

Before the State Water Resources Control Board
California Sportfishing Protection Alliance Policy Statement
Yuba River Hearing
10 January 2006

Good Morning, Bill Jennings representing the California Sportfishing Protection Alliance.

1. First, a historical perspective.
 - a. In early 1988, CSPA filed the initial complaint in this proceeding.
 - b. Following preparation of DFG's Yuba Management Plan, the State Board held a 14-day evidentiary hearing in 1992.
 - c. The State Board prepared a draft decision in 1996 but failed to circulate it until 1999.
 - d. In 2000, the State Board held an additional 13 days of evidentiary hearing to consider additional evidence and issued a revised draft in.
 - e. Following two days of additional hearing the State Board issued D-1644 in March of 2001.
 - f. D-1644 was again amended in May of that year and subsequently revised following a court directed supplemental three-day hearing in June 2003.
 - g. The effective date for implementation of the Long Term Instream Flow requirements in RD-1644 are scheduled to take effect in 2006.
2. The RD-1644 flow requirements resulted from 32 days of evidentiary testimony over 11 years – including recommendations by fisheries experts from NMFS, USFWS, and DFG.
3. Following a subsequent settlement process, Yuba County Water Agency, resource agency managers and some NGOs signed an agreement that essentially repudiated the sworn testimony of agency biologists over multiple hearings. Interestingly, none of the fishery agency signatories are offering direct testimony by their biologists in support of the agreement (USFWS is a no show).

We were looking forward to cross-examining agency biologists in light of their previous testimony in the record.

We trust it has not gone unnoticed that Jerry Mensch, DFG's Region 2 Environmental Services Supervisor who developed the Yuba River Management Plan and testified on behalf of that plan, and Dan Odenweller who testified on behalf of DFG during the previous hearings are representing CSPA today. Dr. Alice Rich, DFG's temperature expert during the hearings, would have testified on our behalf if she hadn't had a previous commitment.

4. The policy statements offered today by DFG and NMFS are at odds with the sworn testimony presented by their biologists in previous hearings. Political science has been enthroned; biological science has been sent to the scaffold.

5. Regardless of policy statements, the long-term instream flow requirements in RD-1644 are significantly better than either the interim or Accord flows in below normal years.
6. The documents submitted by Yuba County Water Agency assume a baseline predicated on the interim flow schedule rather than the long-term flows in RD-1644. Using carefully crafted assumptions, they assume conditions that are not likely to materialize.
7. Contrary to proponent's claims, this is not a one-year program. Proponent's testimony clearly demonstrates that the effects of their scheme reverberate over a number of years.
8. Spring flows are critical for salmonid rearing and outmigration. Water moved from spring to late summer and fall results in less protection for fish in the spring.
9. Water moved from spring to late summer and fall reduces attraction flows for American shad.
10. Additional Delta exports will likely exacerbate the ongoing crash of pelagic species in the Delta (smelt indices are at their historical lows). We note that the recently released CalFed expert evaluation of the OCAP biological opinion concluded that NMFS failed to use the best available science (this on top of the Inspector General's finding that NMFS violated its own policies in issuing the OCAP BO).
11. With respect to the Environmental Water Account, the Third District Court of Appeals recently concluded that there is no way to determine from the flow design of EWA whether it actually mitigates damage to fisheries in the Delta.

It is becoming clear that EWA is simply a moneymaker that provides some protection for some life stages of some fish at the expense of redirecting impacts to other life states of other species.

12. The propose transfer is part of a long-term program that requires conditions that have not been met; i.e., a new flow regime for the PG&E contract and a revised agreement with Hallwood /Cordura.

The proposed plan also requires a groundwater substitution scheme that hasn't been quantified. Nor have sources and potential impacts of the substitution scheme been identified.

13. The Neg Dec that was submitted to the Board this Monday (and apparently rushed to approval last Friday) claims that there can be no significant environmental

effects from discarding RD-1644 and from changing the timing and quantity of flow in the Yuba or increasing exports from the Delta. NONSENSE!

14. Let's be candid. The only purpose of the proposal before you is to make a buck. To take water crucially needed for instream flow in the spring (when it cannot be sold) and to transfer it to late summer and fall (when it can be sold).

In order to further Yuba County Water Agency's profiteering, resources agency managers (and I'm sorry to say – some misguided NGOs) have inexplicably rejected the sworn expert testimony of agency scientists and embraced a back-room deal that evidences no regard for the health of fisheries in the Yuba River and Delta.

15. And let's be clear, this is a dangerous precedent. If the State Board rejects an evidentiary record developed in three separate hearings over an 11-year period, it essentially invites water agencies to persist in contesting every order that is issued by the Board.
16. It has been 18 years since CSPA filed the initial Yuba complaint. In response, DFG developed its Yuba River Management Plan. The State Board held three sets of evidentiary hearings.

It is time to implement the long-term instream flow schedule in RD-1644. Justice delayed is justice denied.