

### **Testimony of Thomas R. Johnson**

1. Good morning, my name is Tom Johnson. A copy of my resume, which accurately describes my education and work experience, is exhibit YCWA-6. As discussed in that exhibit, I was the Assistant Manager for Project Development for the Yuba County Water Agency (“YCWA”) from February 2003 through June 2004, and I presently work as a consultant and project manager for the Agency.
2. I would like to start with some background on the proposed Lower Yuba River Accord (the “Yuba Accord”). While a decision on the Yuba Accord is not before this Board in this hearing, I will briefly discuss the Yuba Accord in this testimony because the decisions that are before the Board regarding the proposed 2006 Pilot Program and YCWA’s request to change the effective date for implementation of the RD-1644 Long Term instream-flow requirements are directly related to the Yuba Accord.
3. The Yuba Accord represents a proposed collaborative settlement agreement that resulted from a long and detailed process to develop a set of instream flow schedules that would address the biological needs of the Lower Yuba River while considering available water supplies and operational constraints.
4. I personally attended over two years of frequent technical team meetings at which the participants worked diligently to communicate their interests in, and perspectives on, Lower Yuba River fisheries issues, and worked collaboratively to develop a flow regime for the Lower Yuba River that would both maintain or improve the conditions for various fish species in the river and respect the physical and operational constraints on the river. Participants in those technical team meetings were biologists from CDFG, USFWS, NMFS, YCWA and a group of non-governmental organizations (“NGO’s”), and, as necessary, operations and modeling experts. Those biologists are knowledgeable of recent studies and current conditions on the Lower Yuba.
5. After the initial development of the biological framework of the proposed Lower Yuba River flow schedules and monitoring requirements by the technical team, I personally attended an additional year and a half of frequent meetings and discussions wherein a group of attorneys and negotiators representing the various parties interested in Lower Yuba River flows worked to develop the comprehensive proposed Lower Yuba River Fisheries Agreement. This proposed Lower Yuba River Fisheries Agreement fully integrates the biology-based flow regime developed by the technical team, and includes additional benefits including a framework for communication and shared management decisions for the Lower Yuba River. Much of the effort in developing the Fisheries Agreement was dedicated to finding common incentives for performance, and robust and flexible but solid provisions to ensure conformance by the parties to the Agreement. The parties who worked to craft this proposed Fisheries Agreement believe that it can be the basis of truly collaborative approach to managing this resource.
6. As outlined in the attached Slide 2, the proposed Yuba Accord consists of the proposed Fisheries Agreement, a proposed Water Purchase Agreement and proposed Conjunctive Use Agreements. Although these agreements will be signed by different parties and concern different matters, all three agreements are interrelated, and all three agreements must be in effect for any one agreement or the Yuba Accord to go into effect. As outlined in Slide 3, the proposed Fisheries Agreement is the product of a collaborative process and provides an instream flow regime that is designed to be equivalent or superior to the current regulatory baseline from the standpoint of Lower Yuba River fisheries resources. The proposed

Fisheries Agreement also will set up a multi-party management framework for the Lower Yuba River and provide substantial funding for core monitoring and focused studies and habitat-improvement measures. The three proposed Yuba Accord agreements together represent a new water use paradigm, deriving transferable water from a biologically-based flow regime, utilizing conjunctive use flexibility to ensure greater water availability for the river, earmarking transfer revenues for conjunctive use and River Management Fund needs, and providing frameworks for collaborative management and contractual performance incentives.

