

State of California

Before the State Water Resources Control Board

Yuba County Water Agency, Petitioner and Permittee

Water Right Permits 15026, 15027, and 15030

Yuba River Watershed; Delta Estuary; State and Federal Pumps

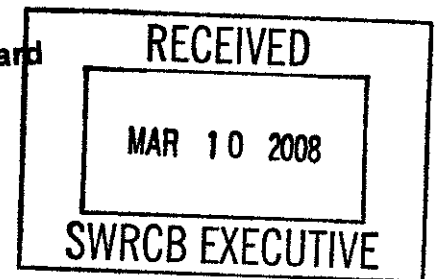
In the Matter of Petition for Long-Term Transfer of up to 200,000 Acre-Feet of Water Per Year From Yuba County Water Agency to the California Department of Water Resources and the United States Bureau of Reclamation Under Water Right Permit 15026

Draft Board Order WR 2008 - XXXX of February 29, 2008 and Ruling of Procedural Objections by Art Baggett

Preliminary Comments by the Anglers Committee, Protestant, and California Salmon and Steelhead Association, Interested Party

The Anglers Committee has standing in the above stated matter as a formal protestant. The California Salmon and Steelhead Association is not a formal protestant, but has standing as part owners of the public trust fishery resources and assets of the Sacramento River Watershed and the Delta Estuary to be affected by the Draft Board Order. The deadline date for filing preliminary comments is March 13, 2008 at high noon for the Anglers Committee. The following are the comments of the Anglers Committee and the California Salmon and Steelhead Association.

The Draft Board Order does not allow for the public to submit comments and take part in development of the terms and conditions of the Draft Board Order. The Draft Board Order is grossly deficient because the proposed Draft Board Order is among the petitioner (YCWA), two major diverters (DWR - USBR), a few agents for major water users, and Art Baggett of the Board. Only one member of the public who represents fisheries interests was formally part of the governmental hearing process and that public interest group was denied the opportunity to testify because Art Baggett the hearing officer, denied a disabled person to testify at the hearing. Art Baggett made this discriminatory decision without a policy being adopted by the Board that allowed disabled persons to testify at hearings without attending hearings pursuant to the American With Disabilities Act (ADA). We reference the hearing records. The records clearly show Art Baggett discriminated against Bob Baiocchi and the Anglers Committee.



Bob Baiocchi, representing the Anglers Committee, submitted several procedural objections to Art Baggett's staff regarding violations of the rules of procedure for the subject hearing. Art Baggett denied the procedural objections by the Anglers Committee in a letter of February 28, 2008 that allowed late filings by the Petitioner to be included into the records. Clearly Art Baggett denied the procedural objections by the Anglers Committee because he had a conflict of interest as clearly shown below. We reference the several procedural objections submittals by the Anglers Committee to the staff of the Board.

Hearing Officer Art Baggett of the SWRCB has a conflict of interest and he should have excused himself from being the hearing officer in this hearing matter. Before the hearing was held in this matter, Art Baggett signed the Habitat Expansion Agreement representing the Board. The Habitat Expansion Agreement included the Lower Yuba River, which was before him at this hearing. The Habitat Expansion Agreement included the Delta Estuary that was before him at this hearing. The Habitat Expansion Agreement included the Department of Water Resources Oroville Facility of the State Water Project located in the Sacramento River Watershed River, of which the Department of Water Resources was a party before Art Baggett at this hearing. The Habitat Expansion Agreement included the U.S. Bureau of Reclamation's dams and reservoirs on the Sacramento River Watershed, of which the Bureau of Reclamation was a party before Art Baggett at this hearing.

