

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permits 15026, 15027,)
and 15030 on Applications 5632, 15204,)
and 15574 of)

YUBA COUNTY WATER AGENCY,)

Petitioner,)

CALIFORNIA SPORTFISHING PROTECTION)
ALLIANCE,)

Protestant.)

ORDER: WR 88- 12

SOURCES: North Yuba, Yuba,
Middle Yuba, and
Oregon Creek

COUNTIES: Yuba, Nevada,
Butte, and Sutter

ORDER APPROVING TEMPORARY CHANGES IN
PURPOSE OF USE AND PLACE OF USE INVOLVING TRIAL TRANSFER

BY THE BOARD:

1.0 INTRODUCTION

Yuba County Water Agency (YCWA) having filed a petition on April 18, 1988 under Water Code Section 1735 for a trial transfer of water involving a temporary change of place of use and purpose of use; a protest having been received; a hearing having been held on May 26, 1988; the State Water Resources Control Board (Board) having duly considered all evidence in the record; the Board finds as follows:

2.0 SUBSTANCE OF PETITION

YCWA has petitioned for a trial transfer of 185,000 acre-feet (af) of water from storage in New Bullards Bar Reservoir (Bullards Bar) under Permits 15026, 15027 and 15030 of YCWA to the Department of Water

88-12

Resources (DWR) to maintain Delta outflow requirements under the Board's Water Right Decision 1485. During the hearing, DWR and YCWA estimated, based on recent calculations, that approximately 108,000 acre-feet actually would be transferred. The proposed transfer would allow retention of an equal amount of State Water Project (SWP) water in storage at Lake Oroville. The purpose of the transfer is to increase carry-over storage in Lake Oroville for use in 1989. Thus, if 1989 is a dry year, the trial transfer will increase the ability of the State Water Project to meet its commitments and will lessen the dry year impacts.

3.0 SUBSTANCE OF PERMITS

3.1 Permit 15026 (Application 5632)

Permit 15026 is for direct diversion and storage. Direct diversion is authorized from North Yuba River and Yuba River for 43 cubic feet per second (cfs) and 1550 cfs respectively from September 1 through June 30. Storage under Permit 15026 is authorized in Bullards Bar up to 490,000 acre-feet per annum (afa) from October 1 to June 30 of each year.

3.2 Permit 15027 (Application 15204)

Permit 15027 is for storage from North Yuba River and Yuba River. Storage is authorized in Bullards Bar up to 240,000 afa from October 1 to June 30 and storage is authorized in Marysville Afterbay for 6,000 afa from October 1 to June 30 of each year.

3.3 Permit 15030 (Application 15574)

Permit 15030 is for storage from the Yuba River. Storage is authorized in Bullards Bar up to 150,000 afa from Middle Yuba River, 44,000 afa from Oregon Creek, and 320,000 afa from North Yuba River from October 1 to June 30 of each year from each source.

3.4 Purpose of Use and Place of Use

The purposes of use for all permits are domestic, flood control, irrigation, industrial, recreational, and fish mitigation and enhancement.

The place of use is a net irrigable area of 102,989 acres within a gross area of 121,366 acres within the service area of Yuba County Water Agency.

4.0 PROTEST

One protest was received and accepted from California Sportfishing Protection Alliance (CSPA).

4.1 Bases of Protest

CSPA's protest was based on environmental issues. CSPA alleges that the transfer will do the following:

- a. "Have a potential significant environmental effect to the fisheries of the Yuba and Feather Rivers."
- b. "Have a potential significant environmental effect to the american shad sportfishery of the Feather River during the month of July."

- c. "Have a potential significant and cumulative environmental effect to sportfishing (licensed anglers -- legal users of the state's waters) for american shad in the Feather River during the month of July."
- d. "May have significant environmental effect to water quality in the Yuba and Feather Rivers."
- e. "May have a significant environment effect to two rare fish species and a part of endangered bald eagles."
- f. "May not be in the public interest."
- g. "May have a potential adverse effect on the public trust resources and uses of the Yuba and Feather Rivers."
- h. "May result in the waste and unreasonable method of diversion and use of the state's waters."
- i. "May be contrary to the requirements of the California Environmental Quality Act, and contrary to state law."