7. As outlined in Slide 4, YCWA and the Bureau of Reclamation are preparing a comprehensive EIS/EIR for the Yuba Accord. Besides satisfying the legal requirements of CEQA and NEPA, this decisional document also will contain a scientific analysis that will test whether the intuition of the biologists who crafted the Accord flow schedules is correct; that is, will the Yuba Accord provide fisheries conditions that are equivalent to or better than the conditions that would be provided by the RD-1644 Long Term requirements, with no significant impacts. As shown by the schedule in Slide 5, preparation of the EIS/EIR is moving forward as expeditiously as possible, with the express goal of completion in early 2007.
8. All of the parties to the Yuba Accord are actively participating in, and contributing resources to, current activities associated with the Pilot Program and the CEQA and NEPA analysis for the Yuba Accord. YCWA, DWR and Reclamation are all providing funding for the CEQA and NEPA analyses. YCWA and CDFG are contributing funding and in-kind services to fisheries studies programs on the Lower Yuba River in accordance with the intent of the Yuba Accord, and NMFS, USFWS, and several NGO's are participating in planning, study and operational activities in accordance with the Yuba Accord. Beyond the contributions of the various participants, the Pilot Program will provide needed funding for all of the 2006 activities associated with the Yuba Accord.
9. The 2006 Pilot Program is an integral and vital element of the Yuba Accord. Recognizing that completion of CEQA and NEPA analysis for the Yuba Accord at an appropriate level of detail would be a time-consuming process, and eager to start to reap the potential benefits of the Yuba Accord, all of the parties to the Yuba Accord agreed to the Pilot Program approach for 2006. The 2006 Pilot Program closely mirrors the flow regimes, accounting rules, management framework and other aspects of the Yuba Accord. As discussed in Slide 6, implementing the 2006 Pilot Program will serve two important functions: first, the Pilot Program will allow a real-world test of several key elements of the Yuba Accord, including the flow schedules, the transfer accounting rules, the compliance provisions, and the planning work for the detailed monitoring studies that will evaluate the Accord flows. Second, implementation of the 2006 Pilot Program will capture the momentum of this potential settlement, by allowing and requiring all of the parties to the Yuba Accord to work cooperatively on the management of the Lower Yuba River resources. When the EIS/EIR is completed, and if the State Board approves the Yuba Accord in 2007, then the agreements, protocols and working relationships established in the 2006 Pilot Program can move seamlessly onwards under the Yuba Accord.
10. The Yuba Accord and the 2006 Pilot Program will represent a paradigm shift in how Lower Yuba River instream flows are determined and managed. The Yuba Accord and the 2006 Pilot Program will use a new index to determine instream flows based on water year types. The proposed Yuba Accord Conjunctive Use agreements and the 2006 arrangements for conjunctive use will provide a backstop for dry year conditions, by making groundwater available for flow schedule augmentation and deficiency pumping. The seven flow schedules in the Yuba Accord, coupled with the North Yuba Index and the conjunctive use

arrangements, will provide both higher instream flows and flows more tailored to the hydrology patterns and reservoir carryover storage on the North Yuba River. However, as has been described in other testimony, these additional instream flows will require driving the system harder, with lower carry-over storage in many hydrologic year classes.

