



October 20, 2009

Chris Wilkinson
Division of Environmental Services
Department of Water Resources
1416 9th Street
Sacramento, CA 95814

Via Electronic Mail

Dear Chris,

American Rivers appreciates the efforts of the Habitat Expansion Agreement (HEA) Steering Committee to develop a draft habitat expansion plan and inform HEA signatories of progress. I would like to provide the following comments on the information presented to signatories on October 15th, 2009.

I appreciate the fact that the Steering Committee and its consultants are working hard to develop the draft expansion plan on schedule, but it is not clear to me that the Steering Committee is being as systematic and objective as it should be in evaluating and selecting actions. For example, in the committee's October 15th presentation, it identified several actions that had been removed from the List of Viable Actions, and identified four of the remaining viable actions as the most promising actions. However, the Steering Committee did not present information describing how it had applied the relevant criteria to either remove projects from the viable list or identify the four "most promising" actions. It seemed apparent that the Steering Committee had not yet evaluated and scored potential actions against the relevant criteria in a systematic way, or in some cases developed the appropriate information to evaluate actions. I am very concerned that the method the Steering Committee is applying is not adequately systematic and objective, or that the rationale used to select actions will be developed retrospectively. The draft habitat expansion plan must be defensible to NMFS and other signatories, as well as the public ultimately.

Regarding the evaluation of the Lower Yuba River (LYR) project as one of the four viable actions under consideration, the Steering Committee identified several additional information needs, including "resolve eligibility issues (gravel augmentation and Daguerre Point Dam fish passage)", and "determine contribution to HET". I have two concerns regarding the methodology for evaluating the LYR project as described by the Steering Committee. First, it seems clear that the Daguerre Point Dam fish passage element of the LYR action is not eligible pursuant to section 3 of the Habitat Expansion Agreement because the Corps of Engineers is required to make these improvements pursuant to the Biological Opinion for the operation of Englebright Dam. However, the Steering Committee stated it was unclear as to whether this

element was eligible. The Daguerre Point Dam element should be removed from the LYR action.

Second, the Steering Committee stated the requirement of the Corps of Engineers to augment spawning gravel in compliance with their Biological Opinion would not be factored into their consideration of either the eligibility of the spawning habitat element of the LYR action, or in the calculation of the contribution to the Habitat Expansion Threshold (HET) of the spawning habitat work. I understand that spawning habitat rehabilitation could involve more than just augmenting spawning gravel supplies, but the Steering Committee did not present an adequate argument that the gravel to be supplied by the Corps of Engineers to the same reach in perpetuity should *not* factor into the calculation of the contribution of LYR action to the HET. Ignoring the contribution of the Corps of Engineer's gravel augmentation obligation to the HET would over estimate the contribution of the LYR action.

In addition, a comment was made in the October 15th meeting that the Corps of Engineers' gravel augmentation program required by the Endangered Species Act (ESA) should not be considered a valid obligation under section 3 of the HEA because it is "unlikely the Corps will receive funding" to meet their legal obligation. This is not an acceptable reason to disregard this existing obligation. American Rivers and other conservation groups such as the South Yuba River Citizens League are taking legal and other actions to ensure the Corps complies with the ESA.

Finally, the Steering Committee continues to include phase 2 of the Battle Creek restoration project continues as a viable action and even one of the preferred viable actions, despite being a requirement of the Biological Opinion for the Central Valley Project and State Water Project. This action should be removed from further consideration because it is clearly ineligible pursuant to section 3 of the HEA.

I look forward to reviewing materials describing the Steering Committee's evaluation and selection methodology when they become available.

Thank you for your consideration.

Regards,

A handwritten signature in blue ink that reads "Steve Rothert". The signature is written in a cursive, flowing style.

Steve Rothert
Director