5.0 BACKGROUND

5.1 Permits

Permits 15026, 15027, and 15030, were issued pursuant to Applications 5632, 15204, and 15574 following a Board hearing and the Board's adoption of Water Right Decision **1159** on December 19, 1963. The permits authorized storage in Bullards Bar, which is formed by a

concrete-arch dam completed in 1968 on the North Yuba River. Pacific Gas and Electric Company (PG&E) funded revenue bonds of YCWA's Colgate and Narrows Power Plants operated under YCWA water right permits. PG&E is entitled, under contract, to any power generated until the year 2016. In the past, PG&E made releases of YCWA "unallocated surplus water" to maximize power generation. In 1985 the Agency began restricting releases made by PG&E to the minimums specified in the power contract. The YCWA/PG&E contract includes the Department of Fish and Game (DFG) minimum fish flow release requirements.

5.2 1987 Transfer

Water year 1987 was critically dry. Therefore, YCWA cut back Yuba River releases to about 77 cfs on July 1, 1987. Then YCWA increased the releases pursuant to a 1987 agreement to sell water to the Department of Water Resources. Flows were increased gradually until August 15, 1987, when a temporary permit change due to the transfer of water became effective pursuant to Water Code Section 1727. A total of 83,100 af was transferred to DWR during the summer of 1987, allowing an equal amount of additional water to be carried over in Lake Oroville into 1988.

5.3 Current Status of Projects

5.3.1 Bullards Bar

Bullards Bar is located about 29 miles northeast of Marysville on the North Yuba River. The reservoir has a total storage capacity of 961,300 af with a usable capacity of 727,400 af. Permits 15026,

15027, and 15030 limit collection to storage in Bullards Bar to 960,000 af in any year. YCWA expects up to 724,939 af to be available in storage on June 30, 1988.

The minimum fish flow in the Yuba River under an agreement with the department of Fish and Game, during critically dry years, is 70 cfs from July 1 to September 30, and 280 cfs from October 1 to December 31 of each year. The petition proposes that the "normal year 400 cfs minimum" be maintained in the Yuba River at Daguerre Point Dam from October 1 through December 31, 1988 in the same manner as during the 1987 transfer.

5.3.2 Oroville Project

Lake Oroville is located about 2 miles northeast of Oroville which is about 27 miles north of Marysville. Lake Oroville has a total storage capacity of about 3,537,600 af with a usable capacity of about 2,685,400 af. DWR expects up to 2,260,000 af to be in storage on July 1, 1988. During the 1988 proposed trial transfer; demands for releases from Lake Oroville are expected to be more than 1,000,000 af. If up to 110,000 af is available to reduce Lake Oroville demands (by meeting a portion of the 1988 Delta outflow requirements from Bullards Bar) projections indicate about 1,392,008 af would remain in storage at Oroville on September 30, 1988, of which about 852,200 af would be dead storage. If Lake Oroville has 1,392,008 af in storage on September 30, 1988, it will contain about 510,000 af more than on September 30, 1977.

The minimum fish flow release to the Feather River during critically dry years, such as 1987 and 1988, is 1,000 cfs from March through September.

6.0 DESCRIPTION OF PETITIONED CHANGES

The petition states that the transfer involves rescheduling releases of up to 185,000 af of Bullards Bar water between July 1, 1988 and September 30, 1988 to replace releases which DWR would otherwise make from Lake Oroville to meet Delta outflow requirements under Water Right Decision 1485. DWR would limit water augmentation from Bullards Bar so that projected storage in Lake Oroville would not exceed 2.4 million af on September 30, 1988. The actual amount of water available for transfer to DWR would be reduced to maintain a minimum storage of 530,000 af in Bullards Bar on September 30, 1988. Any projected amount in excess of 530,000 af is considered to be "unallocated surplus water". It is available for release into the Yuba River, to flow into the Feather River, thence the Sacramento River, and on to the Delta for use in partially meeting outflow requirements on a trial basis during this critically dry year. Transferred Bullards Bar water would replace a similar amount of SWP water that would be retained in Lake Oroville for carry-over into 1989. During the transfer, flows in the Yuba River would be increased by YCWA from about the 70 cfs minimum, to about 650 cfs and Feather River flows, above the confluence with the Yuba River, would be reduced by DWR in an amount equal to the increased Yuba River flows,

but are not expected to be less than about 2,140 cfs. Flows in the Feather River below its confluence with the Yuba River would remain essentially unchanged as a result of the transfer.

