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December 2, 2020

Members of the State Water Resources Control Board
c/o Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000

Re: Comments – Limited Order for Yuba River Development Project

Dear Chair Esquivel, Vice Chair D'Adamo and Board Members Doduc, Firestone, and Maguire:

I am writing on behalf of the California Municipal Utilities Association (CMUA) to respectfully request that you withdraw and vacate the State Water Resources Control Board's (SWRCB) Water Quality Certification (Certification) issued by SWRCB staff on July 17, 2020 for the Yuba Water Agency's (Yuba Water or Yuba Water Agency) pending federal license for the Yuba River Development Project (Project). CMUA represents water agencies that provide water to over 70 percent of the state and 45 publicly owned electric utilities that provide electricity to 25 percent of California.

CMUA believes that the Certification poses substantial risks to Yuba Water's hydroelectric generating assets, which could in turn have a deleterious effect on electric reliability and the ability of the state to meet its clean energy goals.

The SWRCB's staff-issued Certification includes 50 regulatory conditions. Several of the conditions contain an unprecedented reservation of SWRCB authority and empower staff to impose uncertain, expensive, and potentially unachievable requirements on the Yuba Water Agency. Fundamental constitutional due process balances the mitigation requirements a permitting agency could impose on a proposed project. Mitigation should reflect a fair share contribution and account for proportional impacts that a proposed project may cause. As written, the Certification attempts to impose an excess of mitigative requirements on Yuba Water that is not proportional to Yuba Water's fair share impacts to the Yuba River Watershed.

Aside from the problematic extension of SWRCB authority, several of these conditions would limit Yuba Water Agency's ability to generate carbon-free, renewable hydropower, especially during public health emergencies. This is especially troubling given the Administration's focused efforts to address the rolling power outages caused by a Westside heatwave in August of this year. Due to the extreme heat event, 492,000 customers lost power on August 14 for 15 to 150 minutes, and 321,000 customers lost power on August 15 for 8 to 90 minutes.

Yuba Water Agency played an important role during the August heatwave. Specifically, on August 14 and 15 amid record heat and high energy demands, Yuba Water ramped up its hydropower generation to feed the state's power grid, ultimately supplying enough energy for 20,000 homes and businesses. With absolute certainty, the additional power provided by Yuba Water helped California's Independent System Operator (CAISO) mitigate more widespread rolling blackouts throughout the state.

If the SWRCB's Certification is fully implemented, based on likely requirements on reservoir releases, instream flows and other challenging mandates, Yuba Water would have less water and overall capability to generate energy during future instances when the state's power supply may be tight.

Beyond assisting the state during power emergencies, the carbon-free power produced by Yuba Water plays an important and daily role in achieving California's climate goals, including slashing greenhouse gas emissions by 40 percent below 1990 levels and supplying 60 percent renewable energy in the next decade, as well as planning for a 100 percent zero-carbon electric supply by 2045. Power generated by Yuba Water is sold directly into the CAISO market, which facilitates power transactions for 80 percent of the state. Sales of renewable and carbon-free electricity – like that produced by Yuba Water – in the CAISO market are essential to achieving the state's energy and climate goals.

Yuba Water Agency also is participating in a number of collaborative initiatives with the State of California, federal agencies, and conservation groups to protect and restore fish and wildlife habitat throughout the Yuba River Watershed. The stringent requirements imposed on Yuba Water in the Certification would effectively compromise these efforts to protect and restore fish and wildlife habitat.

We believe the Board should recognize the public health and safety risks, as well as the risks to the state's electric reliability and clean energy goals, that the staff-issued Certification presents for all Californians. For this reason, we encourage you to withdraw and vacate this Certification, and to work collaboratively with Yuba Water Agency on the water quality measures that should be responsibly evaluated in their new license for the Yuba River Development Project. Please contact me at 916-847-8444 or dblacet@cmua.org if you have questions or to discuss this further.

Sincerely,



Danielle Blacet-Hyden
Deputy Executive Director