

STATEMENT OF SUPPORT FOR PROPOSED LOWER YUBA RIVER FISHERIES AGREEMENT

Background

A. For several years, the Yuba County Water Agency ("YCWA") has been working with numerous other interested parties to attempt to resolve issues associated with operation of the YCWA's Yuba River Development Project ("Yuba Project") in a way that will settle pending litigation regarding Revised Decision 1644 ("RD-1644") of the State Water Resources Control Board ("SWRCB"), protect local water-supply reliability, protect and improve lower Yuba River fisheries and provide water-transfer revenues for local flood-control and water-supply projects.

B. YCWA proposes to resolve these issues in a coordinated, comprehensive manner by implementing three agreements with various parties: (1) the proposed Lower Yuba River Fisheries Agreement ("Fisheries Agreement") among YCWA, the California Department of Fish and Game ("CDFG") and fisheries and environmental organizations, and supported by the United States Fish and Wildlife Service ("USFWS") and NOAA Fisheries, which will provide for revisions to the instream-flow requirements in YCWA's water-right permits and to some of the other requirements in RD-1644, to improve flows in the lower Yuba River for fisheries and to allow for water transfers to occur in an environmentally benign manner; (2) the proposed Conjunctive Use Agreements between YCWA and its Member Units (water districts and mutual water companies within Yuba County that receive water from YCWA), which will provide for the implementation of a comprehensive program of conjunctive uses of surface water and groundwater supplies in Yuba County; and (3) and the proposed Long-Term Transfer Agreement ("Transfer Agreement") among YCWA, the Department of Water Resources (DWR) and the United States Bureau of Reclamation (Reclamation), which will provide for the transfer and purchase of water in a manner consistent with the improved lower Yuba River flows under the proposed Fisheries and Conjunctive Use Agreements. Copies of the principles of agreement for these three proposed agreements are attached to this statement as Exhibits A, B and C. In order for any of these proposed agreements to become effective, all three must be fully approved and executed by the parties, and YCWA's water-right permits and RD-1644 must be amended as appropriate by the SWRCB.

C. This Statement of Support concerns the proposed Fisheries Agreement and is signed by YCWA, CDFG, South Yuba River Citizens League ("SYRCL"), Friends of the River ("FOR"), Trout Unlimited ("TU"), The Bay Institute ("TBI"), NOAA Fisheries and USFWS. These parties are collectively referred to in this Statement as the "Statement Signatories."

D. This Statement of Support confirms the present understandings of the Statement Signatories regarding the proposed Fisheries Agreement, so that they may proceed with the steps that are described in this Statement.

Actions

1. Request For Stay Of Court Proceedings

YCWA, CDFG, SYRCL, FOR, TU and TBI will sign a joint request to the Superior Court to stay the pending litigation regarding challenges to RD-1644 until the EIR/EIS described in section 2 of this Statement of Support has been prepared and the SWRCB has acted on YCWA's petitions to change its water-right permits and RD-1644 to implement the Fisheries, Transfer and Conjunctive Use Agreements; provided that the request for stay will be only until March 1, 2007, with the goal that the EIR/EIS will be completed and the SWRCB will act on the petitions before that date.

2. CEQA/NEPA

As soon as possible after this Statement of Support is signed, YCWA, working with Reclamation, will initiate the formal process under the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA") to prepare an environmental impact report/environmental impact statement ("EIR/EIS") for the Fisheries, Transfer and Conjunctive Use Agreements. YCWA will provide notice to Statement Signatories when this work begins.

YCWA will be the CEQA lead agency and Reclamation will be the NEPA lead agency for the EIR/EIS. The SWRCB and DWR will be CEQA responsible agencies. CDFG will be a CEQA trustee agency. YCWA will give other Statement Signatories opportunities to engage in pre-draft consultations, and such consultations will include circulations of draft project descriptions, proposed alternatives and proposed analytical methods. During pre-draft consultations under CEQA, YCWA will attempt to reach consensus with Statement Signatories on draft project descriptions, proposed alternatives, proposed analytical methods and other issues that may arise during the CEQA/NEPA process. As the EIR/EIS and YCWA's findings required by section 15091 of the CEQA Guidelines are being prepared, the Statement Signatories will attempt to reach consensus on all of the issues that arise during the process. In addition, YCWA will provide to other interested parties opportunities to review and comment on these proposals and issues, and the statutorily required opportunities to comment on public-review drafts of the EIR/EIS.