The YCWA petition and proposed trial transfer of water is for the maximum amount expected during 1988 and may be subject to reduction and changes as hydrologic and project operations are better defined and additional information is developed. Testimony at the hearing indicated that the actual amount transferred would be in the neighborhood of 100,000 af. (Transcript, p. 43, line 13.) The Negative Declaration states that about 108,400 af will be transferred. Terms will be included which reserve jurisdiction and retain continuing authority over the trial transfer.

7.0 AVAILABILITY OF WATER FOR TRANSFER

As stated in finding 5.3.1 Bullards Bar has a capacity of 961,300 and a usable capacity of 727,400 af. YCWA expects up to 724,939 af to be in storage on June 30, 1988. During the proposed three-month trial transfer period about 87,000 af would be withdrawn from Bullards Bar for other uses in addition to the transferred amount, leaving about 530,000 af in storage on September 30, 1988 for YCWA's use in 1989. Studies indicate that the amount of carry-over will be adequate to serve the Agency's needs in the event of a repeat of the 1977 winter runoff. Based on these figures, approximately 110,000 af is available for transfer. This amount is approximately equal to the amount for which the project impacts were analyzed in the initial study. Because this is the amount of water discussed in the initial study and estimated for this year, we will authorize a transfer up to 110,000 af for this year.

8.0 ND SUBSTANTIAC INJURY TO LEGAL USERS OF WATER

Notice of the proposed trial transfer was sent to the known legal users of water that could be affected by the trial transfer. No legal users of water objected to the trial transfer, and no person came forward with evidence that the trial transfer will result in a substantial injury to any legal user of water. Therefore, to comply with Water Code Section 1735, we presume that the proposed trial transfer is unlikely to cause a substantial injury to any legal user of water.

9.0 ENVIRONMENTAL CONSIDERATIONS

9.1 California Environmental Quality Act (CEQA) Compliance

DWR, as Lead Agency, prepared an Initial Study for the proposed trial transfer project which found, on the basis of available information, that the project does not have the potential to cause a significant environmental impact. A proposed Negative Declaration, along with the supporting Initial Study, was circulated by DWR for public and agency review on April 18, 1988. The Initial Study was revised on May 11, 1988 by DWR in response to the comments received by May 9, 1988 (YCWA/DWR 31) and further corrections and additions were made on May 25, 1988 (YCWA/DWR 31A). In the revised Initial Study, DWR maintained its findings that the project does not have the potential to cause a significant environmental impact. On June 9, 1988, DWR adopted a Negative Declaration for the project which incorporates the Initial Study. We take official notice of the Negative Declaration as adopted.

Pursuant to 14 Cal. Code of Regulations Section 15096 (State CEQA Guidelines), the Board is a Responsible Agency for the project. In this capacity, the Board is required to consider the Negative Declaration and Initial Study adopted by DWR, along with other relevant information, and make its own conclusions whether and how to approve the project. To comply, the Board has considered the environmental effects of the trial transfer as shown in the Negative Declaration and Initial Study adopted by DWR, and other information contained in the hearing record.

9.2 Effects on Fish, Wildlife, and Other Instream Beneficial Uses

In accordance with Water Code Section 1735, we note that the evidence in the record shows that the proposed trial transfer and associated flow changes in the Yuba and Feather Rivers due to the project will not unreasonably affect fish, wildlife, or other instream beneficial uses. However, the precise effect of the trial transfer is difficult to determine in advance.

In DFG's May 11, 1988 comments to DWR on the Draft Negative Declaration (SWRCB 1), DFG could not identify definable impacts due to the project based on its review of available information. Therefore, DFG stated in its May 11, 1988 comments, that it would not object to the transfer under the following conditions:

- "1. The transfer is limited to the 1987-1988. water year.

