

Utica Power Authority (UPA)

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October 7, 2008

Mr. Roger Putty, P.E.
MWH Americas, Inc.
3321 Power Inn Road, Suite #300
Sacramento, CA 95826

Re: **Comments to/Revision of Public Review Draft Baseline Report (“Water Element”)**

Dear Mr. Putty:

The following are UPA’s comments on the draft discussion of CCWD’s Water Rights and Supply as to the Stanislaus River System found on page 7-8 of the County’s Public Review Draft Baseline Report dated January 2008:

1. UPA has the best integrated water and power system in Calaveras County. UPA’s primary duties and obligations are (a) to provide a reliable water supply to the City of Angels, UPUD, and UPA’s own customers, (b) to operate, maintain, and improve Murphys and Angels Powerhouses such that their Green Power revenues continue to pay for much of the cost of the water and power system, and (c) to safeguard UPA’s water rights, water supply, water conveyance system, and power system from those both within and without the county who would try to take those rights and properties away from UPA and its customers.

2. The General Plan and the Water Elements need to be solidly based upon a factual and realistic assessment of each agency’s water rights, actual water supply reliability during droughts, and water conveyance rights. Unsupportable claims or claims with unrealistic chances of being implemented waste valuable time and money and create unrealistic expectations and unsupportable planning decisions.

3. Since CCWD completely withdrew from UPA in June 2004, CCWD has no ownership rights in UPA’s North Fork Stanislaus River, Mill Creek, Angels Creek, and French Gulch pre-1914 rights or in UPA’s water conveyance system or in UPA’s power plants. CCWD has no right to regulate UPA’s use of UPA’s water rights and CCWD has no right to dictate to UPA how those water rights should be used. CCWD also has no right to use UPA’s water conveyance facilities without UPA’s prior written agreement on terms and conditions acceptable to UPA.

4. While CCWD wants to “safeguard” water rights for the county, CCWD has made unsupported claims that would result in taking water from UPA with no mention of compensation to UPA and CCWD in turn wants to sell UPA’s water to new developments. Prices mentioned for the 2009 State Drought Water Bank are in the \$300 to \$400 per acre feet range.

5. CCWD has expressly reserved rights to divert water discharged from NCPA’s Collierville Powerhouse. That water consists of the 28 cfs of the 88 cfs North Fork Stanislaus River pre-1914 right deeded to NCPA by CCWD and CCWD’s post-1914 rights contractually committed to NCPA for generation at the Collierville Powerhouse. The practical question is whether CCWD can economically divert this water from this lower discharge point in the Stanislaus River for use in the county other than in the Copper Cover/Copperopolis area.

6. Unlike its agreement with NCPA, CCWD did not reserve any rights in the pre-1914 rights deeded to UPA. Under the 1997 Assignment Agreement signed by CCWD, NCPA, and UPA, CCWD assigned all of its interests in the CCWD-NCPA 1995 Restated Agreement to UPA except that the Assignment “Agreement did not alter or modify any rights that CCWD may have or acquire to divert or utilize North Fork Stanislaus River water that is discharged in Angels Creek from the Angels Powerhouse and which is no longer needed by Utica to provide water service to its customers.” [Section 2(c).] The North Fork pre-1914 right did not include the right to divert the North Fork water in lower Angels Creek. Also, CCWD did not and has not mentioned the pre-1914 rights to waters in Mill Creek, Angels Creek, and French Gulch that were also deeded by CCWD to UPA and that are also used to generate power at Angels Powerhouse.

7. In CCWD’s final Proposition 204 grant report entitled “Calaveras County Water District West County Water Supply Reliability Feasibility Study,” dated July 2008, CCWD proposed to divert water discharged by UPA into lower Angels Creek after the water was no longer needed by UPA and to transfer that water to the western portion of the county. CCWD should give the Water Element participants an update on its current plans for and the economic feasibility of that proposed transfer.

8. Under the 1997 Assignment Agreement, CCWD did not reserve and, therefore, assigned to UPA the right to divert up to 5,000 acre feet per year (increasing up to 8,000 acre feet per year in 2009). UPA is willing to discuss and reach agreement with CCWD on CCWD’s existing diversions for the Ebbetts Pass system but CCWD has not yet indicated any willingness to discuss this issue.

9. Based upon the above, UPA recommends that the Stanislaus River System paragraph be reworded as follows:

“CCWD hold interests in certain pre-1914 water rights owned by the Northern California Power Agency (NCPA) as well as certain post-1914 water right permits for water diversion and storage. Pursuant to the terms and conditions of its post-1914 water right permits and agreements with NCPA, CCWD was authorized to divert up to 5,000 AF per year (increasing up to 8,000 AF per year in 2009) to supply the Ebbetts Pass system and the Murphys-Angels Camp area. The Utica Power Authority (UPA) states that the right to divert (as opposed to CCWD’s post-1914 water right) was assigned to UPA. The parties hope to resolve this issue amicably. Under its post-1914 permits, CCWD can divert up to 6,000 AF per year from Lake Tulloch to supply the

Copper Cover/Copperopolis water system. Pursuant to its contractual arrangements with NCPA, CCWD can also access North Fork Stanislaus River water after it is discharged from NCPA's Collierville Powerhouse. Pursuant to its contractual arrangements with UPA, UPA agreed that those agreements did not alter or modify any rights that CCWD may have or acquire to divert or utilize North Fork Stanislaus River water that is discharged in Angels Creek from the Angels Powerhouse and which is no longer needed by UPA to provide water service to its customers. Water from the Stanislaus River System is used in the Copper Cove/Copperopolis and Ebbetts Pass service areas."

10. The Stanislaus River System paragraph references "Pattison et. al. 2007." UPA has not been provided a copy of that reference and would appreciate receiving it.

Thank you for the opportunity to comment. Because of the limited time provided to review the Public Review Draft Baseline Report, UPA reserves the right to provide additional comments later. In addition, UPUD will be updating its information and, even though the City of Angels would not be subject to the General Plan or the Water Elements, the City of Angels' water system and supply should be included. UPA looks forward to working with the citizens of the county to develop a factual and realistically based Water Element.

Please contact our office if you have further questions regarding any of the above information.

Regards,

Vern Pyle
General Manager

cc: MintierHarnish, Attn: Jessica
Center for Collaborative Policy, Attn: Carolyn Lott
County Board of Supervisors, Attn: Russ Thomas
CCWD, Attn: Dave Andres
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