

# Appendix A

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Notice of Preparation and Scoping  
Comments



**NOTICE OF PREPARATION OF  
A DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT  
AND NOTICE OF SCOPING MEETINGS**

**FOR EXTENSION OF THE LOWER YUBA RIVER ACCORD WATER TRANSFER PROGRAM**

**Date:** January 12, 2023  
**To:** Agencies and Interested Parties  
**Subject:** Notice of Preparation of a Draft Supplemental Environmental Impact Report and Notice of Scoping Meetings for the Extension of the Lower Yuba River Accord Water Transfer Program  
**Review Period:** January 12, 2023 through February 27, 2023

**Overview**

The Yuba County Water Agency, doing business as Yuba Water Agency (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 (Yuba Accord Extension or Extension).

Although no substantial changes to the Yuba Accord Water Transfer Program (described below) are proposed by Yuba Water, its extension beyond December 31, 2025 requires analysis pursuant to the California Environmental Quality Act (CEQA, Public Resources Code [PRC] Section 21000 et seq.). Yuba Water will prepare a supplemental environmental impact report (SEIR) (supplement to the 2007 EIR) to satisfy the requirements of CEQA and the CEQA Guidelines (California Code of Regulations [CCR], title 14, section 15000 et seq.), and will serve as lead agency, the public agency with primary responsibility for carrying out and approving the project (CEQA Guidelines Section 15367).

**Purpose of this Notice of Preparation**

In accordance with the CEQA Guidelines, Yuba Water has prepared this notice of preparation (NOP) to inform agencies and interested parties that an SEIR will be prepared for the above-referenced project. The purpose of an NOP is to provide sufficient information about the proposed Yuba Accord Extension and its potential environmental impacts to allow agencies, non-governmental organizations (NGOs), and other interested parties the opportunity to provide a meaningful response regarding the scope and content of the SEIR (CEQA Guidelines 14 CCR Section 15082(b)).

**Yuba Accord Water Transfer Program Extension Background**

The Yuba Accord Water Transfer Program was adopted as part of the Yuba Accord, a comprehensive settlement that imposed a set of collaboratively developed, science-based instream flow requirements to protect and enhance fisheries and aquatic resources, and improve local and state-wide water supply reliability. Yuba Water spent years developing the Yuba Accord in coordination with federal, state, and local agencies; NGOs; and other interested parties. After Yuba Water certified a detailed EIR (State Clearinghouse No. 2005062111) analyzing its environmental effects, it began to implement the project in 2008.<sup>1</sup>

The Yuba Accord consists of three related agreements: (1) the Agreement for Long-Term Purchase of Water from Yuba Water by the Department of Water Resources (DWR), dated December 4, 2007, as amended by Amendment Nos. 1-7 (the Yuba Water/DWR Water Purchase Agreement); (2) Lower Yuba River Agreement for the Conjunctive Use of Surface and Groundwater Supplies between Yuba Water and each of the Yuba Water member units (water and irrigation districts and companies, Figure 1)<sup>2</sup>, as amended by Amendment Nos. 1-7 (the Yuba Water/MU Conjunctive Use Agreements); and (3) the Lower Yuba River Fisheries Agreement dated November 5, 2007 (effective March 18, 2008)

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<sup>1</sup> Prior to implementation of the Yuba Accord, Yuba Water conducted two Pilot Programs, including petitions to modify the terms of Yuba Water's water right permits to change the effective date of the State Water Resources Control Board's Revised Water Right Decision 1644's long-term instream flow requirements from April 21, 2006 to April 1, 2008, and individual one-year water transfers to DWR (pursuant to Water Code §1725).

<sup>2</sup> The Member Units are Brophy Water District, Browns Valley Irrigation District, Cordua Irrigation District, Dry Creek Mutual Water Company, Hallwood Irrigation Company, Ramirez Water District, South Yuba Water District, and Wheatland Water District. Seven of the member units approved the Conjunctive Use Agreement in 2007. Cordua Irrigation District approved a Conjunctive Use Agreement with Yuba Water in 2021.

among Yuba Water, California Department of Fish and Game (now California Department of Fish and Wildlife [CDFW]), South Yuba River Citizens League, Friends of the River, Trout Unlimited, and The Bay Institute (the Fisheries Agreement).

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. The Yuba Water/DWR Water Purchase Agreement, the Yuba Water/MU Conjunctive Use Agreements, and the Yuba Water/Contra Costa Water District (CCWD)/East Bay Municipal Utilities District (EBMUD) Water Transfer Agreement expire on December 31, 2025. The proposed Extension would continue the Yuba Accord's Water Transfer Program beyond its current expiration date of December 31, 2025.

When the Yuba Accord was originally approved, the State Water Project (SWP) and Central Valley Project (CVP) export facilities were added as points of redirection for Yuba Accord transfer water; that water was then delivered by DWR (through a separate agreement among DWR, the SWP contractors, and the San Luis & Delta-Mendota Water Authority) to SWP contractors south-of-the-Delta and CVP contractors within the San Luis Unit.

The environmental effects of the whole of the Yuba Accord were evaluated in an EIR certified in 2007. In 2008, the State Water Resources Control Board (SWRCB) adopted an order, Corrected Order WR 2008-0014, which authorized delivery of transfer water consistent with the provisions of the Yuba Accord. Yuba Water relies on this order in its implementation of the Accord's Water Transfer Program.

Since adoption of the original Yuba Accord, the Freeport Regional Water Project and the Delta intakes of the Contra Costa Water District have been added as additional authorized points of redirection for Yuba Accord transfer water, and CCWD and EBMUD have entered into agreements with Yuba Water to receive Yuba Accord transfer water. Addenda were prepared as needed to address these minor changes to the Accord.

The Yuba Accord Water Transfer Program consists of: (1) the Yuba Water/DWR Water Purchase Agreement; (2) the YMA/Member Unit Conjunctive Use Agreements, and the (3) the Yuba Water/CCWD/EBMUD Water Transfer Agreement.

The Yuba Accord related agreements may be found at <https://www.yubawater.org/157/Lower-Yuba-River-Accord> and Corrected Order WR 2008-0014 may be found at [https://www.waterboards.ca.gov/waterrights/board\\_decisions/adopted\\_orders/orders/](https://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/orders/).

## Purpose and Objectives

The purpose and objectives of this proposed Extension are to: (1) continue to support water supply reliability throughout the state by providing supplemental water for contractors of the CVP and the SWP, and other potential transferees consistent with the Accord's Water Purchase Agreement; (2) continue to facilitate sustainable groundwater management and the conjunctive use of Yuba River surface water and groundwater; and (3) continue to generate revenue for Yuba Water 's various projects and programs, such as its programs for replacing aging wastewater infrastructure in Yuba County's Disadvantaged Communities (DACs).

## Location

The location would encompass the same area as the Yuba Accord's original Water Purchase Agreement, as modified by subsequent addenda adopted by Yuba Water and change petitions approved by the SWRCB. Figure 2 illustrates the major water development facilities in the Yuba River Watershed. Places of storage, redirection, and use of existing Yuba Accord water transfers would not change.

## Description of Proposal to Extend the Yuba Accord Water Transfer Program

Yuba Water proposes to continue the Yuba Accord Water Transfer Program beyond its current expiration date of December 31, 2025, with the same features, terms, and conditions, which include: (1) the Yuba Water/DWR Water Purchase Agreement; (2) the Yuba Water/CCWD/EBMUD Water Transfer Agreement; (3) the Yuba Water/MU Conjunctive Use Agreements; and (4) the terms and conditions imposed in SWRCB Corrected Order WR 2008-0014 and subsequent Accord water transfer change petitions approved by the SWRCB. These elements are collectively referred to as the Yuba Accord Water Transfer Program. The extension of the Yuba Accord Water Transfer Program will include the following components:

- ▶ an agreement between Yuba Water and DWR to extend the term of the Yuba Water/DWR Water Purchase Agreement through 2050;
- ▶ an agreement among Yuba Water, CCWD, and EBMUD to extend the term of the Yuba Water/EBMUD/CCWD Water Transfer Agreement through 2050; and
- ▶ an agreement among Yuba Water and its Member Units to extend the term of the Yuba Water/MU Conjunctive Use Agreements through 2050; and
- ▶ petitioning the SWRCB to extend approval of the place of use, purposes of use, and points of rediversion for the Yuba Accord Water Transfer Program.

As reflected by this list, the proposed Yuba Accord Water Transfer Program Extension is a continuation of the program, beyond December 31, 2025, under its existing conditions.

### **Potential Approvals and Permits Required**

Yuba Water anticipates that the process to review and approve the Extension and the required approvals and permits will include the following:

- ▶ Yuba Water and DWR will prepare and approve an extended Yuba Water/DWR Water Purchase Agreement.
- ▶ Yuba Water, EBMUD, and CCWD will prepare and approve an extended Yuba Water/EBMUD/CCWD Water Transfer Agreement.
- ▶ Yuba Water and each of the Member Units will prepare and approve extended Yuba Water/MU Conjunctive Use Agreements.
- ▶ Yuba Water will petition the SWRCB to extend approval of the place of use, purposes of use, and points of rediversion for Accord transfer water under the Yuba Accord Water Transfer Program.
- ▶ If Yuba Water determines that the Extension constitutes a "Covered Action" under the Delta Reform Act of 2009, Yuba Water will make findings regarding consistency with the Delta Plan.
- ▶ If additional coverage under the California Endangered Species Act is needed, Yuba Water will apply for and obtain an incidental take permit from CDFW.

The following public agencies are expected to use the SEIR in their decision-making for the Extension: Yuba Water as CEQA lead agency, and DWR, SWRCB, CCWD, EBMUD, six of the eight member units (Brophy Water District, Browns Valley Irrigation District, Cordua Irrigation District, Ramirez Water District, South Yuba Water District, and Wheatland Water District<sup>3</sup>), and potentially the Delta Stewardship Council as CEQA responsible agencies; and CDFW as a CEQA trustee agency and a responsible agency if an additional CESA permit is required.

### **Potential Environmental Effects**

Pursuant to PRC Section 21166 and State CEQA Guidelines Section 15163, when a lead agency concludes that only minor additions or changes would be necessary to make the previous EIR adequately apply to the project, the lead agency may choose to prepare an SEIR. The 2007 EIR comprehensively analyzed potential impacts related to implementation of the Yuba Accord, and subsequent addenda analyzed minor changes to the project in 2014, 2016, and 2022. Consequently, the focus of this SEIR will be to analyze the potential environmental impacts that may result from the proposed extension of the Yuba Accord water transfer program beyond its original expiration date of December 31, 2025.

As required by CEQA, the SEIR will describe existing conditions and evaluate the potential for significant environmental effects of the Extension and appropriate alternatives, including the No Project alternative. Because the Extension is a continuation of existing conditions, however, it is likely that the SEIR will present analyses supporting the conclusion that extension of the Yuba Accord water transfer program will not result in significant effects in many

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<sup>3</sup> Dry Creek Mutual Water Company and Hallwood Irrigation Company are private companies that are not subject to CEQA.

environmental issue areas and will dismiss these areas from detailed analysis. Notwithstanding this context, the SEIR will address and discuss following environmental impact areas:

- ▶ Surface Water Supply and Management
- ▶ Groundwater Resources
- ▶ Power Production and Energy Consumption
- ▶ Flood Control
- ▶ Surface Water Quality
- ▶ Fisheries and Aquatic Resources
- ▶ Terrestrial Biological Resources
- ▶ Cultural Resources
- ▶ Tribal Cultural Resources
- ▶ Air Quality
- ▶ Greenhouse Gas Emissions and Climate Change
- ▶ Land Use and Agricultural Resource

## Public Review Period

This NOP is being circulated for agency and public review and comment for a period of 45 days from January 12, 2023 through February 27, 2023. Yuba Water will hold two public scoping meetings to inform interested parties about the project and to provide agencies and the public with an opportunity to provide comments on the scope and content of the SEIR. The meeting times and locations are as follows:

February 7, 2023

3:00 p.m. to 5:00 p.m.

