

Testimony of Curt Aikens

I, Curt Aikens, declare:

INTRODUCTION

1. I am the General Manager of the Yuba County Water Agency (“YCWA”) and have been so continuously since January 1, 2001. As YCWA’s general manager, I report to and receive directions from YCWA’s Board of Directors, I have overall responsibility for supervising all YCWA employees, all aspects of YCWA’s operations and planning, including operations of YCWA’s Yuba River Development Project (the “Yuba Project”), and all negotiations of contracts involving YCWA. A copy of my resume, which accurately describes my education and work experience, is exhibit YCWA-13.

LOWER YUBA RIVER ACCORD AGREEMENTS

2. The Lower Yuba River Accord (the “Yuba Accord”) is a set of agreements that resulted from a long and detailed collaborative negotiation process. The Lower Yuba River Fisheries Agreement was developed after several years of meetings among representatives of YCWA, the California Department of Fish and Game (“CDFG”), the National Marine Fisheries Service (“NMFS”), the United States Fish and Wildlife Service (“USFWS”), and the South Yuba River Citizens League, Friends of the River, Trout Unlimited and The Bay Institute (collectively, the “NGO’s”). A copy of the final Lower Yuba River Fisheries Agreement is exhibit YCWA-9. A copy of the Statement of Support for the Lower Yuba River Fisheries Agreement (without its exhibits) is exhibit YCWA-10.
3. Exhibit 1 to the Fisheries Agreement contains the schedules of the minimum instream flows that YCWA will operate the Yuba Project to maintain in the lower Yuba River at the Marysville and Smartville Gages during the term of the agreement. These schedules are designed to provide a level of protection for fishery resources in the Lower Yuba River during the term of the agreement that is equivalent to or better than the level of protection that would be provided by the SWRCB’s Revised Decision 1644 (“RD-1644”). The Fisheries Agreement also provides for a multi-party management framework for the Lower Yuba River, substantial funding by YCWA for core monitoring and focused studies and habitat-improvement measures in the lower Yuba River, and in-kind commitments of resources by YCWA and CDFG to support these activities.
4. The Yuba Accord Water Purchase Agreement (the “Water Purchase Agreement”) was developed through an extensive collaborative and negotiation processes that involved YCWA, the California Department of Water Resources (“DWR”), the United States Bureau of Reclamation (“Reclamation”), and State Water Project (“SWP”) and Central Valley Project (“CVP”) contractors. A copy of the Water Purchase Agreement is exhibit YCWA-11.
5. Under the Water Purchase Agreement, DWR will divert water from the Delta that is attributable to the releases that YCWA makes of water stored in YCWA’s New Bullards Bar Reservoir. Substantial portions of this water will do “double duty,” by first being used in implement the Fisheries Agreement’s instream-flow schedules and then being exported from the Delta under the Water Purchase Agreement. Water diverted by DWR under the Water

Purchase Agreement will be supplied to the Environmental Water Account (“EWA”) Program and to provide dry-year supplies for SWP and SWP contractors.

6. The Yuba Accord also will involve Conjunctive Use Agreements between YCWA and some or all of water districts and mutual water companies in Yuba County that receive water from YCWA. These entities are YCWA’s “Member Units.” Under these agreements, the participating Member Units will make arrangements with the farmers within the Member Units’ service areas to pump groundwater in lieu of using surface water in some years, which will free up some surface-water supplies for transfer through groundwater-substitution transfers from YCWA to DWR under the Water Purchase Agreement. YCWA will compensate the participating Member Units, and these Member Units in turn will compensate the participating farmers, for this groundwater pumping. These Conjunctive Use Agreements also will provide for other payments from YCWA to the participating Member Units for compensation to the farmers for their costs to help maintain wells for participation in the groundwater-substitution transfers and for compensation for the groundwater pumping for local uses that is necessary in very dry years when YCWA does not have sufficient surface water supplies for the Member Units.

CALIFORNIA ENVIRONMENTAL QUALITY ACT COMPLIANCE

7. YCWA and Reclamation prepared a Draft Environmental Impact Report/Draft Environmental Impact Statement (EIR/EIS) and a Final EIR/EIS for the Yuba Accord. The Draft EIR is exhibit YCWA-1. The Final EIR is exhibit YCWA-2. A copy of YCWA’s Resolution No. 2007-23, which certified the Final EIR and approved the Yuba Accord, is exhibit YCWA-3. A copy of YCWA’s Notice of Determination, with stamps showing the filing dates of this notice with the Yuba County Clerk on October 24, 2007 and with the State Clearinghouse on October 26, 2007, is exhibit YCWA-4. A copy of YCWA’s Notice of Completion is exhibit YCWA-5.

