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August 19, 2011

Department of Fish and Game
Ecosystem Conservation Division
Water Branch
Attn: David Zezulak, ERP Manager
830 S Street
Sacramento, CA 95811

**RE: Ecosystem Restoration Program, Conservation Strategy for Restoration of the Delta –
Comment Letter**

Dear Mr. Zezulak:

This office represents Brophy Water District and Hallwood Irrigation Company, which divert water from the Yuba River. We have reviewed the above-referenced document and would like to offer corrections on some of its contents.

On pages 100, 101, 136, 248, and 255, the document makes various references to the Hallwood-Cordua and Brophy-South Yuba diversion structures on the Yuba River. With respect to the Hallwood-Cordua diversion, the document claims that this diversion does not meet current DFG or NMFS screening criteria, its fish bypass needs to be improved, and that this “unscreened diversion” results in significant take of juvenile steelhead and Chinook salmon every year. To the contrary, the Hallwood-Cordua diversion *is* screened with a flat-plate stainless steel screen that has been inspected and approved by both DFG and NMFS. In fact, NMFS inspects the screen’s operation every year, and gives the screen a passing grade each year. The screen’s bypass channel, while long, has also been inspected and approved by both agencies.

With respect to the Brophy-South Yuba diversion, the document, similar to the Hallwood-Cordua diversion, claims that this diversion does not meet current DFG or NMFS screening criteria, its fish bypass needs to be improved, and that this “unscreened diversion” results in significant take of juvenile steelhead and Chinook salmon every year. The document adds that this diversion utilizes a rock levee that “has been shown to be permeable to small fish even when the diversion is not operating.” The document cites no studies or other basis for these statements.

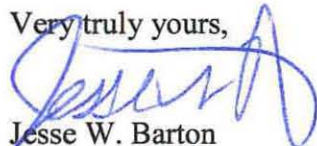
The reason for this is that there are no studies to support this statement. The rock levee incorporates a woven screen that creates an effective barrier against juvenile salmonids from passing through the levee. While the screen does not meet DFG and NMFS narrowly defined screening criteria, this does not mean it is not an effective barrier. To support this statement, please find attached to this letter a stipulated judgment among Brophy, South Yuba and the Department of Fish and Game. Under this judgment, DFG agreed that the Brophy-South Yuba

diversion “will adequately mitigate: (a) any adverse fishlife [sic] impacts on downstream migrant salmon and steelhead in the Yuba River that might result from such river’s diversion facilities...”

Since entering into this stipulated judgment, there have been no studies that support the statement that “significant numbers of juvenile steelhead are entrained and lost” or that “significant numbers of juvenile Chinook salmon are entrained.”

We would appreciate you making the necessary corrections in the final Conservation Strategy for Restoration of the Delta that we have outlined in this letter. If you have any questions, please let me know.

Very truly yours,



Jesse W. Barton

Enc. (1)

cc. Brophy Board of Directors
Hallwood Board of Directors

FILE 10-
D.F.S. v. South Yuba

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Water District

FILED

MAR 30 1984

FRANCES J. FAHEY, CLERK
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF YUBA

CALIFORNIA DEPARTMENT OF FISH AND GAME,

Petitioner,

vs.

SOUTH YUBA WATER DISTRICT AND
BROPHY WATER DISTRICT,

Respondents.

NO. 36092
STIPULATED JUDGMENT

Based: upon the stipulations of the DEPARTMENT OF FISH AND GAME (DFG), SOUTH YUBA WATER DISTRICT (South Yuba) and BROPHY WATER DISTRICT (Brophy) in this matter, the motions of South Yuba and Brophy, and the Court's own consideration of the stipulations; and based upon the documents filed herein and the presentations and evidence presented in open Court, this Court enters the following Judgment:

1 1. The projects of the Brophy Water District and the
2 South Yuba Water District are for the diversion and withdrawal of
3 water from the Yuba Goldfields and from the Yuba River, in Yuba
4 County, California, for delivery to the service areas of said
5 Districts, and said projects are shown and described in Exhibits
6 B-1 and C (South Yuba's Project) and in Exhibits B, and B-1
7 through B-7 (Brophy's Project). South Yuba's project includes
8 the possible later construction and use of the facilities
9 described as the "river diversion works" (Exhibit D).