The Department of Water Resources and the State Water Contractors also signed the Habitat Expansion Agreement. The Department of Water Resources and the State Water Contractors stood to benefit significantly from having the long-term water transfer approved by Art Baggett. The Yuba County Water Agency, the petitioner, also stood to benefit significantly from Art Baggett approving the long-term water transfer as well as approving the Yuba Accord Agreement, which included the Lower Yuba River, which was included in the Habitat Expansion Agreement and was before Art Baggett at this hearing. The US Bureau of Reclamation also stood to benefit from the long-term water transfer by being excluded from additional mitigation cost of the loss of salmon and steelhead species and their habitat above Shasta Dam and other USBR dams in the Sacramento River watershed. The Habitat Expansion Agreement prevented dam owner from mitigation costs for the loss of Central Valley endangered salmon and threatened steelhead species and the loss of their historic habitat above the lowest dams in the Sacramento River watershed. i.e. Feather River; Sacramento River; American River; Stony Creek; Yuba River; Battle Creek; et al. See attached Fact Sheet for the Habitat Expansion Agreement as evidence in this conflict of interest issue.

Clearly Art Baggett made a decision to support the Habitat Expansion Agreement before the subject hearing was held and consequently had a vested conflict of interest on matters pertaining to the Yuba River and the Delta Estuary. Art Baggett had and still has a conflict of interest in any and all decisions affecting the Sacramento River watershed, which includes the Yuba River, Feather River, American River, and the Delta Estuary. I include the Delta Estuary because the Department of Water Resources' Oroville Project in the Sacramento River Watershed is connected to the Department of Water Resources' state pumps, where the people's water is stored at Oroville Dam and Reservoir and re-diverted to the places of use at the state pumps. The same is true with the US Bureau of Reclamation where the people's water is stored at their dams and reservoirs in the Sacramento River Watershed and re-diverted at the federal pumps. That does not include the people's water from the Trinity River that is re-diverted at the federal pumps.

The Board must conduct another hearing with a new hearing officer who does not have a vested conflict of interest. That would be reasonable and in the public interest because the Board is conducting the people's business in a decision having vast effects to the public trust assets owned by the people of California. It is our belief the Board and Art Baggett does not have the discretion to give away the people's trust assets.

The draft Board Order orchestrated by Art Baggett disregarded the public trust duties and responsibilities of the State Water Board to protect and maintain the Delta fisheries and their habitat in the Delta Estuary that would be adversely affected at the state and federal pumps resulting from the long-term water transfer. The State Water Board continues to ignore their public trust duties and responsibilities to protect the state's public trust anadromous fisheries assets. The draft Board Order orchestrated by Art Baggett failed to provide specific protection measures as a result of the multi million-dollar long-term water transfer for the following species and their habitat in the Delta Estuary:

The Draft Board Order failed to order specific protection measures for Delta Smelt species and their habitat in the Delta Estuary for the term of the long-term water transfer. The Draft Order also failed to order monitoring requirements to prevent the extinction of Delta Smelt species during the term of the long-term water transfer. The Draft Board Order also failed to place pumping restrictions on pumping water at the state and federal with and without the long-term water transfer to protect Delta Smelt habitat in the Delta Estuary. We reference the Draft Board Order.

The Draft Board Order failed to order specific protection measures for Longfin Smelt species and their habitat in the Delta Estuary for the term of the long-term water transfer. The Draft Order also failed to order monitoring

requirements to prevent the extinction of Longfin Smelt species during the term of the long-term water transfer. The Draft Board Order also failed to place pumping restrictions on pumping water at the state and federal with and without the long-term water transfer to protect Longfin Smelt habitat in the Delta Estuary. We reference the Draft Board Order.

The Draft Board Order failed to order specific protection measures for Sacramento Splittail species and their habitat in the Delta Estuary for the term of the long-term water transfer. The Draft Order also failed to order monitoring requirements to prevent the extinction of Sacramento Splittail species during the term of the long-term water transfer. The Draft Board Order also failed to place pumping restrictions on pumping water at the state and federal with and without the long-term water transfer to protect Sacramento Splittail habitat in the Delta Estuary. We reference the Draft Board Order.

