

# Memo to Public Files

**To:** Public Files  
**From:** Stephen Bowler, Study Dispute Resolution Panel Chair  
**Date:** December 5, 2011  
**Docket:** P-2246-058  
**Project:** Yuba River Hydroelectric Project  
**Re:** Emailed information from the Cordua Irrigation District regarding the Yuba River Hydroelectric Project Study Dispute

On Wednesday, November 30, 2011, Paul R. Minasian, counsel to the Cordua Irrigation District, emailed information to the Yuba River Hydroelectric Project Study Dispute Resolution Panel regarding the disputed studies. Please add this information to the public record for this proceeding.

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COMMISSION  
2011 DEC -5 P 1:16  
FEDERAL ENERGY  
REGULATORY COMMISSION

**Stephen Bowler**

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**From:** Paul Minasian [pminasian@minasianlaw.com]  
**Sent:** Wednesday, November 30, 2011 9:19 PM  
**To:** Stephen Bowler  
**Subject:** Yuba River

Mr Bowler

Unfortunately, Cordua Irrigation District did not receive your notice on the Technical Conference regarding NMFS study requests on the Yuba River until after the conference had begun. This is no fault of FERC. The notice simply did not get forwarded to this office. This may not be critical However could you make sure that the Panel is aware of Cordua Irrigation Districts comments to the NEPA scoping process which I will summarize and forward to you by separate e mail :

1. Cordua believes that there is substantial evidence that attempting to maintain such cold water for such a long period is not in accordance with the natural conditions on the River. We believe that there is evidence from other streams and study areas that cold water may appear to be beneficial but may in fact delay the growth rates of juveniles, artificially delay the timing of their outmigration and increase mortality because of outmigration occurring when Delta conditions are adverse to survival.
2. Obviously, Cordua landowners are alerted to this potential problem that should be studied because huge amounts of water are being expended but also because the temperatures are substantially below what was experienced in the past in the months that have proven critical for rice culture. Varying temperature and warming the water as the state of nature would do in the spring in fact conforms to the growth needs of the rice. This has been demonstrated in the rice studies done from the Oroville Afterbay in relationship to the Oroville Project and a cooperative way to reduce the injury to the farmers while maintaining flows that may be advantageous to fish has been found there.
3. The Cordua landowners estimate that they are losing 10% to 15% of their production based on yield monitors in the harvesters and aerial studies. What we believe should be done is do some studies aimed at determining whether the theory that cold water at all times is good for rearing and maturing fish at all life stages isn't just another unexamined assumption. It may be that it is and we can provide conditions similar to those agree to upon the Oroville Project. On the other hand, if we are retarding grown and delaying outmigration patterns into conditions which are disadvantageous to survival, it is important to answer these questions.

We look forward to talking with you.

**Paul R. Minasian, Esq.**

**Minasian, Meith, Soares, Sexton & Cooper, LLP**

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12/5/2011

**Stephen Bowler**

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**From:** Paul Minasian [pminasian@minasianlaw.com]  
**Sent:** Wednesday, November 30, 2011 9:26 PM  
**To:** Stephen Bowler  
**Cc:** cmathews@pulsarco.com  
**Subject:** FW: Message from KMBT\_600  
**Attachments:** SKMBT\_60011113019200.pdf

Dear Mr Bowler

Attached is the letter regarding the NEPA scope of fish studies reasonably necessary to examine fishery impacts on the Yuba River. If you need the exhibits which were attached don't hesitate to contact us

**Paul R. Minasian, Esq.**

**Minasian, Meith, Soares, Sexton & Cooper, LLP**

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**From:** bizhub600@minasianlaw.com [mailto:bizhub600@minasianlaw.com]  
**Sent:** Wednesday, November 30, 2011 7:21 PM  
**To:** Paul Minasian  
**Subject:** Message from KMBT\_600

# **CORDUA IRRIGATION DISTRICT**

DIRECTORS:  
CHARLES J. MATHEWS, JR., Chairman  
KEITH DAVIS, Director  
KAY SILLER, Director

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## **FILE COPY**

February 17, 2011

Federal Energy Regulatory Commission  
Office of Energy Projects  
888 First Street, NE  
Washington, D.C. 20426

State Water Resources Control Board  
State of California  
401 Certification Division  
1101 I Street, 14<sup>th</sup> Floor  
Sacramento, California 95814

Re: Project No. 2246-058  
California Yuba River Hydroelectric Project, Yuba County Water Agency

Ladies & Gentlemen:

The Cordua Irrigation District has received notice of a scoping process in regard to the National Environmental Policy Act (NEPA) of 1979 in regard to the relicensing of the Yuba River Hydroelectric Project, FERC No. 2246-058. The Cordua Irrigation District holds extensive pre-1914 water rights and post-1914 water rights under the laws of the State of California for diversion of water from the Yuba River in the vicinity of Daguerra Point Dam downstream of the hydroelectric features of this license project.

