



State Water Resources Control Board

Governor's Office of Planning & Research

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February 27, 2023

STATE CLEARING HOUSE

VIA ELECTRONIC MAIL

Ms. JoAnna Lessard
Yuba County Water Agency
1220 F Street
Marysville, CA 95901
Email: jllessard@yubawater.org

Dear Ms. Lessard:

COMMENTS ON NOTICE OF PREPARATION OF DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT AND NOTICE OF SCOPING MEETINGS FOR EXTENSION OF THE LOWER YUBA RIVER ACCORD WATER TRANSFER PROGRAM (STATE CLEARINGHOUSE NO. 2005062111)

State Water Resources Control Board (State Water Board) staff appreciates the opportunity to provide comments on Yuba County Water Agency's (Yuba Water) *Notice of Preparation (NOP) of a Draft Supplemental Environmental Impact Report (SEIR) and Notice of Scoping Meetings for Extension of the Lower Yuba River Accord Water Transfer Program*. Yuba Water is proposing to continue the Lower Yuba River Accord (Yuba Accord) Water Transfer Program beyond its current expiration date of December 31, 2025, through December 31, 2050. The Yuba Accord Water Transfer Program consists of: (1) a Water Purchase Agreement between Yuba Water and the California Department of Water Resources; (2) Conjunctive Use Agreements between Yuba Water and its Member Units; and (3) a Water Transfer Agreement between Yuba Water, Contra Costa Water District, and East Bay Municipal Utility District. The NOP also states that extension of approval of the places of use, purposes of use, and points of diversion for Yuba Accord transfer water would be needed. Accordingly, as noted in the NOP, the State Water Board is a responsible agency for this project. State Water Board staff comments are provided in Attachment A of this letter.

Thank you again for the opportunity to provide comments on the NOP. If you have questions regarding this matter, please contact Jose Ayala by phone at (916) 327-8590, or by email to Jose.Ayala@waterboards.ca.gov. Written correspondence or inquiries should be addressed as follows:

State Water Resources Control Board
Division of Water Rights
Attn: Jose Ayala
P.O. Box 2000
Sacramento, CA 95812-2000

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

Sincerely,



Erik Ekdahl
Deputy Director
Division of Water Rights

Attachment A: State Water Board Staff Comments on NOP of Draft SEIR and Notice of Scoping Meetings for Extension of the Lower Yuba River Accord Water Transfer Program (State Clearinghouse No. 2005062111)

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The following comments are provided by State Water Resources Control Board (State Water Board) staff on Yuba County Water Agency's (Yuba Water) *Notice of Preparation (NOP) of a Draft Supplemental Environmental Impact Report (SEIR) and Notice of Scoping Meetings for Extension of the Lower Yuba River Accord Water Transfer Program*.

Water Rights Change Petition

The Lower Yuba River Accord Water Transfer Program is in part operated pursuant to State Water Board [Corrected Order WR 2008-0014](#),¹ which approved Yuba Water's April 2007 petition for modification of Permits 15026, 15027, and 15030 and long-term transfer under water right Permit 15026 through December 31, 2025. A long-term transfer of water or water rights involves a change of point of diversion, place of use, or purpose of use for any period in excess of one year; following expiration of the long-term transfer period, all rights automatically revert to the original holders of the water right(s) without any action by the State Water Board (Wat. Code, §§ 1735, 1737). Therefore, in order for Yuba Water to continue water transfers beyond December 31, 2025, a new petition for long-term transfer under Permit 15026 must be approved by the State Water Board.

Before approving a petition to change the point of diversion, place of use, or purpose of use of a water right permit, the State Water Board must make the statutory and regulatory findings that the change would: (1) not operate to the injury of any legal user of the water involved; and (2) not in effect initiate a new right (Wat. Code, § 1702; Cal. Code Regs, tit. 23, § 791, subd. (a)). For a long-term transfer petition by a public agency under Water Code section 386, the State Water Board must find that the change would: (1) not result in substantial injury to any legal user of water; (2) not unreasonably affect fish, wildlife, or other instream beneficial uses; and (3) not unreasonably affect the overall economy of the area from which the water is to be transferred (Wat. Code, §§ 386, 1736; see also Stats. 1959, ch. 788 [Yuba County Water Agency Act], p. 2786, § 5.2, as amended, West's Wat. Code, Appen. § 84-5.2, subd. (c)).

