



September 30, 2011

Mr. Phil Isenberg  
Chair, Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, California 95814

VIA E-MAIL  
deltaplancomment@deltacouncil.ca.gov

**Re: Delta Plan – Yuba County Water Agency’s Comments  
on Fifth Draft Plan**

Dear Mr. Isenberg:

Yuba County Water Agency (YCWA) appreciates the opportunity to comment on the fifth draft of the Delta Plan. YCWA participated in the development of comments on the fifth draft of the Delta Plan by the Association of California Water Agencies and the Northern California Water Association, and supports those comments. YCWA’s comments in this letter focus on that draft’s proposed policy WR P2 – which concerns how water contracts involving the Delta are negotiated – and recommendation WR R5 – which would seek to limit new diversions in the Delta watershed. Those parts of the draft Delta Plan would not help the state achieve the coequal goals of restoring the Delta’s ecosystem and improving statewide water supply reliability. Those parts of the draft Delta Plan could instead discourage the use of water transfers to help meet California’s water supply needs and increase conflict over water that flows through the Delta. YCWA encourages the Council to review and consider the Ag/Urban Alternate Delta Plan’s water-supply recommendations as alternatives to proposed policy WR P2 and recommendation WR R5.

**Background**

In 1959, following the devastating 1955 Yuba River flood and in recognition of then existing groundwater overdraft in Yuba County, the Legislature created YCWA. YCWA constructed and operates New Bullards Bar Dam and Reservoir on the North Yuba River. That project and its associated irrigation canals deliver up to 350,000 acre-feet of surface water for agriculture and waterfowl habitat in Yuba County, which has alleviated the County’s groundwater overdraft. The project’s 340-

megawatt New Colgate Powerhouse is the peaking plant that PG&E uses to balance the northern 230 KV California power grid at the times of highest electrical demand. New Bullards Bar Reservoir's ability to store cold water and release it in the summer and fall has enabled the Yuba River's salmon and steelhead populations to grow from pre-project conditions.

The Lower Yuba River is today one of California's signature salmon streams. This river's history however is one of controversy. Decades of abuse from the Gold-Rush era devastated its fisheries and exacerbated flooding in nearby communities. The tragic consequences from hydraulic mining led to one of the first environmental decisions in U.S. history, the 1884 Sawyer Decision.

Controversy erupted again in 1988 over how much water should be released from flood control facilities owned and operated by YCWA, into the river for salmon and steelhead. This conflict over fisheries flows and water rights played out before the SWRCB, in the courts and in the media. In 2008, 18 parties approved agreements known as the Yuba Accord. YCWA, the California Department of Fish and Game, Department of Water Resources, conservation groups (including The Bay Institute and Trout Unlimited), water agencies in Yuba County and Pacific Gas and Electric Company (PG&E) approved Yuba Accord agreements, which were also supported by the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, State and federal water contractors and numerous other parties and stakeholders. In 2008, following preparation by YCWA and DWR of a \$6 million environmental impact report, the SWRCB approved petitions that led to the Yuba Accord's implementation. There were no legal challenges to the Yuba Accord EIR or the SWRCB decision implementing it.

The Yuba Accord is an innovative program comprising three interrelated agreements to improve 24 miles of fisheries habitat while preserving water rights and the benefits produced by a multipurpose flood control, water supply and hydroelectric system: (1) a fisheries agreement; (2) a water purchase agreement; and (3) conjunctive use agreements.

Under the Yuba Accord, up to an additional 170,000 acre-feet of water per year is now available for salmon and steelhead. In addition to the higher instream fisheries flows, a \$6 million "monitoring and evaluation" program is financing scientific research on these fisheries,

their long-term needs, the effectiveness of Yuba Accord flows in protecting those needs, and to guide the continued restoration of habitat damaged by mining and other activities related to the Gold Rush.

The Yuba Accord water purchase agreement has led to several of the largest and most-successful water transfers in California. From 2007 through 2010, Accord transfers averaged approximately 155,000 acre-feet of water to cities, farms and the environment. Every year, until at least 2016, YCWA transfers a minimum of 60,000 acre-feet to DWR for fish and wildlife purposes, and up to another 140,000 acre-feet to participating state and federal water project contractors. As part of those transfers, the Yuba Accord facilitates groundwater substitution of as much as 90,000 acre-feet per year using conjunctive management of groundwater and surface water.

YCWA's Accord transfer revenues are enhancing environmental resources. For example, in partnership with the County of Yuba, YCWA embarked on a \$78 million bond program to finance the local cost-share for the new Feather River setback levee. This 6 mile-long setback levee along the Feather River is expected to lower water elevations by more than a foot during floods, reducing the flood risk to nearby cities. It also established 1,550 acres for fish and wildlife habitat, and agricultural uses.

