

YCWA-13

**REBUTTAL TESTIMONY OF PAUL BRATOVICH AND TOM JOHNSON TO DAN B. ODENWELLER'S TESTIMONY ON YUBA COUNTY WATER AGENCY'S EXTENSION PETITION**

**Response to Item 1a.**

1. Bullet points one through four of Item 1 in Mr. Odenweller's testimony discuss CDFG and NMFS fish screening criteria for anadromous salmonids, but do not specifically address fish screen effectiveness or the manner in which the South Fish Screen by Daguerre Point Dam affects impingement or entrainment associated with the proposed project, relative to either Interim RD-1644 or Long-Term RD-1644. While Mr. Odenweller's testimony does discuss the rock gabion, it does not indicate whether this fish screen is ineffective and, thus, is allowing the passage of fish. It is recognized that the South Fish Screen does not currently meet CDFG and NMFS fish screening criteria for anadromous salmonids. However, we are not aware of conclusive evidence (e.g., monitoring study results, reports) indicating that the rock gabion is not effective at preventing fish from being impinged or entrained at the point of diversion, and therefore ineffective at preventing the harm or take (i.e., impingement or entrainment) of federally and state listed anadromous salmonids.
2. The fish screening issues associated with the South Fish Screen are not directly part of the proposed project, or the Proposed Yuba Accord. YCWA has executed a separate, independent letter agreement with CDFG to resolve issues associated with the water diversion and South Fish Screen. Under this letter agreement, CDFG and YCWA, in coordination with environmental and fisheries interests and the local irrigation districts and mutual water companies that receive their water supplies from the South Canal, will collaborate on development and implementation of a plan to construct a new fish screen to meet the applicable CDFG and NMFS fish screening criteria. A feasibility study for the South Fish Screen is under preparation, and this work is continuing through a separate process.

**Response to Item 1b.**

3. Bullet point five of Item 1 in Mr. Odenweller's testimony states that the proposed action will shift flow from the spring to the fall.
4. As described on page 2-4 of the Draft Initial Study/Mitigated Negative Declaration (IS/MND) (exhibit YCWA-9), monthly flows under the proposed project would always meet the minimum instream flow requirements of Interim RD-1644 and, thus, shifts in minimum required flows would not occur under the proposed project. The flow shifts that are identified in Mr. Odenweller's testimony represent changes in simulated actual flows that could occur under the proposed project, relative to Interim RD-1644, during some of the months included in the 83-year simulation period. However, these changes in simulated actual flows do not represent shifts in real-time flows or shifts in the minimum required instream flows under RD-1644. Applying terminology like the word "shift" to characterize all of the changes in flow that may occur over an entire year is a

simplistic and inaccurate summary of the many individual changes in simulated flows presented on the exceedance plots in Appendix 4 of the Draft IS/MND.

5. The flow schedules included in the proposed project were based on the results of a 2-year stressor analysis conducted by a team of biologists including NMFS, CDFG and USFWS that evaluated means of assigning monthly allocations of available source water to maximize potential fisheries benefits for all fish species and life stages in the lower Yuba River. Included in the proposed project are several changes and reallocations of flow, each of which was based on a specific requirement or need of a particular species and life stage. Overall, for the term of the proposed project, the proposed flow schedules will not lead to unreasonable effects upon the various resources in the lower Yuba River. Ultimately, the detailed EIR/EIS analysis of the Proposed Yuba Accord agreements will provide information as to whether the Accord flow schedules will provide superior habitat conditions in the lower Yuba River.

#### **Response to Item 2.**

8. Item 2 in Mr. Odenweller's testimony refers to water exports and pumping in the Delta. As described on page 4-53 of the IS/MND and page 2-35 of the EIS/EIR (2003) for the Environmental Water Account (EWA) Program, potential impacts associated with north of Delta EWA water acquisitions, including up to a total of 185 TAF from YCWA, have been previously evaluated for the EWA Program. The EWA Program acquisitions for the proposed project (i.e., up to 125 TAF) are less than the total amount of potentially available YCWA source water previously evaluated for the EWA Program. The proposed project does not represent a new water source for EWA acquisitions, but is merely assigning a specific source to previously identified EWA assets north of the Delta.
9. With respect to the timing of Delta pumping, page 2-38 of the EWA EIS/EIR (2003) states "...EWA water would be moved through the Delta from July through September, although Project operators could start moving EWA water in mid-June if fish were not in the area of the export pumps". Page 4-30 of the EWA EIS/EIR (2003) also states, "*Under certain conditions where the incremental effects on fish would be negligible [as determined] by the Management Agencies, EWA water could be transferred through the Delta as early as June or continue until November or December.*" Thus, the time frame of July through September identified as the principal pumping window for the proposed project is within the time frame that was previously evaluated for the EWA Program. Consistent with the provisions of the EWA Program, the pumping period could extend beyond this timeframe if the EWA Management Agencies determine that fisheries impacts would be negligible and approve a slightly different transfer period for moving EWA assets south of the Delta.
10. Potential effects of the proposed project therefore have been evaluated in the EWA EIS/EIR and ASIP. For the one year that the proposed project would be implemented, the transfer would be within the pumping window identified and evaluated by the EWA program. Additionally, pumping rates and export pumping volumes at the CVP and

SWP facilities in the Delta under the proposed project would be within the range previously identified and approved for the EWA Program. As discussed in the IS/MND at page 4-54, potential impacts on Delta fisheries resources resulting from the EWA Program, and thus from the proposed project, would be less than significant.

