

4.4.4 RESPONSES TO SPECIAL INTEREST GROUP COMMENTS

NP1



DOBBINS/OREGON HOUSE ACTION COMMITTEE

PO BOX 703

OREGON HOUSE CA 95962

PHONE (530) 692-0110

July 27, 2007

Ms. Dianne Simodynes
HDR/Surface Water Resources
1610 Arden Way, Suite 175
Sacramento, CA 95815

Dear Ms. Simodynes:

The Dobbins/Oregon House Action Committee (DOACT) acts as a forum where citizens in our communities (Dobbins and Oregon House in the Sierra foothills of Yuba County, California) can address issues of interest to them, achieve consensus and represent that consensus to those having jurisdiction. Our area of influence includes approximately 3,000 residents who are eligible to participate. At our regular meeting of July 26, 2007 we addressed the Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the Proposed Lower Yuba River Accord.

The Yuba County Water Agency (YCWA) is highly regarded in our community. Their efforts related to protecting Yuba County citizens from flooding, and also from wildland fires, are greatly appreciated. They have committed their resources to help improve the levee systems and to make strategically located water available for fire suppression. In fact, they restored the Lake Frances Dam at a great expense that they are never likely to recover. This primarily due to its strategic value as a source of water for the fire trucks and for its accessibility to fire fighting helicopters. Since restoring the lake there have been at least three wild fires that would likely have burned much larger areas, possibly even destroying homes, if it were not for the helicopters being able to dip out of Lake Frances. Add to this the fact that YCWA continuously goes an extra mile to make its lakes available and well maintained for recreational use by the public.

Because of YCWA's dedication to public safety and commitment to appropriate use of its facilities for recreation we support the Lower Yuba River Accord itself. We believe this accord satisfies the environmental concerns of the people, the needs of affected water users and the agency's own economic requirements. Our members have identified no issues of concern to them related to the Draft EIR/EIS for this accord.

Sincerely:

Greg Crompton, Chairman
Dobbins/Oregon House
Action Committee

NP1-1

LETTER NP1: GREG COMPTON, DOBBINS/OREGON HOUSE ACTION COMMITTEE

Response to Comment NP1-1:

Comment noted. YCWA appreciates DOACT's support of the Proposed Lower Yuba River Accord.

NP2

**THE BAY INSTITUTE
TROUT UNLIMITED**

August 24, 2007

*Submitted via email followed by
Hard copy in U.S. Mail*

Ms. Dianne Simodynes
HDR/Surface Water Resources, Inc.
1610 Arden Way, Suite 175
Sacramento, CA 95815

**Re: Conservation Group Comments on Proposed Lower Yuba River
Accord**

Dear Ms. Simodynes:

This letter includes the comments of The Bay Institute and Trout Unlimited (Conservation Groups) on the Proposed Lower Yuba River Accord (Proposed Accord). Our groups are signatories to the "Statement of Support for the Fisheries Agreement" component of the Proposed Accord. Thank you in advance for your time in consideration of our comments.

In April 2005, Conservation Groups joined with our environmental organization allies Friends of the River and South Yuba River Citizens League, Yuba County Water Agency (YCWA), California Department of Fish and Game, NOAA, National Marine Fisheries Service, and United States Department of the Interior, Fish and Wildlife Service, and signed a "Statement of Support for the Fisheries Agreement." Conservation Groups remain as committed today as we were in 2005 to the goals of providing local water-supply reliability, protecting and improving lower Yuba River fisheries, and providing water-transfer revenues for local flood-control and water-supply projects.

NP2-1

Our support was specifically directed towards the instream flow and habitat provisions of the Fisheries Agreement related to the Lower Yuba River. Conservation Groups only participated in the Fisheries Agreement process. That Agreement provides for revisions to the instream flow requirements in YCWA's water rights permits and to some of the other requirements in RD-1644, to improve flows in the lower Yuba River for fisheries and to ensure water transfers occur in an environmentally benign manner. The Fisheries Agreement is the cornerstone of the Accord.

However, much has changed since 2005. There is general consensus that a pelagic organism decline (POD) is underway in the Delta. *See e.g.*, Draft EIR/EIS, pp. 10-31 to 10-32. Since the release of the Pelagic Fish Action Plan by the Resources Agency earlier in April, Conservation Groups have had to examine the likelihood of significant changes in Delta operations and the effect such changes might have on the

NP2-2

*Conservation Group Comments
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08/24/07*

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NP2

success of the Yuba Accord, specifically the "Signed Memorandum of Understanding for Water Purchase Agreement." It appears clear that future changes will mean reduced ability to move water in and through the Delta.

We thank YCWA for providing us the opportunity as signatories to the Fisheries Agreement Statement of Support to engage in early and consistent consultation on DEIR/DEIS preparation and analysis. We also thank YCWA for its continued commitment since the March 2005 Fisheries Agreement Statement of Support to include in the scope of analysis potential environmental effects of the Accord in the Bay-Delta. Our standard is that the Accord's Water Purchase Agreement and its water transfers not cause Delta impacts. Based on the analysis, it appears that significant aspects of the Water Purchase Agreement will meet that standard. For example, most of the transfers under the Water Purchase Agreement would occur using dedicated priority Environmental Water Account (EWA) capacity in summer months, which would result in no new incremental increases in export or export-related impacts. However, given the vulnerable state of Delta fisheries, we continue to remain concerned about reasonably foreseeable future situations outside of the summer EWA pumping window where contemplated transfers would cause incremental new export impacts.

NP2-2
cont.

We request that the Final EIR/EIS include additional analysis and further specification on these concerns. We also request that the Final EIR/EIS include a finding to adopt a program for monitoring, reporting, and, if necessary, altering implementation of the Accord Water Purchase Agreement as a condition of certification so that no aspect of that agreement causes significant environmental effects in the Delta or further contributes to POD. This request goes beyond additional testing or experimentation for testing's sake alone. Instead, we propose an additional specific approach that would provide better ways to manage future events to avoid or mitigate significant Delta or pelagic species impact. See CEQA Guidelines, § 15204. This request would also have the benefit of making the final environmental document more useful and informative to the decision-makers when they consider that document and the project itself.

NP2-3

We look forward to continuing to work with YCWA as it prepares the final EIR/EIS. We respectfully request that YCWA provide an opportunity for review of the final EIR before approving the project. Thank you again for your time in consideration of these limited comments. Please feel free to contact either of us with questions or concerns.

