

State of California
Before the State Water Resources Control Board

11/13/02
2002 OCT 12 PM 11:02
SACRAMENTO

Petition to Consider Yuba County Water Agency Petition to Modify Water Right Permits 15026, 15027 and 15030 (Applications 5632, 15204 and 15574) and Petition for Long-Term Transfer of up to 200,000 acre-feet of Water Per Year From Yuba County Water Agency the California Department of Water Resources and the United States Bureau of Reclamation Under Water Right Permit 15026 (Application 5632)

Testimony of Bob Baiocchi on Behalf of the Anglers Committee

My name is Bob Baiocchi. I am a retired water rights consultant. I am representing the Anglers Committee and I am the president of the Anglers Committee. I qualified as an expert witness in water right matters during the Board's Bay-Delta Hearing process in the early 1990s. I also prepared and filed a formal complaint against the Yuba County Water Agency and the Board held a long-term hearing. The Anglers Committee was not a party of record to the Yuba Accord. My qualifications are enclosed with my testimony. I reside at Blairsden, California in Plumas County. My mailing address is P.O. Box 1790, Graeagle, California 96103.

The Anglers Committee has a paramount interest in the use of the people's water of the Yuba River and the Bay Delta Estuary. We reference Section 104 of the California Water Code.

The Anglers Committee has a paramount interest in the protection of the public interest in the development of water resources. We reference Section 105 of the California Water Code.

The Anglers Committee is a part owner of the people's water of the Yuba River and the Bay Delta Estuary. We reference Section 102 of the California Water Code and also the Public Trust Doctrine.

The fishery resources of the Yuba River and the Bay Delta Estuary are public trust resources and assets that are owned by the people. We reference the Public Trust Doctrine.

The flow and use of the people's water in or from any natural stream or watercourse in this State shall be limited to such water that shall be reasonably required for the beneficial use to be served, and such rights does and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonably method of diversion of the

people's water. We reference Section 100 of the California Water Code and Article X, Section 2 of the California Constitution.

Under this transfer, the people's water will be released from New Bullards Bar Dam and Reservoir into Englebright Reservoir (via the Colgate Power House) to the Yuba River (through the Narrows II Powerhouse and Daguerre Point dam) thence the Feather River to the Delta Estuary. Water reaching the Delta would be available to provide salinity standards and water quality controls within the Delta or to export from the Delta at either the Clifton Court Forebay or the Tracy Pumping Plant for use within the State Water Project (SWP) or the Central Valley Project (CVP) service areas.

For the transfer period, YCWA proposes to amend Permit 15026 to add the Clifton Court Forebay and the Tracy Pumping Plant as points of rediversion, and to add the services areas of the SWP and the CVP to the places of use. Additionally, YCWA proposes to add municipal, salinity, and water quality control as purposes of use. The petition requests that these changes be effective from January 1, 2008 through December 31, 2025.

Key Issue Determined by the SWRCB as Noticed in the Hearing Notice

In the SWRCB Notice for hearing in this matter, one of the key issues is: **Would the proposed changes unreasonably affect fish, wildlife, or other instream beneficial uses of water? I reference Section 1727 (2) of the California Water Code.**

Yes, the proposed changes could adversely affect Delta Smelt in the Delta, if allowed to be pumped unrestricted or without protection measures for the public trust fishery resources at the State Pumps. The Judge Wanger's Decision placed a limitation on the amount of water that can be pumped from the Delta to protection Delta Smelt. Consequently, it appears to me that additional new water from New Bullards Bar Reservoir cannot be pumped because of the limitation placed on pumping by the Wanger Decision. We reference Judge Wanger's Decision.

Judge Wanger's Decision is "new information". Consequently a new supplemental EIS/EIR should be prepared which include the proposed "new" Biological Opinion" prepared by the federal agencies pursuant to the provisions of the federal Endangered Species Act. Said Biological Opinion for the proposed water transfer should include the Lower Yuba River; Feather River; Sacramento Ruver and the Delta Estuary and the direct, indirect, and cumulative effects to federal listed Spring-run Chinook Salmon and Steelhead Trout (all life stages – migration flows for adults and juvenile fish).

Also a last minute key issue was introduced into the hearing records by the SWRCB. That key issue is: "Would the proposed transfer unreasonably affect the overall economy of the area from which the water is being transferred?"