Yuba Water Headquarters  
1220 F Street  
Marysville, CA 95901

February 9, 2023

4:00 p.m. to 6:00 p.m.

[https://us06web.zoom.us/webinar/register/WN\\_cF2NebDiRBKpp0zNdhxY4A](https://us06web.zoom.us/webinar/register/WN_cF2NebDiRBKpp0zNdhxY4A)

The public scoping meetings will include a brief presentation about the Yuba Accord water transfer program through the year 2025, how Yuba Water plans to continue the water transfer program after 2025, and the CEQA process, including opportunities for public and agency participation. Yuba Water will accept oral comments at the scoping meetings, and written comments at the meetings and at any time during the scoping period.

If you plan on attending one of these meetings and need a translator or for additional accessibility preferences, please contact JoAnna Lessard at the contact information below.

Copies of the NOP may be reviewed during normal business hours at Yuba County Water Agency, 1220 F Street, Marysville, CA 95901-4740; or online at: <https://www.yubawater.org/157/Lower-Yuba-River-Accord>.

## Providing Comments

Written and/or email comments on the NOP should be provided at the earliest possible date but must be received by no later than 5:00 p.m. on February 27, 2023. Please send all comments on the NOP to:

JoAnna Lessard, Project Manager

Yuba County Water Agency

1220 F Street

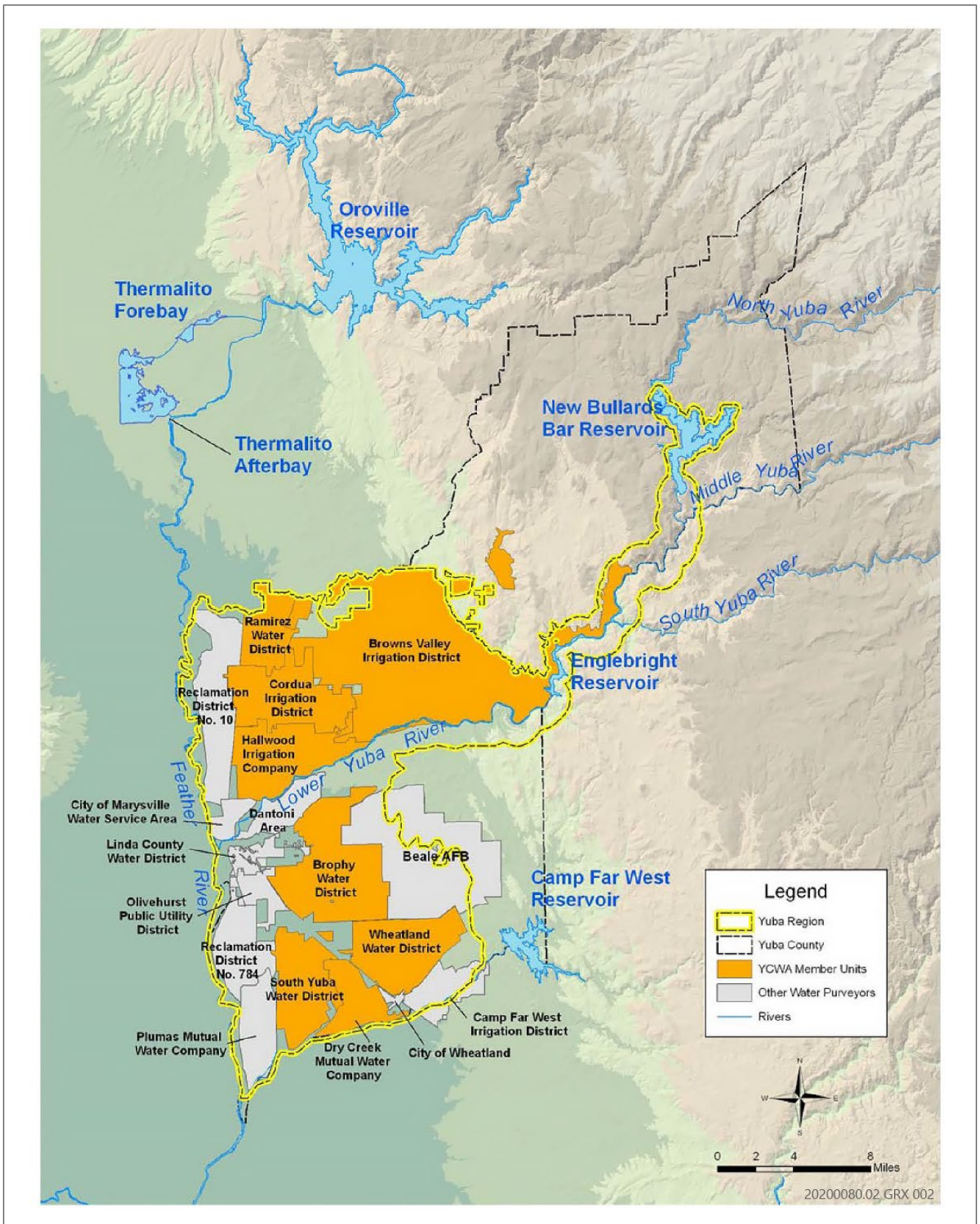
Marysville, CA 95901-4740

Telephone: (530) 741-5035

Email: [jlessard@yubawater.org](mailto:jlessard@yubawater.org)

Comments provided by email should include the name and mailing address of the commenter in the body of the email. If you are from an agency that will need to consider the SEIR when deciding whether to issue permits or other approvals for the project, please provide the name of a contact person in any comments.

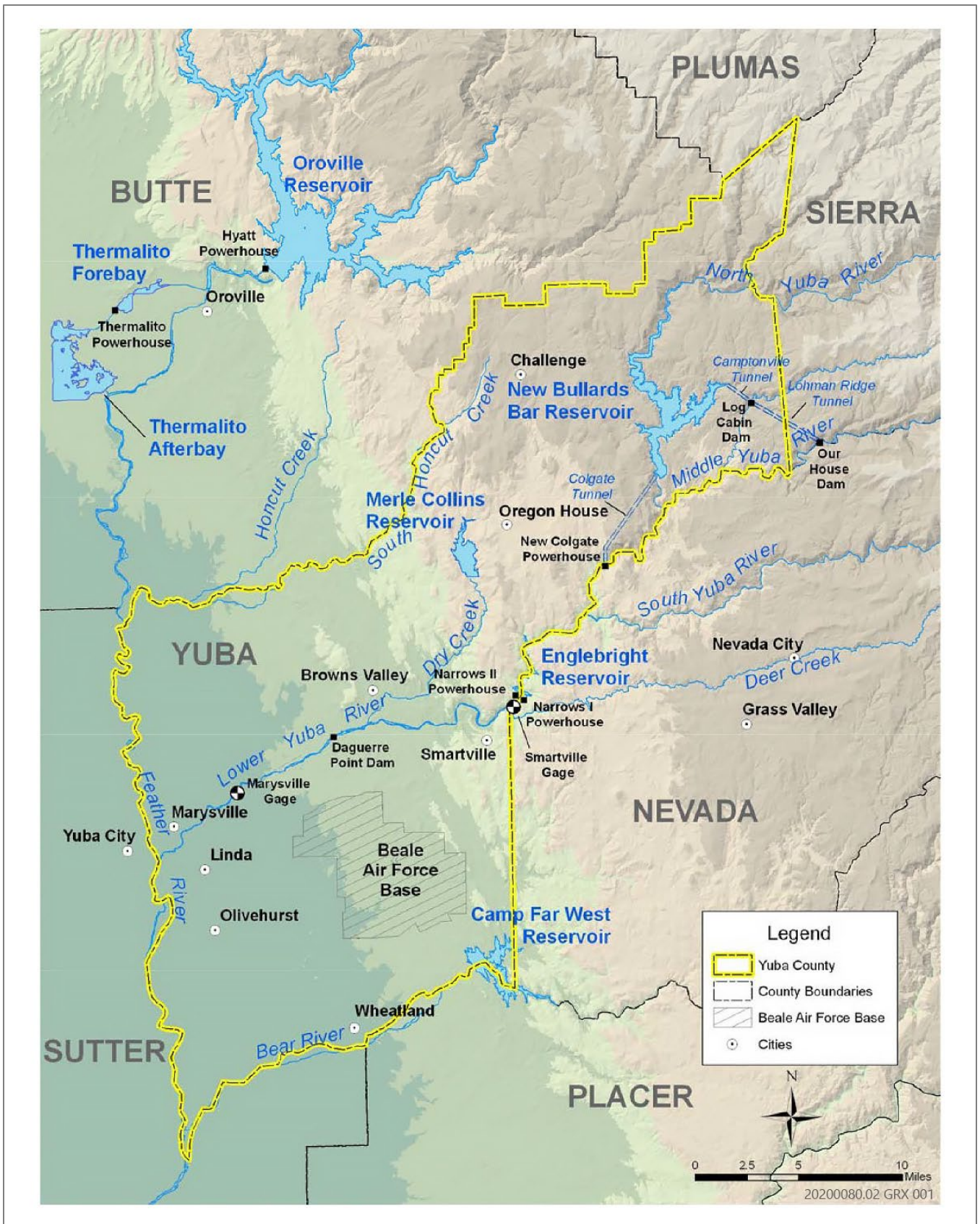




Source: Provided by Yuba Water in 2022; adapted by Ascent Environmental in 2022.

**Figure 1** Yuba Water Member Units and Service Areas of Other Water Purveyors





Source: Provided by Yuba Water in 2022; adapted by Ascent Environmental in 2022.

Figure 2 Major Water Development Facilities in the Yuba River Watershed and Region





State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
North Central Region  
1701 Nimbus Road, Suite A  
Rancho Cordova, CA 95670-4599  
(916) 358-2900  
www.wildlife.ca.gov

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



JoAnna Lessard, Project Manager  
Yuba County Water Agency  
1220 F Street  
Marysville, CA, 95901  
jlessard@yubawater.org

Subject: Extension of the Lower Yuba River Accord Water Transfer Program - Notice of Preparation of a Supplemental Environmental Impact Report  
SCH# 2005062111

Dear Ms. Lessard:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Preparation of a Supplemental Environmental Impact Report (SEIR) from Yuba County Water Agency (YCWA) for the Extension of the Lower Yuba River Accord Water Transfer Program (Project) in Yuba County pursuant the California Environmental Quality Act (CEQA) statute and guidelines.<sup>11</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, plants, and their habitats. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may need to exercise its own regulatory authority under the Fish and Game Code (Fish & G. Code).

## **CDFW ROLE**

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802.). Similarly, for purposes of CEQA, CDFW provides, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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CDFW may also act as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

### **PROJECT DESCRIPTION SUMMARY**

The Project proposes to continue the Lower Yuba Accord Water Transfer Program beyond its current expiration date of December 31, 2025, with the same features, terms, and conditions, which include: (1) the YCWA/Department of Water Resources Water Purchase Agreement; (2) the YCWA/Contra Costa Water District /East Bay Municipal Utilities District Water Transfer Agreement; (3) the YCWA/Member Unit Conjunctive Use Agreements; and (4) the terms and conditions imposed in State Water Resources Control Board (SWRCB) Corrected Order WR 2008-0014 and subsequent Accord water transfer change petitions approved by the SWRCB. The Program also includes the Lower Yuba River Fisheries Agreement among YCWA, CDFW, South Yuba River Citizens League, Friends of the River, Trout Unlimited, and The Bay Institute. These elements are collectively referred to as the Lower Yuba Accord Water Transfer Program. The extension is proposed for a 25-year period (i.e., from 2025 to 2050).

The Lower Yuba River Accord consists of a comprehensive settlement resolving issues regarding instream flow requirements for the lower Yuba River, water transfers, conjunctive use of surface water and groundwater, and fisheries management. The environmental effects of the Lower Yuba Accord were evaluated in an Environmental Impact Report (EIR), which was certified by YCWA in 2007 (State Clearinghouse No. 2005062111). The lead agency will prepare a SEIR for the extension, although the NOP states it does not propose any substantial changes to the Lower Yuba Accord Water Transfer Program.

