

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING – DIVISION OF WATER RIGHTS  
April 5, 2006**

**ITEM: 8**

**SUBJECT**

CONSIDERATION OF A PROPOSED ORDER ON THE PETITION OF YUBA COUNTY WATER AGENCY TO CHANGE THE EFFECTIVE DATE OF THE LONG-TERM INSTREAM FLOW REQUIREMENTS SPECIFIED IN REVISED WATER RIGHT DECISION 1644

**DISCUSSION**

The State Water Resources Control Board (State Water Board) adopted Revised Water Right Decision 1644 (RD-1644) in 2003, to address fishery protection and water right issues on the lower Yuba River. The decision established interim and long-term flow requirements for protection of fish in the Yuba River between Englebright Dam and Marysville as conditions of water right permits held by Yuba County Water Agency (YCWA).<sup>1</sup> YCWA and other water purveyors filed suit challenging some of the requirements of RD-1644 as excessive, while various environmental groups filed suit contending that the decision provides inadequate protection for fish. Some procedural issues have been resolved, but no action has been taken on the substantive issues in the consolidated litigation.

The long-term flow requirements established in RD-1644 are scheduled to come into effect on April 21, 2006. Until that date, YCWA must comply with specified interim requirements. The interim and long-term flow requirements in RD-1644 vary depending upon the time of year and the hydrologic conditions in a particular year, but the long-term flow requirements are higher than the interim requirements during parts of some years. On November 18, 2005, YCWA filed a petition to change the effective date of the long-term flow requirements to March 1, 2007, and allow YCWA to continue operating subject to the interim flow requirements until that time.

The State Water Board held a hearing on the petition on January 10, 2006. The interim and long-term flow requirements are identical or nearly identical for wet, above normal, or below normal water years, but differ more in dry, critical or extreme critical years. Due to relatively wet hydrologic conditions in the Yuba Basin this year, the evidence presented at the hearing indicates there is only approximately an 8 percent probability that continuing the interim flow requirements until March 1, 2007, will result in a significant change in the amount of water

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<sup>1</sup> The interim flow requirements specified in RD-1644 were originally established in Decision 1644 adopted on March 1, 2001. The requirements are included as conditions of Water Right Permits 15026, 15027, and 15030 (Applications 5632, 15204, and 15574).

that must be released to meet minimum flow requirements. Based on the evidence in the record, the proposed order concludes that deferral of the long-term flow requirements until March 1, 2007, will not have an unreasonable effect on fish and wildlife, and will not adversely affect other uses or users of water.

YCWA and several parties to the litigation over RD-1644 have negotiated the proposed Yuba River Accord that is intended to lead to settlement of most issues in the litigation over RD-1644. The order concludes that deferring the effective date of the long-term flow requirements as proposed by YCWA will facilitate completion of environmental documents that are being prepared for the proposed accord and will facilitate the State Water Board's consideration of a litigation settlement proposal based on that agreement. The order concludes that deferring the long-term flow requirements will reduce ongoing litigation expenses related to RD-1644, and that it is in the public interest to change the effective date of the long-term flow requirements to March 1, 2007.

### **POLICY ISSUE**

Should the State Board adopt the proposed order?

### **FISCAL IMPACT**

None.

### **REGIONAL BOARD IMPACT**

The proposed order would maintain the interim flow requirements that are currently in effect for the lower Yuba River until March 1, 2007.

### **STAFF RECOMMENDATION**

Staff recommends adoption of the proposed order.