New Bullards Bar Dam and Reservoir are licensed with the Federal Energy Regulatory Commission as FERC Project 2246. The expiration date of the license is April 30, 2013. I do not know the status of the proposed water transfer with the Federal Energy Regulatory Commission and whether YCWA filed an amendment and received an approved amendment to said license. The proposed transfer: (1) will most likely affect public recreation at the reservoir during low water year conditions; (2) will most likely affect boating and navigation at the reservoir during low water year conditions; (3) most likely affect power production at Colgate Powerhouse and the Narrows II Powerhouse during the period of the transfer; (4) will most likely affect daily flows in the Yuba River, Feather River, Sacramento River, and the Delta Estuary during the period of the transfer; and (5) would need a Water Quality Certification from the SWRCB regarding the effects to water quality in the Lower Yuba River for cold water species such as listed Spring-Run Chinook Salmon and Steelhead Trout during the period of the transfer.

The Federal Energy Regulatory Commission regulates the reservoir and project facilities and mitigates the effects to the people's environment caused by the project. Consequently in the event YCWA did not receive an approved amendment to their hydro power project from the Federal Energy Regulatory Commission, the Board should hold the approval of the water transfer in abeyance until YCWA obtains the approval from the Federal Energy Regulatory Commission concerning the effects of the water transfer with measures to protect: (1) Public Recreation at New Bullards Bar Reservoir; (2) Public Boating and Navigation at New Bullards Bar Reservoir; (3) Fishery Species and their Habitat, including sportfishing at New Bullards Bar Reservoir; (4) Daily River Flows in the Lower Yuba River, and (5) Water Quality Certification from the SWRCB. Also because of the federal nexus, the Federal Energy Regulatory Commission would have to consult with NOAA Fisheries (aka USNMFS) under Section 7 of the federal Endangered Species Act and YCWA may also be required to file an application to NOAA Fisheries for a Section 10(a)(1)(A) permit because of changes to daily flows in the Lower Yuba River resulting from the proposed transfer that could potential affect federally listed spring-run Chinook salmon and steelhead trout and their habitat (all life stages).

The proposed transfer may also divert the people's water of the Yuba River into the State Pumps. The State Pumps are licensed with the Federal Energy Regulatory Commission as FERC Project 2426, with a license expiration date of January 31, 2022. The licensee of the State Pumps is the

California Department of Water Resources and is a party to the proposed transfer. It appears to me that the CDWR should notify FERC concerning the Judge Wanger's Decision to reduce pumping at a FERC licensed project facility and also should notify FERC concerning the proposed transfer of the people's water from one FERC licensed Project to another FERC licensed project. Consequently the SWRCB should hold in abeyance the approval of said water transfer until the FERC licenses for both FERC licensed projects are amended with protection measures, as noted above, for New Bullards Bar Reservoir and the State Pumps in the Delta Estuary.

We also believe YCWA may not have put to full beneficial use all of the people's water stored at New Bullards Bar Reservoir. We reference the reservoir levels at the reservoir since the dam and reservoir was constructed.

When the person entitled to the use of water fails to beneficially use all or part of the water claimed by him, for which a right of use has vested, for the purpose for which it was appropriated or adjudicated, for a period of five (5) years, such unused water may revert to the public and shall, if reverted, be regarded as unappropriated public water. I reference Section 1241 of the California Water Code. We believe the SWRCB must make a determination based on all information and data that may not be part of the hearing to determine whether YCWA has put all of the water stored in New Bullards Bar Reservoir to full beneficial use continuously.

We believe the SWRCB must make findings that there is evidence that all the water stored and used from New Bullards Bar Reservoir has been put to full beneficial use pursuant to the California Water Code in accordance with 1241 of the California Water Code.

However, in the event YCWA will be transferring the people's water used for irrigation of crops by YCWA, the amount of land used for 200,000 acre-feet of water (more or less per year) for irrigation purposes should be fallowed and not cultivated.

Clearly the SWRCB, as the chief water regulator and chief water enforcement agency in California should order daily flows from New Bullards Bar Reservoir and all other dams and reservoirs affecting flows and water quality in the Delta to provide daily salinity and water quality control requirements to protect the Delta Estuary.

That concludes my testimony on behalf of the Anglers Committee.