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September 21, 2012

**VIA E-MAIL (RemandSEP@usbr.gov) AND FIRST-CLASS MAIL**

Ms. Sue Fry  
Manager, Bay-Delta Office  
Bureau of Reclamation, Mid-Pacific Region  
801 I Street, Suite 140  
Sacramento, California 95814-2536

Re: Draft Project Description for Central Valley Project and State Water  
Project Coordinated Long-Term Operations Biological Assessment

Dear Ms. Fry:

This firm represents the Yuba County Water Agency ("YCWA"). On behalf of YCWA, I am submitting these comments on Reclamation's August 12, 2012 draft project description for the new Central Valley Project ("CVP") and State Water Project ("SWP") Coordinated Long-Term Operations Biological Assessment.

1. On page 21 of this draft, it appears that the text in the first paragraph and the first part of the second paragraph should be combined into one sentence. The recommended edit to do this is shown in the first enclosed page.

2. On page 106 of this draft, the second and third full paragraphs should be edited so that they describe the Lower Yuba River Accord ("Yuba Accord") more accurately and in more detail. Our recommended edits to these paragraphs are shown on the second and third enclosed pages. The edits to the second paragraph are necessary so that this text describes the second, third and fourth components of the additional water supplies that YCWA is making and will make available under the Yuba Accord. The draft project description describes Yuba Accord Component 1 water on pages 20-21, but does not describe these other components. It is important that the project description in the final Biological Assessment describe all four of these components, so that it will be clear that they all are included in the proposed project that will be involved in the Endangered Species Act consultations. The edits to the third paragraph are necessary so that it accurately describes the history of the Yuba Accord and the termination provisions of the various Yuba Accord agreements.

3. On page 106, the first paragraph after the "Transfer Capacity" heading states that exports for water transfers to be analyzed in the Biological Assessment "will be limited to the months July-September." Similarly, on page 107, the first paragraph after the "Proposed Exports for Transfers"

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heading states that the Biological Assessment “covers proposed exports for transfers during only the months of July through September. For transfers outside those months, . . . , Reclamation and DWR would request separate consultation.”

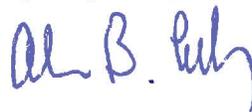
YCWA’s operations under the Yuba Accord almost always produce some transferable water that the Department of Water Resources (“DWR”) may export from the Delta during October, and these operations sometimes produce additional transferable water that DWR may pump from the Delta during November. While DWR sometimes may “back up” some of this water into storage in Lake Oroville, that water often ends up being lost during winter flood-control operations. DWR and YCWA therefore both will benefit if the project description in the new Biological Assessment includes potential DWR exports pumping from the Delta of this water during October and November.

Also, section 11.E of the 2007 DWR/YCWA long-term Yuba Accord Water Purchase Agreement provides that DWR will coordinate with Reclamation in the operations of CVP and SWP to maximize the beneficial use of water that YCWA makes available to DWR under this agreement. Similarly, section 17.D of this agreement provides that DWR will be responsible for complying with state and federal laws as necessary for DWR to be able to divert and use water that YCWA makes available under this agreement.

While the language on page 107 of the draft project description that is quoted above states that Reclamation and DWR would request separate consultation for transfers outside of the July through September period, this statement does not indicate when the separate consultation would occur, and, given the efforts that Reclamation will need to take for the present consultation, it is unlikely that such a separate consultation would be promptly initiated or completed. Accordingly, to provide DWR with authorization to export from the Delta the water that YCWA makes available under the Yuba Accord during October and November, and to facilitate DWR’s compliance with the sections of the Water Purchase Agreement cited in the preceding paragraph, YCWA requests that Reclamation amend the project description so that it includes such exports.

Thank you for providing us the opportunity to make these comments.

Very truly yours,



ALAN B. LILLY

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In years where capacity to pump the Yuba Accord Component 1 Water is not available under the normal 6680 cfs maximum diversion capacity into Clifton Court Forebay (CCF),

The maximum allowable daily diversion rate into CCF during the months of July, August, and September will be increased from 13,870 AF to 14,860 AF and three-day average diversions from 13,250 AF to 14,240 AF (500 cfs per day equals 990 AF). The increase in diversions has been permitted and in place since 2000. The current permit expires on September 30, 2012, but is expected to be renewed into the future. The purpose of this diversion increase into CCF for use by the SWP is to recover export reductions made due to the ESA or other actions taken to benefit fisheries resources. The increased diversion rate will not result in any increase in water supply deliveries than would occur in the absence of the increased diversion rate. This increased diversion over the three-month period would result in an amount not to exceed 90,000 AF each year. Increased diversions above the 48 taf discussed in the previous section (Environmental Water Account) could occur for a number of reasons including:

- 1) Actual carriage water loss on the 60 taf of current year's Yuba Accord Component 1 Water is less than the assumed 20%.
- 2) Diversion of Yuba Accord Component 1 Water exceeds the current year's 60 taf allotment to make up for a Yuba Accord Component 1 deficit from a previous year.
- 3) In very wet years, the diversion of excess Delta outflow goes above and beyond the Yuba Accord Component 1 Water allotment.

Variations to hydrologic conditions coupled with regulatory requirements may limit the ability of the SWP to fully utilize the proposed increased diversion rate. Also, facility capabilities may limit the ability of the SWP to fully utilize the increased diversion rate.

In years where the accumulated export under the 500 cfs increased diversion exceeds 48 taf, the additional assets will be applied to earlier export reductions made due to the ESA or other actions taken to benefit fisheries resources that exceeded 48 TAF or held in the SWP share of San Luis Reservoir, as long as space is available, to be applied to subsequent export reductions made due to the ESA or other actions taken to benefit fisheries resources.

