

Policy Statement of Friends of the River, South Yuba River Citizens League, the Bay Institute, and Trout Unlimited

Regarding Yuba County Water Agency's Petitions to Modify Water Rights Permits and for Long Term Water Transfer related to the Proposed Lower River Yuba Accord

Before the State Water Resources Control Board

Sacramento, CA

December 5, 2007

State Water Board Member Baggett, presiding as Hearing Officer, and other Board Members:

Thank you for the opportunity to make this policy statement regarding Yuba County Water Agency's (YCWA) petition to modify Water Rights Permits 15026, 15027, and 15030, and its petition for a long-term transfer of water related to the Lower Yuba River Accord. My name is Chuck Bonham, and I am the California Director of Trout Unlimited, the Nation's oldest and largest trout, salmon, and steelhead conservation organization. Today, I am also presenting this policy statement on behalf of the South Yuba River Citizens League, the Bay Institute, and Friends of the River. Together, these four organizations have invested significant time and energy towards turning conflict on the Yuba River into consensus.

The central question for the Board in this hearing is whether the State Water Board (Board) should approve YCWA's petition for modification of water right permits. We answer in the affirmative. Yes, the Board should approve.

For us there is also a critical ancillary question; namely, would implementing YCWA's petitioned changes to RD-1644 and the Proposed Yuba Accord Fisheries Agreement provide a level of protection for fisheries resources in the Lower Yuba River during the term of that Fisheries Agreement, that is equivalent to, or better than, that which is provided by RD-1644. Again, we answer in the affirmative. Yes, the changes coupled with the Fisheries Agreement would provide equal or better protection.

As you know, our organizations filed suit against the Board's Water Right Decision 1644 and subsequently entered into negotiations with YCWA and the California Department of Fish and Game. These difficult and lengthy negotiations resulted in the

Lower Yuba River Fisheries Agreement. As you may also know, in May 2007, we signed a Statement of Support for the Fisheries Agreement allowing us to reserve final signature until after completion of California Environmental Quality Act review. Such review has happened. We have since signed the Lower Yuba River Fisheries Agreement, and I believe you have before you a fully executed Fisheries Agreement signed by all the parties involved.

We believe that the Fisheries Agreement's instream flow regimes provide an amount of flow and habitat protection equivalent to or better than D-1644's requirements. In most years under most conditions, more flow would be provided under the Agreement than under D-1644. YCWA will present detailed information comparing the Agreement to D-1644. We thank YCWA and the Department of Fish and Game for initiating a negotiated outcome that placed emphasis on improving flows for hugely important salmon and steelhead resources. The Agreement also provides dedicated funding for habitat restoration projects and establishes an adaptive management decision making process to improve real-time and annual operations and generate new information that we hope will be used to inform future reviews of the adequacy of Yuba River protections by this Board and other responsible agencies.

Based on our finding of the Agreement's, at least, equivalency to RD-1644, we support YCWA's petition to modify its water rights permits to allow for implementation of the terms of the Fisheries Agreement.

Concurrent to the negotiations that led to the Fisheries Agreement, YCWA separately entered into negotiations with the California Department of Water Resources and the U.S. Bureau of Reclamation regarding the transfer of up to 200,000 acre-feet of water to the Environmental Water Account (EWA), and to State Water Project (SWP) and Central Valley Project (CVP) contractors. These parties subsequently signed the Yuba Water Purchase Agreement (Purchase Agreement). Our organizations were neither party to nor signatories of the Purchase Agreement. The Purchase Agreement, the Fisheries Agreement, and a Conjunctive Use Agreement between YCWA and districts receiving YCWA water are collectively referred to as the Yuba Accord.

The majority of the water transferred under the Purchase Agreement would be released for export by the South Delta pumping facilities using priority EWA-dedicated capacity during the summer and fall period. Because the EWA transfer water has priority over CVP and SWP contract deliveries, it represents the first rather than the last increment of export pumping. As a result, implementing this portion of the Yuba Purchase Agreement should result in no new incremental increases in exports or export-related impacts. For this reason, our organizations do not oppose transfer of Yuba Purchase Agreement water that uses EWA- dedicated pumping capacity.

But, water transferred as the last increment of export pumping should be treated differently. A large body of evidence demonstrates that export operations are a critical factor in both the long-term degradation of estuarine habitat and the recent collapse of pelagic fish populations. The federal courts have found that the existing biological opinion for delta smelt (on which both state and federal projects rely) violates the Endangered Species Act, and have ordered interim remedies while a new opinion is prepared. Given the extremely vulnerable state of Bay-Delta fisheries, the Board should be concerned with preventing any additional incremental stresses on the ecosystem. We are deeply worried about that prospect. Consequently, our organizations cannot support transfer of Yuba Purchase Agreement water that does not use EWA- dedicated pumping capacity, because of the risk of additional incremental export impacts. However, other options exist for the Board, including conducting a comprehensive review of existing water rights and water uses to better inform the balancing between diversion and exports in and through the Delta and revitalization of the Bay-Delta ecosystem.

By way of conclusion, let me turn back to something which has great value to me personally and to our four organizations. Perhaps most important, the Fisheries Agreement, and the subsequent Accord, marks the turning of a corner. The Fisheries Agreement ends one of the longest-running water rights and fish flow disputes in California. Now, the parties to the Fisheries Agreement intend to leverage their experience working to develop a solution in the negotiation room to collaborative partnerships out on the river during implementation. This new chapter is cause for celebration. There is no down-side to this new chapter. Hope about California's water future is sorely needed in 2007. The Fisheries Agreement is an important step for a new water future on the Lower Yuba River.

Again, thank you for the opportunity to comment on the YCWA petitions.

Respectfully submitted,

Charlton H. Bonham
Trout Unlimited