### **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations presented below to assist the YCWA in adequately identifying and/or mitigating the Project's significant, or potentially significant, impacts on biological resources. The comments and recommendations are also offered to enable CDFW to adequately review and comment on the proposed Project with respect to impacts on biological resources. CDFW recommends that the forthcoming SEIR address the following:

## Extension of the Lower Yuba River Accord Water Transfer Program

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### **Project Description**

The Project description should include the whole action as defined in the CEQA Guidelines § 15378 and should include appropriate detailed exhibits disclosing the Project area including membership units and water district service locations and the locations of major water development facilities in the region.

As required by § 15126.6 of the CEQA Guidelines, the SEIR should include an appropriate range of reasonable and feasible alternatives that would attain most of the basic Project objectives and avoid or minimize significant impacts to resources under CDFW's jurisdiction.

### **Environmental Setting**

The previous EIR, certified in 2007, included a description of the environmental conditions which established a baseline to assist the lead agency in determining whether impacts caused by the project would be significant. CDFW recommends the SEIR analyze the effects of water transfers on biological resources based upon a determined baseline of current conditions. Circumstances and conditions may have changed with respect to impacted biological resources within the affected area of the proposed Project since the original EIR and analyses was finalized. The SEIR should evaluate the effects of extending the current water transfers on biological resources for an additional 25 years considering drought conditions, climate change impacts, fish populations, and available habitat. If during these analyses, new information of substantial importance shows any sign of having one or more significant effects not discussed in the original EIR, a significant effect that will be more substantially severe than was determined in the original EIR, or mitigation measures or alternatives that are now feasible or would substantially reduce one or more significant effects on the environment where the lead agency declines to adopt the mitigation measure or alternative, then CDFW recommends YCWA consider developing a Subsequent EIR to address these types of major revisions.

### **Water Transfer Timing**

CDFW recommends the SEIR identify what the timeframe for water transfers will be annually and whether water transfer seasonal windows will be increased or decreased. If the SEIR identifies changes to the water transfer timing, CDFW recommends the SEIR analyze the effects of the change in water transfer timing and how this may affect biological resources, especially if the seasonal window for water transfers is extended. If water transfer timing is extended beyond the original EIR's analysis, CDFW recommends YCWA discuss how the extension will be applied through the Project's current agreements. Additionally, CDFW has developed an analysis on the potential impacts of water transfer projects on special-status fish species that occur throughout the areas of the Sacramento River and the San Joaquin Delta and may be able to assist YCWA in evaluating the potential impacts of water transfer activities to biological

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resources when considering change in environmental conditions and altered water transfer seasonal windows.

### **Groundwater Resources**

Since the original EIR and analyses were finalized, the Sustainable Groundwater Management Act (SGMA) was passed and the North and South Yuba groundwater subbasins have adopted a groundwater sustainability plan (GSP), which serves to locally govern groundwater supplies and plan for long-term sustainability. CDFW recommends that the SEIR incorporate the relevant GSP sustainable management criteria into its analysis and identification of thresholds of significance for evaluating potential impacts of the water transfer program.

CDFW also recommends that the SEIR analyze the effects of water transfers on groundwater dependent ecosystems (GDEs) as environmental users of groundwater. The SEIR should identify the locations of GDEs within the Project area and evaluate the potential for significant impacts that may result from groundwater substitution transfers, which have the potential to lower the groundwater table. CDFW recommends the analysis consider potential localized impacts near transfer pumping wells on GDEs and their ability to access groundwater supplies, including an assessment of potential cumulative impacts to GDEs that may occur after sequential years of transfers, particularly during dry or critically dry water years. The SEIR should include mitigation measures, if warranted, that would reduce the potential impact on GDEs due to groundwater pumping.

Groundwater substitution transfers have the potential to alter interactions between groundwater and surface waters, including increasing the rate of surface water depletion. CDFW recommends the SEIR identify interconnected surface waters located within the Project area and identify surface waters as likely gaining or losing to groundwater. The SEIR should analyze the potential impacts of water transfers on the rates of streamflow depletion, particularly if transfer pumping wells are located proximate to surface waters, and identify mitigation measures as warranted to reduce any impacts to less-than significant.

### **California Endangered Species Act**

The NOP states “if additional coverage under the California Endangered Species Act is needed, Yuba Water will apply for and obtain an incidental take permit from CDFW.” However, the YCWA currently does not have any existing coverage for this Project under CESA. CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to CESA. CDFW recommends that a CESA Incidental Take Permit (ITP) be obtained if the Project has the potential to result in “take” (Fish & G. Code § 86 defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”) of State-listed CESA species over the life of the Project.

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State-listed species with the potential to occur in the area include, but are not limited to: winter-run Chinook salmon (*Oncorhynchus tshawytscha*), spring-run Chinook salmon (*Oncorhynchus tshawytscha*), Delta smelt (*Hypomesus transpacificus*), and longfin smelt (*Spirinchus thaleichthys*).

The SEIR should disclose the potential of the Project to take State-listed species and how the impacts will be avoided, minimized, and mitigated. The analysis for potential effects to State-listed species should also consider possible extensions in water transfer seasonal windows and the environmental setting at the time of writing the SEIR. Please note that mitigation measures that are adequate to reduce impacts to a less-than significant level to meet CEQA requirements may not be enough for the issuance of an ITP. To facilitate the issuance of an ITP, if applicable, CDFW recommends the SEIR include measures to minimize and fully mitigate the impacts to any State-listed species the Project has potential to take. CDFW encourages early consultation with staff to determine appropriate measures to facilitate future permitting processes and to engage with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service to coordinate specific measures if both State and federally listed species may be present within the Project vicinity.

### **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database, which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be submitted online or mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

### **FILING FEES**

The Project, as proposed, would have an effect on fish and wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code § 711.4; Pub. Resources Code, § 21089.)

### **CONCLUSION**

Pursuant to Public Resources Code sections 21092 and 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the Project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670.



Extension of the Lower Yuba River Accord Water Transfer Program

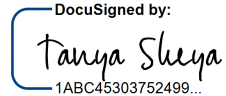
February 24, 2023

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CDFW appreciates the opportunity to comment on the Notice of Preparation of the SEIR for the Extension of the Lower Yuba River Accord Water Transfer Program and recommends that the YCWA address CDFW's comments and concerns in the forthcoming SEIR. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts.

If you have any questions regarding the comments provided in this letter or wish to schedule a meeting and/or site visit, please contact Alexander Funk, Environmental Scientist at (916) 817-0434 or alexander.funk@wildlife.ca.gov.

Sincerely,

DocuSigned by:  
  
1ABC45303752499...

Tanya Sheya  
Environmental Program Manager

ec: Kevin Thomas, Regional Manager  
kevin.thomas@wildlife.ca.gov  
Colin Purdy, Environmental Program Manager  
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*California Department of Fish and Wildlife*

Jacob Vander Meulen, Environmental Compliance Officer  
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*Yuba County Water Agency*

state.clearinghouse@opr.ca.gov  
*Office of Planning and Research, State Clearinghouse, Sacramento*



**Delta  
Stewardship  
Council**

A CALIFORNIA STATE AGENCY

September 12, 2023

JoAnna Lessard, Project Manager  
Yuba County Water Agency  
1220 F Street  
Marysville, CA 95901-4740

Delivered via email: [jlessard@yubawater.org](mailto:jlessard@yubawater.org)

**RE: Comments on Notice of Preparation of a Supplemental Environmental Impact Report for the Extension of the Lower Yuba River Accord Water Transfer Program, SCH# 2005062111**

Dear JoAnna Lessard:

Thank you for the opportunity to review and comment on the Notice of Preparation (NOP) of a draft Supplemental Environmental Impact Report (SEIR) for the extension of the Lower Yuba River Accord Water Transfer Program. The Delta Stewardship Council (Council) recognizes the objective(s) of the extension of the Lower Yuba River Accord Water Transfer Program (project), as described in the NOP, to extend the current water transfer program beyond its current expiration date of December 31, 2025, through 2050.

The Council is an independent state agency established by the Sacramento-San Joaquin Delta Reform Act of 2009, codified in Division 35 of the California Water Code, sections 85000-85350 (Delta Reform Act). The Delta Reform Act charges the Council with furthering California's coequal goals of providing a more reliable water supply and protecting, restoring, and enhancing the Sacramento-San Joaquin River

715 P Street, 15-300  
Sacramento, CA 95814

916.445.5511  
[DELTACOUNCIL.CA.GOV](http://DELTACOUNCIL.CA.GOV)

**CHAIR**  
Virginia Madueno

**MEMBERS**  
Diane Burgis  
Frank C. Damrell, Jr.  
Ben Hueso  
Julie Lee  
Maria Mehranian  
Daniel Zingale

**EXECUTIVE OFFICER**  
Jessica R. Pearson

JoAnna Lessard

Extension of the Lower Yuba River Accord Water Transfer Program

September 12, 2023

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Delta (Delta) ecosystem. (Water Code, § 85054.) The Delta Reform Act further states that the coequal goals are to be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. The Council is charged with furthering California's coequal goals for the Delta through the adoption and implementation of the Delta Plan. (Wat. Code, § 85300.)

Pursuant to the Delta Reform Act, the Council has adopted the Delta Plan, a comprehensive long-term management plan for the Delta and Suisun Marsh that furthers the coequal goals. The Delta Plan contains regulatory policies, which are set forth in California Code of Regulations, Title 23, sections 5001-5015. Through the Delta Reform Act, the Council was granted specific regulatory and appellate authority over certain actions of State or local public agencies that take place in whole or in part in the Delta. (Wat. Code, §§ 85210, 85225.30.) A state or local agency that proposes to undertake a covered action is required to prepare a written Certification of Consistency with detailed findings as to whether the covered action is consistent with the Delta Plan and submit that certification to the Council prior to implementation of the project. (Wat. Code, § 85225.)

## **COVERED ACTION DETERMINATION AND CERTIFICATION OF CONSISTENCY WITH THE DELTA PLAN**

Based on the project location and scope, as provided in the NOP, the project appears to meet the definition of a covered action. Water Code section 85057.5(a) states that a covered action is a plan, program, or project, as defined pursuant to Section 21065 of the Public Resources Code that meets all of the following conditions:

*(1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh.* The project occurs within the boundaries of the Delta because the project proposes to continue a long-term water transfer through the Delta.

*(2) Will be carried out, approved, or funded by a State or a local public agency.* Yuba Water, a local public agency, is proposing to continue the long-term water transfer.

*(3) Is covered by one of the provisions of the Delta Plan.* Relevant provisions of the Delta Plan that may apply to this project are detailed below.

*(4) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and State interests in the Delta. This project would have a significant impact on the coequal goals to provide a reliable water supply for California and to protect, restore, and enhance the Delta ecosystem.*

The State or local agency approving, funding, or carrying out the project that must determine if that project is a covered action and, if so, file a Certification of Consistency with the Council prior to project implementation. (Wat. Code, § 85225; Cal. Code Regs., tit. 23, § 5001(j)(3).)

## **COMMENTS REGARDING DELTA PLAN POLICIES AND POTENTIAL CONSISTENCY CERTIFICATION**

The following section describes the Delta Plan regulatory policies that may apply to the project based on the available information in the NOP. This information is offered to assist Yuba County Water Agency (Yuba Water) in preparing environmental documents that could be used to support a Certification of Consistency for the project.

