March 13, 2008

Ms. Jeanine Townsend, Clerk
State Water Resources Control Board
Division of Water Rights
1001 I Street, 14th Floor
Sacramento, CA 95814

RE: 3/18/08 BOARD MEETING: ***Consideration of a proposed order to modify Three Water Right Permits and approve a long-term Water Transfer Agreement for Yuba County Water Agency***

Dear Ms. Townsend:

The State Water Contractors (SWC) appreciate the opportunity to comment on the State Water Resources Control Boards' (State Board) draft order generally approving Yuba County Water YCWA (YCWA)'s petition for modification of YCWA's water rights permits and YCWA's long-term transfer petition. The SWC is a non-profit association of 27 public agencies from Northern, Central, and Southern California that purchase water under contract from the California State Water Project (SWP).[1] The SWP is the state's largest water delivery system, and collectively, members of the SWC deliver SWP water to more than 25 million residents throughout the state and more than 750,000 acres of highly productive agricultural land.

The SWC joins with YCWA's comments with respect to term 3 on page 56 of the proposed order. We agree with YCWA that nothing in the record or the proposed order supports proposed term 3. The State Board—through its recently revised Bay-Delta Water Quality Control Plan and Water Rights Decision D-1641—the state and federal fishery agencies through their

[1] The members of the SWC are: Alameda County Flood Control and Water Conservation District Zone 7, Alameda County Water District, Antelope Valley-East Kern Water Agency, Casitas Municipal Water District, Castaic Lake Water Agency, Central Coast Water Authority, City of Yuba City, Coachella Valley Water District, County of Kings, Crestline-Lake Arrowhead Water Agency, Desert Water Agency, Dudley Ridge Water District, Empire-West Side Irrigation District, Kern County Water Agency, Littlerock Creek Irrigation District, Metropolitan Water District of Southern California, Mojave Water Agency, Napa County Flood Control and Water Conservation District, Oak Flat Water District, Palmdale Water District, San Bernardino Valley Municipal Water District, San Gabriel Valley Municipal Water District, San Gorgonio Pass Water Agency, San Luis Obispo County Flood Control and Water Conservation District, Santa Clara Valley Water District, Solano County Water Agency, Tulare Lake Basin Water Storage District.

Endangered Species Act authorities and the Federal Court have all established operational requirements on the SWP and Central Valley Project (CVP) to protect the Delta. The SWC assumes, given that the SWP permits were not before it during the Yuba hearings, that the State Board did not intend to impose additional restrictions on SWP operations.

The proposed order purports to limit "rediversion . . . at the Clifton Court Forebay and the Jones Pumping Plant" of water DWR, its contractors and the Westlands Water District have purchased from YCWA under the water transfer agreement that is, in part, the subject of the order. While it is not clear, the proposed order could be read to limit the SWP's and CVP's ability to export water under their existing rights to divert from the Delta. This would be unnecessary and inappropriate in this proceeding.

In their normal operations, the SWP and CVP comply with the State Board's Bay-Delta Water Quality Control Plan and Water Rights Decision 1641 (D-1641). Both the Water Quality Control Plan and D-1641 contain export limitations on the projects to protect beneficial uses, including delta smelt and other "POD" species. In addition, the projects' export operations comply with requirements imposed by the state and federal fishery agencies and the courts under the Endangered Species Acts, consistent with D-1641's direction that the projects comply with those statutes. Under the existing regulatory regime the projects have the right to divert the water released by the YCWA under the Accord either under our water transfer agreement with the YCWA or as abandoned water available directly under the projects' water rights. We do not believe the State Board can nor should impose additional pumping limits through this process, in which the projects water rights permits are not before the State Board. For this reason, the limits proposed in term 3 of the proposed order should be deleted.

As the State Board knows, the statutorily expressed policy of California directs the State Board "to encourage voluntary transfers of water and water rights." (Water Code §109; See also Water Code §475). This very important expression of policy encourages agreements such as that between Yuba and the SWP Contractors. Here, the project contractors have entered into a voluntary transfer of water consistent with state policy that is and must be implemented consistent with all existing state and federal regulatory requirements applicable to SWP operations. If State Board were to include term 3 in its final order, it would be acting directly contrary to that policy in a circumstance where it is unlikely that the term would impact Delta outflows or project pumping levels during times when the Delta is in balance. For that additional reason proposed term 3 should be deleted.

Ample opportunities will exist for the State Board to consider appropriate means to protect Delta fisheries, but proposed term 3 does not fit into that category. We do urge the State Board in its upcoming hearings and workshops to deal with potential impacts of discharges of polluted water to the delta and unscreened and illegal diversions, actions that are within the authority of the State Board and regional boards to control.

Thank you for consideration of our comments. If you have any questions, please contact me at (916) 447-7357 ext. 203.

Sincerely,

Terry Erlewine, General Manager
State Water Contractors