- "2. No dry year conditions are imposed on Yuba River fisheries flow releases under permits 15026, 15027, and 15030.
- "3. Fisheries flow on the Feather River are not reduced below minimum requirements.
- "4. The terms and conditions included in the attached Supplement to Petition for Trial Transfer filed by Yuba County Water Agency are made requirements of any permit.
- "5. By February 28, 1989, Department of Water Resources and the Yuba County Water Agency will provide to Department of Fish and Game an analysis of how this transfer affected the onset of fall and winter spill flows or flood control releases into the Yuba River downstream of Englebright Reservoir.".,

We note that Conditions 1 through 4 above essentially have been accepted by YCWA and DWR in the Negative Declaration, the Petition for Trial Transfer, and in testimony and other representations made at the hearing. These conditions will provide adequate mitigation. Consequently, these conditions will be included in our order.

9.3 Measures to Avoid Significant Impacts

As a part of the trial transfer project, YCWA will provide substantially higher flows in Yuba River below Daguerre Point Dam than required in its September 2, 1965 agreement with DFG (YCWA/DWR 19).

The scheduled flow increases in the Yuba River below Daguerre Point Dam, taken from Table 3 of the revised Initial Study (YCWA/DWR 31, 31A) are shown below in Table 1. The lowest allowable flows in the September 2, 1965 YCWA-DFG agreement are also shown for comparison.

TABLE 1

MONTH (1988)	MEAN MONTHLY FLOW (cfs) YUBA RIVER BELOW DAGUERRE POINT DAM			
	Without Project	With Project	Change	Minimum Requirement*
July	70	718	+648	70
August	70	725	+655	70
September'	70	546	+476	70
October	400	400	0	280
November	432	432	0	280
December	502	502	0	280

* Lowest allowable flows in the 9/2/65 YCWA-DFG agreement for critically dry years.

These increased flows should improve conditions for fish, wildlife and other instream beneficial uses in the Yuba River over what they would likely be without the project this year?

With respect to the Feather River, Table 2 below indicates flow changes in the Feather River at Gridley expected to occur as a consequence of the project, based on a comparison of Tables 5 and 15 in the revised Initial Study (YCWA/DWR 31, 31A). Minimum required flows based on the August 26, 1983 DFG-DWR agreement are also shown in Table 2.

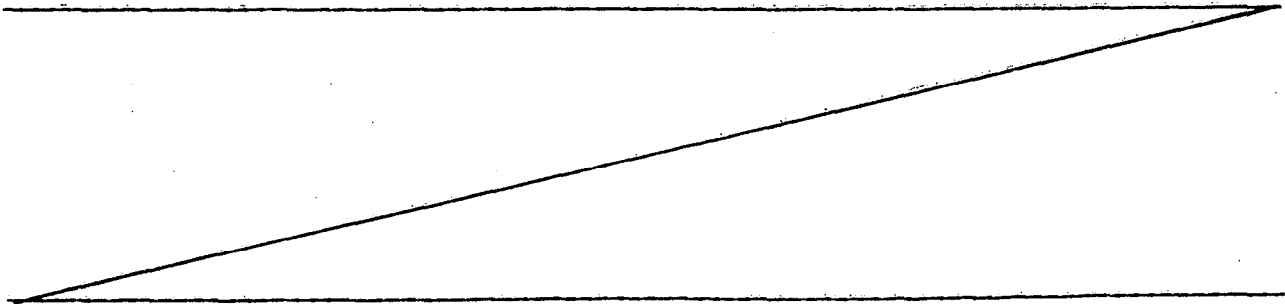


TABLE 2

MONTH (1988)	MEAN MONTHLY FLOW (cfs) FEATHER RIVER AT GRIDLEY			Minimum Requirement*
	Without Project	With Project	Change	
July	4,745	4,097	-648	1,000
August	3,776	3,121	-655	1,000
September	2,618	2,144	-474	1,000
October	2,499	2,499	0	1,200
November	1,351	1,351	0	1,200
December	2,708	2,708	0	1,200

* From 8/26/83 DFG-DWR Agreement. NOTE: Further reductions from these values are allowable under specific circumstances but these circumstances are not expected to occur in 1988.