### *General Policy 1: Detailed Findings to Establish Consistency with the Delta Plan*

Delta Plan Policy **G P1** (Cal. Code Regs., tit. 23, § 5002) specifies what must be addressed in a Certification of Consistency by a project proponent of a project that is a covered action. The following is a subset of policy requirements which a project shall fulfill to be considered as consistent with the Delta Plan:

#### *Mitigation Measures*

Delta Plan Policy **G P1(b)(2)** (Cal. Code Regs., tit. 23, § 5002(b)(2)) requires covered actions not exempt from the California Environmental Quality Act (CEQA) must include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan as amended April 26, 2018 (unless the measures are within the exclusive jurisdiction of an agency other than the agency that files the Certification of Consistency), or substitute mitigation measures that the agency finds are equally or more effective. These mitigation measures are identified in Delta Plan Appendix O and are

available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>.

If the project SEIR identifies significant impacts that require mitigation, Yuba Water should review Appendix O and include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan or identify substitute mitigation measures that the agency finds are equally or more effective.

### *Best Available Science*

Delta Plan Policy **G P1(b)(3)** (Cal. Code Regs., tit. 23, § 5002(b)(3)) states that actions subject to Delta Plan regulations must document use of best available science as relevant to the purpose and nature of the project. The Delta Plan defines best available science as “the best scientific information and data for informing management and policy decisions.” (Cal. Code Regs., tit. 23, § 5001 (f).) Best available science is also required to be consistent with the guidelines and criteria in Appendix 1A of the Delta Plan (<https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1a.pdf>). A future certification of consistency for the project should describe how best available science was applied in project evaluations and decision making.

### *Adaptive Management*

Delta Plan Policy **G P1(b)(4)** (Cal. Code Regs., tit. 23, § 5002(b)(4)) requires that ecosystem restoration and water management covered actions include adequate provisions for continued implementation of adaptive management, appropriate to the scope of the action. This requirement is satisfied through a) the development of an adaptive management plan that is consistent with the framework described in Appendix 1 B of the Delta Plan (<https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1b.pdf>), and b) documentation of adequate resources to implement the proposed adaptive management plan. The Yuba Accord is a water management project, and as such, a future certification of consistency for the project should include an adaptive management plan that is consistent with Appendix 1 B requirements.



*Water Resources Policy 1: Reduce Reliance on the Delta through Improved Regional Water Self-Reliance*

Delta Plan Policy **WR P1** (Cal. Code Regs, tit. 23, § 5003) provides that “[w]ater shall not be exported from, transferred through, or used in the Delta” if *all* three factors – set forth in subdivisions (a)(1), (a)(2), and (a)(3) – apply. Subdivision (a)(1) provides that a project may not proceed if one or more water suppliers that would receive water as a result of the project have failed to adequately contribute to reduced reliance on the Delta and improved regional self-reliance consistent with the requirements of subdivision (c)(1). Subdivision (a)(2) specifies that the project may not proceed if the failure to reduce reliance has significantly caused the need for the export, transfer, or use. Subdivision (a)(3) specifies that the project may not proceed if the export, transfer, or use would have a significant adverse environmental impact in the Delta.

The project proposes to extend the existing water transfer program. The State Water Resources Control Board’s (SWRCB) WR 2008-14 (Order) approving the existing long-term transfer in 2008 states that water reaching the Delta would be available for use by the California Department of Water Resources (DWR) to provide salinity and water quality controls within the Delta or to export from the Delta at either the Clifton Court Forebay or the Jones Pumping Plant for use within the State Water Project (SWP) or Central Valley Project (CVP) service areas. As part of a future certification of consistency for the project, Yuba Water should describe how each water supplier receiving water from the project is consistent with the requirements set forth in subdivision (c)(1) and provide quantitative data in support. (Cal. Code Regs, tit. 23, § 5003(c)(1).) Yuba Water should further address the conditions of subdivisions (a)(2) and (a)(3). Ultimately, the certification of consistency should be supported by substantial evidence in the record. Including this data within the SEIR will provide an opportunity for public review and comment regarding these matters.

*Water Resources Policy 2: Transparency in Water Contracting*

Delta Plan Policy **WR P2** (Cal. Code Regs., tit. 23, § 5004) requires the contracting process for water from the SWP and/or the CVP be done in a publicly transparent manner consistent with applicable policies of the DWR and the Bureau of Reclamation (Reclamation). The project SEIR should document the planned contracting process and describe how Yuba Water will conduct contracting business in a transparent manner with the public. The Council would also like to receive draft

and final versions of the agreements listed as components of the project in the NOP when they are available.

### *Ecosystem Restoration Policy 1: Delta Flow Objectives*

Delta Plan Policy **ER P1** (Cal. Code Regs., tit. 23, § 5005) requires the SWRCB's Bay Delta Water Quality Control Plan flow objectives to be used to determine consistency with the Delta Plan. The project would continue a long-term water transfer program, extending the timeframe of pumping through the Delta. The SEIR should analyze and document how the project may impact or alter Delta flows that are subject to meeting the Bay Delta Water Quality Control Plan flow objectives.

### **CEQA REGULATORY SETTING**

For each resource section in which a Delta Plan policy is applicable, the SEIR's description of the regulatory setting should include the Delta Plan and a reference to the specific applicable regulatory policy or policies.

### **CLOSING COMMENTS**

As Yuba Water proceeds with design, development, and environmental impact analysis of the project, the Council invites Yuba Water to engage Council staff in early consultation (prior to submittal of a Certification of Consistency) to discuss project features and mitigation measures that would promote consistency with the Delta Plan.

More information on covered actions, early consultation, and the certification process can be found on the Council website, <https://coveredactions.deltacouncil.ca.gov>. Council staff are available to discuss issues outlined in this letter as the Yuba Water proceeds in the next stages of its project and approval processes. Please contact James Edwards at [James.Edwards@deltacouncil.ca.gov](mailto:James.Edwards@deltacouncil.ca.gov) with any questions.

Sincerely,



Jeff Henderson, AICP  
Deputy Executive Officer

**DEPARTMENT OF WATER RESOURCES**

1416 NINTH STREET, P.O. BOX 942836  
SACRAMENTO, CA 94236-0001  
(916) 653-5791

**VIA-EMAIL**

Date: February 27, 2023

JoAnna Lessard, Project Manager  
Yuba County Water Agency  
1220 F Street, Marysville, CA 95901-4740  
Telephone: (530) 741-5035  
Email: [jlessard@yubawater.org](mailto:jlessard@yubawater.org)

Subject: Notice of Preparation of a Draft Supplemental Environmental Impact Report and Notice of Scoping Meetings for Extension of the Lower Yuba River Accord Water Transfer Program

Dear Ms. Lessard,

The Department of Water Resources (DWR) appreciates the opportunity to comment on the January 12, 2023, Notice of Preparation (NOP) of a Draft Supplemental Environmental Impact Report (SEIR) for extension of the Lower Yuba River Accord (Yuba Accord) Water Transfer Program. DWR highly values the partnership it has had with the Yuba Water Agency in implementing the Yuba Accord's Water Purchase Agreement for the past 15 years. Water purchased under the Agreement has been used to help meet fishery flows and water supply demands south and west of the Delta, especially in dry years when it is needed most. The Yuba Accord and its water transfer program have been successful and remain a great example of how water can be effectively and efficiently used to meet multiple demands and needs.

In light of the above and considering DWR's role as a responsible agency, DWR offers its assistance and coordination as Yuba Water Agency analyzes the long-term extension of the Yuba Accord water transfer program.

I and my staff are happy to make ourselves available to have discussions on the extension of the water transfer program and offer to meet regularly for the purpose of maintaining our strong partnership in implementing this valuable program.

If you have any questions on these comments or would like further information, please feel to contact me at (916) 651-2447 or [john.leahigh@water.ca.gov](mailto:john.leahigh@water.ca.gov).

Sincerely,

A handwritten signature in cursive script that reads "John Leahigh".

John Leahigh  
Assistant Division Manager, Water Management  
Division of Operations and Maintenance



THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

February 27, 2023

Ms. JoAnna Lessard, Project Manager  
Yuba County Water Agency  
1220 F Street  
Marysville, California 95901-4740  
Email: [jlessard@yubawater.org](mailto:jlessard@yubawater.org)

**Via Electronic Mail**

Dear Ms. Lessard:

Notice of Preparation of a Draft Supplemental Environmental Impact  
Report for Extension of the Lower Yuba River Accord Water Transfer Program

The Metropolitan Water District of Southern California (Metropolitan) reviewed the Notice of Preparation of a Draft Supplemental Environmental Impact Report (SEIR) for Extension of the Lower Yuba River Accord Water Transfer Program (Extension) beyond its current expiration date of December 31, 2025. The SEIR will be prepared pursuant to the California Environmental Quality Act (CEQA) by Yuba Water Agency (Yuba Water) as the Lead Agency. The Extension seeks to extend the agreements comprising the Lower Yuba River Accord Water Transfer Program (Yuba Accord Water Transfer Program) through 2050. These agreements include: (1) the Yuba Water/Department of Water Resources (DWR) Water Purchase Agreement; (2) the Yuba Water/Member Unit Conjunctive Use Agreements, and (3) the Yuba Water/Contra Costa Water District (CCWD)/East Bay Municipal Utilities District (EBMUD) Water Transfer Agreement. Under the Extension, Yuba Water plans to petition the SWRCB to extend approval of the place of use, purposes of use, and points of diversion for the Yuba Accord Water Transfer Program.

Metropolitan is a public agency and regional water wholesaler, comprised of 26-member public agencies serving approximately 19 million people in portions of six counties in Southern California. Metropolitan's mission is to provide its 5,200 square mile service area with adequate and reliable supplies of high-quality water to meet present and future needs in an environmentally and economically responsible way.

Metropolitan achieves its mission of regional water supply reliability in part by pursuing water transfers from willing sellers that protect environmental resources. The Yuba Accord Water Transfer Program is a key part of Metropolitan's water transfer portfolio on the State Water Project. Metropolitan has secured over 250,000 acre-feet of water through this partnership since entering into an agreement with DWR in November 2007 to purchase transfers from Yuba

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

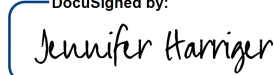
Ms. JoAnna Lessard, Project Manager  
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February 27, 2023

Water. Access to this supplemental water has been instrumental to managing recent droughts. In 2022, nearly 15,000 acre-feet of Yuba transfer supplies were delivered to help meet the minimum human health and safety needs of Metropolitan's service area during the recent historic drought.

Purchase of Yuba transfer supplies provides water reliability for Metropolitan's service area while at the same time generating revenues to help support Yuba Water's mission areas of sustainable water management, flood risk reduction, and environmental stewardship. Through this agreement, Yuba River surface water is transferred to Metropolitan and other agencies across the state in almost all water year types, after the water has benefited critical fisheries in the lower Yuba River. The Yuba Accord is widely considered a model for balancing competing interests in water management, allowing Yuba Water to maintain sustainable surface and groundwater supplies while contributing to fishery enhancement and statewide water supply reliability. Metropolitan also recognizes Yuba Water's statewide leadership in accelerating the pace and scale of forest management and its efforts to protect the Yuba River watershed from catastrophic fire through innovative programs that will ensure the longevity of Yuba Water's statewide partnerships. This leadership to pursue multi-benefit and innovative action will help protect headwaters, combat the effects of climate change, and embodies watershed-wide approaches that are commensurate with the Metropolitan Board's Bay-Delta policies.

The Yuba Accord Water Transfer Program has provided important benefits for Metropolitan over the past fifteen years, and we appreciate Yuba Water's efforts to extend the program. For further assistance, please contact Ms. Sarah Bartlett (213) 217-6166 or sbartlett@mwdh2o.com.

Very truly yours,

DocuSigned by:  
  
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Jennifer Harriger  
Manager, Environmental Planning Section

SB:rdl

Comment Letter\_Yuba Transfer Program Extension





## NATIVE AMERICAN HERITAGE COMMISSION

January 18, 2023

Jacob Vander Meulen  
Yuba County Water Agency  
1220 F Street  
Marysville, CA 95901



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**Re: 2005062111, Extension of the Lower Yuba River Accord Water Transfer Programs Project, Alameda, Butte, Colusa, Contra Costa, Fresno, Glenn, Imperial, Kern, Kings, Lassen, Los Angeles, Madera, Marin, Mariposa, Merced, Monterey, Nevada, Placer, Plumas, Sacramento, San Benito, San Bernardino, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Sierra, Solano, Stanislaus, Sutter, Tehama, Tulare, Ventura, and Yuba Counties**

Dear Mr. Vander Meulen:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, §15064.5 (b) (CEQA Guidelines §15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

**Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.**

AB 52

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

- 1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project:** Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:

  - a. A brief description of the project.
  - b. The lead agency contact information.
  - c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
  - d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).
  