The Draft Board Order failed to order specific protection measures for Striped Bass species and their habitat in the Delta Estuary for the term of the long-term water transfer. The Draft Order also failed to order monitoring requirements to prevent the extinction of Striped Bass species during the term of the long-term water transfer. The Draft Board Order also failed to place pumping restrictions on pumping water at the state and federal with and without the long-term water transfer to protect Striped Bass habitat in the Delta Estuary. We reference the Draft Board Order.

The Draft Board Order failed to order specific protection measures for American shad species and their habitat in the Delta Estuary for the term of the long-term water transfer. The Draft Order also failed to order monitoring requirements to prevent the extinction of American shad species during the term of the long-term water transfer. The Draft Board Order also failed to place pumping restrictions on pumping water at the state and federal with and without the long-term water transfer to protect American shad habitat in the Delta Estuary. We reference the Draft Board Order.

The Draft Board Order failed to order specific protection measures for Central Valley endangered spring-run Chinook salmon species and their habitat in the Delta Estuary for the term of the long-term water transfer. The Draft Order also failed to order monitoring requirements to prevent the extinction of Central Valley endangered spring-run Chinook salmon species during the term of the long-term water transfer. The Draft Board Order also failed to place pumping restrictions on pumping water at the state and federal with and without the long-term water transfer to protect endangered spring-run Chinook salmon habitat in the Delta Estuary. We reference the Draft Board Order.

The Draft Board Order failed to order specific protection measures for Central Valley endangered Winter-run Chinook salmon species and their habitat in the Delta Estuary for the term of the long-term water transfer. The Draft Order also failed to order monitoring requirements to prevent the extinction of Central Valley endangered Winter-run Chinook salmon species during the term of the long-term water transfer. The Draft Board Order also failed to place pumping restrictions on pumping water at the state and federal with and without the long-term water transfer to protect endangered winter-run Chinook salmon habitat in the Delta Estuary. We reference the Draft Board Order.

The Draft Board Order failed to order specific protection measures for Central Valley Fall-Run and Late Fall-Run Chinook salmon species and their habitat in the Delta Estuary for the term of the long-term water transfer. The Draft Order also failed to order monitoring requirements to prevent the extinction of Central Valley Fall-Run and Late Fall-Run Chinook salmon species during the term of the long-term water transfer. The Draft Board Order also failed to place pumping restrictions on pumping water at the state and federal with and without the long-term water transfer to protect Fall-Run and Late Fall-Run Chinook Salmon habitat in the Delta Estuary. We reference the Draft Board Order.

The Draft Board Order failed to order specific protection measures for Central Valley Threatened Steelhead species and their habitat in the Delta Estuary for the term of the long-term water transfer. The Draft Order also failed to order monitoring requirements to prevent the extinction of Central Valley Threatened Steelhead species during the term of the long-term water transfer. The Draft Board Order also failed to place pumping restrictions on pumping water at the state and federal with and without the long-term water transfer to protect threatened steelhead habitat in the Delta Estuary. We reference the Draft Board Order.

The Draft Board Order failed to order specific protection measures for Races of Protected Sturgeon species and their habitat in the Delta Estuary for the term of the long-term water transfer. The Draft Order also failed to order monitoring requirements to prevent the extinction of Races of Protected Sturgeon species during the term of the long-term water transfer. The Draft Board Order also failed to place pumping restrictions on pumping water at the state and federal with and without the long-term water transfer to protect protected sturgeon habitat in the Delta Estuary. We reference the Draft Board Order.

The failure of the Draft Board Order to order protection measures for the above species and their habitat in the Delta Estuary is a significant benefit to the Department of Water Resources and the U.S. Bureau of Reclamation.

Extinction of the above species by the Board is not an alternative and is not acceptable to the Anglers Committee and the California Salmon and Steelhead Association.

The Draft Board Order orchestrated by Art Baggett during the period of the long-term water transfer failed to require monitoring of daily water temperatures detrimental to cold-water species such as salmon and steelhead in the Lower Yuba River. We reference the Draft Board Order. The failure of the Draft Board Order to order specific water temperature requirements during the period of the long-term water transfer in the Lower Yuba River for endangered salmon and threatened steelhead is a significant benefit to the Yuba County Water Agency.

