

For Immediate Release:

Yuba Water Agency sues California water board to protect its future, the Yuba River and Yuba County’s disadvantaged communities

MARYSVILLE, Calif. (Nov. 13, 2020) – Yuba Water Agency filed lawsuits in both federal and state court today to challenge the water quality certification that California’s State Water Resources Control Board issued in July for Yuba Water’s new license for its hydroelectric project, the Yuba River Development Project.

“This is not something we wanted to do,” said Yuba Water General Manager Willie Whittlesey. “We tried every diplomatic option available to us. But the State Water Board’s actions pose a significant threat to Yuba Water’s long-term viability and would prevent us from being the catalyst for public safety, economic growth and prosperity that this disadvantaged community so desperately needs. This is us defending ourselves against a significant and unfair overreach.”

The certification, issued July 17, has three critical flaws that Yuba Water believes will lead to favorable court decisions. It significantly harms Yuba County’s disadvantaged communities. It was created with no collaboration, public process or science and in violation of state and federal laws and regulations. And the certification’s proposed measures are blatantly unfair.

Devastating to Yuba’s disadvantaged communities:

Yuba Water estimates the impacts of the certification’s requirements range from at least \$500 million to more than \$1 billion in lost revenue and added regulation over the term of the license, which is expected to be 50 years.

Implementation of the certification could dramatically reduce surface-water supplies to Yuba County’s farm and ranch families, and could push the county’s groundwater basin back into overdraft. Rather than improving environmental conditions as the certification claims, it could actually result in harm to the Yuba River’s salmon and steelhead populations because Yuba Water would not be able to continue investing millions in watershed health and fish habitat projects.

Lack of process, science, legal grounding:

The State Water Board issued the certification without an application before them, which is required by federal and state law. The Federal Energy Regulatory Commission determined earlier this year that the State Water Board had waived its right to issue a certification for this licensing process when it failed to respond within one year of receiving Yuba Water’s prior application for a certification.

The State Water Board asserts that environmental values cannot adequately be protected without a certification. But environmental values were carefully addressed in the extensive, multi-year, multi-party, open process to relicense the Yuba River Development Project with FERC.

The licensing process included more than 250 public meetings and conference calls, which State Water Board staff participated in, resulting in dozens of environmental requirements that will cost more than \$180 million.

Yuba Water plans to accept and implement these requirements as part of a new FERC license. The State Water Board certification largely ignores the environmental measures already addressed by Yuba Water and FERC during this process.

In contrast with the FERC licensing process, the State Water Board's certification was issued without any public process or notice, and Yuba Water was not even given an opportunity to comment on a draft of the certification.

"We weren't given any chance to engage and collaborate on this certification, but others apparently were," Whittlesey said. "Through the state's Public Records Act, we learned that, while the State Board was developing the certification, its staff members were communicating with state and federal agencies and environmental groups, giving others the opportunity to provide input, while not giving Yuba Water or others who would be impacted any similar opportunity."

The measures included are patently unfair:

Some of the measures included in the certification include requiring Yuba Water to mitigate for the impacts of hydraulic mining that took place during the gold rush, more than 100 years before Yuba Water Agency was created or the Yuba River Development Project was built.

Under the certification, the State Water Board's executive director could require Yuba Water to mitigate for a federal project that it has no control over, Englebright Dam, which is owned by the U.S. Army Corps of Engineers. Lastly, the certification places responsibility for mitigating all of the Yuba River's water diversions on Yuba Water, in spite of the fact that the agency only diverts 11 percent of the river's water. Eighty-nine percent is either natural flow or has been diverted or used by others.

Petition for reconsideration:

After receiving the certification over the summer, Yuba Water submitted to the State Board a petition for reconsideration on Aug. 14, which was supported by [extensive technical analysis](#) showing that the requirements included in the certification would have devastating economic impacts to Yuba Water and the disadvantaged communities it serves.

Two months later, the State Water Board has not responded to Yuba Water's petition or analysis. As a result, Yuba Water's leadership felt that if the State Water Board would not hold a hearing on the certification, then there were no other options but to file lawsuits to challenge the certification in court.

Yuba Water is filing lawsuits in both California Superior Court and U.S. District Court because water quality certifications are a mixture of federal and state law under the federal Clean Water Act and California's water quality laws, and Yuba Water must protect Yuba County's interests to the maximum extent possible.

For additional information and supplemental documents regarding this issue, please visit [Yuba Water's website](#).

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