Sincerely yours,



Gary Bobker
The Bay Institute

Charlton H. Bonham
Trout Unlimited

*Conservation Group Comments
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LETTER NP2: GARY BOBKER AND CHARLTON BONHAM, BAY INSTITUTE AND TROUT UNLIMITED**Response to Comment NP2-1:**

Comment noted. YCWA appreciates the Conservation Groups' continued support of the goals described in this comment.

Response to Comment NP2-2:

The Pelagic Organism Decline is discussed in the Draft EIR at pages 10-31 to 10-36 and 10-57, and in the Final EIR at pages 4-17 (Response to Comment SA1-7), 4-38 (Response to Comment SA3-1b), and 4-42 through 4-44 (Response to Comment SA3-2).

Chapter 3 of the Final EIR/EIS provides additional information about how the recent draft interim remedies order in *NRDC v. Kempthorne* will affect near-term operations in the Delta under the Yuba Accord Alternative.

Under the Yuba Accord Alternative, CVP and SWP operations in the Delta would occur under the terms and constraints of the OCAP Biological Opinions, and, in the near term, the provisions of the court's interim remedies order. Because export pumping for the Yuba Accord would be subject to these constraints, which are and will be designed to prevent impacts to delta smelt, it is unlikely that it would have any significant impacts on delta smelt. Under the Yuba Accord Alternative, instream releases from the Yuba Project facilities generally would be higher than they would be under the otherwise applicable regulatory baseline. The extra water released from the Yuba Project facilities would flow down the Yuba, Feather and Sacramento Rivers to the Delta, providing fisheries benefits along the way. When the Yuba Accord water would reach the Delta, it either would continue through the Delta, contributing to Delta outflow, or would be moved through the CVP or SWP pumps if conditions would allow pumping and if there were spare pump capacity to move the Accord water. Accounting for any Accord water transfers would be completed in arrears. Under these conditions, the Yuba Accord Alternative would not require any operational changes in the Delta, nor would it require any exports of water.

It is quite possible that different or additional operational constraints will be imposed on CVP and SWP Delta water transport operations over the course of the Yuba Accord Alternative's time horizon. However, the Yuba Accord would be subject to all future operational constraints that are set for the Delta, and thus would be unlikely to have any significant impacts.

Response to Comment NP2-3:

In the responses to comments on pages 4-17 (Response to Comment SA1-7), 4-37 to 4-41 (Response to Comment SA3-1b), and 4-42 through 4-44 (Response to Comment SA3-2) there are additional discussions of the Pelagic Organism Decline and its relationship to the Yuba Accord. Also, as described in the response to Comment NP2-2, the Yuba Accord Alternative would not require any operational changes the Delta, nor would it require any export of Accord water. CVP and SWP Delta operations will continue to proceed under the guidance and protections of the OCAP Biological Opinions and the provisions of the court's orders. Only if surplus export capacity exists, and only in accordance with the guidance and protections of the operational limitations for the Delta, would Accord water be exported and subsequently accounted for.

Because the Yuba Accord Alternative would follow, and would not dictate, CVP and SWP operations in the Delta, and because the Yuba Accord Alternative exports would only be accounted after the fact, it would be virtually impossible to develop specific monitoring and operations adjustment protocols specific to the Yuba Accord Water Purchase Agreement.

4.4.5 RESPONSES TO INDIVIDUAL COMMENTS

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August 7, 2007

Ms. Dianne Simodynes
HDR| Surface Water Resources, Inc.
1610 Arden Way, Suite 175
Sacramento, California 95815-4041

Ladies and Gentlemen:

SUBJECT: EIR/EIS for the Proposed Lower Yuba River Accord: 1 Comment.

This 'approximately 15,527-page' book, certainly the newest candidate for putative avatar of environmental-impact disquisition, is ironic on so many levels. In the end, I shall have only one 'comment' in a CEQA/NEPA sense of that term, but after subjecting me to a forced march through 16,000 pages in only 60 days, you're going to have to wade through two or three of mine to get to it.

1. It is ironic, first of all, because it was sent to me for review for no reason I know, other than -- like 17 million others -- I am a resident of the GYR¹. I can only guess someone may have heard that -- unlike many other commenters -- I hold three degrees in this type of engineering, I practiced that trade for 40 years in California and across the world, I was licensed by California and two adjacent states to perform such work, and I am an avocational student of how we humans slip and slog from era to era in baby steps, or alternatively daydream through many of them in idyllic stupor.
2. It is ironic because it purports to explain, at what we shall just call 'length,' a proposed set of activities involving hydrologic manipulation that nobody I have ever met could possibly understand -- in 60 days or ever.
3. It is ironical that it was prepared at all, at any length whatever, given that the activities it accounts and whose impacts numerous resource managers have here struggled to value, are all activities that the very same parties have practiced for years, sometimes in greater than the proposed quantities, absent any apparent need to elaborate or justify impacts in either an EIR or an EIS. (See p. 2-14, Table 2-2; and pp. 5-12 and 5-19, Tables 5-7 and 5-9, respectively.)

¹*i.e.*, the Great Yellow Area of Figure 2-1, p. 2-2.

Yuba Accord Comment, 08/07/07, p. 2.

4. It is ironic because it was always going to be nothing short of hubris to include the GAA² in the list of areas of impact -- given that so little water is involved *vis a vis* the needs of those in the GAA. But perhaps the writers who included us here at the 'bottom' of the map could not at early moments in the analytical journey have predicted that the Titanically monumental modeling effort to be undertaken would end-up 'predicting'³ that the *impacts* to the Export Service Area would be trivially tiny and negative at that -- not realistically larger than the error of the estimate -- not truly different from zero.

It is beyond ironic, it is impossible that -- as this 'book' implies -- I could turn on my kitchen sink faucet for eight years and, even with many pots, pans and glasses in the sink full, empty, and partially both, then measure throughout that period less water going down the drain than I would have measured during the 15 preceding years during which the water was off. Isaac Newton would call such an engineering outcome not just an artifact of overzealous precision but 'wrong'... a defiance of the conservation-of-matter law. (See Table 5-24, p. 5-45 as well as Tables F1-43 and -44, p. F1-38 .)