The Draft Board Order orchestrated by Art Baggett failed to require monitoring of entrainment of endangered salmon and threatened steelhead at water diversion facilities in the Lower Yuba River. We reference the Draft Board Order. The failure of the Draft Board Order to order entrainment protection measures in the Lower Yuba River for endangered salmon and threatened steelhead is a significant benefit to the Yuba County Water Agency.

The Draft Board Order orchestrated by Art Baggett failed to require monitoring of detrimental fluctuating flows in the Lower Yuba River resulting from the long-term water transfer affecting endangered spring-run Chinook salmon species and their habitat and threatened steelhead species and their habitat, and also affecting fall-run and late fall-run Chinook salmon species and their habitat. We reference the Draft Board Order. The failure of the Draft Board Order to order measures to prevent fluctuating flows adversely affecting spawning and rearing habitat for salmon and steelhead species during the long-term water transfers in the Lower Yuba River is a significant benefit to the Yuba County Water Agency.

Art Baggett is an expert in water quality according to the State Water Board's records but disregarded the fundamental water quality requirements for cold-water salmon species and steelhead species and their habitat in the Lower Yuba River. Clearly Art Baggett's vested conflict of interest prevented any water quality protection measures for the people's salmon and steelhead resources in the Draft Board Order. His vested conflict of interest overlooked the Board water quality authority responsibilities under the federal Clean Water Act and the California Water Code. We reference the Draft Board Order. The failure of the Draft Board Order in ordering water quality requirements that are consistent with state and federal statutes is a significant benefit to the Yuba County Water Agency.

The draft Board Order orchestrated by Art Baggett disregarded California Fish and Game 5937 and did not require mandatory daily flow requirements from New Bullards Bar Dam into the North Yuba River. California Fish and Game Code 5939 is mandatory and is state law, and requires water to be released from dams at all times to keep fish that are planted or exist below the dam in good condition. The Board is not exempt from complying with Fish and Game Code 5937. Art Baggett is an attorney and he knows fully well that California Fish and Game Code 5937 applies to all dams in the state, including New Bullards Bar Dam. It applied to the USBR Friant Dam in the San Joaquin River by the courts. Clearly Art Baggett's conflict of interest prevented him from ordering mandatory daily flow requirements from New Bullards Bar Dam into the North Yuba River in the Draft Board Order. We reference the Draft Board Order. The failure of the Draft Board Order in ordering mandatory flow requirements from New Bullards Bar Dam pursuant to California Fish and Game Code 5937 is a significant benefit to the Yuba County Water Agency.

The draft Board Order orchestrated by Art Baggett failed to provide any mitigation measures to mitigate the loss of public recreation at New Bullards Bar Reservoir as a result of long-term water transfers and the diversion of the state's water stored in New Bullards Bar Reservoir, a facility built by public money. Clearly Art Baggett's conflict of interest prevented him from ordering measures to protect public recreation at New Bullards Bar Reservoir. We reference the Draft Board Order. The failure of the Draft Board Order to order measures to protect public recreation at New Bullards Bar Reservoir during the period of the long-term water transfer is a significant benefit to the Yuba County Water Agency.

The draft Board Order orchestrated by Art Baggett failed to provide water quality certification for the Yuba River Project 2246 and also for the California Aqueduct Project (state pumps) 2426. The long-term water transfer exceeds the federal license relicensing date of April 30, 2013 for the Yuba River Project 2426. Again, Art Baggett, a self-proclaimed expert in water quality, failed to protect the people's water quality because of his conflict of interest. Further, for the Board to wait for the federal relicensing process to occur many years down the road and putting off the water quality protection of the people's water is not only unreasonable, but violates state and federal water quality statutes. The failure of the Draft Board Order to order water quality protection measures at the Yuba River Project is a significant benefit to the Yuba County Water Agency.