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

**ORDER WR 2006 -**

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In the Matter of the Petition to Change the Effective  
Date of the Long-Term Instream Flow Requirements  
Established in Revised Water Right Decision 1644 (Permits  
15026, 15027, and 15030; Applications 5632, 15204, and 15574)

**YUBA COUNTY WATER AGENCY,  
Petitioner and Permittee**

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SOURCE: Yuba River Tributary to Feather River

COUNTY: Yuba

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**ORDER CHANGING THE EFFECTIVE DATE  
OF LONG-TERM INSTREAM FLOW REQUIREMENTS**

BY THE BOARD:

**1.0 INTRODUCTION**

The State Water Resources Control Board (State Water Board or Board) adopted Revised Water Right Decision 1644 (RD-1644) on July 16, 2003, to address fishery protection and water right issues involving the diversion and use of water from the Yuba River. The decision established instream flow requirements for protection of fish in the lower Yuba River between Englebright Dam and Marysville as conditions of water right permits for consumptive use held by Yuba County Water Agency (YCWA).<sup>2</sup> The long-term flow requirements established in RD-1644 are scheduled to come into effect on April 21, 2006. Until that date, RD-1644 requires YCWA to maintain instream flows in the lower Yuba River that are equal to or greater than specified interim flow requirements. The interim and long-term flow requirements established in RD-1644 vary depending upon the time of year and the hydrologic conditions in a particular

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<sup>2</sup> Water Right Permits 15026, 15027, and 15030 (Applications 5632, 15204, and 15574).

year, but the long-term flow requirements scheduled to come into effect on April 21 of this year are higher than the interim requirements during parts of some years. (RD-1644, pp. 173-178.)

On November 18, 2005, YCWA filed a petition to change the effective date of the long-term flow requirements to March 1, 2007, and allow YCWA to continue operating subject to the interim flow requirements until that date. Following notice to the public and interested parties, the State Water Board held a hearing on YCWA's petition on January 10, 2006. Based on the evidence in the record and the findings below, the State Water Board concludes that it is appropriate to change the effective date of the long-term flow requirements to March 1, 2007, subject to the provisions of this order.

## **2.0 BACKGROUND**

The Yuba River is the fourth largest river in the Sacramento River Basin. The river provides water for agriculture, domestic use, hydroelectric power generation, and recreation, in addition to supporting numerous species of fish including salmon, steelhead and American shad.

YCWA diverts water from the Yuba River for consumptive uses under Water Right Permits 15026, 15027, and 15030. The permits authorize diversion of water to storage at New Bullards Bar Reservoir and direct diversion of water for consumptive use at downstream locations.<sup>3</sup>

Water diverted under YCWA's water right permits is delivered to Browns Valley Water District, Cordua Irrigation District, Hallwood Irrigation Company, Ramirez Water District, Brophy Water District, South Yuba Water District, and Dry Creek Mutual Water Company. Beginning in 1987, water appropriated under YCWA's permits has also been transferred to other water users in a series of temporary water transfers that were approved pursuant to provisions of Water Code section 1725 et seq. (RD-1644, pp. 20 and 21.) Over the last 20 years, the State Water Board has addressed numerous issues regarding water use and fishery protection in the lower Yuba River, a 24-mile section of the river between Englebright Dam and

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<sup>3</sup> In addition to providing water for consumptive use, water released from New Bullards Bar Reservoir is used for power generation at the Colgate Powerhouse and at the Narrows 1 and Narrows 2 Powerhouses below Englebright Reservoir.

the confluence of the Yuba River with the Feather River south of Marysville. (See, e.g., RD-1644, pp. 1-7; Order WR 2003-0016.)

## **2.1 Instream Flow Requirements Established in RD-1644**

The minimum instream flow requirements adopted in RD-1644 were originally established in Decision 1644, adopted on March 1, 2001. The requirements were re-adopted in RD-1644 following the State Water Board's consideration of additional evidence pursuant to the direction of the Yuba County Superior Court. (Order WR 2003-0016.) RD-1644 specifies two sets of instream flow requirements applicable to YCWA's consumptive use permits: (1) interim flow requirements that have been in effect since the original adoption of Decision 1644 in 2001 and which are scheduled to remain in effect until April 21, 2006; and (2) long-term flow requirements which are scheduled to come into effect on April 21, 2006.