1. **Summary of request for inclusion within NEPA studies and consideration and CEQA studies for SWRCB 401 Certification:**

In addition to the customary inclusions within the NEPA and CEQA processes, Cordua Irrigation District wishes to emphasize the importance and legal necessity of preparing a full analysis of the impacts, their significance, any alternatives, mitigation measures, and the cumulative and economic effects and resulting environmental effects and changes caused by attempting to create an artificially cold flowing river such as the Yuba River in a low-elevation area of California where that river and temperature did not naturally exist in the state of nature on a year-round basis. In effect, the staff of the SWRCB, the DFG staff and NMFS staff are attempting to create artificially cold flows

To: Federal Energy Regulatory Commission, Office of Energy Projects  
State Water Resources Control Board, 401 Certification Division  
Re: Project No. 2246-058  
California Yuba River Hydroelectric Project, Yuba County Water Agency  
Date: February 17, 2011

Page 2

through operations of FERC Project No. 2246-058 which they believe enhance anadromous fish to create a type of fish hatchery at a low and warm elevation in California without cement structures. FERC cannot accept their prejudices, assumptions and guesses.

The environmental baseline for this NEPA project, and to the extent CEQA is involved, is not the flows purportedly ordered by the SWRCB, the temperatures directed by the Department of Fish and Game Management Plan or by Decision 1644 or by the agreement of the Yuba County Water Agency in the 1990's and 2000 which was given to allow water transfers to other geographical areas to occur for monetary profit. The environmental baseline of this project instead is the conditions, including temperatures, experienced before these off-the-record orders and agreements which have never been made subject to either CEQA review or NEPA review occurred. The alternatives to these temperatures, the impacts, the cumulative impacts, and particularly their impact upon agricultural production within Cordua Irrigation District due to reduced temperature of the water and the reductions in waterfowl food production by that same temperature reduction, must now be examined and quantified. The assumptions of DFG and NMFS that colder water (and colder and for the longest period without variance) is better for spawning, rearing and survival of anadromous fish in the Yuba River have never been included within a NEPA study or CEQA examination of Yuba River conditions. Instead, changes have been ordered and undertaken without an examination of the true environmental impacts or their significance.

There is substantial scientific information that would indicate that disastrous consequences are being experienced by the salmon and steelhead on the Yuba River by not varying the temperature of water releases to more reasonably equate with natural-condition temperatures in the months of April, May and June in this reach of the River, and then varying those temperatures during the remainder of the year to equate with natural conditions. If cold water is essential for spring run (which did not occur in this reach of the Yuba River before the Project), the alternative of a hatchery solution must be examined. Attempting to create an artificial Spring and Fall run "virtual hatchery" without cement in this short stretch of river "because it is there" is just the sort of bureaucratic nonsense that NEPA and CEQA are required to examine for its environmental costs and its significant economic effects.

Although cold water may reduce the incidence of disease in fry and smelts, it also reduces food availability, retards growth both by the temperature reduction and the lack of food, and perhaps most importantly, cold water alters the outmigration signals and

To: Federal Energy Regulatory Commission, Office of Energy Projects  
State Water Resources Control Board, 401 Certification Division  
Re: Project No. 2246-058  
California Yuba River Hydroelectric Project, Yuba County Water Agency  
Date: February 17, 2011

Page 3

timing of the juveniles. In California with the dangers of predation and loss in the complicated labyrinth of the Delta area lying between the Yuba River and the Ocean, and the possibility that outmigration can be artificially caused at an "unnatural time" by the cold water when the juveniles are smaller and more susceptible to predation and straying, the assumption that colder water and more of it for longer periods is "better for the fish" is an absurd exercise in bureaucratic arrogance. Now FERC can commission and require the studies which will apply true science to what has up to now been mere surmise and implementation without examination as required.