5. It is ironic because we of the UYD⁴ don't care what result is predicted for the Harvey O. Banks Pumping Plant and our area, if the best you can do is let loose 60,000 acre-feet per year, mostly in dry periods -- almost all of which, up to and including: more than all of which, is going to flow out through the Golden Gate. There are 17 million of us 'down' here; we require 'approximately 4.25000 million' acre-feet of water per year⁵. Sixty TAF per year is equivalent to 82.82 cubic feet per second (cfs), which wouldn't quite fill a 47-inch diameter pipe flowing at 7 feet per second. You do us little good unless we can get the four and a quarter MAF/yr, equivalent to 'approximately 5,866.42' cfs, which would just overflow a 267-inch pipe flowing at 15 ft/sec. Give us a break. Oh, and there are 17,000,000 more folks headed here (and 9,000,000 more headed to Yuba City and round about). *Ironically*, they're in their cars now, about to head out here from the East because they are tired of environmental factors like 6 to 9 months of stultifying heat and concurrent humidity each year, 4 months of blizzards or repeated hurricanes and their aftermath, and 10-day ice-storm events that occur at 'approximately 31.8 to 32°F.' and knock down their power lines, at which point it invariably turns really cold while they shiver unprotected in their unheated apartments and homes and wait the 8-10 days for the power company to

²*i.e.*, the Great Amarillo Abyss, where I live -- the ESA.

³... and there was only a flawed conception of looking ahead used ...

⁴*i.e.*, the Ugly Yellow Drain.

⁵... because everybody knows: One A-ft of water supports one family of 4 for a year.

Yuba Accord Comment, 08/07/07, p. 3.

restore their wires. We're aware that 200,000,000 others won't come because we have earthquakes in California, but what they forget is: Earthquakes are over in 10 seconds and you can then drive your little cart on toward the next tee.

6. It is ironic that this is really all about fish and MOSTLY it's about fisherpersons. Recall that all this began with, "In February 1988, a coalition of fishery groups... filed a complaint..." (App. A, N.O.P., p. 1). I personally find fishing ignoble, involving the literal *luring* of prehistoric animals with near-microscopic brains and nervous systems still breathing through gills, which obviate the placement and growth of a voice-box, to snap at a disguised treble-barbed hook -- creatures whose prehistoric development features cause them not even to yelp as bears gleefully eat their sides off. I prefer homing pigeons as the embodiment of amazing nonhuman creatures; I once had a bird return to my loft in eastern Tennessee from New Orleans in a day and a half (over 500 miles). Lance Armstrong couldn't do that with a bicycle and a map. But for truly human avocation, I much prefer golf, which involves Galileo's 1608 discovery of a parabola to describe launched object's trajectories ($y = ax^2 + bx - c$) and Newton's 1687 trigonometric restatement of it as a function of launch angle (for example clubface loft) and initial velocity, U : $y = x \tan \theta - \sec^2 \theta \ g/2 \ (x^2/U^2)$. [x = distance down-range, of course.] I find 1642, the year Galileo died and Newton was born, the avatar of moments when human endeavor changed from one of its eras to a *very* much different one -- more symbolic actually than 9/11⁶, 1492, or 1066.

What I find *truly* ironic, though, is that someone can write -- in a not very engineering syntax, to be sure: "Maximum water temperature for adults holding, while eggs are maturing, is **approximately 59°F to 60°F**..." (p. E2-5, emphasis added). Here we have found someone who may or may not like to fish but a person who just *loves fish* and is prepared to spend his or her final breath protecting their right to exist and be left alone, unstressed. To each his or her own. I suppose, in the end, whether this convoluted Accord can be implemented -- and that sounds very much over-constrained and likely impossible to me, these fish might just be proved actually to be worth all this time, 30.9 million dollars, and all this paper. Right here's the hero (p. E2-5).

7. It is ironic because this is all about "instream flow requirements" (p. 3-30 and throughout), while during the Comment Period the world has moved on to label this term "dated"⁷ and to replace it with "Environmental Flows."

⁶ironically my date of birth.

⁷Andrew T. Warner, 2007. "Incorporating Environmental Flows into Water Management," AWRA *Water Resources Impact (Environmental Flows)*, Vol. 9, No. 4, p. 6.

Yuba Accord Comment, 08/07/07, p. 4.

8. I find it ironic that this EIR/EIS appears at my 40th anniversary of arriving in California to do water planning⁸, and it appears at the 24th year of my living in the Great Yellow Abyss⁹, and that I can also bring news to these deliberations: This very same year, the Santa Ana Regional Water Quality Control Board's Executive Officer has announced (and I was there when he did so) that further recharge of State Project Water in this basin (and most particularly the *salts* therein) will have to be accompanied by Waste Discharge Requirements for such placement.¹⁰ Mr. Thiebault insisted (slide 33) that 'salts' are what is to be regulated, but he made mention of the wastewater effluent from Sacramento (in particular) that was inherent in the northern California "imported" water. Yuba City and Marysville as well have a 'sewage disposal' plant in the gore point of the (Lower) Yuba and Feather Rivers¹¹, which must be discharging its effluent to the same waters to be transferred south (if any) via the extant project.

Maybe it's time to consider removing the ESA or at least to consider changing its most unfortunately selected color. We're NOT the drain, by the way; my house is 1,000 ft above Yuba City and 1,019 ft above the HOB pumping plant.

9. Ironically, Gregory Bald in the Great Smoky Mountains (where I camped one night as a 15-year-old) lies at 4,948 ft above mean sea level (msl). Albuquerque, NM (which I spotted in the Rand McNally road atlas a few years ago while armchair scouting some Victorio and Geronimo sites) lies at 4,958 ft msl -- 'approximately 6,895,059 ft' west of Gregory Bald. It is ironic how flat the continental U.S. is and how easy it would be to construct and operate a transcontinental excess-flood-water redistribution system of canals and closed conduits, rivaling the interstate highway system, a system required for 50,000,000 people to live in California -- which I did not have to move here from the East to tell anyone, nor did Frémont, Vallejo, or Balboa. THAT would be a 'project,' an 'action' whose construction should have started in 'approximately 1493,' even if some ants were going to get squashed and some coyotes had to scoot.

⁸...my first project being a study of the feasibility of modeling the movement, accumulation, and removal of salts (TDS) from the groundwaters of the Santa Ana River basin.