The SEIR should provide adequate documentation to substantiate the State Water Board's required findings, and should ensure that the SEIR considers all potentially significant direct, indirect, and cumulative impacts associated with the transfer of water; a range of project alternatives that reduce or avoid flow-related impacts on terrestrial and aquatic species; any economic effects in the area that are linked to potentially significant environmental impacts; and any injury to other legal users of water that is linked to potentially significant environmental impacts. An analysis that identifies the extent to which additional water is made available for transfer relative to a clearly

¹ Available at:
https://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/orders/2008/wro2008_0014corrected.pdf.

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defined baseline of existing authorized releases and obligations to release flows will assist the State Water Board in analyzing how the proposed changes petitioned by Yuba Water will affect other legal users of water and fish, wildlife, and other instream beneficial uses. The SEIR should describe and consider release obligations that may result from updates and implementation of the *Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary* (Bay-Delta Plan) or other federal or State Water Board actions (e.g., license or water quality certification for the Yuba River Development Project (YRDP)).

Groundwater Substitution Transfers

As described in Corrected Order WR 2008-0014, up to 120,000 acre-feet of water annually may be transferred to downstream parties made available by groundwater substitution. Groundwater substitution transfers have the potential to result in surface water flow reductions, affect fish and wildlife, and injure other legal users of water. These effects should be evaluated in the SEIR. The 2007 Yuba Accord EIR discussed potential impacts to groundwater and surface water interactions from the groundwater substitution pumping under the proposed long-term transfer, but an analytical evaluation of groundwater and surface water interactions was not conducted as it was not considered feasible based on the information available in the Yuba Basin at that time.

The Yuba Subbasins Groundwater Sustainability Agencies (GSAs)² have subsequently developed the Yuba Groundwater Model, a numerical groundwater and surface water model that estimates surface water and groundwater entering and leaving the North and South Yuba Subbasins under historical, current, future, and future with climate change conditions. Also, the California Department of Water Resources has developed the Sacramento Valley Groundwater-Surface Water Simulation Model (SVSim) that assesses streamflow depletions due to groundwater pumping. The State Water Board encourages Yuba Water to use the appropriate model(s) to analyze and discuss in the SEIR local and regional effects that increased pumping due to long-term groundwater substitution transfers will have on stream flows.

Federal Energy Regulatory Commission (FERC) Water Quality Certifications

The authority of the State Water Board to issue, condition, or deny a water quality certification for the purposes of section 401 of the federal Clean Water Act (33 U.S.C. § 1341) in association with a federally licensed or permitted activity pursuant to Water Code section 13160 is separate and independent from the State Water Board's authority over water rights (Wat. Code, § 1000 et seq.). Accordingly, decisions regarding Yuba Water's water rights are independent actions, separate from any future

² The Yuba Subbasins GSAs consist of the Yuba Water GSA, the Cordua Irrigation District GSA, and the City of Marysville GSA.

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or ongoing water quality certification actions associated with the YRDP or Narrows 1 Hydroelectric Project.

Yuba Water's NOP states in part: "The Fisheries Agreement remains in effect until the Federal Energy Regulatory Commission (FERC) issues a new long-term license for the Yuba River Development Project." Corrected Order WR 2008-0014 incorporated the flow schedules specified by the Lower Yuba Accord Fisheries Agreement. Absent an order amending Corrected Order WR 2008-0014 or otherwise modifying Yuba Water's permits for consumptive use, the minimum instream flow requirements of Corrected Order WR 2008-0014, as well as other requirements set forth in State Water Board [Revised Water Right Decision 1644 \(2003\)](#)³ and Corrected Order WR 2008-0014, remain in effect. According to Yuba Water's NOP, Yuba Water's proposed extension of the Lower Yuba River Accord Water Transfer Program does not include modifications to flow requirements included in Revised Water Right Decision 1644 or Corrected Order WR 2008-0014. Where the flows required by Revised Water Right Decision 1644 or Corrected Order WR 2008-0014 differ from those required by a water quality certification or FERC license, Yuba Water is obligated to implement the greater of the flow requirements to remain in compliance with both requirements.

