

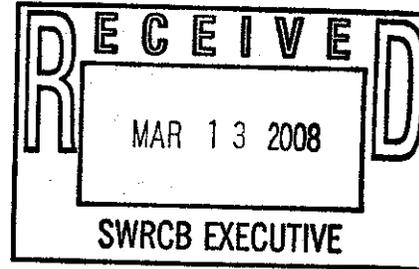
DEPARTMENT OF WATER RESOURCES

1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 653-5791



March 13, 2008

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100



Via U.S. mail and electronic mail (commentletters@waterboards.ca.gov)

Subject: Yuba River Accord and Hearing on YCWA Change Petition

Dear Ms. Townsend:

Please find enclosed the Department of Water Resources' Comments on the State Water Resources Control Board Draft Order Approving Yuba County Water Agency Petitions for Modification of Revised Decision 1644 And Petition For Long-Term Transfer Of Water. The DWR Comments also have been served via electronic mail on all the parties to the hearing as indicated on the attached Declaration of Service.

If you have any questions, please contact me at (916) 653-5613 or crothers@water.ca.gov.

Sincerely,

A handwritten signature in cursive script that reads "Cathy Crothers".

Cathy Crothers
Assistant Chief Staff Counsel

Enclosure

CALIFORNIA DEPARTMENT OF WATER RESOURCES
COMMENTS ON
THE STATE WATER RESOURCES CONTROL BOARD
DRAFT ORDER APPROVING
YUBA COUNTY WATER AGENCY PETITIONS
FOR MODIFICATION OF REVISED DECISION 1644
AND PETITION FOR LONG-TERM TRANSFER OF WATER

On February 29, 2008, State Water Resources Control Board (SWRCB) issued a Draft Order to the Yuba County Water Agency (YCWA), which would approve its petitions requesting changes to YCWA's water rights and Revised Decision 1644 (RD 1644). The approval of these petitions will enable implementation of the Yuba River Accord (Yuba Accord) and resolution of long-standing issues over fishery flows on the lower Yuba River.

The Department of Water Resources (DWR) supports the SWRCB approval of the Draft Order. However, DWR recommends some modifications to improve implementation of the Yuba Accord and to correct an inaccuracy in the background information to the Draft Order. These modifications are described below.

A. Modify Term 3 of the Order to Delete Winter Limit on Transfer of Water.

DWR requests that the SWRCB modify a portion of Term 3 of the Draft Order approving the Petition for the Long-term Transfer of water. (See Draft Order, p. 56.) Term 3 of the Draft Order approving the long-term transfer defines the conditions under which the U.S. Bureau of Reclamation (USBR), at Jones Pumping Plant, and the DWR, at Clifton Court Forebay, would divert YCWA water from the Delta. Term 3 restricts the diversion of the water to a combined rate of no more than 500 cfs between November 1 and June 30 and no more than 1,500 cfs between July 1 and October 31. These maximum diversion rates were suggested in testimony by DWR engineer John Leahigh. (RT 168:1.) These limits on diversion rates are acceptable to DWR.

The Draft Order also would further condition Delta diversions by imposing a limit on maximum amounts of water that may be transferred annually between specified months. The Draft Order would limit transfers each year between July 1 and October 31 to 200,000 acre-feet. This limit during these summer months equals the petitioner's requested total transfer amount and is acceptable to DWR.

However, DWR does not believe that the proposed annual limit of 20,000 acre-feet pumped between November 1 and June 30 is reasonable or appropriate.

(See Draft Order Section 4.2.3, p. 27, Section 7.2.1, p. 51, and Term 3, p. 56.) This proposed limit would permit only 20,000 acre-feet of the 200,000 acre-feet to be pumped during 8 months of the year. The limit appears to be based on an estimate given by John Leahigh who estimated that 90 percent of Yuba Accord water would be moved (or pumped) during the summer and 10 percent pumped during the winter. (RT 167:14.) This testimony was an estimate made in reference to only that portion of the transfer that would actually be "pumped" during this period and did not cover all transferable water, which would include stored water in upstream Project reservoirs. In addition, this estimate was an average and should not be turned into a "maximum" limit on pumped transfers during the 8-month period.

The transfer limit of 20,000 acre-feet during the 8 months could unreasonably restrict YCWA's ability to transfer water under the Yuba Accord when regulatory conditions would otherwise allow such transfers. Term 4 in the Draft Order makes the transfer of Yuba water subject to USBR's and DWR's compliance with Decision 1641 and all laws and regulations, such as applicable biological opinions and court orders. Term 4 will serve to assure that pumping operations will be limited as appropriate to protect other water users and resources. With the existing and proposed regulatory restrictions in place, a limit on the maximum amount of water pumped during November through June is not necessary. In addition, Term 3 is inconsistent with the condition in Section 7.2.1 of the Draft Order that would limit the amount of "pumped" transfer water, which more accurately describes the operations that would be limited. For the above reasons, DWR recommends that the SWRCB modify the Draft Order by deleting from Term 3 the following phrase: "and the annual limit of water transferable during this period is 20,000 acre-feet." Consistent with this change, the SWRCB should also delete this language from other sections of the Draft Order. (See Draft Order Section 4.2.3, page 27, and Section 7.2.1, page 51.) The SWRCB deletion of the limit on transferable water during the 8-month period would be consistent with the Accord's negotiated solution.