The long-term flow requirements were established based on the State Water Board's determination of the minimum average daily streamflows that should be provided for protection of fish in the lower Yuba River. (RD-1644, pp. 75-78 and 173-175.) When the State Water Board adopted Decision 1644 in 2001, however, California was experiencing electrical power supply shortages, and the Board was concerned about providing YCWA operational flexibility with regard to generation of hydroelectric power. Therefore, the State Water Board determined that it was appropriate to establish interim flow requirements and defer imposition of the long-term minimum flow requirements until April 21, 2006. (RD-1644, pp. 34; 125-127; and 175-178.)<sup>4</sup>

Due to the relative abundance of water in the Yuba River in wet and above normal years, the interim and long-term flow requirements for wet and above normal water year types are identical.<sup>5</sup> In below normal years, the interim and long-term flow requirements are extremely

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<sup>4</sup> The interim flow requirements are very similar to flows that were specified in a YCWA instream flow proposal that was submitted at the 2000 evidentiary hearing. (RD-1644, p. 127.)

<sup>5</sup> The interim and long-term flow requirements both vary depending on the water year classification of a particular year. Both sets of requirements specify minimum flows to be provided in wet, above normal, below normal, dry, and critical water years, as determined using the Yuba River Index described in Appendix I of RD-1644. In addition, the long-term flow requirements include separate flow requirements for years that are classified as "extreme critical."

similar; and in dry, critical and extreme critical years, the differences between the interim and long-term flow requirements are more substantial. (RD-1644, pp. 173-178.) The interim flow requirements specified in RD-1644 have been in effect since 2001. RD-1644 expressly recognizes that the instream flow provisions and other requirements established in the decision are subject to the continuing authority of the State Water Board and may be modified based on changed circumstances. (RD-1644, pp. 29-35; 172-173.)

Following adoption of RD-1644, YCWA, several other water purveyors in Yuba County, and several environmental groups filed petitions challenging the decision in Yuba County Superior Court. Among other contentions in the litigation, YCWA and the other water purveyors argue that some of the flow requirements specified in RD-1644 are unsupported and excessive, while the environmental groups contend that the decision provides insufficient protection for fish. The lawsuits have been consolidated and assigned to the San Joaquin County Superior Court, but the litigation is still in a preliminary stage, and no action has been taken with respect to substantive issues.

## **2.2 Proposed Yuba River Accord and 2006 Pilot Program**

With the exception of the State Water Board, the parties to the consolidated litigation over RD-1644 have been involved in extended settlement negotiations to attempt to develop a comprehensive proposal that would meet the litigants' competing interests regarding use of water from the Yuba River.<sup>6</sup> On April 21, 2005, YCWA, several Yuba River water purveyors, the Department of Water Resources (DWR), the U.S. Bureau of Reclamation (USBR), the California Department of Fish and Game (DFG), and several environmental organizations approved agreements for a proposed settlement regarding instream flow requirements and other issues related to diversion and use of water from the lower Yuba River.

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<sup>6</sup> State Water Board staff has discussed the procedural requirements that would have to be followed to implement various aspects of the settlement proposal, but was not involved in the negotiations among the parties regarding development of specific settlement proposals.

The proposed Lower Yuba River Accord (Yuba Accord) includes three separate but related agreements: (1) a Fisheries Agreement,<sup>7</sup> (2) a Water Purchase Agreement,<sup>8</sup> and (3) a Conjunctive Use Agreement.<sup>9</sup> The Yuba Accord is intended to form a framework to resolve the lengthy conflicts over minimum instream flows in the lower Yuba River, and it proposes to modify the instream flow requirements established by RD-1644. In addition to complying with modified instream flow requirements that would apply as conditions of YCWA's water right permits, the Yuba Accord also proposes that YCWA provide additional water to meet instream needs pursuant to the terms of a Fisheries Agreement negotiated among YCWA, state and federal fishery agencies, and specified environmental groups.

