



1 Having considered the memoranda and evidence, and good cause appearing, the Court  
2 HEREBY ORDERS that the interim injunctive measures set forth below are GRANTED. Plaintiffs  
3 have succeeded on the merits of their Third Claim that the National Marine Fisheries Service  
4 (“NMFS”)’s Biological Opinion for Operation of Englebright and Daguerre Point Dams on the Yuba  
5 River, California, November 21, 2007) (“BiOp”) is arbitrary and capricious and invalid. Injunctive  
6 relief is appropriate to remedy the harms caused by NMFS and the U.S. Army Corps of Engineers  
7 (“the Corps”)’s failure to comply with the Endangered Species Act (“ESA”). Accordingly, the Court  
8 hereby orders as follows:

9 **Interim Measures To Correct the Delays in Upstream Migration Caused by the Project:**

- 10 1. The Corps shall reduce the impediment to spring Chinook and steelhead passage at Daguerre  
11 Point Dam (“Daguerre”) by developing and then rigorously implementing a written operation  
12 plan for optimum operation and maintenance of the Daguerre fish ladders.
- 13 A. The Corps shall promptly install flow meters or other devices to measure the volume  
14 of water per unit time passing through the Daguerre fish ladders. The Corps shall then  
15 immediately begin recording data from the flow device.
- 16 B. The Corps shall begin immediately recording data on adult Chinook<sup>1</sup> and steelhead  
17 passage through the ladders from the existing VAKI device<sup>2</sup> already installed on the  
18 ladders.
- 19 C. From this data, the Corps shall develop data and conclusions as to what are the  
20 optimum flow velocities in the Yuba River and ladders for promoting fish passage.
- 21 D. The Corps shall use this data to consider whether and how to modify flows through  
22 the ladders to achieve these optimum flow conditions. This may include operation of  
23 flash boards on the dam spillway, operation of the slide gates at the ladder exits,  
24 and/or consideration of whether upstream releases of water from the various  
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27 <sup>1</sup> Data on fall Chinook passage would also be relevant to determining optimum flow conditions to  
support fish passage.

28 <sup>2</sup> The VAKI device is a fish counting device installed in the Daguerre fish ladders.

1 impoundments in the Yuba River watershed could be adjusted to help secure these  
2 optimum flow velocities.

3 E. The Corps shall begin developing the operation and maintenance plan based on data  
4 correlating spring flows through the ladders with data on passage for fish, including  
5 spring Chinook, during the spring of 2011.

6 F. The Corps shall gather additional data, if necessary, throughout 2011 and complete  
7 the study and implementation of a written operation plan by no later than December  
8 31, 2011.

9 G. This plan shall specify that the slide gates at Daguerre will only be closed if needed to  
10 protect against damage to the gates during extreme high flows or when needed for  
11 maintenance purposes, and that the Corps will routinely inspect the gates to ensure  
12 that no third parties close them.

13 2. The Corps periodically has placed movable flash boards on the Daguerre dam spillway to try  
14 to manipulate flows through the fish ladders and over the face of the dam, but has never  
15 developed systematic criteria for when or where the flash boards shall be placed to optimize  
16 their usefulness for this purpose. Therefore, the Corps shall develop a written plan by April 6,  
17 2011 that specifies:

18 A. How the flash boards can be used to maximize fish passage at Daguerre (i.e., by  
19 concentrating flows through the ladders, by concentrating flows away from the  
20 ladders in order to avoid interfering with attraction flows, or in other ways);

21 B. What Yuba River flow conditions will prompt the placement or removal of the flash  
22 boards;

23 C. Where the flash boards will be placed under different river flow scenarios;

24 D. Any other pertinent criteria related to operating the flash boards in the way that best  
25 facilitates fish passage at Daguerre;

26 E. The plan shall further specify that the Corps will monitor the flash boards at least  
27 once a week to make sure that they have not collected debris which might contribute  
28 to juvenile fish mortality.

