

**YUBA RIVER WATERSHED
MULTI-PARTY FORUM
CONVENING ASSESSMENT PROCESS**

Final Convening Report



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DRAFT CONVENING REPORT**

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YUBA RIVER WATERSHED MULTI-PARTY FORUM DRAFT CONVENING REPORT

I. Overview and Introduction

Kearns & West is a neutral, private, company that provides process support to people addressing complex environmental and public policy issues. In February 2010, NOAA Fisheries asked Kearns & West to conduct an independent convening assessment of stakeholder perspectives on issues and concerns related to the potential convening of a multi-party forum in the Yuba River Watershed. Funds for the assessment were contributed by NOAA Fisheries.

The goal of the convening and assessment process was to assess the potential for initiating a collaborative process to address identified issues and, if feasible, to recommend a process design. This convening and assessment phase is intended to answer the question of *whether* a collaborative process is appropriate or useful, and if the answer to the first question is “yes,” answer the question of *how* the interested parties might move forward with such a process.

Kearns & West interviewed people representing the range of perspectives on issues and concerns related to the Yuba River watershed. This Convening Report provides a summary of the issues, concerns, ideas, and suggestions explored in the convening assessment interview process. The report recommends that, with some initial process-related tasks, a collaborative process could be constructive in addressing anadromous fish restoration activities and water management issues in the Yuba River Watershed. The report also provides Kearns & West’s proposed recommendations on how such a process might be structured for consideration by the interviewees and interested parties.

Kearns & West would like to express its appreciation to all the interviewees who gave willingly of their time to share information and ideas and without whom this report would not be possible.

II. Convening Assessment Process and Approach

A convening process or feasibility assessment is a method to assess and potentially assist stakeholders in organizing or convening a collaborative process. An assessment provides the opportunity for stakeholders to gather information, learn about each other’s interests, better understand the varying perspectives on critical issues and concerns, test assumptions regarding the anticipated barriers or obstacles, and develop a range of ideas and suggestions for addressing identified issues and concerns.

In February 2010, Debra Nudelman, Kearns & West VP/Senior Mediator along with Senior Associate Peter Harkema held a one day meeting in Sacramento, California in order to learn about the parties’ hopes and expectations for the convening process, to identify anticipated topics to discuss during the convening interviews, and to develop an initial list of individuals to interview. Based on the input received, Kearns & West crafted a draft set of interview questions and an initial list of interviewees. The interview list was not intended to include every individual with an interest or information related to issues in the Yuba River watershed; rather, it was designed to obtain a cross section of the full range of perspectives related to these issues. Parties agreed to move forward with the process and Kearns & West designed the convening protocols, process, and schedule for

the Yuba River Multi-Party Forum (YMPF) Convening Assessment. In early March, Kearns & West sent introductory materials to the proposed interviewees describing the process, interview questions (*see Appendix A*) and a request for scheduling information. The convening interview process took place from March through mid-May with individual, group, phone and/or in-person interviews. Where interviewees were not available by telephone or in person, input was solicited in the form of written responses to the interview questions. In total, Kearns & West contacted 56 people to request their input to the assessment process and input was received from 49 individuals (*see Appendix B*).

Kearns & West conducted each interview utilizing the same set of questions to provide for consistency throughout the process. The assessment process helped the Kearns & West team to learn about the perspectives of interviewees, their passion for a wide range of issues, as well as their understanding of the challenges and complexity facing the Yuba River watershed. Kearns & West was especially interested in identifying the similarities and differences of opinions on issues, looking for areas of commonality and convergence as well as areas of conflicting or polarized opinions. The process helped Kearns & West understand stakeholder interest in finding collaborative solutions to identified issues as well as the likelihood that a collaborative process could achieve success in resolving the issues. Kearns & West wishes to express our gratitude for interviewees' time and thoughtful consideration of the interview questions. The interviews provided a wealth of information, process suggestions, and a comprehensive list of topics for consideration by parties as they determine whether and how to move forward with the YMPF effort.

Because of the complexity of the environmental, regulatory, and water management issues in the Yuba River watershed, interviews lasted from one to three hours. Based on interviewee suggestions, a number of people were added to the potential interview list as the process progressed. Because resources and time to complete the assessment were limited, Kearns & West was not able to interview every entity that was suggested for an interview. Additional parties that were suggested for interviews or participation in the YMPF have been included in the convening report.

The convening interview process produced a significant amount of information, a rich diversity of perspectives, creative and pragmatic insights, and thoughtful ideas and suggestions. This report represents highlights of the key issues, concerns and ideas offered during the interview process. Because it is a summary it will not include every idea raised during the interviews.