This artificially cold water condition also destroys a part of the productive capacity of the farm lands lying north of the Yuba River since the water prevents the growing of maturable and harvestable crops on a significant amount of the acreage. Temperature reduction measures implemented in the period from 1995 to present reduced temperatures to artificially low levels, well below the temperatures experienced before the Yuba Project began operations, and below levels experienced in the years of operation of the Yuba River Project before 1995. The economic, environmental and social impacts of rendering farmers and ranchers unable to grow crops to be consumed by hungry people on a substantial portion of their acreage, which is only now becoming apparent, the feasibility of mitigation or nullifying this temperature impact by alternative facilities or alternative temperature regimes that may actually be better for the fish and closer to natural conditions, and finally, the possibility of economic mitigation, all must be examined. The cumulative effects of placing farmers in a condition where yields are reduced, then economic conditions or a crop failure occurs, rendering the farmers unable to maintain farming activities which preserve a food supply and open space land used for waterfowl, was just the type of situation NEPA and CEQA was designed to avoid.

Finally, waterfowl utilize the area North of the Yuba River as an early stop-over and resting place and it provides a unique spot in the ecological survival of some of the most endangered waterfowl. The Cordua area, unique to other areas of the Sacramento Valley, is able to harvest its rice early and flood the fields early, and waterfowl species arriving early in the season historically congregated in the Cordua area. Cold water retards the growth of aquatic organisms which these ducks and geese eat. The magnitude of this reduction in food availability for waterfowl, its impact in driving waterfowl to attempt to continue their journey southward and to other areas of the Sacramento Valley and San Joaquin Valley, and the effects of stress placed upon the waterfowl due to this change must be quantified and examined, and a means of considering alternatives and mitigation measures must be considered. There is also the effect of reducing the economic viability of the rice farming within the area which -- through rice left in the field

To: Federal Energy Regulatory Commission, Office of Energy Projects  
State Water Resources Control Board, 401 Certification Division  
Re: Project No. 2246-058  
California Yuba River Hydroelectric Project, Yuba County Water Agency  
Date: February 17, 2011

Page 4

and flooding after harvest – provides a large part of the food supply for these waterfowl. The cumulative impacts of economically reducing the economic survivability of those rice farmers by reduced rice production through cold water on a substantial portion of each field, and the potential that formerly farmed lands providing habitat for these waterfowl will be deprived of economic survival, then fields will no longer be available for waterfowl use because farming is not economically feasible, must be examined, quantified and mitigated for if this artificially cold water regime is to be continued.

**2. History of water temperatures delivered by the Cordua Irrigation District:**

Prior to Decision 1644 adoption in the early 2000's, the water temperature of water diverted from the Yuba River by the Cordua Irrigation District from May through August for agricultural purposes were not intentionally lowered throughout the period by the operations of Englebright Dam or Bullards Bar Dam. Therefore, the water temperature was conducive to the raising of crops (largely rice) within the Cordua Irrigation District and the adjoining districts served through the Cordua-Hallwood Main Canal consisting of Hallwood Irrigation Company and the Ramirez Water District. During the period of September through the commencement of winter rains and cold ambient temperatures, Cordua Irrigation District landowners provide for application of water to their farming fields for the purposes of providing waterfowl habitat. The temperatures of water provided for that purpose, if sufficiently warm, are conducive to the development of food for migrating waterfowl. The Cordua Irrigation District's flooded fields constituted one of the most reliable and earliest available waterfowl resting and stopping points for migrating waterfowl through the Sacramento Valley.