- 2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report:** A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).

  - a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).
  
- 3. Mandatory Topics of Consultation If Requested by a Tribe:** The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

  - a. Alternatives to the project.
  - b. Recommended mitigation measures.
  - c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).
  
- 4. Discretionary Topics of Consultation:** The following topics are discretionary topics of consultation:

  - a. Type of environmental review necessary.
  - b. Significance of the tribal cultural resources.
  - c. Significance of the project's impacts on tribal cultural resources.
  - d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).
  
- 5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process:** With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).
  
- 6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document:** If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:

  - a. Whether the proposed project has a significant impact on an identified tribal cultural resource.

b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

**7. Conclusion of Consultation:** Consultation with a tribe shall be considered concluded when either of the following occurs:

- a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
- b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).

**8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document:** Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).

**9. Required Consideration of Feasible Mitigation:** If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).

**10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:**

- a. Avoidance and preservation of the resources in place, including, but not limited to:
  - i. Planning and construction to avoid the resources and protect the cultural and natural context.
  - ii. Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
- b. Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
  - i. Protecting the cultural character and integrity of the resource.
  - ii. Protecting the traditional use of the resource.
  - iii. Protecting the confidentiality of the resource.
- c. Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
- d. Protecting the resource. (Pub. Resource Code §21084.3 (b)).
- e. Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
- f. Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).

**11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource:** An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:

- a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
- b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.



- c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: [http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation\\_CalEPAPDF.pdf](http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf)

## SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: [https://www.opr.ca.gov/docs/09\\_14\\_05\\_Updated\\_Guidelines\\_922.pdf](https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf).

Some of SB 18's provisions include:

1. Tribal Consultation: If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. No Statutory Time Limit on SB 18 Tribal Consultation. There is no statutory time limit on SB 18 tribal consultation.
3. Confidentiality: Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. Conclusion of SB 18 Tribal Consultation: Consultation should be concluded at the point in which:
  - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
  - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>.

## NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center ([https://ohp.parks.ca.gov/?page\\_id=30331](https://ohp.parks.ca.gov/?page_id=30331)) for an archaeological records search. The records search will determine:
  - a. If part or all of the APE has been previously surveyed for cultural resources.
  - b. If any known cultural resources have already been recorded on or adjacent to the APE.
  - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
  - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.









# Nevada Irrigation District

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February 6, 2023

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Telephone: (530) 741-5035  
Email: jlessard@yubawater.org

Re: Comments of Nevada Irrigation District Concerning Yuba County Water Agency's (YCWA) Notice of Preparation of a Draft Supplemental Environmental Impact Report and Notice of Scoping Meetings for the Extension of the Lower Yuba River Accord Water Transfer Program.

Dear Ms. Lessard:

Nevada Irrigation District (NID) received Yuba County Water Agency's January 13, 2023, Notice of Intent to Prepare Supplemental Environmental Impact Report for the Extension of the Lower Yuba River Accord Water Transfer Program (NOP). NID is the licensee of the Yuba – Bear Hydroelectric Project, consisting of approximately 79 MW of developed power utilizing the South Fork Yuba River, Middle Fork Yuba River, Bear River, and associated tributaries. NID additionally provides domestic and irrigation water supplies to approximately 25, 000 accounts in Placer and Nevada Counties, California. A significant portion of NID's water supply is from sources on the South Fork and Middle Fork of the Yuba River.

To assist in the scoping process, NID has identified several issues for YCWA's attention in the preparation of the proposed Environmental Review to address NID's concerns:

a. The Presumption that the Extension of the Yuba Accord Water Transfer program will not result in significant effects to multiple resource areas, and that a Supplemental EIR is an Appropriate Environmental Document is Premature.

YCWA states in its NOP that: "Yuba Water will prepare a supplemental environmental impact report (SEIR) (Supplement to the 2007 EIR) to satisfy the requirements of CEQA and the CEQA Guidelines." YCWA's NOP further states,

[b]ecause the Extension is a continuation of existing conditions, however, it is likely that the SEIR will present analyses supporting the conclusion that extension of the Yuba Accord water transfer program will not result in significant effects in many environmental issue areas and will dismiss these areas from detailed analyses.

JoAnna Lessard, Project Manager

Yuba County Water Agency

Re: Comments of Nevada Irrigation District Concerning Yuba County Water Agency's (YCWA) Notice of Preparation of a Draft Supplemental Environmental Impact Report and Notice of Scoping Meetings for the Extension of the Lower Yuba River Accord Water Transfer Program.

February 6, 2023

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Yuba's determination to prepare an SEIR, as opposed to a subsequent EIR is entirely premature, as is the conclusion that "the extension of the Yuba Accord water transfer program will not result in significant effects in many environmental issue areas."

A supplement to an EIR is a document that is separate from the prior EIR and contains only those additions or changes needed to make the EIR adequate. Pursuant to CEQA, if major revisions are necessary to make a previous EIR adequate, the agency prepares a subsequent EIR. (Pub. Res. Code § 2166; 14 Cal Code Regs § 15162). In contrast, a subsequent EIR is a revised version of a prior EIR which contains the modifications necessary to describe and analyze the project changes, changes in circumstances, or new information that triggered the need for further environmental review. At this stage of the environmental review, it is premature for YCWA to conclude that a supplemental EIR, which is legally appropriate only to address "minor additions or changes to the prior EIR" is the appropriate environmental document.

The Yuba Accord and its various components was last subject to extensive environmental review in the Lower Yuba River Accord 2007 EIR. Since that time, many significant changes to the regulatory and physical inputs affecting the California water transfer market have occurred. Each one of these changes individually, and certainly on a cumulative basis, merit review in a Subsequent EIR:

- On December 12, 2018, the State Water Resources Control Board adopted Resolution No. 2018 – 0059 to update the Bay-Delta Plan. On March 29, 2022, Yuba Water Agency signed a Memorandum of Understanding, pursuant to which it agreed to support a Voluntary Agreements Program to implement flow and non-flow measures, as reflected in a Term Sheet appended to MOU. The Term Sheet included, among other measures, commitments of "New Contributions to Tributary Flow and Delta Outflows in Thousands of Acre Feet." In Certain Year Types, the Yuba Basin would provide up to 60 TAF of new flows. The Yuba River basin also committed to significant habitat improvement measures pursuant to the Term Sheet. The Subsequent EIR should evaluate the impact of the proposed flow and non-flow measures in the context of the proposed transfer program.
- In 2020 the U.S. Fish and Wildlife Services and National Marine Fisheries Service issued a no jeopardy biological opinion concerning operations of the Central Valley

JoAnna Lessard, Project Manager  
Yuba County Water Agency

Re: Comments of Nevada Irrigation District Concerning Yuba County Water Agency's (YCWA) Notice of Preparation of a Draft Supplemental Environmental Impact Report and Notice of Scoping Meetings for the Extension of the Lower Yuba River Accord Water Transfer Program.

February 6, 2023

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Project. That determination was challenged by multiple groups, and the United States Bureau of Reclamation subsequently requested a reinitiation of consultation under the Endangered Species Act concerning operation of the Central Valley Project. During the pendency of the litigation, Project operations are governed by an Interim Operations Plan (IOP). The IOP and any biological opinions issued as a result of the reinitiation of consultation is likely to impact, at a minimum, the ability to utilize delta pumps for water exports (transfers) in terms of timing, quantity, and duration. These constraints may, in turn, impact YCWA's proposed project. The Subsequent EIR should evaluate these impacts, among others on its proposed Project.

- In January 2019, the Federal Energy Regulatory Commission issued its Final Environmental Impact Statement for the Yuba River Development Project. The Staff Recommendations set forth in the FEIS included significant changes to operation of the Yuba River Development Project, including revisions to the drought management plan to change the definition of drought, and proposed revisions to minimum flows below New Bullards Bar Dam.

Any one of these changes independently, and certainly any combination of these changes cumulatively, will constitute a significant change in the circumstances evaluated in the 2007 Final EIR, and merit review in a Subsequent, and not Supplemental, EIR.

b. The Environmental Document Should Analyze Impacts Associated with Current Transfer Periods and Evaluate Alternative Transfer Periods.

The lower Yuba River hosts Endangered Species Act listed Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*) evolutionarily significant unit, the Central Valley steelhead (*O. mykiss*) distinct population segment (DPS), and the North American green sturgeon (*Acipenser medirostris*) southern DPS, their proposed or designated critical habitat, and essential fish habitat (EFH).

Each of the identified species and associated designated critical habitat and essential fish habitat are directly impacted by the timing, quantity, and frequency of water transfers pursuant to the proposed project. Under the existing project, which YCWA proposed to extend, water transfers occurred in seven dry, critical dry, and extremely critically dry hydrologic year types that have occurred within the past seventeen years.

JoAnna Lessard, Project Manager  
Yuba County Water Agency

Re: Comments of Nevada Irrigation District Concerning Yuba County Water Agency's (YCWA) Notice of Preparation of a Draft Supplemental Environmental Impact Report and Notice of Scoping Meetings for the Extension of the Lower Yuba River Accord Water Transfer Program.

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The timing of transfers during these year types is of significant concern to listed species. In testimony before the State Water Resources Control Board, the California Department of Water Resources, advised that “the vast majority of the Yuba River Accord water will be moved in the traditional transfer window during the summer and early fall months of July through October.”

This transfer period does not align with the period of significant interest concerning water temperatures in the Lower Yuba River for the period July through November. The environmental document should evaluate the impacts of water transfers in dry, critical dry, and extremely critically dry year types and further evaluate the impact of the timing and schedule of such transfers to mitigate impacts, including water temperature impacts occurring in the Lower Yuba River in the July – November time period.

c. Water Transfers During Schedule 6 Water Years.

Pursuant to the Accord and its related water transfer programs, YCWA commits to providing 30,000-acre feet of transfer water during ‘schedule 6 water years.’. The Yuba Accord does not specify the timing of this water delivery, but project documents contemplate consultation with stakeholders between April 10 – May 21 to determine a schedule for such deliveries. During previous Schedule 6 water years, California DFW determined high water temperatures negatively impacted various life stages of ESA listed fishes.

The Environmental Document should evaluate the benefit of limiting transfers during Schedule 6 water years to the July – November period to benefit cold water for ESA listed species in the lower Yuba River.

d. Narrows 2 Intake Extension.

The State Water Resources Control Board’s Revised Decision 1644, issued in 2003, ordered YCWA to extend the Narrows 2 Powerhouse Intake to a lower elevation in Englebright Reservoir and consult with NMFS, USFWS and California DFW regarding use of the lower intake from July through November in dry and critically dry years. Specifically, pages 176 and 177 of the 2003 Revised Decision 1644 orders in part:



JoAnna Lessard, Project Manager  
Yuba County Water Agency

Re: Comments of Nevada Irrigation District Concerning Yuba County Water Agency's (YCWA) Notice of Preparation of a Draft Supplemental Environmental Impact Report and Notice of Scoping Meetings for the Extension of the Lower Yuba River Accord Water Transfer Program.