The EIR/EIS will analyze the potential environmental effects of implementing the Fisheries, Transfer and Conjunctive Use Agreements on surface water hydrology, groundwater hydrology, water supplies, hydropower generation, flood control, water quality, fisheries, wildlife, vegetation, special-status species, recreation, visual resources, cultural resources and Indian Trust Assets, air quality, land use, socioeconomic resources, growth inducement and environmental justice. The scope of the analysis of potential environmental effects will include the Bay-Delta, Bay-Delta concerns and the effects of the proposed Feather River diversion. Alternatives to be evaluated in the EIR/EIS will include the No Action Alternative, the Proposed Action Alternative, and appropriate

other alternatives. In addition, the EIR/EIS will analyze the cumulative effects of implementation of the Fisheries, Transfer and Conjunctive Use Agreements in conjunction with other past, present and reasonably foreseeable actions, including implementation of the proposed new Feather River point of diversion.

After the EIR/EIS is completed and YCWA has adopted the findings required by section 15091 of the CEQA Guidelines, each Statement Signatory will review the EIR/EIS and YCWA's findings and determine whether that Statement Signatory believes that the EIR/EIS and YCWA's findings support implementation of the Fisheries, Transfer and Conjunctive Use Agreements. If a Statement Signatory believes that the EIR/EIS and YCWA's findings support implementation of these agreements, then that Statement Signatory (except for NOAA Fisheries and USFWS) will execute the Fisheries Agreement. Except for any changes to the Fisheries Agreement that may be required to comply with CEQA or NEPA, the Statement Signatories do not contemplate further substantive amendments to the principles of agreement for the proposed Fisheries Agreement that are attached to this Statement as Exhibit A will be made.

YCWA will pay a total of \$100,000 to the NGO's (SYRCL, FOR, TU and TBIU) to fund or partially fund their hiring of a fishery biologist and a hydrologist to participate in the CEQA/NEPA process described in this section 2 of this statement. This amount will be deemed to include \$25,000 per year for the 2005 and 2006 payments that YCWA would have made to the NGO's under section 5.2.2 of the Fisheries Agreement for 2005 and 2006 plus one additional payment of \$50,000.

3. Petitions To Change YCWA's Water-Right Permits and RD-1644

YCWA will file petitions with the SWRCB for the changes to YCWA's water-right permits and RD-1644 that will be necessary to implement the Fisheries, Transfer and Conjunctive Use Agreements. These petitions will include: (a) a petition to amend the instream-flow requirements in YCWA's water-right permits that are specified in RD-1644 and other provisions of RD-1644 to implement the proposed Fisheries Agreement; (b) a petition to amend YCWA's water-right permits to add the CVP and SWP points of diversion/rediversion and places of use during the term of the Transfer Agreement, as necessary to implement the Transfer and Conjunctive Use Agreements; and (c) a petition to add a new point of diversion/re-diversion at or below the confluence of the Yuba River and the Feather River for the diversion/re-diversion and delivery of water under YCWA's permits to irrigation, municipal and industrial water users, which water will be used only within Yuba County and not in any place of use outside of Yuba County. These petitions are described in more detail in Section 4.1 of the attached Exhibit A.

Prior to the submittal of the petition in (b) to amend points of diversion and places of use during the term of the Transfer Agreement, YCWA will consult with Statement Signatories regarding this petition. YCWA's petition (b) will request that the SWRCB include all mitigation measures in the EIR/EIS (except for any mitigation measures that YCWA finds, and CDFG and the NGOs concur, are infeasible under section 15091(a)(3)

of the CEQA Guidelines) concerning petition (b) that concern matters within the SWRCB's jurisdiction in its order approving this petition. CDFG's and the NGOs' concurrence described in the preceding sentence will not be unreasonably withheld. YCWA will promote a measure for petition (b) that is consistent with the monitoring and reporting elements of CEQA Guidelines section 15097, including but not limited to subsection (e)(6). Further, YCWA will request in petition (b) that the SWRCB include in its order approving this petition a specific reservation of jurisdiction to add, amend, revise, supplement, or delete terms and conditions in the SWRCB's order regarding petition (b), and that this order specify that the SWRCB will review its order regarding petition (b) before May 2016 or during the Clean Water Action section 401 process for YCWA's FERC relicensing, whichever is earlier, to determine whether, and if so, how, to exercise this jurisdiction, after notice to interested parties and opportunity for a hearing.