Commencing in the mid-2000's, the Department of Fish & Game of the State of California, utilizing the device of conditioning transfers of water, and later the State Water Resources Control Board, purported to compel colder water to be released on an almost continuous basis. This was done without CEQA compliance or NEPA compliance as a condition of transfer of sale of water by YCWA. Again without CEQA or NEPA review and with no comprehensive FERC proceedings, guidelines were designed through consultation with the purported Temperature Advisory Committee through Decision 1644 (pages 84 through 87 are attached as Exhibit "1" for the convenience of FERC and SWRCB) were implemented by the State Water Resources Control Board. The targets were set without regard to what temperatures existed in the state of nature which these fish had adapted to, and the SWRCB ordered that water temperatures be lowered from October 1 through June 30 to a target of 56 degrees, and from July 1 through September

To: Federal Energy Regulatory Commission, Office of Energy Projects  
State Water Resources Control Board, 401 Certification Division  
Re: Project No. 2246-058  
California Yuba River Hydroelectric Project, Yuba County Water Agency  
Date: February 17, 2011

Page 5

30 at a target of 56 degrees at Daguerre Point Dam, the point of diversion of the Cordua Irrigation District. The action of the SWRCB was not taken pursuant to any NEPA or CEQA study: in fact, the SWRCB claimed that they were exempt from any environmental examination and requirement to consider adverse impacts to either fish, avian, or crop production. No examination of the environmental consequences, impacts or mitigation measures occurred.

Pursuant to an Order approving a Petition for Modification of Decision 1644 and approving long-term transfers of water of the Yuba County Water Agency to third parties outside of the basin in 2008, the SWRCB discussed the Temperature Advisory Committee and the representations by the Department of Fish & Game and National Marine Fisheries Service that lower water temperature was reasonable and a proper condition upon both the water and power supply operations. That discussion is found on page 24 and 25, a copy of which is also attached to this letter for your ease of referral (Exhibit "2"). Although an EIR and EIS was done in regard to the transfer through the proposed Order Modifying Decision 1644, no CEQA or NEPA analysis was done of the environmental effects, the alternatives, or the negative mitigable impacts to fish, waterfowl or farming of lowering water temperature delivered to the agricultural area North of the Yuba River below natural temperature levels. It was assumed that the "no project" or baseline environmental condition was 56 degrees, and therefore there was no need to examine alternatives of natural temperature regimes to warm the water from 56 degrees, and was also assumed that it might aid both rice production and fish and waterfowl at certain times.

As a result of the fact that no independent Federal or State agency has ever thoroughly examined the impacts of lowering the water temperature delivered from the Yuba River, this examination of all aspects, being both conditions existing prior to the transfers by the YCWA in the early 1980s, the conditions prior to Decision 1644 in 2001, and existing in periods after 2001 in which the Temperature Advisory Committee and the Yuba County Water Agency is legally required before FERC or the SWRCB can consider action on this license, must be examined. To order reduced water temperature for purported enhancement of salmon and steelhead conditions while ignoring crop impacts, economic impacts, and impacts on waterfowl and alternatives without NEPA and CEQA review is simply to potentially compound both factual and legal error. This assumption must now be examined, and a full examination of the environmental and economic impacts, alternatives and effects, must be contained within the FERC EIS and the 401 Certification EIR of the SWRCB as follows:



To: Federal Energy Regulatory Commission, Office of Energy Projects  
State Water Resources Control Board, 401 Certification Division  
Re: Project No. 2246-058  
California Yuba River Hydroelectric Project, Yuba County Water Agency  
Date: February 17, 2011

Page 6

1. It is now well-established that artificially maintaining colder water deliveries to an area in which rice culture is predominant will destroy rice production on portions of the land affected by those cold temperatures, and will remove the economic viability of those affected acres. A copy of some of the reports prepared by the University of California Extension in regard to the effects of cold water being artificially released and replacing naturally warm river flow in order to purportedly increase the population and viability of salmon or steelhead population are attached as Exhibits "3", "4", "5" and "6". A similar condition exists in the Cordua Irrigation District in which farmers are noting that a substantial portion of their fields where water intakes are located are blank, are stunted in growth, far less dense than other field areas, and when yields are mapped through a harvester, demonstrate the loss of substantially any value from those areas sufficient to recover the costs of cultural practices. In effect, a decision has been made without NEPA and CEQA determination to reduce the production of rice by 20% or more, and render these farms economically unsustainable in low price periods. The environmental impacts driving these farmers out of business and where the food supply will be replaced must be examined.

2. Although some fishery experts believe the benefits of cold water in reducing disease overcome and overshadow:

- (i) the effects of cold water in reducing the food available for juvenile or emerging salmon or steelhead during their maturation period;
- (ii) the effects of retarding or delaying outmigration;
- (iii) the effects of changing the timing of outmigrating salmon in periods when juveniles are smaller and more susceptible to predation; and,
- (iv) the effects of placing smaller outmigrating salmon in periods when special problems exist in the Delta and ocean, which actually increase loss and reduce adult return. These assumptions that cold water is better have not been quantified, studied or examined.

