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FAX / COVER LETTER

DATE: October 11, 2002
TO: KATHY MROWKA, SWRCB
FROM: Daniel F. Gallery
SUBJECT: **Comments of Yuba City on Sept. 23, 2002 Draft Order on Petitions of
OWID and YCWD**

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KATHY: Yuba City's Comments on the Draft Order were mailed in the noon mail, but I am faxing herewith a copy of those Comments for your use and such distribution as you think appropriate.

I also just faxed a copy directly to Mr. Baggett at 341-5621.

Dan Gallery

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October 11, 2002

Arthur Baggett, Jr., Chairman
State Water Resources Control Board
State of California
Post Office Box 2000
Sacramento, CA 95812-2000

**Re: COMMENTS on behalf of Yuba City on September 23, 2002 Draft
Order of SWRCB insofar as it relates to Petition of Yuba County Water
District (YCWD) to add use of water by Yuba City to Permit 11518**

Dear Chairman Baggett:

The City of Yuba City continues to join in the request of Oroville-Wyandotte Irrigation District that the proposed Order be held in abeyance and that the parties be given an opportunity to meet with Staff to discuss some areas of concern and uncertainty in the Draft Order. However, in response to your October 9, 2002 letter to Mr. Jeff Meith, Yuba City submits the following comments on the Board's draft Order WRO 2002.

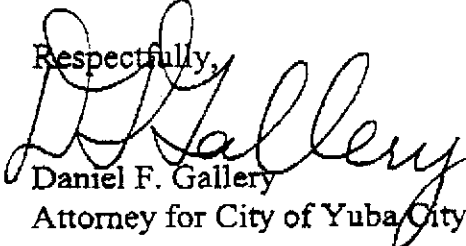
1. Condition 2 of the draft Order – adding Yuba City's point of diversion and place of use to Permit 11518.

Condition 2 requires the preparation and Board approval of operation plans to establish that direct diversion water and/or stored water releases are present when Yuba City is diverting water under Permit 11518. The Permits for the South Fork Project provide for the direct diversion of water and for the storage of water at Little Grass Valley Reservoir and at Lost Creek Reservoir to be used both for consumptive uses and for the generation of hydroelectric power. OWID and YCWD for example jointly own the Permit on Application 13676 for the direct diversion and storage of water for hydroelectric generation, and also Permit 11518 (Application 14113) to use the same water for consumptive purposes. Under OWID's agreement with PG&E, large amounts of water are used every year under the hydro Permit for the generation of hydroelectric

power, far in excess of the consumptive uses of OWID and YCWD. A large part of that water flows into the Feather River below Kelly Ridge Power House thence into the Feather River.

Yuba City assumes that the water that is available under the hydroelectric permits is water that can be shown to be available to Yuba City under such required operation plans for use consumptive use by Yuba City, inasmuch as the use of the water for hydroelectric generation does not remove it from the system, and it is at the same time available for consumptive use. But so there is no uncertainty about that, Yuba City requests that that be made clear in the proposed Order. If the intent of the Order is that the water re-diverted by Yuba City must be available under the Permit *over and above or in addition to* the water being used to generate hydro under the Hydro permits, Yuba City believes that it would be difficult and perhaps impossible to comply with the requirement, and that such requirement would in any event be contrary to law, and particularly Water Code Section 1202(d).

2. Clarification of draft Order regarding diversions by Yuba City under direct diversions, re-diversions of storage, and the City's diversions under its own existing water rights. Yuba City joint in and supports the request of the Yuba County Water District for revisions to the language on pages 15, 30 and 31 of the draft Order to clarify and distinguish the applicability of the requirements in ordering paragraph 2 to direct diversions and re-diversions of water by Yuba City under Permit 11518, and to diversions by Yuba City under its own existing Permits. The corrections are shown by handwritten correction on pages 15, 30 and 31 attached hereto, and are the same corrections that have been requested by Yuba County Water District.

Respectfully,

Daniel F. Gallery
Attorney for City of Yuba City

Cc: Peter S. Silva
Richard Katz
Gary Carlton
David Beringer
See Service List attached
Mr. Bill Lewis, City of Yuba City

Service List

Yuba County Water District
c/o Mr. Alan B. Lilly
Bartkiewicz, Kronick & Shanahan
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Sacramento, CA 95816

Droville-Wyandotte Irrigation District
/o Mr. William H. Baber III
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Mr. Dale Storey
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California Sportfishing Protection Alliance
Mr. Jerry Mensch
553 Stonehaven Drive
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Yuba County Water District
Mr. Dennis Parker
P. O. Box 299
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Greg Crompton, Chairman
Dobbins/Oregon House Action Committee
P. O. Box 703
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Dobbins/Oregon House Fire Protection District
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beneficially used under Permits 1267, 1268, 1271 and 2492. The permittees shall submit new engineered drawings for Permits 11516 and 11518 if the maps on file do not accurately reflect the as-built project(s), including points of diversion, rediversion, and diversion to offstream storage, conveyance facilities, and place of use (service area). The permittees shall document compliance with all permit conditions during the licensing perfection period.

The permittees shall furnish the water diversion and use records and the engineered maps (if necessary) within 180 days of the date the partial time extension is denied or deemed denied. If the required information, including permit compliance information, is not submitted in a timely manner, the Chief, Division of Water Rights is delegated authority to revoke any permit elements for which the required information is not submitted.