The Yuba Accord also provides climatic benefits. Under the conjunctive use agreements, YCWA is administering a \$1 million program to reimburse farmers for the purchase and installation of new, more-efficient electric groundwater pump motors – replacing diesel pump engines. This program enables local farmers to irrigate their crops with groundwater when surface water is needed for other Accord purposes. Up to 75 diesel engines are being replaced with electric motors – reducing fossil fuel demands by up to 600,000 gallons of diesel per year and reducing greenhouse gas emissions by up to 7,000 tons per year.

The Yuba Accord has been heralded for its collaboration, and more importantly for its economic and environmental benefits. "Historically in California, water wars have been the most contentious resource battles imaginable," Linda Adams, Secretary of the California Environmental Protection Agency told the *Christian Science Monitor*. "The fact that these organizations were able to come up with an agreement that met all their needs at once is phenomenal ..." The Yuba Accord has been recognized as a model for resolving complex disputes,

receiving the Association of California Water Agencies' Theodore Roosevelt Award for Environmental Excellence in 2008, the National Hydropower Association's Outstanding Stewards of America's Waters Award in 2009 and the 2009 Governor's Environmental and Economic Leadership Award. (For more information on the Yuba Accord, please visit [www.ycwa.com](http://www.ycwa.com).)

*Proposed Policy WR P2 Could Discourage Agencies That Have Been Sources Of Transfer Water From Involvement With The Delta And Water Transfers*

Water transfers are a favored policy of the State of California to help meet California's water supply needs, and all State agencies are directed to encourage and facilitate water transfers. (See, e.g., Water Code sections 109 and 475.) Consistent with this policy, State agencies should be working with water providers to find ways to make the water transfer process more efficacious. For example, the Little Hoover Commission issued a report in August 2010, entitled "Managing for Change: Modernizing California's Water Governance," that calls for increasing economic efficiency and system flexibility through a streamlined water transfer process.

Proposed policy WR P2 would require that "(a)ll new contracts . . . to . . . transfer water through . . . the Delta except transfers for up to one year in length, are not consistent with Delta Plan (*sic*) unless they have been developed in a transparent manner consistent with Department of Water Resources' revised policies adopted in 2003 for contract renewals and permanent transfers . . . ." This policy could discourage water transfers by adding yet one more layer of regulation on local agencies' processes for developing transfers, contrary to other State policies cited above.

It is very important to understand the regulatory background for water transfers longer than one year, which is what the proposed policy WR P2 would cover. YCWA understands this background well, partly because YCWA needed to comply with applicable environmental and regulatory laws, as well as water transfer criteria developed by DWR and the US Bureau of Reclamation, to implement the Yuba Accord's long-term transfer program. YCWA and DWR prepared a \$6 million environmental impact report under the California Environmental Quality Act and YCWA obtained the SWRCB's approval of changes to YCWA's water-right permits. Numerous public meetings were held for these

purposes. In summary, under current requirements there is extensive public disclosure and opportunities for public involvement with water transfer proposals. The draft Delta Plan's proposed policy WR P2 would add additional public-review requirements to the existing requirements, without achieving any additional public benefit.

Proposed policy WR P2 would make long-term transfers even more difficult to implement because it could involve third parties in the negotiation of the actual terms of the transfer agreement itself. The negotiation of long-term water transfer agreements is too complex to introduce third-party participation in that stage of a water transfer. Negotiations could involve, among other things: (1) highly-technical discussions of water-quality conditions in the Delta and their relationship with Central Valley Project and State Water Project pumping capacity; (2) disputes about the statewide market price of water; (3) information about market prices for rice (because agencies that transfer water often deliver water to rice farmers within their boundaries); and (4) analysis of the local groundwater available over a long term in the case of transfers involving conjunctive use (like the Yuba River Accord). Moreover, third-party participation at the negotiation stage of a water transfer would be of little use to the third parties or the public because the proposed transfer's terms would not be defined well enough for their review and comment.

In light of these concerns, if the Delta Stewardship Council were to adopt the fifth draft Delta Plan's proposed policy WR P2, agencies in the Delta watershed that could transfer water would be discouraged from doing so. Such agencies must invest significant time, money and resources to make a water transfer work. If faced with the prospect of being required to engage in large stakeholder negotiations just to develop a transfer agreement - before then participating in further public-review processes under CEQA and the SWRCB's governing laws - many agencies may simply not seek to transfer water and instead focus on their primary function of serving water to their local communities.