YCWA and the USBR are serving as lead agencies for preparation of a joint Environmental Impact Report/Environmental Impact Statement (EIR/EIS) on the proposed Yuba Accord pursuant to requirements of the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). In addition to the present petition, YCWA intends to file additional petitions with the State Water Board to revise the instream flow requirements established in RD-1644 and approve other changes to YCWA's water right permits that would be necessary to implement the agreements composing the Yuba Accord. The State Water Board will not act upon those petitions until completion of the EIR/EIS, which is not expected until early 2007.

In addition to requesting amendment of the long-term flow requirements and approval of a long-term transfer of water envisioned in the Yuba Accord, YCWA proposes to implement a Pilot Transfer Program in 2006 (Pilot Program). The Pilot Program calls for providing the flow levels specified in the proposed Yuba Accord and proposes a temporary water transfer to

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<sup>7</sup> The Fisheries Agreement for the proposed Yuba Accord would be signed by YCWA, DFG, Friends of the River, the South Yuba River Citizens League, the Bay Institute, and Trout Unlimited. The National Marine Fisheries Service (NMFS), and the U.S. Fish and Wildlife Service (USFWS) will not be signatories but have signed a statement of support for the Fisheries Agreement.

<sup>8</sup> The Water Purchase Agreement for the proposed Yuba Accord would be signed by DWR, YCWA, and the USBR.

<sup>9</sup> The Conjunctive Use Agreement for the proposed Yuba Accord would be signed by YCWA and most of the water districts and water companies that receive water supplied by YCWA. Cordua Irrigation District does not presently support the Yuba Accord.

DWR for use in the CALFED Environmental Water Account and for possible use in DWR's 2006 Dry-Year Water Purchase Program. On November 16, 2005, YCWA filed a separate petition for the proposed temporary transfer of water. That petition is subject to a separate public notice and review process pursuant to requirements of Water Code sections 1725-1732.

The stated goals for the 2006 Pilot Program include the following:

- To implement the Yuba Accord flow schedules from March 1, 2006, through February 28, 2007.
- To make a temporary water transfer in 2006 to produce revenue to help pay for the Yuba Accord EIR/EIS and fisheries studies.
- To begin evaluation of the Yuba Accord flows and provide funding for a River Management Fund.
- To begin the evaluation of accounting rules developed for the Yuba Accord Water Purchase Agreement.
- To commence a River Management Team process, a collaborative body made up of signatories to the Yuba Accord.

### **2.3 YCWA Petition to Change the Effective Date of the Long-Term Flow Requirements**

On November 18, 2005, YCWA filed the Petition for Modification of Water Right Permits that is the subject of this order. The petition requests that the State Water Board change the effective date of the long-term flow requirements established in RD-1644 to March 1, 2007.

The petition states that the change is required in order to accomplish the proposed temporary water transfer called for in the 2006 Pilot Program. Without the change in the effective date of the long-term flow requirements, YCWA's petition states the carryover storage in New Bullards Bar Reservoir after September 30, 2006, and after the proposed temporary transfer of water, would be up to 70,000 acre-feet lower than it would be if the requested change is approved. The petition states that reduced carryover storage would increase the severity of deficiencies in the amount of water that would be available for delivery to local water users in 2007, if 2007 is a dry year. (YCWA-1, pp. 1-2.)<sup>10</sup>

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<sup>10</sup> References to exhibits introduced at the State Water Board hearing are designated with the abbreviation for the party who submitted the exhibit, followed by the number of the exhibit and, in some instances, the page number

If the petition to change the effective date of the long-term flow requirements is approved, YCWA proposes to operate its facilities to comply with the interim flow requirements that are currently in effect. In addition, YCWA proposes to maintain the minimum instream flows specified in Exhibits 1-5 of the Fisheries Agreement for the 2006 Pilot Program. (YCWA-7.) YCWA contends that its proposed instream flows will provide a level of protection for fish, wildlife, and other instream beneficial uses that will be equivalent to or better than the protection that would be provided by the long-term instream flow requirements in RD-1644.