10 2. The Court has received a dismissal without prejudice
11 filed by DFG as to all issues in the subject litigation except
12 for the following issue of law and fact:

13 a. Does the project of South Yuba have any significant
14 impact upon fish or wildlife resources.

15 b. Does the project of Brophy have any significant
16 impact upon fish or wildlife resources.

17 c. Have Brophy and South Yuba respectively, through
18 their Environmental Impact assessments, Negative
19 Declarations and Notices of Determination, complied with
20 CEQA in regard to impacts upon fish and wildlife resources.

21 3. The Court finds, based upon the stipulations of the
22 parties and the evidence and presentations made, that:

23 a. On August 11, 1982, Brophy filed its Notice of
24 Determination for the approval of its project to withdraw
25 and divert water from the Yuba Goldfields, for use within
26 Brophy Water District. A copy thereof is attached hereto as
27 Exhibit E.
28

1 b. On November 22, 1982, Brophy filed its Notice of
2 Determination for its project referred to as a Distribution
3 System for Brophy Water District Improvement District No. 1,
4 a copy of which is attached hereto as Exhibit F.

5 c. On September 28, 1983, Brophy filed its Notice of
6 Determination for its project referred to as Brophy Main
7 Canal - Southern Section, a copy of which is attached hereto
8 as Exhibit G.

9 d. On November 10, 1983, South Yuba Water District filed
10 its Notice of Determination for its project for the
11 construction and operation of the South Yuba Water District
12 Distribution System, a copy of which notice is attached
13 hereto as Exhibit H.

14 4. The aforesaid respective projects of Brophy Water
15 District and of the South Yuba Water District for the diversion
16 and withdrawal of water from the Yuba Goldfields and the Yuba
17 River (including the facilities referred to as the river
18 diversion facilities), and the delivery of such waters to the
19 Districts' respective service areas, when constructed
20 substantially in accordance with the project descriptions above
21 set forth or referred to, including the standards and the
22 mitigation measures therein described, will adequately mitigate
23 (a.) any adverse fishlife impacts on downstream migrant salmo
24 and steelhead in the Yuba River that might result from such river
25 diversion facilities; (b.) any fish or wildlife impacts that ma
26 otherwise result from taking water from the Yuba River (prior t
27 the construction of a river diversion facility); and (c.) i
28 either event, any impacts on fish and wildlife from taking water

1 through and from the Yuba Gold Fields and from conveying and
2 delivering such waters to the service areas of the respective
3 Districts, through their respective projects.

4 5. In all respects with regard to impacts on fish and
5 wildlife resources, Brophy and South Yuba have each complied with
6 the requirements of the California Environmental Quality Act
7 (Sections 21000 - 21176 of the Public Resources Code), and the
8 applicable Guidelines, for the planning and construction of their
9 respective projects for the diversion and withdrawal of water
10 from the Yuba Goldfields and the Yuba River, and the conveyance
11 and delivery of such waters to the lands within the respective
12 Districts. The Court makes no judgment as to the applicability
13 of CEQA to the river diversion facilities which may hereafter be
14 constructed.

15 8. The Alternative and Peremptory Writs of Mandate re-
16 quested by the Department of Fish and Game are denied. Each
17 party shall bear its own costs and attorney's fees in this
18 action.

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21 Dated: March 20, 1984.

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25 JUDGE OF THE SUPERIOR COURT

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The foregoing Judgment is stipulated and agreed to.

STATE OF CALIFORNIA,
DEPARTMENT OF FISH AND GAME

By Ad. W. Carpenter

MAR 9 1984

and by Dennis Smaage
Its Attorney

SOUTH YUBA WATER DISTRICT

By Michael E. King
President

and by Robert J. ...
Its Attorney

BROPHY WATER DISTRICT

By Gene Dinocchio
President

and by David G. ...
Its Attorney

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Ecosystem Conservation Division
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Water Branch
Dept. of Fish and Game

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