⁹...where I came to work on an EIS about nuclear ballistic missiles in WY and NE silos... missiles whose warheads were NOT guided but were to fall from the sky along Galileo's 399-year-old parabolas. THAT was a 'project' -- an 'action.'

¹⁰Gerard Thiebault. 2007. "Proposed General Waste Discharge Requirements for Salts from Injection/Percolation of Imported Water," PowerPoint Presentation, Am. Ground Water Trust Conf., Ontario, CA, 2/5/07, 40 slides.

¹¹<http://www.topozone.com/print.asp?lat=39.13479&lon=-121.6262...> Accessed on 7/20/2007.

Yuba Accord Comment, 08/07/07, p. 5.

10. Isn't it ironic that only fish do well here, except for the farmers (pp. 17-7 and 17-8) who will "net" about the same amount of money for participating in this Accord as the Tier One payment for the 480 TAF -- around 30 million dollars (p. 17-14)? Does this whole thing amount to a penny-ante poker game (in which, I repeat, I have no dog), and in which fish and farmers end-up somewhat better-off and everybody else gets through in a 'washing-each-others'-shirts' sort of tie? Wow. Maybe that's all an 'accord' is.
11. It took me about 30 days to find Exhibit 6 in the appendix (App. B, p. B-64); and then I realized I had read right past it, and its significance, in Chapter 3 (p. 3-7). Would it not have been possible, and plenty accurate enough, ironically, to have multiplied 8 years by each of the frequencies in that table to have determined that during the Tier One period -- the only nonspeculative one -- there would be $8 \times 0.56 = 4.48$ yr of Schedule 1 flow, $8 \times 0.22 = 1.76$ yr of Schedule 2 flow, $8 \times 0.07 = 0.56$ yr of Schedule 3 flow, $8 \times 0.05 = 0.40$ yr of Schedule 4 flow (and Schedule 5 flow), $8 \times 0.04 = 0.32$ yr of Schedule 6 flow, and $8 \times 0.01 = 0.08$ yr of 'Conference' flow -- analyze that -- and, as they still say in *Common Sense's* Thomas Paine's England: 'Job done... and Bob's your uncle!?!' Wouldn't that have saved about 12,000 pages?
12. It's ironic that the ONLY potentially significant impact (Chapter 7, p. 7-14) was for power *consumption* -- found in the same chapter where previously NO significant impacts for power *generation* had been found; and that the magnitude for this impact is described with a term whose justification is wholly absent: "unreasonable." Who says? If you got it, what's unreasonable about using (some of) it?

My only comment is:

Someone, possibly one of the proponent-organizations' attorneys, should petition the U. S. Supreme Court -- probably through a "complaint" of some kind -- to issue a Permanent Injunction or something to reinstate the Negative Declaration aspect of environmental impact enumeration, which somebody appears to have repealed inadvertently, so that no studies have to be performed or tomes written and disseminated when benign arrangements, plans, or schemes such as this one -- or even more convoluted or malevolent ideas -- comprising no activities whatsoever are floated that do not involve anybody going outside or any insect, weed, bird, or bison missing a single hot meal.

II-1

Respectfully submitted,


Michael B. Sonnen, PhD, P.E.

Yuba Accord Comment, 08/07/07, p. 6.

P.S. The Climate Change chapter is completely irrelevant and immaterial, except for what it critically implies but never really says, *vis a vis* the entire modeling effort of the period "October 1921 to September 1994" (p. A-6), namely, contrary to what is assumed here and what every Hydrology textbook for a hundred years listed as a basic assumption -- that history will repeat itself -- is no longer regarded as either valid or useful; the number of water years in the Oct. 1921 through Sept. 1994 period is (and I've checked this by onesies; Sept. 1925 is FOUR water years after Oct. 1921): **73** [1994-1921], although the number at numerous spots throughout is given as 72, occasionally as 71, and once that I found, ironically, as 73; the word "affects" at the bottom of p. 11-45 should be "effects;" and 'CEQ' on p. 17-21 should be either CEQA or first spelled-out and defined before it's abbreviated. (Council on Environmental Quality? CEQ does not appear in the Glossary.)

I1-2

LETTER I1: MICHAEL B. SONNEN

Response to Comment I1-1:

Comment noted.

Response to Comment I1-2:

Any incorrect statements of the number of years in the hydrological record were inadvertent and the correct numbers can be determined by referring to the appropriate data in Appendix F. "Affects" on page 11-45 has been changed to "effects". "CEQ" is in the list of acronyms on page iv of the Draft EIR/EIS.

I2

Written Comments to EIR of the Yuba Accord

I request that my name, and address be withheld from public disclosure

Principles of Agreement with the Agency Member Units in connection with the Proposed Settlement of the SWRCB Decision-1644.

1) Voluntary Participation.

All member units (including Wheatland Water District) would be invited to participate in the settlement by entering into conjunctive use agreements with the Agency.

Voluntary participation in the Yuba Accord should not be limited to just Member Units, but include individual land owners who never agreed to join a member unit. Landowners that never volunteered to join a Member Unit and choose not to participate in the Conjunctive Use and Long-term Water Transfers Agreement of the Yuba Accord, should not have their land, future land use, and groundwater use compromised by any current or future project associated with the Yuba Accord Agreements or projects between Member Units and the YCWA. The landowners who never volunteered to participate should not have their land or easement across their land acquired by Eminent Domain.

I2-1

5) Allocation of Scheduled 6 Pumping.

The ability of the Member Units to participate in the conjunctive use program will depend on the extent to which Member Units can make arrangements with landowners within it's service area to provide the groundwater pumping capacity required.

Member Units should not be allowed to pump groundwater from any land, or adjacent to any land, (if the pumping effects the groundwater level, current or future land use of the property) if the landowner never agreed to participate in the Member Unit, or in the Conjunctive Use Program.

I2-2

11) CEQA Compliance for and SWRCB Approval of the Groundwater Substitution Water Transfer Program.

The Agency's EIR for the settlement, and petition to the SWRCB for approval of a long-term water transfer, adding the SWP and the CVP to the place of use under the Agency's water rights, would include the long-term groundwater substitution water transfer program.