B. Clarification of Availability of EWA Funding.

In Footnote 14 on page 9, the Draft Order inaccurately states that EWA funding is scheduled to terminate at the end of 2008. The DWR testimony by Teresa Geimer indicated that the amount of funds available after 2008 depends on many things, such as the needs of EWA in 2008 and hydrology. In addition, USBR has authorization for funding available for EWA through 2010. Therefore, DWR requests that the SWRCB delete Footnote 14. If the SWRCB disagrees with the suggested deletion, DWR requests modification to Footnote 14 to more accurately describe EWA funding with the following language: "Funding for EWA after 2008 is undetermined, but is expected to decrease."

In conclusion, DWR appreciates the SWRCB's proposed approval of the YCWA petitions that will allow implementation of the Yuba Accord. The Draft Order reflects the interests of the parties who have spent considerable time and effort to create a comprehensive program that addresses the interests of YCWA and its member units, the fishery agencies, the environmental community that participated in developing the Fisheries Agreement, and the water community that participated in the Water Transfer Agreement. In support of the Yuba Accord, DWR requests that the SWRCB approve the Draft Order with the modifications described above.

Respectfully submitted,



Cathy Crothers
Assistant Chief Counsel

3-13-08

Date

DECLARATION OF SERVICE BY MAIL

Pursuant to Title 8 CCR Section 355, I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to the within action; my place of employment and business address is 1416 Ninth Street, Room 1118, Sacramento, California 95814.

On March 13, 2008 I served a true copy of the attached "Department of Water Resources Comments on the State Water Resources Control Board Draft Order Approving Yuba County Water Agency Petitions for Modification of Revised Decision 1644 And Petition For Long-Term Transfer Of Water" to the attached list of Hearing Participants by electronic mail to the E-mail addresses shown therein. In addition, a copy with an original signature was mailed to the SWRCB, P.O. Box 100, Sacramento, California 95812-0100. There is delivery by the United States Mail at each of the places so addressed, or there is regular communication by mail between the place of mailing and each of the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 13, 2008 at Sacramento, California.



Aimee Shepard

**PROPOSED LOWER YUBA RIVER ACCORD
(2007 PETITION FOR MODIFICATION AND LONG-TERM TRANSFER PETITION)
DECEMBER 5-6, 2007 HEARING
SERVICE LIST OF PARTICIPANTS
(October 12, 2007)**

**(PARTICIPANTS TO BE SERVED WITH WRITTEN TESTIMONY, EXHIBITS
AND OTHER DOCUMENTS.)**

**(Note: The participants whose E-mail addresses are listed below agreed to accept
electronic service, pursuant to the rules specified in the hearing notice.)**

Yuba County Water Agency
Alan B. Lilly
Bartkiewicz, Kronick & Shanahan
1011 22nd Street
Sacramento, CA 95816-4907
abl@bkslawfirm.com

Cordua Irrigation District
Paul Minasian
Minasian, Spruance, Meith, Soares and Sexton, LLP
P.O. Box 1679
Oroville, CA 95965
pminasian@minasianlaw.com

United States Bureau of Reclamation
Ray Sahlberg
2800 Cottage Way
Sacramento, CA 95825
rsahlberg@mp.usbr.gov
rcolella@mp.usbr.gov

California Department of Water Resources
Cathy Crothers
1416 Ninth Street, Room 1118-25
Sacramento, CA 95814
crothers@water.ca.gov
Westlands Water District

Jon D. Rubin
Diepenbrock Harrison
400 Capitol Mall, Suite 1800
Sacramento, CA 95814
jrubin@diepenbrock.com
The San Luis & Delta-Mendota
Water Authority

Jon D. Rubin
Diepenbrock Harrison
400 Capitol Mall, Suite 1800
Sacramento, CA 95814
jrubin@diepenbrock.com

State Water Contractors and
Kern County Water Agency
Clifford W. Schulz
Kronick, Moskovitz, Tiedemann & Girard
400 Capitol Mall, Suite 2700
Sacramento, CA 95814
cschulz@kmtg.com

Anglers Committee
Bob Baiocchi
P.O. Box 1790
Graeagle, CA 96103
rbaiocchi@gotsky.com