- 1 F. The plan shall further specify that the Corps will monitor the effects of the flash  
2 boards in possibly promoting mortality in juveniles due to entrainment or  
3 concentrating juveniles in a fashion that promotes predation.
- 4 G. The plan shall further specify that the Corps will continually adjust the plan for  
5 operation and maintenance of the flash boards based upon the information generated  
6 through its monitoring efforts, after seeking comments from NMFS, California  
7 Department of Fish and Game (“CDFG”), the South Yuba River Citizens League  
8 (“SYRCL”), and Friends of the River (“FOR”) on proposed changes to the plan.
- 9 3. The Corps shall promptly install pressure transducers in the north and south fish ladders. The  
10 transducer is a device that would continuously record the water pressure within the fish  
11 ladders—and because flow is correlated with such pressure, indicate when changes in flow in  
12 the ladders occur. A sudden decline in water pressure as shown by the pressure transducer  
13 would provide immediate notice that flows in the ladders had declined due to a debris  
14 blockage.
- 15 A. The Corps shall post the pressure transducers’ continuous measurements on a Corps  
16 internet web site in real time—which would allow other interested agencies and  
17 members of the public to monitor flows in the ladders as they are occurring.
- 18 4. To minimize adverse impacts to spring Chinook and steelhead, the Corps shall clear debris  
19 blockages from the Daguerre fish ladders as soon as possible after they are discovered and,  
20 unless blockages are due to abnormally large debris, no later than within 12 hours. If  
21 abnormally large debris (such as very large logs which may be transported into the ladders by  
22 unusual high river flows) is blocking the ladders which necessitates unusual efforts, the  
23 Corps shall remove the debris as soon as possible, but in no case to exceed 3 days (unless  
24 persistent high river flows make access impossible, in which case as soon as such flows  
25 recede).
- 26 5. The Corps shall adopt a revised sediment management plan and a plan for re-engineering the  
27 south bank of the Yuba River and the main channel of the River as needed to improve flows  
28 to the south fish ladder.

- 1           A.     The Corps shall adopt a revised written sediment management plan by April 6, 2011  
2                     that provides for inspection of the channels leading to the Daguerre fish ladders in  
3                     May, mid-July and again after all major winter storm events (i.e., after the cessation  
4                     of high flows from storms that generate Yuba River flow exceeding 20,000 cubic feet  
5                     per second as measured at the Marysville flow gauge or flow that is sufficient to move  
6                     significant sediment loads in the bed of the river). If the Corps' inspections reveal that  
7                     the channels are less than three feet deep, but still appear to be sufficiently functional  
8                     for fish passage, the Corps shall schedule dredging for sometime between the last two  
9                     weeks of July and the first two weeks of August. If the inspections reveal significant  
10                    sediment buildup that risks impairing fish passage, the Corps shall propose a dredging  
11                    plan for accomplishing the dredging in a manner that minimizes adverse impact risks  
12                    to the fish, and circulate this proposed plan to NMFS, CDFG, SYRCL and FOR for  
13                    comments. The Corps shall respond to these comments in a final dredging plan and  
14                    then promptly implement the plan.
- 15           B.     The Corps shall circulate a proposed south bank re-engineering plan for comments to  
16                    NMFS, CDFG, SYRCL and FOR by April 6, 2011. The Corps shall respond to  
17                    comments in a final plan adopted no later than June 6, 2011. The Corps shall then  
18                    complete implementation of the plan by October 6, 2011.
- 19           C.     The Corps shall place back into the Yuba River on the river's bank any  
20                    gravel-containing sediments that it dredges from the Yuba River. The Corps'  
21                    dredging plans shall specify where placement of the gravel sediments will occur to  
22                    ensure maximum benefits to the River's substrate.
- 23     6.     To prevent poaching from the fish ladders at Daguerre, the Corps shall install locking grates  
24                    over the north and south fish ladders. These grates shall be hinged so they can be opened for  
25                    removing debris from the ladders. The grates will also serve to prevent fish jumping out of  
26                    the ladders onto dry land. The Corps shall consult with NMFS and CDFG about the design of  
27                    the grates and then install them by April 6, 2011.
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1 **Interim Measures To Correct the Loss of Genetic Diversity, Reproductive Success, and**  
2 **Suitable Habitat Caused By the Project:**