11. Testimony provided by Steve Grinnell and filed with YCWA's 2006 transfer petition describes the North Yuba Index (NYI), the mechanism for dispatch of the flow schedules under the proposed Yuba Accord and the 2006 Pilot Program. One of the key benefits of utilization of the North Yuba Index is that it is calculated utilizing both end-of-season carryover storage and current-year hydrology. This methodology has the fundamental benefit that the NYI closely tracks the North Yuba River and New Bullards Bar Reservoir, which are the only significant control facilities for water supply available for modification of flows in the Lower Yuba River.
12. The Yuba Accord flow schedules (which will be utilized in the 2006 Pilot Program), NYI, and relative exceedances of occurrence of the various flow schedules were carefully weighed and balanced by the Technical Team. It was recognized during the development of the Fisheries Agreement that a change to any one of the elements of the program would result in changes to other aspects of the program (for example, a change to the total flow volume for one flow schedule would result in a change in the probability of occurrence of all of the flow schedules). The Technical Team tested many different combinations of flow schedules, total volumes, and relative exceedances until, in the judgment of the majority of the Technical Team, the best overall balance of flows and probabilities was struck.
13. The Fisheries Agreement flow schedules were developed based on a regulatory baseline of RD-1644 Interim, and the proposed Fisheries Agreement anticipates the request that will be made to the Board to modify RD-1644 to incorporate a slightly modified RD-1644 Interim flow requirements as the permanent regulatory baseline for the Lower Yuba River. Similarly, the proposed Fisheries Agreement anticipated the 2006 Pilot Program, including a request to the Board for extension of the flow requirements of RD-1644 Interim beyond April 2006.
14. A requirement for a regulatory baseline different than RD-1644 Interim would have the potential to disrupt the balance struck in the Fisheries Agreement flow schedules, which would likely require reconsideration of the many of the fundamental elements of the proposed Fisheries Agreement. While the comprehensive analysis being undertaken for the EIR/EIS evaluation process for the Yuba Accord may ultimately suggest that some modification to or mitigation for the Accord may be necessary, de-facto denial of the 2006 Pilot Program or disruption of the terms of the proposed Fisheries Agreement would not be warranted by current evidence.
15. YCWA and the other proponents of the Accord and 2006 Pilot Program recognize that the transfer element of the Yuba Accord does not resolve the pending questions or challenges that are associated with cross-Delta transfers. However, the Yuba Accord water purchase agreement will not increase the annual transfer volume through the Delta; current Delta transfers are limited by either transfer constraints (pumping limits, E/I ratio, etc.) or demand. Instead, transfers associated with the proposed Yuba Accord will 'firm up' current annual purchases by the EWA and others. This firm commitment will allow more efficient use of the water resources, including more refined planning, utilization of storage, and potentially flexibility in the timing of transfer pumping. The potential benefits and effect of this additional flexibility will be addressed and evaluated in the Yuba Accord EIS/EIR.
16. As has been described in other testimony, and as is outlined in Slide 7, in the absence of an extension of the RD-1644 Interim instream-flow requirements (that is, if the RD-1644 Long Term requirements were to go into effect on April 21, 2006), then there would be potential

for very serious Yuba County delivery shortages in 2007 under certain hydrologic conditions. While the probability of occurrence of hydrologic conditions that would lead to serious delivery shortages is relatively small, the resulting impacts of the delivery shortages within Yuba County under such conditions would be very substantial. If the State Board were to deny YCWA's petition to extend the RD-1644 Interim requirements, then the Yuba County Water Agency Board of Directors would be in the very difficult position of having to decide whether or not to risk substantial dry year shortages in 2007 and subsequent years to implement the Pilot Program in 2006. Because of these risks, the YCWA Board may likely decide not to implement the 2006 Pilot Program if the State Board does not approve YCWA's extension petition. Additionally, the 2006 Pilot Program Fisheries Agreement will not become effective unless both of YCWA's petitions are approved by the Board.

17. In addition to the potential for substantial impacts to Yuba County deliveries, denial of YCWA's extension petition would raise additional concerns for YCWA and the other proponents of the proposed Yuba Accord. If the provisions of RD-1644 Long Term were to go into effect, there may be legal or procedural challenges to restoring a regulatory baseline of a modified RD-1644 Interim which will be required to implement the proposed Yuba Accord. Essentially, denial of the current petition for extension may pose additional challenges for the Yuba Accord that are not based on the scientific or technical merits. This in turn would send a strong negative message to the collaborative that worked to develop the proposed Yuba Accord.
18. The Environmental Analysis of the 2006 Pilot Program concludes that the Pilot program will not lead to unreasonable effects upon the various resources in the Lower Yuba River and Delta, and that the increased flows under the Pilot Program should provide an equivalent or higher level of protection as compared to the baseline of analysis. Similarly, the Initial Study/Proposed Mitigated Negative Declaration prepared for the one-year extension of the flow requirements of RD-1644 Interim concludes that the proposed project will not have a significant impact on the environment.
19. RD-1644 Interim flows have been the regulatory baseline in the Lower Yuba River for nearly five years. A continuation of that regulatory baseline, supplemented by the flow schedules proposed in the 2006 Pilot Program would provide an equivalent or higher level of protection for fisheries resources while retaining the flexibility for the Board to evaluate the scientific and technical merits of the proposed Yuba Accord through the EIR/EIS process, and then take appropriate action on the petitions to the Board that will be necessary to implement the proposed Yuba Accord.
20. In this testimony I have emphasized that the Fisheries Agreement of the proposed Yuba Accord (which is the basis of the 2006 Pilot Program) was developed through a collaborative process, wherein all of the participating parties represented their perspectives, the interests of their agencies or organizations, and their resource protection mandates during the crafting of the agreement. In light of the collaboration and support for the Fisheries Agreement, the progress in completing a detailed EIR/EIS analysis of the proposed Accord agreements, the importance of the 2006 Pilot program as an element of the Accord as well as a water transfer for 2006, and the potential risk of shortages in 2007 if an extension of the flow requirements of RD-1644 Interim is denied, the State Board should grant YCWA's extension petition so that this important first phase of the Yuba Accord may proceed.