YCWA filed its petition pursuant to California Code of Regulations, title 23, section 791(e), which applies to petitions for changes in water right permits and licenses that do not involve a change in the point of diversion, purpose of use, or place of use of appropriated water. The State Water Board provided public notice of the petition on November 22, 2005, and conducted an evidentiary hearing on January 10, 2006. The State Water Board has broad authority over the administration of previously issued water rights, including authority to control and condition water use to protect the public interest and to ensure utilization of water consistent with the public interest and protection of the environment. (*Environmental Defense Fund, Inc. v. East Bay Municipal Utility District, et al.* (1980) 26 Cal.3d 183, 198 [161 Cal.Rptr. 466].) The State Water Board's review of the present petition involves consideration of: (1) the relationship between the requested change and current year hydrology; (2) possible effects of the requested change on fish, wildlife, and other beneficial uses of water; and (3) the relationship between the requested change and the public interest.

### **3.0 RELATIONSHIP BETWEEN CHANGES REQUESTED BY PETITIONER AND CURRENT YEAR HYDROLOGY**

YCWA provided a hydrologic analysis of the Yuba River for water year 2006 through 2007 that evaluates the water supply impacts of operating YCWA facilities to meet different instream flow objectives in the lower Yuba River. (YCWA-1.) The YCWA analysis compares the effects on the estimated amount of water available for consumptive use in Yuba County in

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or location in the exhibit where the cited information is found. References to testimony in the court reporter's transcript of the hearing are designated as "R.T." followed by the starting page and line number in the transcript, followed by the ending page and line number.

2007 under two scenarios. The first scenario assumes that YCWA would operate to meet the *interim* flow requirements established in RD-1644 plus provide the additional flows as specified in Exhibit 1 to the Pilot Program Fisheries Agreement. The second scenario assumes that YCWA would operate to meet the *long-term* flow requirements established in RD-1644 plus provide additional flows as specified in Exhibit 1 to the Pilot Program Fisheries Agreement.

The analysis indicates that if YCWA were required to meet the RD-1644 long-term flows in addition to providing the flows called for in the Pilot Program Fisheries Agreement, then the carryover storage in New Bullards Bar Reservoir on September 30, 2006, would be reduced by an average of 30,000 acre-feet if the 2006 water year were in the driest 20 percent of all years simulated. If the 2006 water year were in the driest 10 percent of all years simulated, YCWA's analysis indicates that carryover storage would be reduced by between 40,000 and 70,000 acre-feet. If the 2007 water year were in the driest 20 percent of all water years simulated, the YCWA analysis concludes that estimated reductions in carryover storage would result in shortages that could not be replaced through substitution of groundwater pumping by farmers in Yuba County. (YCWA-1, pp. 1-2.)

During cross-examination, a YCWA witness discussed the potential risks of diversion delivery shortages in 2007 if: (1) the 2006 water year were classified as a wet, above normal or below normal water year type; (2) YCWA were required to meet the RD-1644 long-term flows; and (3) YCWA also provided the flows called for in the Yuba Accord. The witness explained that under those conditions, because RD-1644's interim flows and long-term flows are identical for wet and above normal years, and nearly identical for below normal years,<sup>11</sup> deferring the long-term flow requirements would not affect the amount of carry-over storage at the end of 2006. YCWA would be able to meet its water supply obligations in wet, above normal, or below normal

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<sup>11</sup> During the 10-day period of April 21-April 30, RD-1644 long-term flows and interim flow requirements differ by 100 cubic feet per second in below normal water year types.

water years even if the long-term flow requirements remained in effect and YCWA also provided the additional flows called for in the Yuba Accord. (R.T. 110:2-111:25; 121:12-121:16; 127:14-128:21.)