2006 AND 2007 PILOT PROGRAMS

8. YCWA operated the Yuba Project to maintain flows in the lower Yuba River at or above the applicable amounts in the flow schedules in exhibit 1 of the Fisheries Agreement under Yuba Accord Pilot Programs during 2006 and 2007. Additionally, the YCWA, CDFG, NMFS, USFWS and NGO biologists that are the members of the Yuba Accord River Management Team (“RMT”) met regularly during 2006 and 2007 to discuss, and to provide input to YCWA regarding, Yuba Project operations, and to develop fisheries monitoring and study plans for 2008 and beyond.
9. YCWA made two \$550,000 payments to the River Management Fund (RMF), with one payment on July 20, 2006 and the other payment on July 18, 2007. The source of this funding came from the Environmental Water Account (EWA) water transfer contract revenues. YCWA and CDFG also both made substantial in-kind contributions to the RMF during 2006 under the 2006 Pilot Program. YCWA and CDFG are in the process of fulfilling their respective in-kind contribution obligations under the 2007 Pilot Program. Currently, the RMT is overseeing water temperature monitoring, spawning escapement, rotary screw trapping and upstream migration (VAKI fish counter) studies, with the spawning escapement and rotary screw trapping studies being funded by the RMF. If the SWRCB approves YCWA’s pending petitions, then, upon receipt of the initial payments under the Water Purchase Agreement, YCWA will provide funding to the RMF for the continuation of fisheries studies and monitoring on the Yuba River.

EFFECTS OF *NRDC v. KEMPTHORNE* ON YUBA ACCORD

10. Both the Yuba Accord Draft EIR/EIS (section 10.1.4.1 on pages 10-31 through 10-36) and Final EIR/EIS (section 3.1) discuss the recent declines of pelagic fish species in the Delta, the Pelagic Fish Action Plan and Reclamation's decision to re-initiate ESA consultations regarding the CVP and SWP Operations Criteria and Plan ("OCAP") with USFWS and NMFS.
11. On August 30, 2007, the court in *NRDC v. Kempthorne* issued its draft interim remedies order, which directs Reclamation and DWR to take several actions to protect Delta smelt, including some substantial curtailments in Delta exports by the CVP and SWP during late December through June of each year.
12. As a result of the *NRDC v. Kempthorne* order, Reclamation has decided to delay completion of its ESA compliance, and to wait to consider approval of the final environmental impact statement and issuance of its Record of Decision ("ROD") for the Yuba Accord, until the pending ESA re-consultations for OCAP are completed. For this reason, while the Yuba Accord EIR/EIS has been certified as a final environmental impact report by YCWA, the Yuba Accord EIR/EIS has not yet been approved as a final environmental impact statement by Reclamation.
13. Until Reclamation issues its ROD for the Yuba Accord, YCWA and DWR will be the only parties to the Water Purchase Agreement. During this first phase of the Yuba Accord, the same amount of Component 1 Yuba Accord transfer water will be transferred to the EWA Program. For Components 2, 3 and 4 Yuba Accord transfer water, DWR still will execute Tier 3 Agreements with SWP contractors, and DWR also may execute water-purchase agreements with interested CVP contractors. (The four components of Yuba Accord transfer water are discussed in the Yuba Accord Draft EIR/EIS at pages 3-13 to 3-14.)
14. After Reclamation issues its ROD for the Yuba Accord, Reclamation will consider becoming a party to the Water Purchase Agreement. If Reclamation decides to become a party to the Water Purchase Agreement, then the second phase of the Yuba Accord Alternative will begin. During this second phase, YCWA, DWR and Reclamation all will be parties to the Water Purchase Agreement, DWR and Reclamation will execute the Tier 2 Agreement, and Reclamation and CVP contractors will execute their Tier 3 Agreements, all as contemplated in the EIR/EIS.
15. Even with the proposed phasing of the Yuba Accord, and even with the court's interim remedies order in *NRDC v. Kempthorne*, the Fisheries Agreement and YCWA's obligations to maintain the lower Yuba River flows that are specified in exhibit 1 to the Fisheries Agreement will not change.

