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Charlton Bonham, Director, California Department of Fish and Wildlife
Will Stelle, Regional Administrator, West Coast Region, NOAA Fisheries
Curt Aikens, General Manager, Yuba County Water Agency
Steve Rotherth, California Director, American Rivers
Chris Shutes, FERC Projects Director, California Sportfishing Protection Alliance
Brian Johnson, California Director, Trout Unlimited

Re: Yuba Salmon Partnership Initiative Plan to Trap and Haul Wild Salmon

Dear Parties to the Yuba Salmon Partnership Initiative,

We are writing to share our concerns and make several requests regarding the May 7, 2015 announcement by the Yuba Salmon Partnership Initiative (YSPI) outlining an agreement and term sheet that would, in part, create a first of its kind ‘collect and transport’ (better known as ‘trap and haul’) program in California. This program would aim to move Yuba River Spring–run Chinook salmon around two dams, Englebright Dam and New Bullards Bar Dam, between the lower Yuba River and the North Fork Yuba River.

First and foremost among our concerns: non-volitional fish passage projects such as trap and haul do not provide for self-sustaining, long-term restoration and recovery of wild salmon and other native fish species within the river. Instead, they invest limited resources into new facilities that must be funded and managed continuously and indefinitely beyond the term of the YSPI agreement, and do little to nothing for steelhead and green sturgeon, which are also at risk of extinction in the Central Valley.

Moreover, we are concerned that the YSPI is making decisions on the direction of recovery efforts on the Yuba River without having considered and fully analyzed all the available alternatives, which should include an investigation of other ways to ensure effective fish passage and recovery in the watershed. We cannot understand why the YSPI would announce a framework for a “settlement agreement” among six parties, with the National Marine Fisheries Service as the only participating federal entity, when the Army Corps of Engineers is moving forward, at the same time, with a \$3 million feasibility study with the Yuba County Water Agency, commencing with a “charette, a collaborative design and planning session to determine the project’s scope.” A select group of entities should not be preemptively supporting an unsustainable fish enhancement effort in the Yuba River, particularly when the federal government is preparing a feasibility study through a collaborative process to assess a range of recovery options at the exact same time.

Both the National Marine Fisheries Service and the Army Corps will ultimately have to comply with the procedural requirements of the National Environmental Policy Act (NEPA) prior to funding or implementing any restoration activities on the Yuba River.¹ Pursuant to NEPA, federal agencies must consider alternatives to the proposed action.² To date, a comprehensive and watershed-based study looking at all Englebright Dam removal and sediment management options, along with improved flood protection and upstream dam management options, has not been carried out. The Council on Environmental Quality, which has issued regulations

¹ 42 U.S.C. § 4321 *et seq.*

² 42 U.S.C. § 4332(2)(C)(iii), (2)(E).

implementing NEPA's requirements, refers to the alternatives analysis as the "heart" of the environmental impact statement.³ We are very concerned that the YSPI appears to be deciding on the future direction of recovery efforts on the Yuba River before the federal government has engaged in the public analysis and comprehensive review procedures required by federal law. By announcing a substantive decision to pursue non-volitional fish passage in the context of a framework for a "settlement agreement," before any analysis has been conducted of other alternatives, NMFS and CDFW have put the cart before the horse and threaten to undermine the legitimacy of its decision and future efforts. The Ninth Circuit Court of Appeals has warned that NEPA's procedures "must be timely . . . and not as a subterfuge designed to rationalize a decision already made."⁴

In addition, the YSPI plan sets a very concerning precedent for use of trap and haul projects on other rivers in California and elsewhere that shifts attention and resources away from self-sustaining, volitional fish passage, as well as other wild salmon recovery actions.

The performance record for existing trap and haul programs is inconsistent and replete with problems. Mechanical failures, stress and mortality to fish, and even unanticipated impacts to water quality and macroinvertebrate populations from large juvenile fish collection facilities are among them⁵. While engineers are certainly willing and capable of building newer facilities with better performance, any facilities designed to collect and remove fish from the river are inherently prone to both mechanical and biological complications. The California Department of Fish and Wildlife's own Steelhead Restoration and Management Plan cites "the history of failure of trap-and-truck operations," and features a paper from the journal *Conservation Biology* that calls the use of such technological solutions, "techno-arrogance."⁶ Among the causes of biological issues, the artificial conditions and stress of concentrating and handling fish are known to be particularly problematic. The Oregon Department of Fish and Wildlife has noted that trap and haul programs can cause long-term evolutionary and population persistence problems as they "impose an artificial selective force and generally reduce fitness."⁷ Climate change studies carried out by leading wildlife experts have identified unimpeded wildlife migration, natural selection, and adaptation as high priorities to ensure long-term species survival in the face of changing environmental conditions. The more natural resource managers and regulatory agencies try to engineer solutions on dynamic living systems like rivers, the more opportunities there are for unexpected costs, ineffectiveness, and unforeseen impacts on aquatic communities and their habitat.