Avoiding potential shortages in the water supply available for consumptive uses in 2007 was one of the major reasons that YCWA submitted its petition on November 18, 2005, requesting that the effective date of the long-term flow requirements be deferred until March 1, 2007. By the time of the hearing on January 10, 2006, however, changes in hydrologic conditions in the Yuba River watershed reduced the probability that water year 2006 will be classified as a dry or critical year, and also reduced the probability that deferring the effective date of the long-term flow requirements will have a significant effect on YCWA's carryover storage for 2006. YCWA's witnesses were asked whether YCWA had made any preliminary estimates on what the water year type will be for 2006. Based on the hydrologic conditions at the time of the hearing and applying the Yuba River Index as established in RD-1644, there was a 92 percent probability that 2006 will be classified as either a wet, above normal or below normal water year. (R.T. 113:6-113:20; 128:5-129:20).

Thus, due to the hydrologic conditions in the Yuba Basin this year, and the fact that the interim and long-term flow requirements are identical or nearly identical for wet, above normal, or below normal years, the hearing record indicates there is only approximately an 8 percent probability that continuing the interim flow requirements until March 1, 2007, will result in a significant change in the amount of water that would otherwise have to be released to meet minimum flow requirements in the lower Yuba River, or in the amount of water held in carryover storage for subsequent use by YCWA.<sup>12</sup> The actual flows in the lower Yuba River will depend upon numerous factors including water releases to meet consumptive use demands, water releases for hydroelectric power generation, and possible water releases called for in the 2006 Pilot Program.

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<sup>12</sup> This conclusion is consistent with a more recent hydrologic forecast in DWR's February 6, 2006, Bulletin 120 indicating that 2006 will probably be classified as a wet year under the Yuba River Index established in RD-1644. (RD-1644, p. 174 and Appendix 1.) The State Water Board takes official notice of the information in the DWR report pursuant to Cal. Code Regs., tit 23, § 648.2. See <http://cdec.water.ca.gov/snow/bulletin120/b120feb06.pdf>.

**4.0 EFFECT OF REQUESTED CHANGE ON FISH, WILDLIFE AND OTHER BENEFICIAL USES OF WATER**

As discussed in section 3.0 above, the interim flow requirements in RD-1644 for wet and above normal years are identical to the long-term requirements, and the interim requirements for below normal years are very similar to the long-term requirements. The interim and long-term requirements are substantially different only for dry, critical, or extreme critical years, and there is very high probability that water year 2006 will not be classified as a dry, critical, or extreme critical year. Therefore, there is a high probability that extension of the interim flow requirements established in RD-1644 until March 10, 2007, will not have any effect on the minimum instream flows that YCWA will be required to maintain pursuant to the conditions of its water right permits or on the carryover storage at New Bullards Bar. Extension of the interim flow requirements established in RD-1644 would have an actual effect on required minimum flows only in the unlikely event that water year 2006 turns out to be a dry, critical or extreme critical year. In that event, extension of the interim flows until March 1, 2007, would allow YCWA to maintain minimum flows for much of the spring and summer of 2006 at a lower level than would be required under the long-term flow requirements that are scheduled to come into effect on April 21, 2006. (RD-1644, pp. 173-178.)

The long-term minimum flow requirements established in RD-1644 were based on the State Water Board's conclusions regarding the minimum flows needed to provide reasonable protection for fish in the lower Yuba River on a long-term basis, but the Board recognized that those flow requirements may be subject to change based on further evidence. (RD-1644, pp. 170, 172-173.) In developing flow proposals for the Yuba Accord, the parties to the fisheries agreement reexamined available information on Yuba River fishery conditions and other relevant factors. (YCWA-5.) The support of the Yuba Accord by environmental groups and state and federal agencies responsible for fish and wildlife protection provides a reasonable basis for the State Water Board to consider further review of instream flow requirements on the lower Yuba River following completion of the EIR/EIS for the proposed Yuba Accord. A 10-month extension of the interim flow requirements proposed by YCWA will allow the parties to the Yuba Accord to implement the 2006 Pilot Program, complete the EIR/EIS for the Yuba Accord, and determine if they believe that the Accord provides a reasonable basis for

amending the flow requirements established in RD-1644 and adopting a proposed settlement of the ongoing litigation over that decision.