01/04/2006

Testimony by Dan B. Odenweller  
on behalf of the  
California Sportfishing Protection Alliance  
in the matter of the  
Yuba County Water Agency Petition  
Regarding the Flow Schedules in RD1644  
before the SWRCB

My name is Dan B. Odenweller, and I reside at:

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Education: B.S. Zoology, C.S.U. @ Long Beach, 1969  
M.A. Biology, C.S.U. @ Long Beach, 1971, Thesis titled: Life History of  
the Shiner Perch, Cymatogaster aggregata Gibbons, in Anaheim Bay,  
California

Employment: California Department of Fish and Game, 1968 to 2001, relevant  
experience included:

1974 to 1991 - Research Supervisor, Fish Facilities Program, Bay-Delta  
Project, Stockton, California.

- Supervised the Fish Facilities Unit and the Fish Salvage  
Operations Unit of the Bay-Delta Project
- Supervised the Delta Environmental Review Team and the  
Suisun Marsh Team of the Bay-Delta Project
- Chair of the I.E.P. Fish Facilities Technical Team
- Program Manager, Upper Sacramento River Instream Flow  
Study
- Supervised the Contract Services Section of the Bay-Delta  
Project in Red Bluff

1991 to 2001 - Statewide Water Diversion and Fish Passage Coordinator,  
Inland Fisheries Division, Sacramento, California

2001 to 2004 - N.O.A.A. Fisheries, National Marine Fisheries Service,  
Southwest Region, Bioengineering Team, Sacramento, California

Testified as an expert witness in both previous SWRCB rounds of hearings (1992 and 2000) leading to RD1644, on behalf of the California Department of Fish and Game.

There are two areas of concern which, I wish to discuss in more detail. First is the issue of unscreened (and poorly screened) diversions on the Yuba River, the Feather River, the Sacramento River, and in the Delta. The second is the effect of the water transfers on the Federal and State fish facilities in the south Delta.

1. Unscreened diversions (and poorly screened diversions) were the subject of my earlier testimony in the two previous hearings leading to RD1644. I testified to the effects of these diversions on the fish and wildlife resources of the Yuba River, and on the means to resolve the issue.
  - o The CDFG Fish Screening Criteria and the NOAA Fisheries' Fish Screening Criteria for Anadromous Salmonids constitute the best available science for determining the protective value of fish screening structures. These criteria were developed through many years of studies and analysis of the biological, physiological, and hydrological aspects of fish screening technology. Full conformance to these criteria is the only way to insure the level of protection that must be afforded to a species that is listed under the Endangered Species Act, or the California Endangered Species Act.
  - o Sufficient data has been collected throughout several studies of the South Yuba-Brophy facility to determine conclusively that this structure does not meet several of the necessary criteria set forth in the CDFG Fish Screening Policy, or the NOAA Fisheries' Fish Screening Criteria for Anadromous Salmonids. This point was clearly established during the 2000 hearings, (Transcript of April 3, 2000 hearing pages 1971 to end).
  - o There are no known similar structures (rock weirs) in use today that have been found to provide acceptable protection for listed salmonids and/or fully comply with the CDFG Fish Screening Policy, or the NOAA Fisheries' Fish Screening Criteria for Anadromous Salmonids.
  - o As the California Department of Fish and Game's fish screening expert during the previous rounds of hearings, I determined that it was not possible to "fix" or alter the present structure in a way that could make it meet all the necessary fish screening criteria. NOAA Fisheries (NMFS) staff has recently confirmed this assessment.

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- o The proposed action will shift flow from the spring when it is facilitating the outmigration of Salmonids from the Yuba River, to the fall, when the water has a greater value for transfer to storage south of the Delta.
2. Essential to the understanding of the full range of impacts associated with this proposal is the effect of the transfer pumping on the South Delta pumping, at the CVP and SWP facilities. The key is understanding that there is a limited period of opportunity in which to pump these water transfer exports, and the CVP and SWP contracted water deliveries.

Pumping cannot begin to increase in the late fall until there is water available in the Delta. This water can be from releases from storage, for example, planned releases from storage to establish the flood control reservation, or the water can come from uncontrolled storm runoff. The priority for the project operators is to fill their south of the Delta storage capacity before other factors limit their operations. Prominent among these other factors is the winter run Chinook salmon Biological Opinion, and its "Incidental Take" limit.

Pumping the water transfer exports, takes up some of the available capacity, and regardless of when this water is pumped, the net effect is to either raise the export level (pumping rate), or extend the period of pumping for the water year (Figure 1), or some combination.

This effect in the south Delta is a direct impact of the proposed action, albeit one, which occurs at some distance from the Yuba River. The action requires a case by case analysis, to allow a determination of the impacts in the south Delta, and their significance. Such an analysis has not been provided at this time. Figure 2 summarizes the pumping patterns of the Federal and State facilities in the south Delta, while Figure 3 shows some recent shifts in those patterns.

The increase in winter pumping (J-F-M) is now being scrutinized as one of the factors associated with the "Pelagic Organisms Decline (P.O.D.)," by the I.E.P.'s - P.O.D. Team (Figure 3).

Attached for the record is my most recent Delta Smelt data summary table (developed from the CDFG-CVBDB website), which is located at:

<http://www.delta.dfg.ca.gov>

It includes all the summer tow net and fall mid water trawl survey data for 2005 (Figure 4, and Table 1). As you can see, the 2005 indices are the lowest on record for this species, causing concern for the survival of the species.

Thank you for the opportunity to testify today, I will be happy to answer any questions.

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