuba River resulting from entrainment at YCWA screened and unscreened diversions in the Lower Yuba River during the period of the long-term water transfer until a conditioned “incidental take permit” is issued by the US National Marine Fisheries Service to the YCWA and/or its water district members;

(16) The SWRCB should not approve the proposed long-term water transfer because the proposed long-term transfer has the potential to unreasonably affect and harm Central Valley threatened steelhead species in the Lower Yuba River resulting from entrainment at YCWA screened and unscreened diversions in the Lower Yuba River during the period of the long-term water transfer until a conditioned “incidental take permit” is issued by the US National Marine Fisheries Service to the YCWA.

(17) The SWRCB must require YCWA to release water at all times from New Bullards Bar Dam directly into the North Yuba River to protect the beneficial uses

of the North Yuba River directly below the dam during the period of the long-term water transfer;

(18) The SWRCB must not approve any long-term water transfer for any agreement that allow the public to pay for mandatory daily flow requirements for federally listed protected and non-listed anadromous fish species from New Bullards Bar Dam to the California Aqueduct Project No. 2426;

(19) The SWRCB must not approve any long-term water transfer until the YCWA prepares a “fishway passage truck and haul plan in cooperation with the US National Marine Fisheries Service that provide for endangered spring-run Chinook salmon species and threatened steelhead trout species to utilize their historic natural resting, spawning, and rearing habitat river areas above New Bullards Bar Dam and Reservoir (Spring-run need cold water and deep pool habitat for resting habitat prior to spawning);

(20) Based on new information by the Courts, the SWRCB must delay a decision on the long-term water transfer until the issuance of the final Biological Opinion by federal agencies, which is proposed by September 15, 2008;

(21) The SWRCB should order the USBR to release water from their projects on the Sacramento River watershed and San Joaquin River watershed and also reduce pumping from the Delta Estuary to provide water quality control requirements to protect water quality in the Bay Delta Estuary et al;

(22) The SWRCB should order the CDWR to release water from their Oroville Project on the Sacramento River watershed and also reduce pumping from the Delta Estuary to provide water quality control requirements to protect water quality in the Bay Delta Estuary et al;

(23) Any order and decision by the SWRCB for the long-term water transfer must comply with federal statutes.

The Anglers respectfully request a copy of the SWRCB decision in this matter and request the opportunity to file a petition for reconsideration. Thank you for allowing the Anglers Committee to submit a closing brief.

Respectfully Submitted

Signed by Bob Baiocchi

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Dated: December 21, 2007

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SWRCB Service List

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Mr. Ray Sahlberg, US Bureau of Reclamation et al
Ms. Cathy Crothers, Counsel, California Department of Water Resources et al
Mr. Jon D. Rubin, Westlands Water District and
San Luis & Delta-Mendota Irrigation District
Mr. Paul Minasian, Cordua Irrigation District
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Anglers Committee Service List

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**Mr. Jerry Mensch, Retired, California Department of Fish and Game
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Interested Parties