2. The petition to add Yuba City to the place of use under Permit 11518 and to add a point of diversion and rediversion on the Feather River is approved, subject to the following conditions:

No water shall be ^{directly} diverted for consumptive use from the Feather River at Yuba City ^{under Permit 11518} until the permittee submits a direct diversion operations plan to the Chief, Division of Water Rights (Division Chief) and the Division Chief approves the plan. The operations plan must identify the following: (1) the quantity of natural and abandoned flow at the Lost Creek and South Fork Feather River points of diversion when Yuba City is diverting water; and (2) the quantity of natural and abandoned flow diverted by the permittees under Permits 1267, 1268, 1271, 2492, 11516, and 11518 at the Lost Creek and South Fork Feather River points of diversion to serve the permittees' place of use when Yuba City is diverting water. The plan must demonstrate that the ^{direct} diversion at Yuba City ^{under Permit 11518} is always less than or equal to the quantity of natural and abandoned flow (1, above) minus the quantity diverted (2, above). All quantities shall be calculated after deducting from the quantity of natural and abandoned flows any bypass flows required now or in the future.

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under Permit 11518

No water shall be rediverted for consumptive use from the Feather River at Yuba City until the permittee submits a reservoir operations plan to the Division Chief and the Division Chief approves the plan. The plan must identify the following: (1) the reservoir(s) that will be used to serve Yuba City; (2) the dates when reservoir releases will be made and the daily release rate (in cfs); and (3) a means for metering diversions at Yuba City. If releases will vary on a seasonal basis, all release rates must be specified. If reservoir releases are modified, the reservoir operations plan shall be updated and the revised reservoir operations plan is subject to approval of the Chief, Division of Water Rights.

If YCWD is responsible for the rediversion of water from the Feather River at Yuba City, the reservoir operations plan shall also identify the basis of YCWD's right to control such rediversions. Accordingly, no water shall be rediverted from the Feather River at Yuba City until the following actions are taken: (1) OWID and YCWD execute an agreement establishing sufficient control by YCWD over reservoir operations for the rediversion of water at Yuba City; (2) OWID and YCWD provide a copy of the agreement to the Division Chief; and (3) the Division Chief advises the co-permittees in writing that the agreement provides YCWD with the necessary operational control.

The permittee must separately report daily diversions at Yuba City on the Progress Reports by Permittee for Permit 11518 (and any subsequent license issued pursuant to Permit 11518).

3. The petitions to add municipal and industrial purposes of use under Permits 1267, 1268, 1271, 2492, 11516, and 11518 are approved subject to the permittee's submission of a water conservation plan that meets the requirements for an urban water management plan under Water Code section 10620 et seq. and that is acceptable to the Chief, Division of Water Rights (Division Chief). YCWD shall submit a water conservation plan for use under Permit 11518. OWID shall submit a water conservation plan for use under Permits 1267, 1268, 1271, 2492, and 11516. In addition, the water conservation plans submitted by OWID shall evaluate and address ditch conveyance losses. No water shall be diverted for municipal and industrial purposes until the Division Chief accepts the plan.

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not have the infrastructure to use the 4,500 af of water after the water is delivered to the Kelly Ridge Power Plant and thence to the Feather River. (R.T. 106:20 – 107:1.) Moreover, OWID does not need the water that is currently sold to Yuba City, never anticipated using the water, and is not deprived by delivery of water to the city. (R.T. 107:2-6; 109:2-10; 111:9-15.) In its closing brief, OWID withdrew its 1983 protest to YCWD's change petition. (OWID Closing Brief, p. 5.) There are no other protests raising the issue of injury to a legal user of water. The SWRCB finds that no legal user of water will be injured by the proposed change.

5.1.3.3 Initiation of New Right

YCWD's petition seeks, in part, to add points of diversion and rediversion from the Feather River at Yuba City. The Feather River is not identified as a source under Permit 11518 and to ensure that the addition of a point of diversion would not effectively initiate a new right, this Order contains a condition requiring the permittee to demonstrate that the SWRCB's approval of the change will not result in a net increase in diversion. The permittee must demonstrate that the natural and abandoned flow at the Lost Creek or South Fork Feather River points of diversion for Permit 11518 is sufficient to cover both existing direct diversions by the co-permittees and the new ^{direct} diversion at Yuba City under Permit 11518.

The Feather River may be added as a point of rediversion for water stored and released under Permit 11518. In order for the diversion of water at Yuba City to be considered a point of rediversion under Permit 11518, the water must originate in one of the storage facilities authorized under the permit, be released from storage, and then be rediverted at Yuba City. To ensure that the reservoir releases are coordinated with the rediversion at Yuba City, YCWD must submit a reservoir operations plan that, at a minimum, identifies the reservoir(s) that will be used to serve Yuba City, specifies the dates when reservoir releases will be made to serve Yuba City and the rate (in cubic feet per second (cfs)) that water will be released from storage for subsequent rediversion at Yuba City, and includes a provision for measuring diversions at Yuba City. If releases will vary on a seasonal basis, all release rates must be specified. The reservoir operations plan shall be subject to the review, modification, and approval of the Chief, Division of Water Rights. The plan shall be updated whenever there is a modification in the reservoir