STATUS OF YUBA ACCORD AGREEMENTS AND CONDITIONS PRECEDENT TO FISHERIES AGREEMENT

16. The Fisheries Agreement has been signed by all parties. See exhibit YCWA-9.
17. Part 4 of the Fisheries Agreement describes various conditions precedent that must be satisfied before the Fisheries Agreement will become effective. Section 4.1 lists the actions that the SWRCB must take before the Fisheries Agreement will become effective. YCWA's pending petitions for modification of RD-1644 and for the long-term transfer of Yuba Accord water ask the SWRCB to take these actions.
18. Section 4.2 of the Fisheries Agreement provides that the Fisheries Agreement will not become effective until YCWA and DWR execute the Water Purchase Agreement and the

Water Purchase Agreement has gone into effect. DWR has not yet signed the Water Purchase Agreement. (An unsigned copy of this agreement is exhibit YCWA-10.) The YCWA Board of Directors has approved this agreement and authorized me to sign it. As soon as we receive the signed original of this agreement from DWR, we will file a copy of it with the SWRCB. We anticipate that we will receive this signed original from DWR before the December 5-6 SWRCB hearing. I also will advise the SWRCB before or during the December 5-6 hearing regarding whether the Water Purchase Agreement has gone into effect.

19. Section 4.3 of the Fisheries Agreement provides that the Fisheries Agreement will not become effective until YCWA executes Conjunctive Use Agreements with a sufficient number of YCWA's Member Units so that YCWA can meet its obligations under the Fisheries Agreement and the Water Purchase Agreement. However, this section 4.3 also provides that YCWA may determine that it does not need to execute any Conjunctive Use Agreements for the Fisheries Agreement to become effective, and that YCWA instead will execute agreements with Member Units for the proposed groundwater-substitution program at later dates, as necessary for the program. The form for the Conjunctive Use Agreements has been prepared by representatives of YCWA and the Member Units of YCWA, the YCWA Board of Directors has approved this form of agreement, and various Member Units are deciding on whether to execute Conjunctive Use Agreements with YCWA. I will advise the SWRCB before or during the December 5-6 SWRCB hearing regarding this condition precedent.
20. Section 4.4 of the Fisheries Agreement provides that the Fisheries Agreement will not become effective until YCWA executes an agreement, memorandum of understanding or similar document with the Pacific Gas and Electric Company ("PG&E") to make the necessary amendments to the 1966 YCWA/PG&E Power Purchase Contract so that YCWA can implement the Fisheries Agreement, the Water Purchase Agreement and any necessary Conjunctive Use Agreements. On March 15, 2005, PG&E's Lead Director, Power Generation, sent me a letter confirming that PG&E believes that the modified operations of the Yuba Project for the Yuba Accord will be acceptable to PG&E. A copy of this letter is exhibit YCWA-25. Following the concepts in this letter, YCWA and PG&E agreed to the necessary changes in Yuba Project operations to implement the Yuba Accord during the 2006 and 2007 Pilot Programs. YCWA and PG&E now are in the process of preparing a formal modification to the 1966 YCWA/PG&E Power Purchase Contract to confirm that they will continue to operate under this new operating regime. It is anticipated that this formal contract modification will be executed in late 2007 or early 2008. This contract modification will be subject to subsequent approval by the California Public Utilities Commission ("CPUC"). PG&E will submit the contract modification to the CPUC for its approval via an Advice Letter or some other standard format. It is anticipated that the CPUC's approval will be pro-forma and will occur in early 2008.

EFFECTS OF YUBA ACCORD ON ECONOMY OF YUBA COUNTY

21. The Yuba Accord will create several different types of economic and related benefits for Yuba County. These benefits are discussed in the following paragraphs.
22. By resolving the pending legal disputes regarding instream flows for the lower Yuba River, and by providing over \$5 million in funding for fisheries monitoring and enhancement activities, the Yuba Accord will protect and enhance lower Yuba River fisheries, which in turn will provide significant recreation and associated benefits for Yuba County