These scheduled Feather River flow reductions during the transfer period should not pose a significant environmental impact, since resulting flows will still be well above the minimum flows specified in the 1983 DFG-DWR agreement (YCWA/DWR 31, 31A). Moreover, DFG in its May 11, 1988 comments on the Draft Initial Study stated it would not object to the transfer if the flows are maintained above the minimum levels specified in the 1983 agreement.

9.4 Issues Raised by Protestant

Protestant California Sportfishing Protection Alliance (CSPA) raised several environmental issues (see Section 4.1 above). The Board has reviewed carefully all of the information offered in evidence by protestant and other parties. We find that the evidence does not indicate that the trial transfer itself will cause a significant environmental impact.

The issues raised by protestant are more properly directed toward the environmental impacts of current water development projects on the Yuba and Feather River systems in general. The underlying impacts of the projects are not subjects of this particular proceeding. While there may be environmental impacts in the Yuba and Feather Rivers associated with ongoing water development projects in general, the issue before the Board is whether the trial transfer itself will cause significant environmental impacts that would not otherwise occur in the absence of the trial transfer. Protestant has not identified or produced any specific information which indicates a potential significant environmental impact due to the trial transfer that would not otherwise occur in the absence of the trial transfer.

9.5 Issues Raised by the Department of Fish and Game

As noted above, DFG stated in its May 11, 1988 comments on the Draft Negative Declaration (SWRCB 1) that it could not identify definable impacts due to the proposed trial transfer and that it would not object to the project under certain conditions. In effect, all except one of those conditions have been accepted by DWR and YCWA. They are included in our order.

Although two of the conditions directly address the Feather River, they are appropriate as conditions of this trial transfer because they avoid impacts which otherwise might occur because of the transfer. Without compliance with these conditions, there could be significant adverse impacts to the environment as a result of the trial transfer. Consequently, our approval is predicated on the existence of the appropriate conditions in the Feather River.

At the hearing, DFG appeared as an interested party and presented a statement (DFG 1). In the statement, DFG asserted that although available information was insufficient to indicate whether the trial transfer would have significant adverse impacts to fish and wildlife resources, certain specific environmental studies should be performed to evaluate the potential impacts of a permanent transfer as follows:

- "1. Studies be conducted to determine flow-habitat requirements for chinook salmon, steelhead, American shad and striped bass in the Feather River between Oroville Dam and its confluence with the Sacramento River.
- "2. Site-specific habitat use and preference data for the above species should be developed as part of these studies.
- "3. A temperature monitoring program be implemented and a temperature model be developed to provide information on temperature/flow relationships in the Feather River. These temperature/flow relationships should be integrated with Yuba and Sacramento Rivers data and requirements.
- "4. A study be conducted to develop comprehensive information and flow requirements for American shad, spawning, growth and angling use in the Yuba and Feather Rivers.
- "5. An evaluation be made of impacts on riparian habitat reproduction and growth along the Yuba and Feather Rivers which may result from long-term flow changes.
- "6. An evaluation be made of potential impacts on threatened or endangered species with particular emphasis on the Bald Eagle nest at Bullards Bar Reservoir.
- "7. An evaluation be made of impacts of any proposed flow changes on recreational use of fish and wildlife resources on the Yuba and Feather Rivers as well as Oroville and Bullards Bar Reservoirs.
- "8. An evaluation be completed of impacts of flow changes as related to diversions (fish screened and unscreened) on the Yuba and Feather Rivers. "

We will not require that these studies be done as a condition of the proposed trial transfer, because they are related more closely to a potential long-term transfer of water. However, these studies would complement fish and wildlife studies now being conducted for the Yuba River, and should be performed before we consider any future long-term transfer similar to the proposed trial transfer project. (We note that since, under Section 1735, a trial transfer shall be for a period not to exceed one year, the next transfer is likely to be a long-term transfer.) Since one of the purposes of a trial transfer is to obtain information to define its precise effects on instream beneficial uses, the Board strongly encourages YCWA and DWR to initiate such studies during the 1988 trial transfer to the extent they are feasible.

10.0 CONCLUSIONS

Based on the foregoing findings, we conclude as follows:

1. Substantial injury to any legal user of water as a result of the proposed trial transfer is unlikely to occur.
2. The proposed trial transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.
3. The precise effect of the proposed trial transfer on other legal users or instream beneficial uses is difficult to determine in advance of the trial transfer.