I2-3

Although groundwater may be pumped for use within the county during some years, nothing within the Yuba Accord should add the SWP or the CVP as place of use for any implied groundwater rights the agency has. SWRCB 1644 should not be used as a means to imply that the SWP and/or the CVP as the place of use of Yuba County groundwater rights within the long-term water transfer agreement.

**Agreement for the Long-term Purchase of Water
from Yuba County Water Agency
by the Department of Water Resources
and the Bureau of Reclamation.**

RECITALS

G. *The Contracting Parties believe that this Agreement is consistent with: (1) Yuba's commitments to utilize water management tools (such as conjunctive use of groundwater) to create operational efficiencies, and manage water shortage risks in new ways that would benefit the fisheries and augment water supplies for downstream users; and (2) the Projects' need for additional water supplies.*

No Water from the Long-Term Purchase of Water from YCWA should be used to create an additional benefit or future benefit to downstream users at the expense of landowners within Yuba County. Additional irrigation acreage in the CVP or new Home Development with the service area of the SWP or downstream users should not take place if it has any adverse consequences to any landowner within Yuba County. The landowners within Yuba County should not have their property seized or easement taken by an Eminent Domain process for a conjunctive water use project that benefits downstream users and landowners anymore than what is currently in place. Taking groundwater from Yuba County to benefit farmers and home developers in Southern California was never the reason for SWRB Decision-1644.

I2-4

Section 6. Component 2 Water

Is not needed to satisfy Decision-1644, but is rather a drought protection plan for CVP and SWP, and not for the EWA or Fishery Agreement.

Section 7. Component 3 Water

Is not needed to satisfy Decision-1644, and the EWA or Fishery Agreement.

I2-5

Section 8. Component 4 Water

Is not needed to satisfy Decision-1644, and the EWA or Fishery Agreement.

Section 17 Approvals and Conditions Precedent to the Performance of the Agreement.

Yuba represents that Yuba has complied with the provisions of Section 5.2 of the Yuba Act, which requires that, prior to entering into this agreement, the Board of Directors of Yuba to: (1) determine that water to be purchased under this Agreement

I2-6a.

I2

would be surplus to the amount of water available to meet the contractual requirements of the Member units.

Conditions that would require selected groundwater pumps to supply water to other landowners within the county should not be considered a surplus condition. When landowners within the county have to rely on the pump from another landowner's property, then the Agency should not consider themselves to have surplus water available to meet the requirements of the Long-term Water Transfer Agreement.

I2-6a.
cont.

(2) hold public meetings to receive and consider comments on and objections to this Agreement:

YCWA should "act in good faith to properly educate all the citizens of the county" of the true and total scope of the Conjunctive Groundwater Use, and the Long-Term Water Transfer Agreements that the Agency is contracting into. Good faith should not be limited to simple meeting announcements in local newspapers that draw only six citizens, or require that citizens spend hours of self-research to educate themselves of the Agreements.

I2-6b.

(3) confirm that a majority of the registered voters residing within Yuba County have not filed written protests against this Agreement.

The Agency should not enter into these Agreements without the full and knowledgeable consent of a majority of the registered voters in the county. Instead of keeping the citizens in the dark, and measuring the objections of a few self-informed citizens, the Agency should invest sufficient resources into educating all the citizens of the extent of the Agreements, and placing the Agreements on an upcoming public ballot, which would be a true and honest means of measuring support of entering into the contracts. Such ballot measure should be free of campaign financing by any interest outside of Yuba County.

I2-6c.

Section 19. Hold Harmless

This whole section should be changed to ensure that landowners and citizens inside or outside Yuba County have some recourse, in the event that this Agreement causes adverse effects to the property, property value and future land use, that may arise from the Agreements. For all the contracting parties to agree not to hold anybody accountable is only in their interest, and not in the interest of the citizens they are to be serving.

I2-7

Section 24. General Contracting Provisions.

E. No Third-party Beneficiaries, Except as Expressly Provided.

The words "permitted transferees and assigns" should be removed. Decession-1644 was not intended to create a benefit to private parties through Long-term Contracts.

I2-8a.

Q. Officials Not to Benefit

This should include any Employee or Director of YCWA, or (publicly or non-disclosed) campaign contributor to the Yuba County Supervisors/ YCWA Director, State Legislature or Governor of the State of California, which makes appointments to Contracting Parties.

I2-8b.

Written comments to the EIR of the Yuba Accord continued

Chapter 6. Groundwater Resources

Conclusions Based on Long-Term Analysis

Even if the maximum pumping volumes were implemented over 6 years consecutively under the Yuba Accord Alternative (e.g., 3-year 180 TAF pumping), the estimated total groundwater storage after the maximum groundwater decline of 180 TAF (Figure 6-19) would be much higher than historical low conditions. Figure 6-20 demonstrates conceptually how groundwater storage in the South Yuba Subbasin would change as a result of the worst case groundwater storage decline of 180 TAF. Assuming 2005 represents the baseline year...

I2-9

If 2005 is considered the baseline year and the analysis claims that maximum groundwater pumping would result in worst case conditions only half that of the historic lows of 1983, then it should be clearly stated that individual wells could never be pumped to create groundwater levels more than 50% of the difference between the levels of 2005 and 1983.

Chapter 8. Flood Control

Impact 8.2.5-1 increases in New Bullards Bar Reservoir end-of-month storage volumes that could affect flood control releases

Any increases to the end-of-month storage volumes at Bullards Bar that could increase the likelihood of flows exceeding 4,170 cubic feet (uncontrolled flows) should not be an acceptable component of the Yuba Accord. Although Yuba Accord would provide revenues to Yuba County for flood control projects, they are not the only counties (Sutter and Sacramento) who would be subject to flooding associated with the management of end-of-month storage volumes at Bullards Bar.

I2-10

LETTER I2: NAME WITHHELD BY REQUEST

Response to Comment I2-1:

YCWA's current operations involve delivery of surface water from the lower Yuba River to Member Units for use within the Member Units. The conjunctive use program under the Yuba Accord Alternative would involve groundwater substitution transfers and deficiency pumping. Only those entities (i.e., Member Units) currently receiving surface water from YCWA would have opportunities to pump groundwater in lieu of receiving their surface water deliveries. Therefore, there would be no opportunity for individual land owners to participate in a groundwater substitution transfer unless they belong to one of YCWA's Member Units. For a discussion of potential impacts to groundwater users, not participating in the Yuba Accord, please refer to the response to Comment LA2-2. The Yuba Accord would not cause any significant impacts on the lands, land uses and groundwater uses of landowners not participating in the Yuba Accord, and the Yuba Accord would not involve any acquisitions of lands by eminent domain.