23. By resolving the pending litigation regarding the RD-1644 instream-flow requirements, the Yuba Accord will provide stability and certainty to YCWA's ability to provide surface-water supplies to its Member Units in the future, which will benefit Yuba County agriculture and the portions of the Yuba County economy that rely upon agriculture.
24. As shown in Table LA2-2 on pages 4-98 and 4-99 of the Yuba Accord Final EIR/EIS (exh. YCWA-2), the average annual amounts of groundwater pumping that will be necessary to make up for shortages in YCWA's deliveries of surface water to YCWA's Member Units will be 3,701 acre-feet per year ("af/yr") under the Yuba Accord, compared to 6,219 af/yr under the CEQA No Project Alternative. Local farmers will benefit from having to pump less groundwater to make up for deficiencies in their surface-water supplies under the Yuba Accord than they would have to pump under the No Project Alternative. Moreover, under the Yuba Accord Conjunctive Use Agreements, YCWA will provide about \$4 million to the participating Member Units, which they will use to help make their landowners' wells available to pump groundwater. Also, YCWA will make additional payments to the Member Units to pay for the costs of pumping these wells for deficiency pumping. No similar payments would occur under the No Project Alternative.
25. The Conjunctive Use Agreement also will provide substantial additional economic benefits to the Member Units and landowners that participate in the Yuba Accord's groundwater-substitution transfers. The Yuba Accord Draft EIR/EIS estimates that these additional benefits will average \$625,000 per year, with average annual revenues to participating landowners ranging from \$6,000 to \$10,500 per year. (Yuba Accord Draft EIR/EIS, exh. YCWA-1, p. 17-13.)
26. Yuba County has had and still has substantial flood risks. Devastating floods from levee breaks in 1986 and 1997 resulting in the losses of numerous lives and hundreds of millions of dollars in property damage. (See Yuba Accord Draft EIR/EIS, exh. YCWA-1, pp. 1-4 to 1-7.) Within 60 days after execution of the Water Purchase Agreement, DWR will pay YCWA \$30.9 million for the 60,000 af/yr of Component 1 Yuba Accord transfer water that YCWA will provide to the EWA Program from storage in New Bullards Bar Reservoir. (See *id.* p. 3-13.) Under this agreement, DWR will make additional payments to YCWA for additional transfers of surface water and for groundwater-substitution transfers. (See *id.*, pp. 3-13 to 3-21.) While YCWA will use substantial portions of the revenues that it receives from surface-water transfers for the fisheries and conjunctive-use programs described above, there still will be substantial remaining revenues that YCWA will be able to use to pay the local share costs of flood protection studies and projects and other conjunctive use water projects that are desperately needed in Yuba County.
27. In contrast, because YCWA would need to maintain higher carryover storage under the No Project Alternative, YCWA would not be able to make any surface-water transfers under the No Project Alternative. (See Yuba Accord Draft EIR/EIS, exh. YCWA-1, App. D, pp. A-16, A-22 & C-1 to C-5.) YCWA therefore would not receive any revenues from surface-water transfers under the No Project Alternative, and therefore would not be able to fund the fisheries and conjunctive-use programs or the flood-control projects described above. (YCWA will pay most of the revenues from groundwater-substitution transfers to the participating Member Units, and YCWA will have to use the remaining revenues from these transfers to pay its costs of administering these transfers. Thus, even though groundwater-substitution transfers could occur under the No Project Alternative, they would not provide revenues that YCWA could use to fund fisheries or conjunctive-use programs or flood-control projects.)

28. The Yuba Accord groundwater-substitution program has been carefully structured to require extensive monitoring of groundwater levels and to limit the amounts of groundwater pumped under this program to levels that will not cause any significant impacts to users of groundwater in the Yuba Basin. (See Yuba Accord Draft EIR/EIS, exh. YCWA-1, ch. 6; Yuba Accord Final EIR/EIS, exh. YCWA-2, pp. 4-87 to 4-99.)
29. Because the Yuba Accord and the proposed long-term water transfer under the Yuba Accord will result in the economic benefits described above and will not have any adverse economic impacts, this proposed long-term water transfer will not unreasonably affect the overall economy of Yuba County, the area from which the water is to be transferred.
30. As required by section 5.2 of the Yuba County Water Agency Act, YCWA asked the Marysville Appeal-Democrat, a newspaper of general circulation in Yuba County, to publish a public notice of the October 23, 2007 hearing of YCWA's Board of Directors on the Water Purchase Agreement. A copy of the Appeal-Democrat's affidavit of publication of this notice is exhibit YCWA-26. As stated in this affidavit, this notice was published on October 1 and 8, 2007. On October 23, 2007, YCWA's Board of Directors adopted Resolution No. 2007-24. A copy of this resolution is exhibit YCWA-6.