- 3 7. The Corps shall study and develop a plan for measures that will promote and secure physical  
4 segregation/separation of spring Chinook from fall run Chinook in the Yuba River, allowing  
5 the former to spawn without competition from or cross-breeding with the fall run Chinook.
- 6 A. The plan shall propose a temporary, seasonal artificial segregation weir within the  
7 Yuba River below Englebright. The proper design, placement, installation, and  
8 operation of the segregation weir project shall be supported by a diligent analysis. The  
9 Corps shall provide its plan for review and comment to the CDFG, NMFS, SYRCL  
10 and FOR by June 6, 2011. The Corps shall then implement its plan if and as approved  
11 by CDFG and NMFS.
- 12 B. The plan shall further propose measures for impeding the migration of stray hatchery  
13 fish into the Yuba River to locations where hatchery fish could compete with spring  
14 Chinook spawners and/or interbreed with spring Chinook.
- 15 C. To ensure and measure success of segregation efforts, the plan shall also include  
16 methods for identifying and distinguishing spring Chinook from fall run Chinook.
- 17 D. The plan shall also include an appropriate schedule for implementation of physical  
18 segregation/separation measures, with these measures commencing as soon as  
19 feasible and in no case later than September 2011.
- 20 8. By April 6, 2011, the Corps shall develop and commence implementation of a complete long-  
21 term gravel augmentation plan for adding gravel to the Yuba River in sufficient quantity to  
22 create new suitable spawning habitat for spring Chinook and steelhead. The Corps' long-term  
23 gravel augmentation plan shall require the Corps to:
- 24 A. Complete the monitoring and evaluation of its November 2010 gravel placement that  
25 the Gravel/Cobble Augmentation Implementation Plan ("GAIP") specifies;
- 26 B. Complete implementation of the gravel restoration project called for by the GAIP, i.e.,  
27 meet minimum rehabilitation objectives for the Yuba River site immediately below  
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1 Narrows 1, by adding an additional 10,000 tons of gravel by November 2011 at the  
2 location specified by the GAIP;

3 C. Implement at least the two additional Yuba River gravel placement projects called for  
4 in the November 2010 "Final Habitat Expansion Plan" authored by the California  
5 Department of Water Resources ("DWR") and Pacific Gas & Electric Co. ("PG&E").  
6 The plan shall specify a schedule for completing these projects, with commencement  
7 of these projects in June 2011 and completion of these projects thereafter as  
8 expeditiously as possible given permitting and construction constraints;

9 D. Continue to monitor all areas of the Yuba River that are designed to have improved  
10 gravel spawning substrate as a result of the Corps' gravel placement efforts and  
11 identify any such areas that have deficient gravel as a result of gravel placed in these  
12 areas being lost to downstream transport; and

13 E. Annually place additional gravel into the Englebright Dam Reach in quantities  
14 sufficient to maintain all rehabilitated areas for spawning.

15 9. By April 6, 2011, the Corps shall develop a draft plan for the implementation of the plan for  
16 riparian planting and large wood installation identified as Project 10 in the report entitled  
17 Rehabilitation Concepts for the Parks Bar to Hammon Bar Reach of the Lower Yuba River)  
18 (Nov. 2010). The Corps shall circulate the draft plan to NMFS, CDFG, SYRCL and FOR for  
19 comments and respond to these comments in a final plan, which the Corps shall adopt by  
20 June 6, 2011. The Corps shall then secure all needed approvals and implement the vegetation  
21 project by November 7, 2011.

22 **Schedule for Remand Proceedings and Submission of Quarterly Status Reports**

23 10. NMFS shall issue a new biological opinion by June 6, 2011 that addresses the deficiencies  
24 found in this Court's summary judgment order of July 8, 2010.

25 11. The Corps shall submit quarterly status reports to Plaintiffs describing the progress being  
26 made to implement the measures set forth above. This will allow the Court and the Plaintiffs  
27 to monitor compliance with the Court's injunction and ensure that any shortcomings in this  
28 compliance are appropriately addressed.

1 12. The Parties shall file briefs to the Court after the new biological opinion is issued addressing  
2 the question of whether the injunction should remain in force going forward.

3 13. The Corps shall continue to implement the measures set forth above until further order of the  
4 Court.

5 This is not a final order for all claims and all parties for purposes of Fed. R. Civ. P. 54(b). If a  
6 party should file an appeal from this order, this Court is not divested of jurisdiction to hear and  
7 decide any motion for attorneys' fees. *Metcalf v. Borba*, 681 F. 2d 1183 (9th Circuit 1982); *Int'l*  
8 *Ass'n of Bridge, Structural, Ornamental and Reinforcing Ironworkers' Local Union 75 v. Madison*  
9 *Industries, Inc.* 733 F.2d 656 (9th Cir. 1984); *Cervantes v. Sullivan*, 739 F. Supp. 517 (E.D. Cal.  
10 1990).

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12 Dated: \_\_\_\_\_

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Lawrence K. Karlton  
United States District Court Judge

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