The water quality certification issued by the State Water Board on July 17, 2020, as well as the staff alternative in FERC's 2019 Final Environmental Impact Statement for the YRDP, included minimum instream flow releases from the YRDP greater than those required by Revised Water Right Decision 1644 or Corrected Order WR 2008-0014. Additionally, as part of the FERC relicensing process, Yuba Water has proposed modifications to water year schedule determinations below Englebright Dam. While the FERC relicensing process has not concluded and a new license has not been issued for the YRDP, it is likely that this relicensing process will result in seasonal increases to minimum instream flows, and it may result in modifications to water year schedule determinations. Accordingly, State Water Board staff request that Yuba Water analyze the potentially significant direct, indirect, and cumulative impacts of increased minimum flows and water year schedule determinations to proposed water transfers.

Modeling of the Proposed Project

The SEIR should evaluate the effects the proposed project would have on stream flows in and downstream of the Yuba River, including the Feather River, Sacramento River, and Sacramento-San Joaquin Delta (Delta), and any associated impacts on water temperature, water quality, and fish and wildlife species. Hydrologic modeling of the proposed project should incorporate the flow schedules required under Yuba Water's water right Permits 15026, 15027, and 15030. In addition, the SEIR should evaluate the effects the proposed project would have on diversions from the Delta, and any

³ Available at:

https://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/decisions/d1600_d1649/wrd1644revised.pdf.

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associated impacts to fish and wildlife species in the Delta and propose appropriate mitigation for any impacts, including cumulative impacts.

Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary

The SEIR should evaluate the proposed project in the context of the State Water Board's current efforts to update and implement the Bay-Delta Plan. In particular, as you are aware, the State Water Board is considering amendments to the Bay-Delta Plan focused on the Sacramento River and its tributaries, Delta eastside tributaries, Delta outflows, and interior Delta flows (referred to as the Sacramento/Delta Update to the Bay-Delta Plan). In July 2018, State Water Board staff released a [Framework for a possible Sacramento/Delta Update to the Bay-Delta Plan](#)⁴ (Framework) that identifies a possible new Delta inflow objective of 55% of unimpaired flow with an adaptive range of 45%-65% of unimpaired flow and a possible new inflow-based Delta outflow objective that would specify that required inflows from the Sacramento/Delta tributaries and the San Joaquin River be provided as outflow. (More information about the State Water Board's [current efforts to update and implement the Bay-Delta Plan](#) is available online.⁵) In addition, in 2022, the State Water Board received a [Memorandum of Understanding Advancing a Term Sheet for Voluntary Agreements](#)⁶ (VAs) proposing voluntary measures for the update and implementation of the Bay-Delta Plan.

The SEIR should evaluate alternatives consistent with the Sacramento/Delta Update to the Bay-Delta Plan, including the Framework and VAs. Specifically, in evaluating the amount of water that would be available for transfer and the environmental impacts of those transfers, the SEIR should also consider Yuba River inflows and contributions to Delta outflow that would be required under the Framework and VAs. Additionally, the SEIR should evaluate the effects of the proposed project on surface water and groundwater resources and the cumulative impacts of the proposed project in the context of the Sacramento/Delta Update to the Bay-Delta Plan.

⁴ Available at:

https://waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/sed/sac_delta_framework_070618%20.pdf.

⁵ Available at:

https://waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/.

⁶ Available at:

https://waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/proposed_voluntary_agreements.html.