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2. To minimize water temperature impacts on anadromous fish and other public trust resources in the lower Yuba River, permittee [YCWA] shall comply with the following terms and conditions:

a. Permittee shall diligently pursue development of the Narrows II Powerhouse Intake Extension Project at Englebright Dam, in coordination with the Department of Fish and Game, the United States Fish and Wildlife Service and the National Marine Fisheries Service. Permittee shall submit proposals for project funding and prepare all appropriate CEQA documentation for project development in a timely manner. Permittee shall submit a report to the Chief of the Division of Water Rights on the status of its application for funding and the progress of project development every six months from the date of this Order through the completion of project construction.

b. Permittee shall coordinate operation of available temperature control devices to minimize temperature impacts on anadromous fishery resources in the lower Yuba River. Permittee shall consult with the Temperature Advisory Committee (composed of representatives from the SWRCB, the Department of Fish and Game, the United States Fish and Wildlife Service, the National Marine Fisheries Service, the California Sportfishing Protection Alliance and the South Yuba River Citizens League) on a regular basis during the temperature control season (May through October). Permittee shall monitor water temperature effects of project operations and report to the Advisory Committee on a regular basis. Permittee shall discuss with the Committee current operations for temperature control and variances from the temperatures needed to provide suitable habitat for anadromous fish. Permittee shall make changes to project operations for temperature control as recommended by the Temperature Advisory Committee on a real-time basis, unless Permittee informs the Chief of the Division of Water Rights within 14 days that the Committee recommendation is infeasible and explains the basis for that conclusion.

JoAnna Lessard, Project Manager  
Yuba County Water Agency

Re: Comments of Nevada Irrigation District Concerning Yuba County Water Agency's (YCWA) Notice of Preparation of a Draft Supplemental Environmental Impact Report and Notice of Scoping Meetings for the Extension of the Lower Yuba River Accord Water Transfer Program.

February 6, 2023

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Revised Decision 1644 clearly envisioned that the upper intake at New Bullards Bar Reservoir would be available along with the Narrows 2 Powerhouse Intake Extension to provide suitable water temperatures for ESA-listed fishes, and that YCWA would consult with NMFS, CDFW and USFWS regarding the coordinated operations of these two P-2246 facilities. YCWA has not constructed the Narrows 2 intake facilities, but nonetheless continues to make transfers that may be contributing to water temperature issues on the lower Yuba River.

The Environmental Document should evaluate the benefits of constructing and operating the Narrows 2 Intake Extension, as required by Revised D-1644.

e. Streamflow Depletion Factors Associated with Groundwater Substitution Transfers.

The Proposed Project contemplates the transfer of significant quantities of water through the mechanism of groundwater substitution transfers. Depending on various factors including the distance of the groundwater well(s) participating in the transfer to the Yuba River and associated tributaries, depth of the well, and local hydrogeologic conditions, the increase in groundwater pumped by entities participating in the YCWA / Accord Groundwater Substitution Transfer program to enable the proposed transfers results in a reduction in the amount of water that would otherwise have accrued to the stream due to the interconnection of surface water and groundwater (streamflow depletion). Consequently, YCWA's groundwater pumping program for transfer operations will provide water at the expense of current and future streamflow.

The Environmental Document must evaluate the impacts of groundwater pumping on streamflow depletion affecting the lower Yuba River both on a 'real-time' basis as well as long term impacts. Mitigation measures evaluated in the Environmental Document should include, at a minimum: reductions in total quantities transferred in certain impacted year types, cessation of transfers during sequence of multiple, or multiple consecutive dry year types. These results must also be harmonized with requirements of the Sustainable Groundwater Management Act (SGMA) and any Groundwater Sustainability Plans adopted for the basin affected by the proposed Groundwater Substitution Water Transfers.

JoAnna Lessard, Project Manager  
Yuba County Water Agency

Re: Comments of Nevada Irrigation District Concerning Yuba County Water Agency's  
(YCWA) Notice of Preparation of a Draft Supplemental Environmental Impact Report  
and Notice of Scoping Meetings for the Extension of the Lower Yuba River Accord  
Water Transfer Program.

February 6, 2023

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Thank you for the opportunity to provide these comments. Should you have further questions please do not hesitate to contact me at: (530) 273-6185 or [hansonj@nidwater.com](mailto:hansonj@nidwater.com).

Very truly yours,

NEVADA IRRIGATION DISTRICT

By   
JENNIFER HANSON, General Manager



February 27, 2023

**VIA EMAIL**

Joanna Lessard, Project Manager  
Yuba County Water Agency  
1220 F Street  
Marysville, CA 95901-4740  
Email: [jlessard@yubawater.org](mailto:jlessard@yubawater.org)

**Re: Comments – Notice of Preparation of a Draft Supplemental Environmental Impact Report and Notice of Scoping Meetings for Extension of the Lower Yuba River Accord Water Transfer Program**

Dear Ms. Lessard:

The Notice of Preparation of a Draft Supplemental Environmental Impact Report and Notice of Scoping Meetings for Extension of the Lower Yuba River Accord Water Transfer Program (“NOP”) describes an important opportunity for the Yuba County Water Agency (“Yuba Water”) to analyze the continued benefits of the Lower Yuba River Accord (“Yuba Accord”) Water Transfer Program beyond its current expiration date of December 31, 2025 (“Yuba Accord Extension”). Through the San Luis & Delta-Mendota Water Authority’s (“Water Authority”), eleven member agencies participate in and benefit from the Yuba Accord Water Transfer Program. The Water Authority, Del Puerto Water District, Eagle Field Water District, Mercy Springs Water District, Pacheco Water District, Panoche Water District, San Benito County Water District, San Luis Water District, and Westlands Water District submit this comments to support Yuba Water’s proposed extension of the Lower Yuba River Accord Water Transfer Program as well as implementation of the programs governed by the Yuba Water/DWR Water Purchase Agreement, Yuba Water/MU Conjunctive Use Agreements, and Fisheries Agreement. The continued implementation of the Yuba Accord contributes to the health of the fisheries and the reliability of the water supply for Water Authority member agencies, including for disadvantaged communities within their service areas.

Most of the Water Authority’s member agencies depend upon the CVP as the principal source of water they provide to users within their service areas. And yet, in the last ten years<sup>1</sup>, south of Delta Central Valley Project (“CVP”) agricultural water service and repayment contractors have averaged just a 27% allocation, and south of Delta CVP municipal and industrial (M&I) contractors have averaged an approximate 62% allocation. Because of unreliable CVP supplies, Water Authority member agencies have needed to purchase supplemental water, which itself is

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<sup>1</sup> 2022-2013, available at [https://www.usbr.gov/mp/cvo/vungvari/water\\_allocations\\_historical.pdf](https://www.usbr.gov/mp/cvo/vungvari/water_allocations_historical.pdf).


uncertain, both in amount and availability. In recent years, as in 2022, supplemental water was *only* available through the Yuba Accord Water Transfer Program. The importance of the Yuba Accord Water Transfer Program to Water Authority member agencies cannot be overstated.

**Conclusion**


The Water Authority, Del Puerto Water District, Eagle Field Water District, Mercy Springs Water District, Pacheco Water District, Panoche Water District, San Benito County Water District, San Luis Water District, and Westlands Water District appreciate the opportunity to submit these comments. If you have any questions regarding these comments, please contact Pablo Arroyave, Water Authority Chief Operating Officer, at (209) 832-6230.

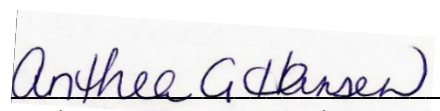
Regards,

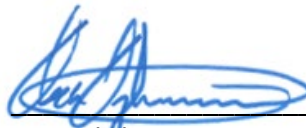
  
\_\_\_\_\_  
Federico Barajas, Executive Director  
San Luis & Delta-Mendota Water Authority

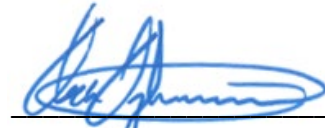
  
\_\_\_\_\_  
David Parreira, Board President  
Pacheco Water District

  
\_\_\_\_\_  
Lon Martin, General Manager  
San Luis Water District

  
\_\_\_\_\_  
Steve Wittry, General Manager  
San Benito County Water District

  
\_\_\_\_\_  
Anthea Hansen, General Manager  
Del Puerto Water District

  
\_\_\_\_\_  
Ara Azhderian, General Manager  
Mercy Springs Water District

  
\_\_\_\_\_  
Ara Azhderian, General Manager  
Panoche Water District

  
\_\_\_\_\_  
Hugh Bennett, Board President  
Eagle Field Water District

  
\_\_\_\_\_  
Jose Gutierrez, Interim General Manager and Chief Operating Officer  
Westlands Water District

**Bill Diedrich**  
*President*

**Mike Wood**  
*Vice President*

**Mitch Coit**  
*Tax Assessor/Collector*



**Tom Teixeira**  
*Secretary/Treasurer*

**Jon E. Maring**  
*Director*

**Lon Martin**  
*General Manager*

---

**VIA EMAIL**

February 27, 2023

Joanna Lessard, Project Manager  
Yuba County Water Agency  
1220 F Street  
Marysville, CA 95901-4740  
Email: [jlessard@yubawater.org](mailto:jlessard@yubawater.org)

**Re: Comments – Notice of Preparation of a Draft Supplemental Environmental Impact Report and Notice of Scoping Meetings for Extension of the Lower Yuba River Accord Water Transfer Program**

Dear Ms. Lessard:

Through its membership with the San Luis & Delta-Mendota Water Authority, the San Luis Water District receives water from the Yuba Accord Water Transfer Program. As you describe, the Yuba Accord provides benefit to the environment and water contractors throughout the State of California. The Yuba Accord water is one of the most reliable sources of water in the State making its extension of the utmost importance.

San Luis Water District appreciates the effort Yuba County Water Agency is making to ensure this water supply remains accessible the environment and water users across the State of California. Please commit this comment letter to the record in response to the Notice of Preparation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lon Martin", with a long horizontal stroke extending to the right.

Lon Martin  
General Manager  
San Luis Water District



February 27, 2023

Sent by email: [jllessard@yubawater.org](mailto:jllessard@yubawater.org)



Ms. JoAnna Lessard, Project Manager  
Yuba County Water Agency  
1220 F Street  
Marysville, California 95901-4740

Re: Notice of Preparation of a Draft Supplemental Environmental Impact Report for  
Extension of the Lower Yuba River Accord Water Transfer Program

Dear Ms. JoAnna Lessard:

The State Water Contractors (SWC) appreciate this opportunity to comment on the CEQA Notice of Preparation (NOP) for the extension of the Lower Yuba River Accord (LYRA) Water Transfer Program. The NOP states that the purpose and objectives of this proposed extension are to continue providing supplemental water for SWP and CVP contractors, to facilitate conjunctive use in the Yuba River watershed, and to generate revenue for the Yuba Water Agency. Therefore, Yuba Water Agency is proposing to extend the agreements comprising the LYRA Water Transfer Program through 2050.

The SWC is an organization representing 27 of the 29 public water entities<sup>1</sup> that hold contracts with the California Department of Water Resources (DWR) for the delivery of State Water Project (SWP) water. Collectively, the SWC members provide a portion of the water supply delivered to approximately 27 million Californians, roughly two-thirds of the State's population, and to over 750,000 acres of irrigated agriculture in the Bay Area, San Joaquin Valley, Central Coast, and Southern California.

The SWC supports the proposed extension of the LYRA Water Transfer Program. The Water Transfer Program is a key element of the LYRA that provides important benefits for fish and wildlife and contributes to water supply reliability statewide. Since its inception in 2008, the Water Transfer Program has allowed our members to secure supplemental water supply across different water year types, especially during droughts. The proposed extension of the Water Transfer Program is essential to continue this successful multi-benefit Program.