Response to Comment I2-2:

The conjunctive use program under the Yuba Accord would involve groundwater pumping only by willing landowners.

Response to Comment I2-3:

The Yuba Accord Alternative is intended to improve water supply reliability for Reclamation and DWR through the purchase of additional water in drier years. To prevent YCWA's water supply reliability from being reduced by the Yuba Accord Alternative's instream flows, YCWA and its participating Member Units would implement the Conjunctive Use Agreements. These agreements would establish a comprehensive conjunctive use program that would integrate the surface water and groundwater supplies of the local irrigation districts and mutual water companies that YCWA serves in Yuba County. Under the Conjunctive Use Agreements, YCWA Member Units would participate in a conjunctive use program and substitute groundwater for some surface water supplies.

If YCWA and a Member Unit decided to enter into a conjunctive use agreement, then the Member Unit would arrange for its respective water users to reduce their use of surface water diversions by amounts to be determined by YCWA and its Member Units during the water accounting year, and to pump equivalent amounts of groundwater from approved wells as replacement supplies for the groundwater substitution component of the YCWA water transfer to Reclamation and DWR.

The Yuba Accord Alternative would not involve the transfer of groundwater from Yuba County directly to the CVP or SWP, or to any other place of use outside of the county. Pumped groundwater would be used to irrigate lands within the Member Units' service areas that otherwise would have been served by surface water between March 1 and December 31. These operations would be consistent with the implementation of YCWA's Groundwater Management Plan (YCWA 2005b) and within the safe yields of the groundwater basins. Additionally, the Member Units would not lose or forego any existing surface water rights by participating in the Yuba Accord.

Response to Comment I2-4:

Integration of Yuba County's groundwater and surface water supplies has been a key element of the YCWA transfer program for the past 14 years. Under the Yuba Accord Alternative, this integration would be formalized to assure a supplemental dry year supply of groundwater to irrigate local farmland and to allow storage in New Bullards Bar Reservoir to be more fully exercised to meet: (1) the instream flow schedules in the Fisheries Agreement; and (2) the commitments to deliver water under the Water Purchase Agreement. Under the Water Purchase Agreement, DWR, in dry and critical years, would purchase from YCWA the surface water made available by participating Member Units' use of groundwater as a substitute supply. Although the Proposed Yuba Accord is intended to improve water supply reliability and provide a supplemental water supply during drier years, the actions (e.g., increased flows, water transfers) required to implement these benefits only would occur during a relatively short period of time. Additionally, Component 2, 3 and 4 water deliveries would only provide a supplemental supply, not to exceed the maximum existing SWP Table A amounts or CVP contract entitlements, which would improve reliability, particularly during dry years (see Chapter 3, Chapter 5 and Appendix F1 of the Draft EIR/EIS for additional detail). Therefore, no increases in long-term water supply reliability necessary to facilitate growth in the export service area would occur due to implementation of the Yuba Accord Alternative.

In Yuba County, YCWA would compensate participating Member Units for: (1) associated groundwater pumping; and (2) electric standby charges incurred to implement the conjunctive use program (if the wells were not used to provide water for a groundwater substitution water transfer during the period when the standby charge was incurred). YCWA also would provide financing to assist in modernizing local diesel groundwater pumps through conversions to more efficient and cleaner electric pumps. Meeting the Yuba Accord Alternative's instream flow schedules may result in occasional surface water deficiencies under YCWA's contracts with participating members. To mitigate such deficiencies, YCWA would compensate participating Member Units for the costs associated with groundwater pumping determined necessary to irrigate crops and avoid irrigation deficiencies, thereby effectively assuring that no adverse impacts to any landowner occur within the Yuba Region. No seizing of property or taking of easements is proposed as part of the Yuba Accord Alternative.

Response to Comment I2-5:

Under the Yuba Accord Alternative, water releases in the lower Yuba River would occur for the primary purpose of meeting the Fisheries Agreement's flow schedules. As described on page 3-13 of the Draft EIR/EIS, portions of the water used to implement Schedules 1 through 6 of the Fisheries Agreement under the Yuba Accord Alternative would be delivered as Components 1, 2, 3 and 4 water under the Water Purchase Agreement. The Yuba Accord Alternative includes three separate but interrelated agreements that would result in enhancement of fisheries protection on the lower Yuba River, increase certainty of local supply reliability, and provide Reclamation and DWR with increased operational flexibility for protection of fisheries resources through the EWA Program or an equivalent program, and provision of supplemental dry-year water supplies to state and federal water contractors (see page 1-9 of the Draft EIR/EIS). For these reasons, water releases necessary to meet the instream flow schedules in the lower Yuba River under the Proposed Project/Action would occur regardless of how the transfer volumes would be characterized for CVP and SWP accounting purposes (e.g., Component 1, 2, 3 and 4 water) under the Water Purchase Agreement. Additionally, because of the interrelated nature of the three Proposed Yuba Accord agreements, the portion of water that may be provided to CVP and SWP for use by the EWA Program or an equivalent program (Component 1 water) or CVP and SWP contractors (e.g., Components 2, 3 and 4 water) cannot be separated from the other elements of the Proposed Project/Action (i.e., Yuba Accord Alternative).

Response to Comment I2-6a:

YCWA will comply with Section 5.2 of the Yuba County Water Agency Act.

It is not contemplated that groundwater pumping for the Yuba Accord would cause landowners to have to use groundwater pumped on other landowner's properties to meet their local needs. Groundwater-substitution pumping would be arranged to avoid any unreasonable local groundwater impacts. See responses to Comment LA2-2.

Response to Comment I2-6b:

YCWA and Reclamation circulated a NOP/NOI to prepare a joint EIR/EIS for the Proposed Yuba Accord on July 20, 2005.

The NOP was filed with the California State Clearinghouse, the NOI was published in the Federal Register, and both notices were published in local newspapers, including the Sacramento Bee and the Marysville Appeal Democrat. Additionally, a separate notice of

scoping meetings was distributed to over 800 individuals on the Yuba Accord mailing/distribution list.