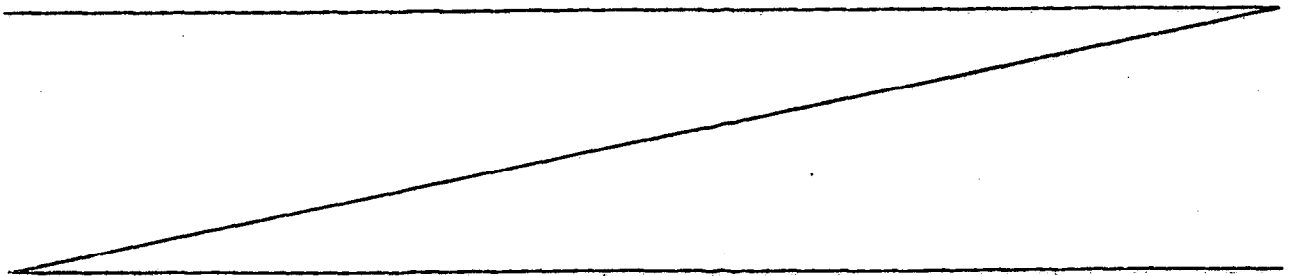
4. We have considered the environmental effects of the trial transfer as shown in the Negative Declaration and Initial Study and in the hearing record, and have found no significant adverse environmental impacts of the trial transfer.
5. The permittee should be required by the terms of our order to carry out the measures listed in the Initial Study to avoid adverse environmental effects, and to carry out most of the measures described by the Department of Fish and Game in its May 11, 1988 comments on the draft Negative Declaration.
6. The studies requested by DFG in DFG Exhibit 1 should be performed by YCWA and DWR prior to our consideration of a future long-term transfer similar to the proposed trial transfer. To the extent it is feasible, we strongly encourage DWR and YCWA to initiate such studies during the trial transfer approved herein.
7. The proposed trial transfer should be approved.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition is approved for a trial transfer of up to 110,000 acre-feet of water to Department of Water Resources for use in the Sacramento-San Joaquin Delta, subject to the following terms and conditions:

1. The trial transfer is limited to the period commencing on the date of this order and continuing through September 30, 1988.

2. No dry year conditions shall be imposed by the permittee on the Yuba River fisheries flow releases under Permits 15026, 15027, and 15030 pursuant to the agreement between the Department of Fish and Game and the Yuba County Water Agency dated September 2, 1965; permittee shall maintain a flow of at least 400 cubic feet per second in the Yuba River below Daguerre Point Dam during the balance of the 1988 calendar year after completing the trial transfer.
3. Fishery flows in the Feather River shall not be reduced below the minimum flow requirements set forth in the agreement between Department of Fish and Game and the Department of Water Resources dated August 26, 1983.
4. Feather River flows below Thermalito Afterbay Outlet during the trial transfer shall be substantially in accordance with the release schedule set forth in Table 15 of the Initial Study. Feather River flows at Gridley shall not be significantly less than 2140 cubic feet per second during the trial transfer.
5. By February 28, 1989, permittee shall provide to the Board a report indicating the mean daily flows measured in the Yuba River at the U. S. Geological Survey gage near Marysville and in the Feather River at the U. S. Geological Survey gage near Gridley for the period from the beginning of the trial transfer through December 31, 1988.



6. Pursuant to Water Code Section 1736, the State Water Resources Control Board reserves jurisdiction over this trial transfer to modify or revoke it, in the event that it finds that the trial transfer will result in substantial injury to any legal user of water. Action by the Board will be taken only after notice to interested parties and opportunity for hearing.

CERTIFICATION

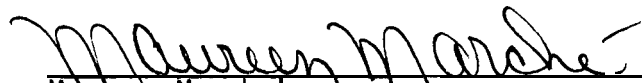
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing *is* a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on July 6, 1988.

AYE: W. Don Maughan
Edwin H. Finster
Eliseo M. Samaniego
Danny Walsh

NO: None

ABSENT: Darlene E. Ruiz

ABSTAIN: None


Maureen Marche
Administrative Assistant to the Board