Implementation of the proposed action is contingent on meeting the following conditions:

1. The increased diversion rate will not result in an increase in annual SWP water supply allocations than would occur in the absence of the increased diversion rate. Water pumped due to the increased capacity will only be used to offset reduced diversions that occurred or will occur because of ESA or other actions taken to benefit fisheries.
2. Use of the increased diversion rate will be in accordance with all terms and conditions of existing biological opinions governing SWP operations.
3. All three temporary agricultural barriers (Middle River, Old River near Tracy and Grant Line Canal) must be in place and operating when SWP diversions are increased.
4. Between July 1 and September 30, if the combined salvage of listed fish species reaches a level of concern, the relevant fish regulatory agency will determine whether the 500 cfs increased diversion is or continues to be implemented.

have signed Conjunctive Use Agreements. These agreements establish a conjunctive use program that facilitates the integration of the surface water and groundwater supplies of the seven local irrigation districts and mutual water companies that YCWA serves in Yuba County. Integration of surface water and groundwater allows YCWA to increase the efficiency of its water management.

Under the Water Purchase Agreement, DWR administers the water transfer activities. The Water Transfer Agreement allows DWR to purchase water from YCWA to generally off-set water costs resulting from export restrictions in April and May each year to benefit out-migrating San Joaquin River salmonids. This quantity of water is known as "C1" under the Water Purchase Agreement and is quantified as a 60,000 AF of water from YCWA that generally can produce a mitigation offset of approximately 48,000 AF of reduced exports.

Additional water supplies purchased by the SWP contractors and/or CVP contractors under the Water Purchase Agreement is administered by DWR as a water transfer program in drier years. Reclamation is not a signatory to the Water Purchase Agreement, but may consider partnering under the agreement at a future date.

All three sets of agreements (Fisheries, Water Purchase, and Conjunctive Use) completed CEQA and NEPA review in 2007 and were fully executed between late 2007 and early 2008. The SWRCB approved the flow schedules and water transfer aspects of the Yuba River Accord on March 18, 2008. The Fisheries Agreement expires in 2015, the Water Purchase Agreement expires in 2025, and the expiration of the Conjunctive Use Agreements is contingent on the Fisheries and Water Purchase Agreement expiration terms. The FERC license for the Yuba River Development Project expires in April 2016. A new FERC license is expected to impose new flow requirements, and a renegotiation of the agreements is expected to be required at that time.

*See proposed edits  
on attached page*

### Transfer Capacity

The assumption in this BA is that under both existing conditions and in the future, water transfer programs for environmental and water supply augmentation will continue in some form, and that in most years (all but the driest), the scope of annual water transfers will be limited by available Delta pumping capacity, and exports for transfers will be limited to the months July-September. As such, looking at an indicator of available transfer capacity in those months is one way of estimating an upper boundary to the effects of transfers on an annual basis.

The CVP and SWP may provide Delta export pumping for transfers using pumping capacity at Banks and Jones beyond that which is being used to deliver project water supply, up to the physical maximums of the pumps, consistent with prevailing operations constraints such as E/I ratio, conveyance or storage capacity, and any protective criteria in effect that may apply as conditions on such transfers. For example, pumping for transfers may have conditions for protection of Delta water levels, water quality, fisheries, or other beneficial uses.

The surplus capacity available for transfers will vary a great deal with hydrologic conditions. In general, as hydrologic conditions get wetter, surplus capacity diminishes because the CVP and SWP are more fully using export pumping capacity for Project supplies. CVP's Jones Pumping Plant has little surplus capacity, except in the driest hydrologic conditions. SWP has the most surplus capacity in critical and some dry years, less or sometimes none in most median hydrologic conditions, and some surplus again in some above normal and wet years when demands may be lower because some water users may have alternative supplies.

Additional water supplies purchased by the SWP contractors and/or CVP contractors under the Water Purchase Agreement ~~are is~~ administered by DWR as a water transfer program in drier years. These supplies include: (a) Component 2 water (up to 15,000 af/yr in Dry Years and up to 30,000 af/yr in Critical Years); (b) Component 3 water (up to 40,000 af/yr in specified drier years); and (c) Component 4 water (additional water that YCWA makes available from surface-water supplies and its groundwater-substitution program). Reclamation is not a signatory to the Water Purchase Agreement, but may consider partnering under the agreement at a future date.

~~CEQA review for A~~ all three sets of the Yuba Accord agreements (Fisheries, Water Purchase, and Conjunctive Use) ~~was~~ completed ~~CEQA and NEPA review~~ in 2007, and these agreements were fully executed between late 2007 and early 2008. The SWRCB approved the instream flow schedules and water transfer aspects of the Yuba River Accord on March 18, 2008 (and made some corrections to this approval order on May 20, 2008). The Fisheries Agreement will terminate expires in 2015 when FERC issues a new long-term FERC license for the Yuba River Development Project (which will be some time after April 30, 2016, when the present license expires), ~~€~~ The Water Purchase Agreement will terminate on December 31, expires in 2025, but the amounts of water that YCWA will transfer under the agreement after FERC issues a new long-term license for the Yuba River Development Project will be subject to negotiation by the parties to the agreement, ~~and €~~ The expiration of the Conjunctive Use Agreements will terminate when the Fisheries Agreement and the Water Purchase Agreement terminate. is contingent on the Fisheries and Water Purchase Agreement expiration terms. The FERC license for the Yuba River Development Project expires in April 2016. A new FERC license is expected to impose new flow requirements, and a renegotiation of the agreements is expected to be required at that time.