The Draft Board Order orchestrated by Art Baggett does not provide specific salinity control requirements for the Delta Estuary during the term of the long-term water transfer. Salinity control is part of the long-term water transfer. We reference the Draft Board Order. The failure of the Draft Board Order to order specific salinity control requirements during the long-

term water transfer benefits the Department of Water Resources and the U.S. Bureau of Reclamation, and has the potential to adversely effect the people's fresh water resources and prevent salt water intrusion.

The Draft Board Order orchestrated by Art Baggett does not provide specific water quality control requirements for the Delta Estuary during the term of the long-term water transfer. Water quality control is part of the long-term water transfer. We reference the Draft Board Order. The failure of the Draft Board Order to order specific water quality control requirements during the long-term water transfer benefits the Department of Water Resources and the U.S. Bureau of Reclamation.

Finally the hearing process orchestrated by Art Baggett ruled against accommodations for a disabled person to testify by teleconference means so that the disabled person could support the written testimony he submitted in this hearing matter. The SWRCB does not have a policy to provide accessibility to disabled persons that cannot travel to Sacramento to testify pursuant to the Americans With Disabilities Act. I was that disabled person and clearly Art Baggett Jr. discriminated against me and preventing me from testifying at the hearing.

For the records, the Draft Board Order circumvented many issues that were raised by the Anglers Committee in its filing to Hearing Officer Art Baggett because of his vested conflict of interest. We reference the Anglers Committee filing.

In it my belief the California Department of Justice must investigate Art Baggett's vested conflict of interest, violation of the Americans With Disabilities Act, and his lack of protecting the people's public trust resources and assets when he orchestrated the draft Board Order. We plan to file a complaint with the California Department of Justice.

It is also my belief that the U.S. Department of Justice must also investigate Art Baggett's vested conflict of interest involving hydropower projects because it is related to hydropower projects that provide interstate power production. We plan to file a complaint with the U.S. Department of Justice.

I am requesting the Board to make a decision in this matter regarding the conflict of interest by Hearing Officer Art Baggett. I formally request a new hearing based on the new information shown above Thank you for the opportunity to submit preliminary comments to the Board and its staff.

Place my comments into the records for these proceedings. Thank you.

Respectfully Submitted

Bob Baiocchi

**Bob Baiocchi, President
Anglers Committee, Protestant
California Salmon and Steelhead Association, Executive Director
P.O. Box 1790
Graeagle, CA 96103
E-Mail Address: rbaiocchi@gotsky.com**

Dated: March 4, 2008

**cc: Members of the State Water Resources Control Board, First Class
Mail**

**Mr. Ernie Mona, Staff, First Class Mail
Division of Water Rights
Hearing Staff**

**Attachments (a) Habitat Expansion Agreement Fact Sheet; (b) Notice of
Draft Board Order WR 2008 – XXXX of February 29, 2008; (c) Notice of
Hearing Officer Art Baggett Ruling on Procedural Objections Notice**

HABITAT EXPANSION AGREEMENT

FOR CENTRAL VALLEY SPRING-RUN CHINOOK SALMON AND CALIFORNIA CENTRAL VALLEY STEELHEAD



The Habitat Expansion Agreement, to be signed by nine parties including hydropower licensees, agencies, organizations, and an individual, seeks to expand spawning, rearing, and adult holding habitat for Central Valley spring-run Chinook salmon and California Central Valley steelhead in the Sacramento River Basin.

Created to complement licensed operations of the Oroville, Poe, Upper North Fork Feather River, and Rock Creek-Cresta hydropower projects, all located on the Feather River, this program will provide greater gains for the target species beyond project boundaries through identification, evaluation, selection, and implementation of the most promising and cost-effective actions.