The petition in (c) above will request SWRCB approval only at a programmatic level and will not include any site or project-specific proposals. However, the programmatic proposal will include, to the extent possible, information with regard to the kind, size, intensity, and location of anticipated subsequent project-specific proposals. Statement Signatories reserve their rights to object to this petition or to future proposals or plans for specific facilities that will be constructed at the point of diversion/rediversion described in (c) above, if and when YCWA submits those proposals or plans to the SWRCB. If YCWA develops such proposals or plans while the Fisheries Agreement is in effect, it will consult with Statement Signatories regarding such proposals or plans. YCWA intends to conduct environmental impact report review in the event specific projects concerning the matters in petition (c) are proposed in the future.

When the SWRCB issues its public notices of these petitions, the other Statement Signatories may file protests to these petitions. However, if a Statement Signatory executes the Fisheries Agreement, then that Statement Signatory will dismiss any protests that it filed to these petitions and support the petition described in (a) above. If, after reviewing the EIR/EIS, NOAA Fisheries or USFWS believes that the EIR/EIS supports implementation of the Fisheries, Transfer and Conjunctive Use Agreements, then that agency will dismiss any protest that it filed to these petitions and support the petition described in (a) above.

4. Review of Conjunctive Use, Long Term Transfer, and PG&E Agreements

YCWA will provide copies of the final versions of the Conjunctive Use Agreements, including any supporting information that exists which is intended to assist in developing implementation of the agreement, the final version of the proposed Transfer Agreement and the final version of any agreement, memorandum of understanding or similar document with the Pacific Gas and Electric Company ("PG&E") to CDFG, SYRCL, FOR, TU and TBI, and give them reasonable opportunities to review these final versions for consistency with the Fisheries Agreement, before they execute the Fisheries Agreement. If these final versions are not consistent with the Fisheries Agreement, then a Statement Signatory may decide not to execute the Fisheries Agreement.

5. River Management Fund Guidance Document

As part of preparing to implement actions that will be funded by the River Management Fund (“RMF”) that will be created by the proposed Fisheries Agreement, the Statement Signatories will work together to produce a “*Lower Yuba River Accord Process, River Management Fund, Monitoring and Evaluation Guidelines*” document before execution of the Fisheries and Transfer Agreements. This document will provide a detailed rationale describing the monitoring and evaluation guidelines for the proposed core monitoring and focused studies that will be funded by the RMF.

6. 2005 Water Transfer and 2006 Pilot Water Transfer and Instream Flow Program

YCWA intends to implement a water transfer during the summer and fall of 2005.

To implement this water transfer, YCWA has filed a petition with the SWRCB. YCWA’s petition asks the SWRCB to include in its order approving the petition appropriate conditions regarding the monitoring of fish and fish habitat in the lower Yuba River during the transfer. YCWA’s petition does not ask the SWRCB to amend any of the terms and conditions of RD-1644. Any other Statement Signatory may protest this petition. However, if YCWA does not receive substantially all of the net revenues that YCWA anticipates receiving from the proposed 2005 water transfer, then YCWA may reduce, on a pro-rata basis, the payments that otherwise are contemplated by this Statement of Support, and YCWA may not be able to proceed with the CEQA/NEPA process described in section 2 of this Statement of Support.