No one has comprehensively studied or proved this proposition. Creating a "hatchery" for spring run salmon in a river stretch where they never survived or reared in the state of nature has blinded the decisionmakers to the damage that cold water can cause to the fish themselves. In the complicated Yuba River, Sacramento River, and Sacramento-San Joaquin Delta systems, changing through temperature the timing at which juveniles are

To: Federal Energy Regulatory Commission, Office of Energy Projects  
 State Water Resources Control Board, 401 Certification Division  
 Re: Project No. 2246-058  
 California Yuba River Hydroelectric Project, Yuba County Water Agency  
 Date: February 17, 2011

Page 7

signaled to commence their outmigration can result in substantially reduced viability, greater susceptibility to predation, and to inability to follow and rapidly transit the Sacramento-San Joaquin Delta and enter the ocean when ocean feeding conditions are suitable for survival.

If cold water impacts – even though adverse – are chosen by FERC in its relicensing after weighing these impacts and alternatives, the taking of the use of the water and irrigated land is required to be compensated in monetary terms if in fact the approved project continues to require cold water releases and artificially restricted use of farmers' fields and equipment. The EIS and EIR study must also consider these alternative means of mitigating for the increasing temperature during critical maturation periods for the rice crop and during critical periods in which waterfowl habitat and growth of food supplies for the migrating waterfowl will be in-hand. The idea that one temperature target is good on a year-round basis when salmon and steelhead in this stretch of the Yuba River are genetically attuned to varying and warmer temperatures basis is simply counterintuitive. That is obviously not the state of nature, and it is not the temperature regimen that these species genetically adapted to during their life history, so why would it be preferable?

We look forward to working with you in regard to identifying these impacts, the alternatives for both the salmon, steelhead, waterfowl and farmers, and to a cessation of the attitude that in some way the environment should be manipulated without study and without compliance with NEPA and CEQA on the basis of prejudices of bureaucratic agencies.

Very truly yours,

CORDUA IRRIGATION DISTRICT:

By:

  
 CHARLES MATHEWS, Chairman

Enclosures:

Exhibit "1" 2001 Guidelines developed in consultation with the Temperature Advisory Committee, pp. 84 through 87.

(Exhibits continued, page 8)

To: Federal Energy Regulatory Commission, Office of Energy Projects  
 State Water Resources Control Board, 401 Certification Division  
 Re: Project No. 2246-058  
 California Yuba River Hydroelectric Project, Yuba County Water Agency  
 Date: February 17, 2011

Page 8

Exhibit "2" Pursuant to an Order approving a Petition for Modification of Decision 1644 and approving long-term transfers of water of the Yuba County Water Agency to third parties outside of the basin in 2008, the SWRCB discussed the Temperature Advisory Committee and the representations by the Department of Fish & Game and National Marine Fisheries Service that lower water temperature was reasonable and a proper condition upon both the water and power supply operations.

University of California Extension Reports regarding effects of cold water being artificially released:

- Exhibit "3" "Measuring the Effect of Low Water Temperature on Blanking and Grain Yield", R. G. Mutters, J. W. Eckert, A. Roel, R. E. Plant, University of California Cooperative Extension.
- Exhibit "4" "Effect of Low Water Temperature on Rice Yield in California", A. Roel, T. G. Mutters, J. W. Eckert, and R. E. Plant (2005) by the American Society of Agronomy.
- Exhibit "5" "Measuring the Effect of Low Water Temperature on Blanking and Grain Yield in California Rice Production", R. G. Mutters, J. W. Eckert, A. Roel, and R. E. Plant, University of California Cooperative Extension, Oroville, California; Department of Agronomy, University of California, Davis.
- Exhibit "6" Correspondence August 16, 2006 to Magalie Roman Salas, Secretary, FERC, re Comments on California Department of Water Resources to the Recommendations, Terms and Conditions, Prescriptions, and Settlement Comments: Technical Response to Intervention of the Water and Irrigation Districts in Butte County, California, from Randall G. Mutters, Farm Advisor, and Richard E. Plant, Professor, University of California, Davis, Department of Plant Sciences.

Document Content(s)

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