Goal:

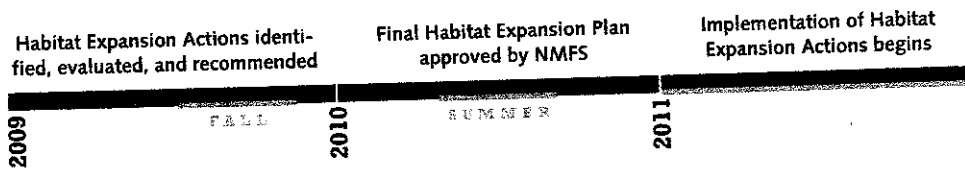
Expand the amount of habitat with physical characteristics necessary to support spawning, rearing, and adult holding of 2,000 to 3,000 spring-run Chinook salmon and also support California Central Valley steelhead in the Sacramento River Basin to contribute to the conservation and recovery of these species.

Details:

Potential habitat expansion actions may include, among other actions, dam removals, dam re-operation, creation or enhancement of fishways, water temperature/flow improvements, or other physical habitat enhancements.

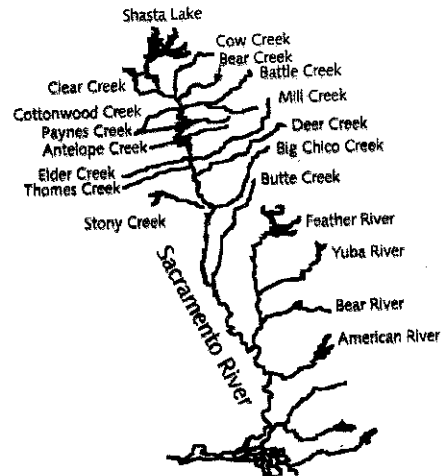
Timeline:

Identification, evaluation, and recommendation of habitat expansion action(s) will be completed by fall 2009. The National Marine Fisheries Service, in consultation with other appropriate agencies, will review and approve a Final Habitat Expansion Plan likely by summer 2010. After completion of preliminary design and permitting, implementation of habitat expansion action(s) may begin as early as 2011.



Partners:

This agreement, negotiated among the California Department of Water Resources, Pacific Gas and Electric Company, U.S. Department of Commerce National Marine Fisheries Service, U.S. Fish and Wildlife Service, California Department of Fish and Game, U.S.D.A. Forest Service, American Rivers, State Water Contractors, and Arthur G. Baggett, Jr. (signing as a recommendation to the California State Water Resources Control Board), is additionally supported by a coordination agreement between Pacific Gas and Electric Company and the California Department of Water Resources to fund and implement selected projects.



Note: This document provides highlights of the Habitat Expansion Agreement and is not intended to be a legal description.

Bob Baiocchi

From: "Ernie Mona" <EMONA@waterboards.ca.gov>
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Sent: Friday, February 29, 2008 1:53 PM
Attach: yubaaccord_draftorder_coverletter.pdf; Yuba Draft Order for Public Release1(02-29-08).pdf
Subject: Lower Yuba Accord Hearing - Draft Order

To Lower Yuba River Hearing Service List:

Ladies and Gentlemen:

Attached is the proposed Draft Order and Cover Letter for the Lower Yuba River Hearing that have been issued today. The State Water Resources Control Board (State Water Board) has tentatively scheduled consideration of the proposed Draft Order at the March 18, 2008 Board Meeting. Formal comments on the Draft Order are due at Noon on March 13, 2008. However, because this time line leaves only a few working days to review comments and prepare potential changes to the Draft Order, the State Water Board would appreciate the courtesy receipt of any preliminary comments the parties may have before the March 13th comment submittal deadline, with the understanding that the parties are free to amend, supplement, further develop, or otherwise change such preliminary comments before the March 13th deadline. Please send any preliminary comments to me at emona@waterboards.ca.gov. Thanks

Ernest Mona
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Bob Baiocchi

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Sent: Thursday, February 28, 2008 1:20 PM
Attach: 0228008-rulingonproceduraimatters.pdf
Subject: Rulings on Procedural Objections

Mr. Baiocchii,
 Attached is a copy of the Hearing Officer's February 28, 2008 letter ruling on procedural objections raised by
 Angler's Committee of California since December 31, 2007.

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