During the summer and fall of 2005, YCWA will attempt to negotiate a short-term agreement with CDFG, SYRCL, FOR, TU and TBI for a 2006 Pilot Water Transfer and Instream Flow Program (“2006 Pilot Program”) that will contain the provisions of the proposed Fisheries Agreement that are appropriate for a short term agreement, including the proposed Fisheries Agreement’s provisions regarding instream flows and YCWA’s contributions to the River Management Fund, and the transfer accounting rules in the proposed Transfer Agreement and the conjunctive use program in the proposed Conjunctive Use Agreements, with modifications as reasonably necessary to accommodate the fact that the 2006 Pilot Program will be for one year or less. This short-term agreement will provide for a decision-making process that is similar in concept to decision-making process for the River Management Team in the proposed Fisheries Agreement.

During the 2005 and 2006 water transfers, YCWA will set aside the funds in the amounts of \$550,000 per year minus the amounts that YCWA spends on monitoring and studies in connection with the 2005 and 2006 water transfers, and minus \$25,000 per year for some of the amounts that YCWA is going to pay the NGO’s under section 2 of the this Statement of Support. If the Parties execute the proposed Fisheries Agreement, then YCWA will pay these set-aside funds into the RMF that will be created by the Fisheries

Agreement. If the proposed Fisheries Agreement is not executed, then these set-aside funds will revert back to YCWA.

During the 2005 and 2006 water transfers, YCWA will make the in-kind contributions of \$15,000 per year, and CDFG will make the in-kind contributions of \$50,000 per year, that are described in section 5.3.2 of the proposed Fisheries Agreement.

7. Provision Regarding Resolution of South Screen issues

A Statement Signatory may decide not to execute the Fisheries Agreement if the implementation of the proposed resolution of South Screen issues that is described in the proposed CDFG/YCWA letter agreement regarding South Screen issues has not occurred, has been substantially delayed, or is reasonably expected to not occur or to be substantially delayed.

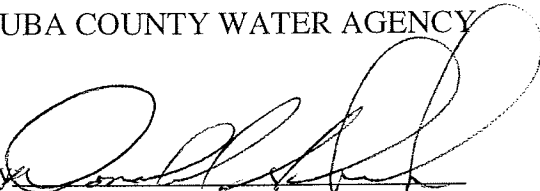
8. Public Review of Documents

The Statement Signatories agree that this statement and the attached exhibits are public documents, and that copies of these documents may be distributed to any person or entity.

9. Non-Execution of Fisheries Agreement

If any Statement Signatory does not execute the Fisheries Agreement, then the Statement Signatories that do execute the Fisheries Agreement will proceed to implement the Fisheries Agreement, but such execution and implementation of the Fisheries Agreement will not affect any of the legal rights of any Statement Signatory that does not execute the Fisheries Agreement.

Date: 4-21-06 YUBA COUNTY WATER AGENCY

By: 

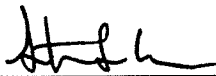
Date: Jan 18, 2005 CALIFORNIA DEPARTMENT OF FISH AND GAME

By: 

Date: _____ SOUTH YUBA RIVER CITIZENS LEAGUE

By: _____

Date: 4-20-05 FRIENDS OF THE RIVER

By: 

Date: _____ TROUT UNLIMITED

By: _____

Date: _____ THE BAY INSTITUTE

By: _____

Date: _____ U. S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC
ADMINSTRATION, NATIONAL MARINE
FISHERIES SERVICE

By: _____

Date: _____ U.S. DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE

By: _____

Date: April 19, 2005 SOUTH YUBA RIVER CITIZENS LEAGUE

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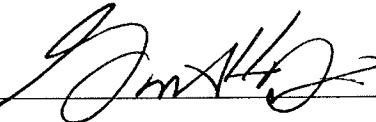
Date: _____ FRIENDS OF THE RIVER

By: _____

Date: April 19, 2005 TROUT UNLIMITED

By: 

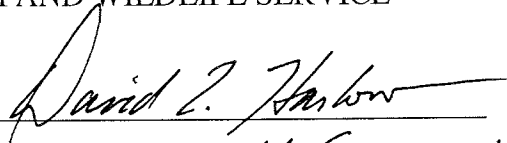
Date: April 19, 2005 THE BAY INSTITUTE

By: 

Date: April 18, 2005 U. S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION, NATIONAL MARINE
FISHERIES SERVICE

By: 
Area Supervisor

Date: April 18, 2005 U.S. DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE

By: 
Acting Field Supervisor