#### DIRECTORS

**Craig Wallace**  
President  
Kern County Water Agency

**Robert Cheng**  
Vice President  
Coachella Valley Water  
District

**Laura Hidas**  
Secretary-Treasurer  
Alameda County Water  
District

**Brad Coffey**  
Metropolitan Water District  
of Southern California

**Thomas Pate**  
Solano County Water  
Agency

**Ray Stokes**  
Central Coast Water  
Authority

**Matthew Stone**  
Santa Clarita Valley Water  
Agency

**Peter Thompson, Jr.**  
Palmdale Water District

**Jacob Westra**  
Tulare Lake Basin Water  
Storage District

**General Manager**  
Jennifer Pierre

<sup>1</sup> Alameda County Flood Control & Water Conservation District, Zone 7; Alameda County Water District; Antelope Valley East Kern 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 & Water Conservation District; Oak Flat Water District; Palmdale Water District; San Bernardino Valley Municipal Water District; San Gabriel Valley Municipal Water District; San Geronio Pass Water Agency; San Luis Obispo County Flood Control & Water Conservation District; Santa Clara Valley Water District; Santa Clarita Valley Water Agency; Solano County Water Agency; and Tulare Lake Basin Water Storage District.

Ms. JoAnna Lessard, Project Manager  
February 27, 2023  
Page 2

Thank you for the opportunity to comment on the NOP. The SWC looks forward to working with you and DWR on this proposed extension. If you have any questions or would like to discuss this, please do not hesitate to contact Mr. Chandra Chilmakuri at (916) 562-2583. The Yuba Accord Water Transfer Program has provided important benefits for the SWC members, and we appreciate Yuba Water Agency's efforts to extend the Program.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Pierre". The signature is written in a cursive, flowing style with a large initial "J" and a long, sweeping underline.

Jennifer Pierre  
General Manager



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## State Water Resources Control Board

February 27, 2023

### VIA ELECTRONIC MAIL

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

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)

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](#),<sup>1</sup> 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

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<sup>1</sup> Available at:  
[https://www.waterboards.ca.gov/waterrights/board\\_decisions/adopted\\_orders/orders/2008/wro2008\\_0014corrected.pdf](https://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/orders/2008/wro2008_0014corrected.pdf).

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)

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)<sup>2</sup> 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

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



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)

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 \(2003\)](#)<sup>3</sup> 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

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<sup>3</sup> Available at:

[https://www.waterboards.ca.gov/waterrights/board\\_decisions/adopted\\_orders/decisions/d1600\\_d1649/wrd1644revised.pdf](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](#)<sup>4</sup> (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.<sup>5</sup>) In addition, in 2022, the State Water Board received a [Memorandum of Understanding Advancing a Term Sheet for Voluntary Agreements](#)<sup>6</sup> (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.

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<sup>4</sup> Available at:

[https://waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/docs/sed/sac\\_delta\\_framework\\_070618%20.pdf](https://waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/sed/sac_delta_framework_070618%20.pdf).

<sup>5</sup> Available at:

[https://waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/](https://waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/).

<sup>6</sup> Available at:

[https://waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/proposed\\_voluntary\\_agreements.html](https://waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/proposed_voluntary_agreements.html).



February 27, 2023

JoAnna Lessard, Project Manager  
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Submitted via email: [jlessard@yubawater.org](mailto:jlessard@yubawater.org)

**RE: Notice of Preparation of a Draft Supplemental Environmental Impact Report for the Extension of the Lower Yuba River Accord Water Transfer Program**

Dear Ms. Lessard:

This letter is submitted as the comments of the South Yuba River Citizens League (SYRCL), The Bay Institute, Friends of the River, Trout Unlimited, California Sportfishing Protection Alliance and Northern California Council, Fly Fishers International, regarding Yuba Water Agency's (Yuba Water) January 12, 2023, Notice of Preparation (NOP) of a Draft Supplemental Environmental Impact Report for the Extension of the Lower Yuba River Accord (Yuba Accord) Water Transfer Program (WTP). In addition to reviewing the NOP itself, we also reviewed Corrected Order WR 2008 – 0014, and the 2007 Yuba Accord FEIR upon which the Yuba Accord Extension will rely on during the California Environmental Quality Act (CEQA) process, as well as other relevant documents cited in this comment letter.

**I. Introduction**

Yuba Water is proposing to extend the Yuba Accord WTP through 2050, beyond its current expiration date of December 31, 2025.

SYRCL, Friends of the River, Trout Unlimited and the Bay Institute were involved in the development of the Yuba Accord's Lower Yuba River Fisheries Agreement (Fisheries Agreement) and have participated in its implementation for many years. These organizations were not involved in the development of the WTP and were not signatories to it. They were clear during the entire process that the Yuba Accord did not address Yuba Water's obligations to protect water quality and habitat downstream of the Yuba, and that the other elements of the Yuba Accord would likely need to be modified in the future to be consistent with needed changes in regulatory requirements relating to the ongoing species declines and habitat degradation occurring in the Sacramento River and the San Francisco Bay-Delta estuary.

Before extending the WTP, Yuba Water must consider:

- how extending the WTP will affect ongoing degradation of the Bay-Delta and its Sacramento River watershed, which will only be exacerbated by climate change;
- whether extending the WTP is inconsistent with the pending update of Sacramento River and re-initiation of consultation for the NMFS 2019 Biological Opinion for Chinook salmon;
- how extending the WTP's transfer schedule will affect the ability to improve flow regimes in the Yuba watershed itself to protect and restore salmonids and other native fishes;
- whether the WTP is necessary to achieve Yuba Water's project purposes; and
- evaluating alternatives that may be more environmentally benign and economically efficient than the proposed extension.

## **II. Project Purpose**

Three of the project objectives cited in the NOP require re-examination. First, providing supplemental water for Central Valley Project (CVP) and State Water Project (SWP) contractors may no longer be consistent with necessary and pending new protections for the Bay-Delta estuary, including more stringent controls on Delta export pumping (*see IV, below*). Second, the stated project purpose of providing environmental benefits in the Delta through the Environmental Water Account (EWA) or equivalent has not been achieved and may no longer be viable (*see VI, below*). Third, Yuba Water could potentially generate revenue for its projects, no matter how laudable these projects may be, using different mechanisms (*see VII, below*).

## **III. Appropriate Level of CEQA Review**

The proposed WTP necessitates a new review under CEQA, due to the extension of the program beyond its original project timeline end date of December 31, 2025. The NOP proposes to prepare a supplemental environmental impact report (SEIR) to satisfy the requirements of CEQA. The NOP states that there will be no substantial changes to the WTP. The supplemental environmental review will cover the proposed extension of the project to 2050.

CEQA guidelines<sup>1</sup> require a subsequent EIR for certified program and project-level EIRs if the following conditions exist:

- a. Substantial changes with respect to the circumstances requiring major revisions due to involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
- b. New information of substantial importance which was not known and could not have been known with the exercise of reasonable diligence at the time of preparation of the EIR, becomes available. Such information must show either: the project will have one or more significant effects not discussed in the previous EIR; significant effects previously examined will be substantially more severe; mitigation measures or alternatives previously found to be infeasible would in fact be feasible and would substantially reduce

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<sup>1</sup> CEQA Guidelines Section 15162

one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

Based on the above guidelines for issuing a new EIR and changed conditions since 2007, it appears that a new EIR (rather than a SEIR) is required for the proposed WTP extension. The potential effects of extending the WTP will be substantially more severe with regards to deteriorating conditions for endangered species and critical habitat areas downstream in the Sacramento River watershed and the Bay-Delta estuary (see IV below), as well as in the Yuba River itself (see V below). There are also pending changes to regulatory requirements in the Delta (especially, pending litigation and the re-initiation of consultation for the 2019 NMFS Biological Opinion, and the in-progress update of the Bay-Delta Water Quality Control Plan and subsequent water rights proceedings). In any case, it is unlikely that Yuba Water will be able to complete a new EIR or a new SEIR in a timeframe commensurate with the timeline for ratification of the proposed project.

The 2007 EIR was certified despite the lack of a complete Endangered Species Act (ESA) consultation by the U.S. Bureau of Reclamation (USBR) related to pelagic fish in the Delta at the time. In a 2005 lawsuit, the Natural Resources Defense Council (NRDC) alleged that USBR and the U.S. Fish and Wildlife Service (USFWS) “acted unlawfully by renewing and implementing and approving of the renewal and implementation of certain long-term water contracts in reliance on a 2005 Biological Opinion issued pursuant to the Endangered Species Act (ESA) the agencies knew, or should have known, was inadequate to protect the ESA-listed delta smelt.”<sup>2</sup> Due to interim remedies ordered in *NRDC v. Kempthorne*, USBR delayed completion of its ESA compliance for the Proposed Project/Action, and opted to wait to complete its Record of Decision (ROD) until the ESA re-consultations for Operating Criteria and Procedures (OCAP) were completed.<sup>3</sup>

Despite the ongoing ESA consultation in 2007, Yuba Water moved forward with implementing the Water Purchase Agreement between Yuba Water and the Department of Water Resources (DWR), without USBR as a party to the agreement. Yuba Water also made no changes to its FEIS/FEIR following interim remedy orders outlined in *NRDC v. Kempthorne*, contending that any changes made to USFWS Biological Opinion the project would not result in any new significant environmental impacts not already analyzed.

In 2008, USFWS issued a new OCAP Biological Opinion (BiOp) for pelagic Delta fish species. In 2009, the National Marine Fisheries Service (NMFS) issued a new OCAP BiOp for salmonids and green sturgeon. Those BiOps had effect until 2019, when they were superseded by BiOps for the “long-term operation” of the CVP and SWP. In 2021, DWR and USBR reinitiated consultation with USFWS and NMFS; new BiOps are expected in 2023.

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<sup>2</sup> *Natural Res. Def. Council v. Kempthorne*, Case No. 1:05-cv-01207 LJO-GSA (E.D. Cal. Jun. 15, 2015)

<sup>3</sup> Final EIR/EIS Proposed Lower Yuba River Accord, Chapter 5, p. 3

Yuba Water's new CEQA document will have to consider this changing regulatory setting. In particular, the 2019 BiOps expanded the Delta export and transfer "window" to include October and November, as well as July, August, and September. That expansion is likely, but not certain, to remain in the new BiOps.

#### **IV. Bay-Delta Fish Declines, Habitat Degradation, and WTP-related Delta Exports**

Pursuant to Yuba Water's purchase agreement with DWR, Yuba Water transfers up to 200,000 AF of water annually to DWR. In the first 8 years of the agreement, approved recipients of part of the annual transfer also included the EWA or other water supply reliability projects.

Water released into Englebright Reservoir for transfer to the Yuba River would then flow to the Feather River, Sacramento and finally the Delta. Water transferred to the Delta was intended to be available either for water quality and salinity control, or to export within the SWP or CVP service areas. The additional surface water released from New Bullards Bar Reservoir is made available for purchase by DWR through increasing groundwater pumping by Yuba Water member irrigators.

The 2007 DEIR noted several significant mitigable effects of the Project, including 1) a change in groundwater pumping that could impact local groundwater users in the Yuba Region; 2) a change in salinity and chloride concentrations that could degrade water quality conditions in the Delta; and 3) a change in reservoir refilling that could impact water quality in the Delta or in the export service areas south of the Delta. Corrected Order 2008-20014 required that mitigation measures be incorporated into the project to reduce the impact to a less than significant level, as well as requires monitoring and reporting of compliance.<sup>4</sup>

Environmental conditions in the Bay-Delta are substantially worse than they were in 2007, due in large part to hydrologic alteration, *i.e.*, the reduction in volume and change in timing of freshwater flows. The State Water Resources Control Board (SWRCB) has repeatedly determined that the existing flow requirements in the Bay-Delta are inadequate. The Bay-Delta Water Quality Control Plan and Water Rights Decision 1641 (D-1641), which implements the plan, fail to adequately protect fish and wildlife beneficial uses and the Public Trust. They are insufficient to prevent decline and extinction of native fish and wildlife in the estuary.

The SWRCB made explicit findings in 2010 (SWRCB, *Development of Flow Criteria for the Sacramento-San Joaquin Delta*) and 2017 (SWRCB, *Scientific Basis Report in Support of New and Modified Requirements for Inflows from the Sacramento River and its Tributaries and Eastside Tributaries to the Delta, Delta Outflows, Cold Water Habitat, and Interior Delta Flows*). These findings included the inadequacy of existing criteria controlling Delta export pumping and its effects on in-Delta hydrodynamics and fish habitat. In recent years, populations of numerous native flow-dependent estuarine fish species experienced record or near record low levels, and entire year classes of endangered Chinook salmon have been decimated. This situation is only exacerbated by climate change.