At present, there is insufficient evidence in the record to conclude that the flows proposed in the Yuba Accord, if implemented on a long-term basis, would provide protection to fishery resources in the Yuba River that is equal to or better than the protection provided by the long-term flow requirements established in RD-1644.<sup>13</sup> In light of the evidence currently before the State Water Board, however, there is no basis to conclude that extension of the RD-1644 interim flow requirements until March 1, 2007, will have an unreasonable impact on fish, wildlife, or other instream beneficial uses. The interim requirements have been in effect since 2001. For the reasons explained above, the record establishes that it is very probable that deferring the long-term flow requirements to March 1, 2007, will have no effect whatsoever on the minimum flow requirements in the lower Yuba River through March 1, 2007.

The petition to defer the long-term requirements was submitted in order to facilitate the 2006 Pilot Program for the Yuba Accord. Among other things, the Pilot Program proposes a temporary transfer of up to 125,000 acre-feet of water from YCWA to DWR for use primarily by the Environmental Water Account (EWA).<sup>14</sup> Some of the transferred water may be used for DWR's 2006 Dry Year program, but testimony presented by DWR explained that it is likely that all of any water transferred from YCWA to DWR in 2006 will be used for the EWA. (R.T. 153:8-154:6.) The proposed transfer is subject to State Water Board approval in a separate proceeding in which impacts on instream beneficial uses will be considered. YCWA submitted a separate petition for the proposed transfer on November 18, 2005, and the State

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<sup>13</sup> Although the minimum flows proposed in the Yuba Accord are frequently higher than the minimum flows required under either the interim or long-term requirements established in RD-1644, in some cases the Yuba Accord flows are lower than either the interim or long-term requirements. The State Water Board's review of the flows proposed in the Yuba Accord will await completion of the EIR/EIS and other relevant evidence.

<sup>14</sup> The EWA is a program administered by DWR and USBR that is intended to mitigate water supply impacts to State Water Project and Central Valley Project contractors from reductions in exports that are made to protect fishery resources, primarily within the Sacramento-San Joaquin Delta area. DFG, USFWS, and NMFS are the agencies that collaborate to request export reductions. The recommended export reductions typically occur in the winter and spring, but may occur at any time. (R.T. 154:7-155:19.) The fishery agencies have determined that the July through September period is the preferred time to export water. (R.T. 154:7-156:5.) Water that is acquired for the EWA is used to provide make-up water for the curtailment of water exports due to fishery protection concerns and to allow for shifting water exports to other periods.

Water Board issued public notice of the petition on November 23, 2005. The Board has not yet acted on the petition. Prior to any approval of a temporary transfer, the Board must find that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1725 et. seq.) In addition, recent past water transfers from YCWA to DWR have been subject to the conditions in DWR's and USBR's water right permits requiring DWR and USBR to maintain water quality conditions to protect beneficial uses of water in the Delta. (R.T. 141:15-142:1.)<sup>15</sup>

In summary, the record establishes that approval of the petition before the State Water Board in this proceeding will not have an unreasonable effect on fish, wildlife, instream uses of water or any other beneficial uses of water. The proposed temporary transfer of water from YCWA to DWR is subject to a separate review process, and potential effects of the proposed transfer will be addressed in that process pursuant to applicable statutory requirements. (Wat. Code, §§ 1725-1732.)