Kearns & West is providing this draft report to, and seeking comments from, all interviewees both for the value of sharing this information broadly and to ensure there are no significant errors or major omissions. No confidential information has been included in this report nor were any names attributed to statements made during the interview process. The Kearns & West team will present the results of the assessment at the two upcoming Yuba River Multi-Party Forum meetings providing an opportunity for discussion of the convening report and its proposed recommendations.

III. Summary of Convening Interviews

Interviewees were thoroughly engaged throughout the interview process expressing a wide range of opinions. Some overarching themes wove their way into most of the conversations and are summarized here to provide a context for this portion of the convening report.

Interviewees appreciated NOAA Fisheries effort to bring parties together through this convening process. Many interviewees noted that the Yuba Accord provided a positive example of collaborative efforts in the Yuba watershed. Most interviewees recognized that the Yuba River is a unique watershed, providing important resources to people, fish and wildlife. They recognize that these resources are often perceived as and may be in conflict with each other often creating a win/lose paradigm. There are also process challenges related to identifying a convening entity, timing, participation and sideboards around the issues. With careful attention to initiating the process to address mutual interests, interviewees stated a collaborative approach has the potential to overcome barriers, address the myriad of issues facing the Yuba watershed, and provide a forum to develop solutions acceptable to all parties.

A. Interviewee Background, Involvement and Interests with Respect to the Yuba River Multi-Party Forum

Kearns & West was fortunate to have the opportunity to interview a diverse, thoughtful, and articulate group of individuals with interests, both personal and professional, in the Yuba River watershed. Interviewees included federal and state government officials; tribal representatives; water providers; power generators; environmental group leaders; recreational interests; technical experts; attorneys; and policy makers.

Interviewees reflected a range of experience and investment in the Yuba watershed. Interviewees approached the process with unique professional, personal, and cultural perspectives. They expressed a wealth of expertise, drawing on tribal and cultural history, technical expertise, legal and regulatory knowledge, and past experience. Interviewees had expertise in fish and wildlife management, water management, power generation or other areas and were employed as scientists, managers, public servants, and private business employees; each with significant expertise in their fields of interest.

Drawing on their personal and profession experiences, interviewees described a variety of interests relating to the Yuba River watershed. Many reflected an overarching interest in the Basin's overall health, including protection of anadromous fish and water quality, quantity and flow. Some interviewees expressed an interest in protecting local communities from floods and providing them with a reliable supply of water. Other interviewee's interests focused on maintaining or enhancing anadromous fish runs. Some had an interest in protecting the river and fish as a way of preserving and rebuilding traditional uses and tribal culture.

Interviewees represented a diverse cross-section of interested stakeholders. Each brought their perspective to share with respect to issues in the Yuba River Basin. It was a pleasure for the Kearns & West team to participate in this process. We are deeply grateful to the interviewees who shared their knowledge, interests, perspectives, and passion about issues that were clearly important to them in their professional and personal capacities.

B. Proposed Purpose of the Yuba River Multi-Party Forum

Introduction

Many interviewees suggested that the purpose of the Multi-Party Forum should be to collaboratively address challenges in the Yuba watershed, noting that the forum represents an opportunity to build off the good work of the Yuba Accord and other collaborative efforts in the basin. It was noted by some parties that a collaborative approach had the advantage of allowing flexibility to explore

solutions outside the traditional regulatory approach. A significant number of interviewees noted that to be successful, the YMPF would have to maintain stakeholder authorities and mandates, including flood protection, water supply, protection of listed species, and power generation. There was a diversity of opinion regarding whether the forum should address near-term issues, such as relicensing efforts or focus on medium to longer-term goals such as “overall watershed health.” This section provides highlights of the various purposes interviewees offered for the YMPF.

Restoration/Recovery

Numerous interviewees suggested that the YMPF’s primary purpose should be to work for the recovery and restoration of anadromous fish in the Yuba watershed. Some noted that the Yuba is a high priority watershed and that recovery of Spring Chinook would be of particular importance, especially given recent declines in stocks and limited access to habitat throughout the California Central Valley. Although many interviewees agreed that restoration should be a top priority, opinions varied about how best to approach the restoration. Some believe that the YMPF should work to establish how hydro-projects could work together to optimize salmon and steelhead populations and contribute to the restoration of anadromous fish in the watershed. Many of these same respondents noted that, to accomplish successful restoration, it would be important to concurrently ensure and provide for sustainable water supply and power production uses. Some felt strongly that the restoration of salmon populations should guide YMPF process, suggesting that the forum should seek consensus on the question of how best to recover spring Chinook and steelhead populations, while meeting the needs of the water users and power generators.