**Yuba County Water Agency  
2006 Pilot Program and Petition for Extension of RD-1644  
Interim Flow Requirements**

**Testimony of Tom Johnson**

**January 10, 2006**

# Proposed Yuba Accord

## Three distinct, but interrelated agreements

### Fisheries Agreement

Lower Yuba River fisheries protection and enhancement

### Water Purchase Agreement

Supplemental water supply for EWA, DWR, and Reclamation

### Conjunctive Use Agreements

Enhanced integration of New Bullards Bar Reservoir and local water district operations

# Proposed Yuba Accord

- **Fisheries Agreement:**
  - Collaborative development
  - Instream flow regime equivalent to or better than current regulatory baseline
  - Multi-party RMT management framework
  - Funding for studies and habitat projects
- **New Water Use Paradigm**
  - Conjunctive use and demand limit commitments
  - New, more representative index for dispatch of flows
  - Transfer flows 'embedded' within fishery flows
  - Transfer revenues fund conjunctive use, River Mgmt Team, study/habitat programs

# Yuba Accord – Next Steps

- **EIR/EIS process – underway**
  - Comprehensive evaluation of Accord benefits and potential impacts

- **2006 Pilot Program**
  - Funding for EIR/EIS and 2006 programs
  - Actual test of several elements of Accord

**Continued Collaborative Participation**  
Continuing participation demonstrates the commitment of the Accord signatories



# Accord Timeline

<b>CEQA/NEPA Compliance Timeline:</b>	
<b>Public Scoping Meetings</b>	<b>July 19 &amp; 20, 2005</b>
<b>Public Review Draft EIR / EIS</b>	<b>June 2006</b>
<b>60-Day Public Review Period - Hearings / Meetings</b>	<b>July - August 2006</b>
<b>BA for ESA Compliance</b>	<b>July 2006</b>
<b>Complete ESA Compliance</b>	<b>March 2007</b>
<b>Final EIR / EIS</b>	<b>February 2007</b>
<b>Agency Review and Approvals</b>	<b>May 1, 2007</b>
<ul style="list-style-type: none"> <li>● YCWA - Notice of Determination</li> <li>● Reclamation - Record of Decision</li> </ul>	
<b>Other Actions:</b>	
<b>SWRCB Action on Petitions to Implement Yuba Accord</b>	<b>February 2007 - August 2007</b>
<b>Dismiss D-1644 Litigation</b>	<b>August 2007</b>
<b>Start Implementing Yuba Accord</b>	<b>August 2007</b>

# 2006 Pilot Program – Importance

- Immediate benefits of the Accord
  - Increased flows from Accord flow schedules
  - Collective participation in management decisions via RMT
  - Funding of studies program via RMF
  - New transfer paradigm with transfers embedded in flow schedules
- Moving the Accord settlement forward
  - Real-World testing of Accord provisions for accounting, decision management
  - Reinforcing collaborative behavior for all parties

## Extension of RD-1644 Interim

- RD-1644 Long Term in 2006 would cause small, but severe risk of shortages within Yuba County in 2007 and beyond under certain hydrologic conditions
- YCWA Board of Directors probably could not undertake a 2006 Pilot Program transfer with such risks
- Extension of RD-1644 Interim and implementation of 2006 Pilot Program:
  - No significant adverse impacts (IS/ND conclusion)
  - 2006 Pilot Program will provide more water for Lower Yuba River than RD-1644 LT



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