CONCLUSION

31. The development of the Fisheries Agreement took more than 2½ years of meetings and discussions among representatives of YCWA, CDFG, NMFS, USFWS, and the NGO's. The resulting Fisheries Agreement represents a collaboratively-produced, balanced outcome that reasonably addresses the interests of the stakeholders.
32. The development of the Water Purchase and Conjunctive Use Agreements involved numerous meetings and discussions among representatives of YCWA, YCWA's Member Units, DWR, Reclamation, and the SWP and CVP contractors. The resulting agreements meet the interests of these stakeholders and will provide more-reliable water supplies for YCWA's participating Member Units.
33. Representatives of all of the parties to the Yuba Accord agreements and other interested parties participated in, or were given opportunities to participate in, the development of the Yuba Accord EIR/EIS for the Yuba Accord. The modeling and assumptions for the make the analyses that are described in the EIR/EIS used the best available information. The EIR/EIS did not identify any negative impacts to water supply or fisheries resources that will result from implementation of the Yuba Accord.
34. In summary, the collaborative process has produced an accord that all of the parties continue to support, and the parties are ready to implement this accord for the benefit of water supply and fisheries resources in Yuba County and throughout the State. On behalf of the Yuba County Water Agency, I therefore ask the SWRCB to approve YCWA's petitions.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Marysville, California, this 8th day of November, 2007.



Curt Aikens



**Yuba County Water Agency
2007 Yuba Accord and Petitions**

Testimony of Curt Aikens

December 5, 2007

Lower Yuba River Accord

- **Fisheries Agreement:** instream-flow schedules, RMT, RMF
- **Water Purchase Agreement:** transfers to EWA & DWR
- **Conjunctive Use Agreements** with YCWA Member Units
- **Successful Pilot Programs** in 2006 and 2007
- **Yuba Accord EIR/EIS:** comprehensive analyses and positive findings
- **More than five years' work** by the stakeholders
- **Time to implement the Accord**



Deb Pate (modified by MWH)

2006-07 Pilot Program Update

- Schedule 1 Accord flows in 2006
- Schedule 2 Accord flows in 2007
- 2006 a very wet year, no transfer possible
- 2007 a dry year, over 100 TAF transferred
- River Management Team
 - Regular meetings & operations inputs
 - Fisheries study plan development continuing
 - Current studies underway include Escapement, Temperature Monitoring & RST
- RMF funding by YCWA, plus substantial in-kind contributions by YCWA, CDFG

Summary of Yuba Accord EIR/EIS

- Participation by multiple stakeholders throughout preparation of Draft EIR/EIS
- Analyses in 16 Categories of Resources
- Key Findings:
 - Several minor mitigation measures required
 - Only significant impacts are impacts on energy consumption from additional groundwater pumping
- EIR certified by YCWA B/D on Oct. 23

Benefits of Yuba Accord

- Yuba County:
 - Resolution of RD-1644 instream-flow issues
 - Additional water for Yuba fishery
 - Funding for fisheries, conjunctive-use, water & flood-control projects
 - Lower amounts of deficiency groundwater pumping by local farmers
 - Potential benefits to local economy from groundwater-substitution transfers
- Statewide:
 - Additional water flows to Delta during balanced conditions
 - Additional water for EWA Program
 - Additional water for CVP/SWP contractors during dry years

Recent Events

- *NRDC vs Kempthorne*
 - Interim remedies order limits CVP/SWP Delta exports during December-June
 - Reclamation will delay ESA consultation and final EIS for Accord, and therefore will postpone participation in Accord
 - DWR to purchase all Accord water during first phase
 - Additional analyses in Final EIR/EIS: no additional impacts during first phase or because of interim remedies order

Time to Approve the Accord

- Accord: collaborative settlement by stakeholders
- Comprehensive EIR/EIS: no significant impacts besides impacts on energy consumption
- Continued support by all stakeholders who executed the statements of support in April 2005
- Pilot Programs refined minor elements, but uncovered no 'structural flaws'
- Continued viability under Kemphorne limitations demonstrates the robustness of concept
- Time for SWRCB to approve YCWA's petitions



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