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<sup>4</sup> Corrected Order 2008-20014, p. 48-49

According to California’s Fourth Climate Change Assessment, the Delta is particularly vulnerable to several impacts including infrastructure collapse due to earthquakes, increased contamination, saltwater intrusion from sea-level rise, flooding due to extreme weather events, and water temperature disturbances that impact native fish species. The assessment also finds that “under current emissions trajectories, 82 percent of native fishes have an increased probability of becoming extinct by 2100 (Moyle et al., 2013). Many of these species, including iconic salmon and steelhead trout, are already at risk and listed as species of special concern or endangered, even without climate change impacts. (Quiñones & Moyle, 2015).”<sup>5</sup>

Further, the Delta Stewardship Council’s 2022 End of Year Review found that water quality in the Delta is declining. Continued drought conditions in 2022 reduced freshwater entering the Delta allowing salinity levels to increase. The impacts and threats of Harmful Algal Blooms are becoming more frequent and severe.<sup>6</sup>

Put simply, the Bay-Delta estuary is an incredibly important ecosystem that is increasingly susceptible to ongoing impacts of altered freshwater flow and the growing impacts of climate change. In this light, the impacts of Delta exports associated with the extension of the WTP will be far more damaging today than they were in 2007.

## **V. Yuba Accord Flow Schedule and FERC Relicensing**

The WTP was developed to be implemented consistent with the Yuba Accord’s flow schedule as described in the Fisheries Agreement.

The Fisheries Agreement sets minimum instream flows in the lower Yuba River, providing different guidance above Daguerre Point Dam (Smartsville gauge) and below Daguerre Point Dam (Marysville gauge). The stated purposes of the Fisheries Agreement included fisheries enhancement and protection and ensuring that water transfers occur in an environmentally sound manner. The implementation of the environmental flows in the Fisheries Agreement are intrinsically linked to how Yuba Water manages and operates its facilities. Extending the WTP means that flows in the Yuba River will continue to be managed as much to implement the WTP as to implement the Fisheries Agreement. The NOP says that a new CEQA document will not directly address the flow schedule in the Fisheries Agreement. However, extending the WTP may constrain opportunities to modify flow requirements in the lower Yuba River. Additional constraints on Yuba flow management are of particular concern given the continued decline in the condition of Yuba fish populations, even under the Fisheries Agreement and the historic pattern of Fisheries Agreement flow requirements being waved in dry years.

In 2010, Yuba Water began relicensing its hydroelectric project, Yuba River Development Project (YRDP) in a proceeding before the Federal Energy Regulatory Commission (FERC). The Yuba Accord Fisheries Agreement explicitly contemplated re-evaluating lower Yuba River flows in relicensing. New flows in the FERC license will supersede the flows in the Fisheries Agreement. If the new FERC license (including any required in a Clean Water Act Section 401 water quality certification for the new license) substantially increases flow requirements in the

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<sup>5</sup> [California’s Fourth Climate Change Assessment](#)

<sup>6</sup> [Year in Review - 2022 Performance Measures | Delta Stewardship Council \(ca.gov\)](#)



lower Yuba River, Yuba Water may need to perform additional evaluations. These may include water reliably available to the WTP and changes in carryover storage targets in New Bullards Bar Reservoir. Yuba Water may also need to re-evaluate related additional impacts, such as impacts to local water supply and groundwater. An alternatives matrix that treats these elements as variables may be the most efficient way to set up these evaluations.

## **VI. Water Delivery Contracts with DWR and other Partners**

The Water Purchase Agreement executed in December 2007 between Yuba Water and DWR established the terms and conditions under which Yuba Water and its local irrigation districts/mutual water companies will provide water supplies for DWR and USBR, including water for water supply reliability purposes.

The agreement provides for DWR to pay for 8 years of transfers to the EWA Program and for certain dry-year supplies for SWP and CVP contractors until 2025.<sup>7</sup> Specifically, the components of the agreement are as follows:

- a. Component 1 – For the first 8 years of the agreement, DWR will purchase 60,000 AF to be used for the EWA.
- b. Component 2 – Yuba Water will provide DWR 15,000 AF of water in any dry year and 30,000 AF of water in any critical year.
- c. Component 3 – Under certain SWP and CVP delivery allocation scenarios, Yuba Water will make available for sale a total of 40,000 AF to DWR.
- d. Component 4 – In all water year types, Yuba Water will inform DWR of the quantity of any additional transfer water available from surface and groundwater supplies. DWR will then notify YCWA if DWR will opt to take delivery of any or all Component 4 water.

The 2007 EIS/EIR evaluated water sales to DWR through the EWA as an environmental benefit.<sup>8</sup> It also evaluated the EWA as fulfilling a project purpose for DWR and providing Delta inflows that served a mitigation or enhancement function in the Delta.<sup>9</sup> There is no substantial evidence that water sales through the WTP performed its purported Delta mitigation or environmental enhancement function. There is at present also no clear functional successor to the EWA. Therefore, it appears to be necessary to issue a new EIS/EIR that both removes Delta mitigation or enhancement as project purpose and that deletes the analysis that considers the WTP as performing Delta mitigation or enhancement.

The NOP proposes to add water sales to the East Bay Municipal Utility District (EBMUD) and to Contra Costa Water District (CCWD) as part of the proposed project. As a general matter, water sales to EBMUD and CCWD have fewer impacts on Delta fisheries than water sales that

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<sup>7</sup> Corrected Order WR 2008-0014, p. 9

<sup>8</sup> See Yuba Accord 2007 DEIS/DEIR, p. ES-4. The DEIS/DEIR with additions was adopted as the FEIS/FEIR.

<sup>9</sup> *Id.*

must be executed using the Delta pumps. The new CEQA document should analyze deliveries of different amounts or percentages of WTP water to CVP and SWP Delta pumps and to other destinations. Setting these as CEQA alternatives and evaluating the associated impacts would provide a clear analytical framework.

Climate change is leaving California extremely vulnerable to extreme weather patterns and presents significant challenges when it comes to planning for and managing future water supply. As purchase agreements are considered pursuant to the Yuba Accord extension, we recommend that contracted water amounts not establish acre-foot per year allocations but rather set up a conditional schedule based on operational constraints and annual hydrology. This modification in water purchase agreements would allow for flexibility in a changing and unpredictable climate.

Further, purchase agreements should be reviewed annually or on a regularly scheduled basis to ensure that contractually obligated water allocations are not outpacing the water reality in California. We recommend a process be put in place that allows for water purchase agreements to be modified or cut back if any given water year circumstances necessitate doing so. We believe that this can be done with public need, economic efficiency, and environmental sustainability in mind.

## **VII. Project Alternatives**

As outlined in the 2023 NOP, the Supplemental EIR will describe existing conditions and evaluate the potential for significant environmental effects of the WTP Extension and appropriate alternatives, including a No Project alternative.

The 2007 Yuba Accord DEIR described and evaluated the Proposed Project and alternatives as follows: 1) Yuba Accord Alternative (Proposed Project/Action Alternative); 2) Modified Flow Alternative; 3) No Project Alternative and 3) No Action Alternative.<sup>10</sup> CEQA and NEPA require an analysis of a “No Project” alternative and a “No Action” alternative, respectively.<sup>11</sup> CEQA guidelines state that “the ‘no project’ analysis shall discuss the existing *conditions at the time the notice of preparation is published*, or if no notice of preparation is published, at the time environmental analysis is commenced, as well as what would be reasonably expected to occur in the *foreseeable future* if the project were not approved, based on current plans and consistent with available infrastructure and community services.”<sup>12</sup>

The 2007 Yuba Accord DEIR outlines environmental conditions and potential operational and environmental conditions that may occur in the near-term foreseeable future (2007 through 2025) if the Proposed Project/Action or other alternative were not implemented. Yuba Water explains that the two primary differences between the Existing Condition and the No Project Alternative are as follows:

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<sup>10</sup> Draft EIR-EIS for the Proposed Accord, Chapter 3-Proposed Project Action and Alternatives, p.1

<sup>11</sup> CEQA Guidelines Section 15126.6

<sup>12</sup> CEQA Guidelines Section 15126.6 (e)(2)

- a. “The instream flow schedules would be the RD-1644 Long-term requirements rather than the RD-1644 Interim requirements.
- b. The Wheatland Canal would be operational, increasing diversions at Daguerre Point Dam by approximately 40 TAF, thereby increasing in-lieu groundwater recharge in Yuba County by a similar volume.
- c. These two differences would affect the ability of YCWA to continue to transfer stored surface water and therefore to generate a revenue stream for continued investment in flood control and water supply projects.”<sup>13</sup>

It may be that a No Project/No Action alternative would significantly alter the ability of Yuba Water to deliver water and generate revenue. However, proceeding with the proposed WTP extension will not necessarily provide the anticipated benefits, given greatly changed circumstances and the prospect of even more drastic climate change impacts on the ability to transfer water. As noted above, the last analysis of project alternatives was completed for the years 2007 – 2025.

Therefore, according to CEQA/NEPA guidelines, it is incumbent upon Yuba Water to analyze a full range of project alternatives as it considers the Yuba Accord Extension, particularly due to the drastic change in conditions both in the present and into the “foreseeable future,” which in this case would be through the year 2050. We have suggested some specific potential alternatives or series of alternatives above. In addition, the alternatives analysis should consider not only modifications to the WTP transfer schedules and related actions, but also alternatives to generate revenue for Yuba Water that do not involve water transfers using CVP and SWP Delta pumps.

## **Closing**

In summary, we strongly recommend that if Yuba Water proceeds with the proposed extension of the WTP, it must:

- 1) produce a new EIR that fully accounts for the numerous changes that have occurred since the 2007 EIR was first certified and extends the analysis into projected 2050 conditions;
- 2) consider project impacts to the Bay-Delta estuary;
- 3) evaluate how significant pending changes to WQCP and ESA requirements will impact Yuba Water’s ability to deliver environmental flows while meeting obligations to DWR and Yuba Water member units;
- 4) evaluate the WTP under different flow requirements that may reasonably result from the FERC relicensing of the YRDP;
- 5) ensure water delivery contracts are flexible to account for water year conditions and are reviewed consistently; and

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<sup>13</sup> Draft EIR-EIS for the Proposed Accord, Chapter 3-Proposed Project Action and Alternatives, p. 29

- 6) carefully consider project alternatives incorporating analysis through year 2050, including a No Project/No Action alternative as required by CEQA/NEPA.

Thank you for the opportunity to provide comments on the Notice of Preparation of a Draft Supplemental Environmental Impact Report for the Extension of the Lower Yuba River Accord Water Transfer Program. We look forward to continued participation in this process. If you have any questions regarding our comments, please do not hesitate to contact us.

Respectfully submitted,



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## Westlands Water District

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February 27, 2023

By Electronic Mail

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Subject: Notice of Preparation of a Draft Supplemental Environmental Impact Report and Notice of Scoping Meetings for Extension of the Lower Yuba River Accord Water Transfer Program

Ms. Lessard,

On behalf of Westlands Water District, I write to express the District's support for Yuba Water Agency's proposed extension of the Lower Yuba River Accord Water Transfer Program.

The Yuba Accord Water Transfer Program is a key element of the Lower Yuba River Accord, a model settlement agreement that provides important benefits for fish and wildlife and contributes to water supply reliability statewide. The Water Transfer Program provides a proven mechanism for the District to secure an important source of reliable water supply across different water year types, while the revenues generated by the Program help support Yuba Water's mission areas of sustainable water management, flood risk reduction and environmental stewardship.

The Yuba Accord Water Transfer Program has provided important benefits for the District, and it appreciates Yuba Water Agency's efforts to extend the Program.

Sincerely,

Jose Gutierrez  
Interim General Manager