## **5.0 PUBLIC INTEREST CONSIDERATIONS**

RD-1644 is the product of a lengthy hearing process, an extensive evidentiary record and legal briefing, and extensive deliberations by the State Water Board on the evidence and competing interests. In such situations, the Board ordinarily is not receptive to reopening adopted decisions absent a showing of good cause. In this case, however, RD-1644 is also the subject of complex litigation involving numerous parties. In the more than two years since adoption of RD-1644, most of the parties to that litigation have been involved in settlement negotiations directed at developing a proposal that they believe would provide protection of fishery resources equal to or better than the protections of RD-1644 and that would also better meet demands for water for consumptive use in Yuba County and elsewhere. Those negotiations have resulted in the proposed Yuba Accord that is presently supported by most parties on various sides of the litigation.

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<sup>15</sup> State Water Board Decision 1641 (D-1641) conditions water diversions by DWR and USBR upon compliance with specified requirements for protection of fish, wildlife, and other beneficial uses of water.

YCWA and the USBR are jointly preparing an EIR/EIS for the proposed Yuba River Accord. That document will not be completed until late 2006 or early 2007. The State Water Board cannot consider revising the requirements of RD-1644 to implement the proposed Yuba Accord until the necessary environmental studies are complete. In the meantime, deferring the effective date of the long-term flow requirements until March 1, 2007, would allow for maintaining the status quo with respect to flow requirements for the Yuba River pending completion of the EIR/EIS and the Board's consideration of the Yuba Accord.

Due to the similarity between the long-term and interim flow requirements for wet, above normal and below normal water years, and the high probability that 2006 will not be classified as a dry, critical, or extreme critical year, approval of YCWA's petition to defer the long-term flow requirements is likely to have little or no effect on the minimum flows that YCWA is required to maintain in the Yuba River during 2006. Approval of the petition would serve the public interest by facilitating further work on the Yuba Accord settlement proposal and related environmental documents, and by helping to minimize litigation costs for the State Water Board and other parties pending the Board's consideration of the Yuba Accord.

## **6.0 CEQA COMPLIANCE**

Pursuant to the provisions of CEQA, YCWA served as lead agency and prepared an initial study and mitigated negative declaration for the proposed extension of the interim instream flow requirements established by RD-1644. (YCWA-9; YCWA-11.) The State Water Board is serving as a responsible agency and has considered the environmental effects of the project as determined by YCWA's initial study and negative declaration before reaching its own conclusions regarding the petition. (Cal. Code Regs., tit. 14, § 15096 (f).) Based on the evidence in the record and the findings in this order, the State Water Board concludes that changing the effective date of the long-term flow requirements established in RD-1644 to March 1, 2007, as directed in this order, will not result in a significant impact to the environment.

**7.0 CONCLUSION**

There was no evidence presented that maintaining the current interim flow requirements for an additional 10 months would result in injury to any legal users of water. Based on the evidence in the record and the findings above, we conclude that deferral of the long-term flow requirements established in RD-1644 until March 1, 2007, will not have an unreasonable effect on fish and wildlife and will not adversely affect other uses or users of water. Deferring the effective date of the instream flow requirements will facilitate completion of the EIR/EIS on the proposed Yuba Accord, allow for the State Water Board's consideration of the Yuba Accord following completion of those studies, and reduce litigation over requirements in RD-1644 prior to the Board's consideration of the proposed Yuba Accord in the near future. The State Water Board concludes that it is in the public interest to change the effective date of the long-term flow requirements established in RD-1644 to March 1, 2007, as requested by the petition.

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**ORDER**

IT IS HEREBY ORDERED that:

1. The effective date of the long-term instream flow requirements specified on pages 173 to 175 of Revised Water Right Decision 1644 (RD-1644) is changed to March 1, 2007.
2. The interim instream flow requirements specified on pages 176 to 178 of RD-1644 shall apply from the date of adoption of this order until March 1, 2007.
3. No other provisions of RD-1644 are changed by this order.

**CERTIFICATION**

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 5, 2006.

AYE:

NO:

ABSENT:

ABSTAIN:

**DRAFT**

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Song Her  
Clerk to the Board