Scoping is used under both CEQA and NEPA to determine the focus and content of an EIR or EIS. The main objective of the scoping process is to provide the public and potentially affected resource agencies with information on the proposed project and to solicit public input regarding the issues and concerns to be evaluated in the environmental documentation. The scoping process is generally intended to provide the lead agencies with information regarding the range of actions, alternatives, resource issues, and mitigation measures that are to be analyzed in depth in the EIR/EIS and to eliminate from detailed study those issues found not to be significant. The Yuba Accord scoping process was designed to elicit comments from public agencies, other interested organizations and the public on the scope of the potential environmental effects and issues to be addressed in the Draft EIR/EIS.

Reclamation and YCWA held four public scoping meetings over two days: two on July 19, 2005 in Sacramento, California, and two on July 20, 2005 in Marysville, California. Attendees at the meetings included various federal, state, and local agency representatives, NGO representatives, and local residents. The first portion of each meeting was an informal discussion and display session. Four information stations were set up around the meeting room displaying information related to the three agreements comprising the Proposed Yuba Accord and explaining the EIR/EIS process. Lead agency representatives and consultant team members answered questions related to the Proposed Yuba Accord and EIR/EIS process, and collected public comments. A brief slide presentation of the history and overview of the Proposed Yuba Accord was made. At the conclusion of the slide presentation, meeting attendees were given the opportunity to make verbal comments. The meetings concluded with additional time for meeting attendees to view, ask questions, and comment upon the information display stations and meeting materials. Questions and comments were taken throughout each meeting and attendees were encouraged to provide their comments to the lead agencies in writing.

A Notice of Availability of the Draft EIR/EIS was published in the Federal Register, filed with the California State Clearinghouse, and published in local newspapers, including the Sacramento Bee, the Appeal Democrat, and the Grass Valley Union on July 25, 2007. The purpose of the notice was to inform interested parties of the availability of the Draft EIR/EIS document for public review and comment. A separate Notice of Public Hearings was distributed by Reclamation to all agencies and individuals on the Yuba Accord mailing/distribution list.

As part of the NEPA/CEQA process, two public hearings were held which allowed individuals an opportunity to provide verbal or written comments on the Draft EIR/EIS. The hearings occurred from 2:00 pm to 3:00 pm and from 6:00 pm to 7:00 pm on Wednesday, August 1, 2007 in Marysville, California.

Also, copies of the Draft EIR/EIS were made available for public review at the following locations:

- Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825
- Yuba County Water Agency, 1220 F Street, Marysville, CA 95901
- Department of Water Resources, Division of Environmental Services, 1416 Ninth Street, Sacramento, CA 95814
- Sacramento Public Library, 828 I Street, Sacramento, CA 95814

- Yuba County Library, 303 2nd Street, Marysville, CA 95901

Ample opportunities for public involvement, questions, and comments have been provided throughout the environmental compliance process. Chapter 2 of this Final EIR/EIS provides further information regarding the public outreach efforts conducted during the EIR/EIS process. Also, the Draft EIR/EIS describes the Yuba Accord Alternative and its potential impacts in detail. Therefore, YCWA has indeed acted “in good faith to properly educate all the citizens of the county” and other citizens potentially affected by implementation of the Yuba Accord Alternative.

Response to Comment I2-6c:

YCWA has complied with all applicable CEQA and NEPA notice requirements for the Draft EIR/EIS and generally has made the Draft EIR/EIS available for public review and comment in Yuba County. YCWA will comply with the notice and other requirements of Section 5.2 of the Yuba County Water Agency Act. The ballot measure that is requested in this comment is not required by law.

Response to Comment I2-7:

The comment refers to Section 19 of the draft Water Purchase Agreement, which sets forth the contractual provisions related to the delivery and sharing of purchased water and related integrated operations of the CVP/SWP system that will be agreed upon by YCWA, Reclamation and DWR (see page 1-11 of the Draft EIR/EIS). While the Water Purchase Agreement is one of the three interrelated agreements of the Yuba Accord Alternative, the Conjunctive Use Agreements between YCWA and the Member Units specify the contractual provisions that would pertain to conditions in Yuba County.

With respect to the commentor’s concerns regarding the protection of local interests in Yuba County and the underlying groundwater aquifer, protective provisions are identified in the Signed Memoranda of Understanding (MOU) for Conjunctive Use Agreements, which are provided in Appendix B3 of the Draft EIR/EIS. Excerpts from these MOUs that pertain to landowner participation and the measures that have been established to protect groundwater resources are provided below.

- The last paragraph of **Item 5. Allocation of Schedule 6 Pumping** states that...*“The ability of a Member Unit to participate in the conjunctive use program will depend on the extent to which the Member Unit can make arrangements with landowners within its service area to provide the groundwater pumping capacity required for the conjunctive use program. The proposed groundwater pumping allocation set forth in this section could be adjusted to reflect the ability of Member Units to provide this pumping capacity.”*
- **Item 15. The Conjunctive Use Program** states that ...*“The Agency's conjunctive use program would monitor groundwater pumping to avoid long-term impacts to the safe yield of the aquifer and impacts to domestic and municipal wells. The maximum annual amount of groundwater pumping for the Schedule 6 year commitments, for the Phase 8 settlement commitments, to mitigate for deficiencies in supplemental water supplies, and for groundwater substitution transfers would not exceed approximately 120,000 AF per year, to avoid long-term impacts to the safe yield of the aquifer. The Agency would coordinate with the Member Units in developing a program for efficiently providing the groundwater needed to implement the settlement (including the designation of wells that would participate in the program). To avoid air quality impacts from the implementation of the settlement (including the groundwater*

substitution water transfer program), the Agency would coordinate with the Member Units in the development and implementation of a program to convert certain diesel pumps to electrical pumps. The Agency would reimburse the Member Units for electricity standby charges incurred to implement the conjunctive use program if the wells were not used to provide water for a groundwater substitution water transfer during the period of years that the standby charge coverage. The Agency would work with the Member Units to avoid (or mitigate for) impacts to domestic and municipal wells. The Agency would use funds from the Phase 8 settlement implementation agreement to fund the conjunctive use program.”

For additional information related to concerns about potential impacts to private wells and individual landowners in Yuba County, see the response to Comment LA2-2.

Response to Comment I2-8a:

The reference to “permitted transferees and assigns” is appropriate here. Regardless of the intent of RD-1644, this language is appropriate for this section of the Water Purchase Agreement.