Furthermore, trap and haul programs do not meet criteria for recovery under the Endangered Species Act or support California Department of Fish and Wildlife goals for "wild" and "self-sustaining" populations⁸. Guidance documents for implementation of the ESA make it clear that delisting (the official goal of recovery actions)

³ 40 C.F.R. § 1502.14; see also.

⁴ *Metcalf v. Daley*, 214 F.3d 1135, 1143 (9th Cir. 2000) (striking down a NEPA document prepared after NMFS signed two agreements binding the agency to a specific decision).

⁵ Hafele, Rick. 2015. Lower Deschutes River water quality results. For the Deschutes River Alliance and Oregon Wild.

Keefer ML, Caudill CC, Peery CA, Lee SR. 2008. Transporting juvenile salmonids around dams impairs adult migration. *Ecological Applications* 18:1888-1900

Keefer ML, Taylor GA, Garletts DF, Gauthier GA, Pierce TM, Caudill CC. 2010. Prespawn mortality in adult spring Chinook salmon outplanted above barrier dams. *Ecology of Freshwater Fish* 19:361-372

⁶ California Department of Fish and Game. 1996. Steelhead restoration and management plan. California Resources Agency

⁷ Oregon Dept of Fish and Wildlife. 2006. Revised viability criteria for salmon and steelhead in the Willamette and lower Columbia basins. Review draft with the Willamette/Lower Columbia Technical Recovery Team.

⁸ California Department of Fish and Game. 1996. Steelhead restoration and management plan. California Resources Agency

requires adequate wild and self-sustaining populations⁹. NMFS acknowledged in the Public Draft Recovery Plan for Central Valley Salmonids that “allowing for volitional fish passage to the upper watershed is the only way to establish a self-sustaining population” , and the Final Plan Recovery Implementation Principles, indicate that “...priority will be given to measures that, once implemented, are self-sustaining.”¹⁰

More broadly, trap and haul programs present a terribly unsatisfactory solution from the standpoint of environmental stewardship. There is nothing benign about removing fish from rivers to move them along their way in trucks. Not least among these problems is that there are climate change implications from the high energy use and greenhouse gas emissions that result from such operations.

Ultimately, trap and haul fails to adequately address – and in fact, diverts attention away from -- any of the root causes of the decline in wild salmonid populations and watershed health, including the effects of dams. The recovery of Central Valley Spring-run Chinook, steelhead, and sturgeon requires that these fish populations gain access to historic habitat upstream of Englebright Dam and other barriers, as well as protection and restoration of adequate flows and habitat conditions below other diversions within the watershed. Re-locating adult salmon from the lower Yuba River to the North Yuba River, and juvenile salmon from the North Yuba to the lower Yuba does not truly connect existing habitat to historic habitats but rather bypasses 40 miles of river through an artificial system of fish collection and transport. YSPI’s plan apparently involves no restoration of the watershed bypassed by trap and haul and pre-empts regulatory processes that may require restoration of those reaches between and below dams for the purpose of recovering fish and improving watershed health and fisheries suitability.

We request that YSPI parties return to the pursuit of detailed studies investigating volitional fish passage options for the Yuba. The process of determining the best actions on the Yuba River for recovery of wild salmon and steelhead should occur in an open process, with significant input from diverse local and regional stakeholders, instead of an exclusive group bound by confidentiality agreements. Furthermore, the studies should be coordinated with the \$3 million Army Corps of Engineers feasibility study for fish passage at Englebright Dam and Daguerre Point Dam so that results of both processes will be based on adequate assessment and evaluation of long-term, watershed-scale options.

Accordingly, we request that YSPI suspend negotiations focused on a premature and pre-emptive plan for trap and haul on the Yuba and refocus efforts on conducting adequate alternatives assessment studies with required stakeholder collaboration. We support the portions of the YSPI plan calling for sustainable restoration of fish habitat in the lower Yuba River. We welcome collaboration in achieving shared goals on this river, the broader San Francisco Bay ecosystem, and sustainable West Coast fisheries recovery in general.

Volitional fish passage is the only way to achieve true recovery of wild and self-sustaining fisheries and watershed function in the Yuba River and throughout the country. Non-volitional fish passage projects like trap and haul lock us into costly ongoing programs which divert resources and energy away from more effective and sustainable solutions. This concept is underlined in the conclusion of the California Department of Fish and

⁹ U.S. Fish and Wildlife Service. 1990. Policy and guidelines for planning and coordinating recovery of endangered and threatened species

¹⁰ National Marine Fisheries Service. 2014. Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-run Chinook Salmon and Central Valley Spring-run Chinook Salmon and the Distinct Population Segment of California Central Valley Steelhead. California Central Valley Area Office. July 2014.

Wildlife's Steelhead Restoration and Management Plan where technological solutions are discussed, stating
“...the real danger with this philosophy is that it can divert attention, and forestall real, long-term solutions.”

Sincerely,

Yvon Chouinard
Founder/ Owner
Patagonia, Inc.

Hans Cole
Environmental Campaigns and Advocacy Director
Patagonia, Inc.

Matt Stoecker
Biologist/ Owner
Stoecker Ecological

Erica Stock
Executive Director
Native Fish Society

Kurt Beardslee
Executive Director
Wild Fish Conservancy