*Proposed Recommendation WR R5 Would Reduce Watershed Agencies' Ability To Implement Changes To Their Operations That Could Benefit The Delta And Would Violate The Area-of-Origin Laws*

The fifth draft Delta Plan contains proposed recommendation WR R5, which states: "The (SWRCB) . . . should require that proponents

requesting a new point of diversion, place of use, or purpose of use that results in the new or increased use of water from the Delta watershed should demonstrate that the project proponents have evaluated and implemented all other feasible water supply alternatives.” If the SWRCB were to accept such a recommendation, it would undermine watershed agencies’ efforts to serve their communities with their local resources, force them to expend resources on new, less cost-effective projects and reduce the resources available for agencies to participate in cooperative programs that could help the Delta.

Recommendation WR R5 focuses on changes to existing water rights in the Delta watershed. For over 100 years, such changes have been governed by the “no injury” rule, whether embodied in court decisions or statutes like Water Code section 1702. This rule has allowed communities to adjust their water systems to meet their evolving needs, while ensuring that those changes do not harm other water users by resulting in those communities taking more water than their water rights allow. The “no injury” rule also allows water agencies to adjust their operations in order to address problems with other water sources and to make water available, through transfers, to other parts of the state. The ability to change operations to use more water covered by an existing water right therefore has always been a fundamental part of California’s system of appropriative water rights.

Recommendation WR R5 therefore conflicts with the 2009 Delta Reform Act under which the Council is developing the Delta Plan. Water Code section 85031(a) contained in that Act states, “This division does not diminish, impair, or otherwise affect in any manner whatsoever any area of origin, watershed of origin, county of origin, or any other water rights protections . . . .” Water Code section 85032 contained in that Act states, “This division does not affect any of the following: . . . (g) Section 1702. (h) Any water right.” Recommendation WR R5 conflicts with these parts of the 2009 Delta Reform Act because, if implemented by the SWRCB, it would fundamentally change water-right holders’ ability to modify their operations as currently allowed by Water Code section 1702 and decades of existing law.

Moreover, the kind of changes to water rights that recommendation WR R5 would restrict are foundational to the very innovative programs that California needs to get as much benefit as possible from its existing water system. YCWA’s history provides a good example. When YCWA initially began delivering water from its project, it

was unable to serve southern Yuba County because of the problems associated with conveying water through the thousands of acres of hydraulic mining debris located just south of the Yuba River. In the mid-1980's, these problems were resolved and water from YCWA's project began to be diverted at a new diversion on the Yuba River's south bank, which increased the use of water under YCWA's water rights. YCWA's delivery of surface water to southern Yuba County allowed that area's groundwater levels to recover to historic levels. This recovery, in turn, supports the dedication of water to fishery needs in dry years, and transfers to other areas of the state, under the Yuba Accord because the high groundwater levels in southern Yuba County enable the conjunctive use of surface water and groundwater on which the Accord relies.

Recommendation WR R5, if implemented by the SWRCB, would stifle such innovative projects by forcing water agencies to expend resources on new water projects that would be less cost-effective than modifying their operations to optimize their use of the supplies available under their existing water rights. Agencies would be compelled to expend large amounts of time, energy and money conducting feasibility studies, preparing environmental review documents, seeking permits, developing financing and constructing new projects completely separate from their existing water rights. This significantly increased burden on watershed agencies would divert their resources from seeking to developing cooperative programs like the Yuba Accord that generate both local and statewide benefits. Watershed agencies would have not only fewer resources, but also less incentive, to participate in programs that could help the Delta because implementation of recommendation WR R5 by the SWRCB would force them to be ever more insular as they were forced to develop ever more expensive local projects to meet that recommendation's vague demands.

YCWA respectfully requests that the Council delete recommendation WR R5 from the Delta Plan.

*In Order To Avoid Problems That Proposed Policy WR P2 and Proposed Recommendation WR R5 Would Cause, The Council Should Consider The Water-Supply Proposals In The Ag/Urban Alternate Delta Plan*

The Ag/Urban group of watershed, Delta and export water agencies coordinated by ACWA prepared, and submitted to the

Council, an Alternate Delta Plan that contains, among other things, comprehensive water-supply proposals. YCWA urges the Council to consider replacing proposed policy WR P2 and proposed recommendation WR R5 with elements of the Alternate Delta Plan's water-supply proposals.

### **Conclusion**

YCWA has been very innovative and active in developing water-management measures that have benefited fisheries, improved YCWA's ability to meet local needs and enabled YCWA to transfer water to help meet California's water supply needs. Based on YCWA's extensive experience in this area, YCWA believes that proposed policy WR P2 and proposed recommendation WR R5 could drive agencies away from cooperative solutions both by forcing them to be more protective of their own water supplies and increasing the burden of developing such solutions. This would be a very unfortunate result for a Delta Plan that was intended to help the state resolve conflicts, not worsen them.

Sincerely yours,



*for* Curt Aikens  
General Manager

Cc: Randy Fiorini, Vice Chair  
Gloria Gray  
Patrick Johnston  
Felicia Marcus  
Hank Nordhoff  
Don Nottoli  
Joe Grindstaff