Response to Comment I2-8b:

The additional language requested by this comment is not required by law and will not be added to the Water Purchase Agreement. The people listed in this comment would be subject to all applicable laws regarding conflicts of interest and prohibitions on benefits from public-agency actions.

Response to Comment I2-9:

Estimates of groundwater pumping for shortages under the CEQA Existing Condition, the CEQA No Project Alternative and the Yuba Accord Alternative during the hydrologic period are presented in Table I2-9.1. The statement about overall groundwater storage in the Yuba Basin that is on page 6-50 of the Draft EIR/EIS and that is quoted in this comment is correct. However, the conclusion about individual wells that is stated in this comment may or may not be correct. During the period of the Yuba Accord Alternative, groundwater levels in any particular individual well would be determined by many factors, including pumping of that well and neighboring wells for purposes unrelated to the Yuba Accord. Also, the mix of wells used for the Yuba Accord Alternative’s groundwater-substitution program could affect groundwater levels in different wells in different ways. To prevent the implementation of the Yuba Accord Alternative from having any significant effects on individual wells, the actions in Exhibit 3 to the Water Purchase Agreement will be implemented (see Final EIR/EIS, Appendix M2).

Table I2-9.1. Estimates of Groundwater Pumping for Shortages During the Hydrological Period

Water Year	Yuba River Index Year Type	Groundwater Pumping for Shortages (AF)		
		CEQA Existing Condition	CEQA No Project Alternative	Yuba Accord Alternative
1922	Wet	0	0	0
1923	Above Normal	0	0	0
1924	Extremely Critical	0	0	54,631
1925	Below Normal	0	0	7,422
1926	Below Normal	0	9,105	0
1927	Wet	0	1,237	0
1928	Above Normal	0	0	0
1929	Dry	0	12,140	0
1930	Below Normal	0	1,649	0
1931	Extremely Critical	0	12,140	15,175
1932	Below Normal	0	1,649	2,062
1933	Dry	0	0	0
1934	Extremely Critical	0	0	0
1935	Above Normal	0	0	0
1936	Above Normal	0	0	0
1937	Above Normal	0	0	0
1938	Wet	0	0	0
1939	Dry	0	36,420	0
1940	Above Normal	0	4,948	0
1941	Wet	0	0	0
1942	Wet	0	0	0
1943	Wet	0	0	0
1944	Below Normal	0	0	0
1945	Above Normal	0	0	0
1946	Above Normal	0	0	0
1947	Dry	0	12,140	0
1948	Above Normal	0	1,649	0
1949	Below Normal	0	0	0
1950	Above Normal	0	0	0
1951	Wet	0	0	0
1952	Wet	0	0	0
1953	Wet	0	0	0
1954	Above Normal	0	0	0
1955	Dry	0	0	0
1956	Wet	0	0	0
1957	Above Normal	0	0	0
1958	Wet	0	0	0
1959	Dry	0	63,736	0
1960	Below Normal	0	8,659	0

Table I2-9.1. Estimates of Groundwater Pumping for Shortages During the Hydrological Period

Water Year	Yuba River Index Year Type	Groundwater Pumping for Shortages (AF)		
		CEQA Existing Condition	CEQA No Project Alternative	Yuba Accord Alternative
1961	Critical	0	0	0
1962	Below Normal	0	0	0
1963	Wet	0	0	0
1964	Below Normal	0	0	0
1965	Wet	0	0	0
1966	Below Normal	0	0	0
1967	Wet	0	0	0
1968	Below Normal	0	0	0
1969	Wet	0	0	0
1970	Wet	0	0	17,934
1971	Wet	0	0	2,375
1972	Below Normal	0	0	0
1973	Above Normal	0	0	0
1974	Wet	0	0	0
1975	Wet	0	0	0
1976	Extremely Critical	0	0	0
1977**	Extremely Critical	120,000	120,000	120,000
1978	Above Normal	20,463	57,660	50,538
1979	Below Normal	0	0	0
1980	Wet	0	0	0
1981	Dry	0	48,561	0
1982	Wet	0	6,597	0
1983	Wet	0	0	0
1984	Wet	0	0	0
1985	Below Normal	0	12,140	0
1986	Wet	0	1,649	0
1987	Critical	0	18,210	0
1988	Extremely Critical	0	2,474	0
1989	Below Normal	0	0	0
1990	Dry	0	0	0
1991	Critical	0	0	0
1992	Extremely Critical	0	0	0
1993	Above Normal	0	0	0
1994	Critical	0	21,245	0
Average of all years (AF)		1,924	6,219	3,701
<p>** Groundwater pumping during the 1977 drought is limited to 120,000 AF. Model estimated surface water shortage (i.e., model estimated groundwater pumping for meeting surface water shortage) during 1977 is 143,632 AF for the CEQA Existing Condition; 274,650 AF for the CEQA No Project Alternative; and 273,153 AF for the Yuba Accord Alternative. The maximum groundwater pumping of 120,000 AF in a single year is a constraint established for the upper bound of pumping volumes and to limit groundwater pumping during dry conditions.</p>				

Response to Comment I2-10:

For the purposes of the evaluations conducted in the Draft EIR/EIS, in the Yuba River, a substantial increase in the number of potential flood control releases (i.e., reservoir storage reaches flood control target value) from New Bullards Bar Reservoir under the Proposed Project/ Action and alternatives, relative to the bases of comparison, was considered significant. Additionally, a substantial increase in mean monthly flows exceeding 4,170 cfs was evaluated as an indicator of a potential increase in the magnitude of flood flows.

Minimum storage space reserved for flood control purposes in New Bullards Bar Reservoir is set for the September through April time period (see Section 8.2.1 Impact Assessment Methodology, pages 8-6 through 8-7). Over the 72-year simulation period, New Bullards Bar Reservoir would reach minimum flood control storage levels 49 times under the Yuba Accord Alternative compared to 54 times under the CEQA No Project Alternative (Appendix F4, 3 vs. 2, pages 2 - 8, and 13), 51 times under the CEQA Existing Condition (Appendix F4, 3 vs. 1, pages 2 - 8, and 13), and 55 times under the NEPA No Action Alternative (Appendix F4, 6 vs. 5, pages 2 - 8, and 13).