Others emphasized that restoration and recovery actions would be important but suggested that the YMPF should focus efforts on developing a prioritized list of recovery opportunities for the Yuba basin. A prioritized list of anadromous fish restoration opportunities could then be used by licensees and others when determining which mitigation actions to implement. It was noted that such a list would be of great value and would avoid the often challenging conversations associated with which actions to implement, how, and when. Some noted that a survey of all of the restoration opportunities, both upstream and downstream, would also have to be cross-walked against possible temperature and flow to achieve the restoration.

Passage/Reintroduction

There was strong division on the issue of whether fish passage and reintroduction of anadromous fish into the Upper Yuba should be a primary purpose of the YMPF. Some felt that the goal of the forum should be to restore wild salmonids above Englebright Dam. Some suggested that this effort should include a credible scientific, legal, and policy evaluation of the implications of reintroduction. Others firmly believe that reintroduction should not be the starting point for the forum. Rather, they suggest a broader evaluation of potential restoration activities throughout the Yuba watershed.

Relicensing

Some interviewees emphasized that for the YMPF to be successful, it would also need to allow for successful relicensing of the hydro-projects in Yuba watershed. Many noted that the Integrated Licensing Process (ILP) requires licensees to follow strict timelines. The disjunctive schedules of the Yuba-Bear, Drum-Spaulding and Yuba County Water Agency relicensing combined with the ILP process requirements would seem to create significant impasse in striving to develop a coordinated approach and outcome. Others saw the YMPF as a unique opportunity to align the three projects’ relicensing efforts, collaboratively developing a set of environmental measures that all parties agree on and that protect environmental resources against potential impacts from hydro-project

operations. Still others saw the YMPF as venue through which to collaboratively develop studies and a common source of information for YCWA's relicensing efforts.

Some interviewees expressed concern that the individual and distinct relicensing process was leading to a fragmented approach toward watershed restoration. Many felt that the purpose of YMPF should be to provide a collaborative, coordinated, and integrated approach to solving watershed level challenges. Some suggested that the forum might work to develop a comprehensive plan to provide the basis for a relicensing agreement, fish and wildlife issues (including anadromous fish), and an updated water management plan or "Yuba Accord Two."

Balancing Resource and Water Uses

Many interviewees suggested that the purpose of the YMPF should be to collaboratively develop a plan to balance environmental needs with the consumptive use needs within the Yuba River watershed and across watersheds. Some interviewees expressed concern that the current management system does not adequately support anadromous fish and saw the collaborative forum as a way to develop a better forum for balancing of the limited resources for the benefit of multiple species and users. Still others noted that the YMPF should have a broad enough scope to address related interests in other watersheds.

Economic Impact

Several interviewees suggested that the YMPF should work to maintain the beneficial uses that have built and sustained the region's economy, including rural, suburban, and urban uses of water. Others noted that the forum should also protect economic interests, such as tourism, boating, and recreation – including recreational fisheries above and below the projects.

C. Major Issues and Challenges That Need to be Addressed in the Yuba River Basin Over the Short, Medium and Longer-Term and Why.

Substantive Issues

Data

There was a strong division on the issue of what data is currently available and what data would be needed for the YMPF to effectively function. Some interviewees stated that existing data and data that is being gathered through ongoing and future relicensing efforts would provide sufficient information to assess such topics as fish passage. Other interviewees believe there is a lack of data and it is a major challenge that must be addressed in the Yuba River basin. Some of the key data gaps identified as major barriers to YMPF success were: habitat suitability and availability in the South Fork Yuba, Middle Fork Yuba, and North Fork Yuba; determining the impacts of the upstream projects on downstream areas; and potential changes and impacts to the New Bullards Bypass reach. A complete list of identified data and information gaps provided by interviewees can be found in Section III.G of this report.

Some interviewees perceived that with past restoration efforts, the status of anadromous fish species the Central Valley had seen dramatic decline. They noted that this effort is beginning at a new place, both in terms of status of the species, as well as through the guidance provided through NMFS Recovery Planning efforts and the data it includes. Others saw oral history and cultural traditions as an important source of information that need to be captured before those who carry these traditions and stories are no longer able to share them.

Anadromous Fish Restoration

Many interviewees identified the recovery and restoration of salmonids in Yuba River watershed as the key issue that needs to be addressed in the basin. Some believe that fish passage will be a fundamental component of restoring anadromy in the Yuba. For these parties a critical component in providing for recovery and restoration is the development of a plan to allow salmon and steelhead access to habitat upstream of Englebright Reservoir with appropriate flow and other conditions, as well as to get juveniles out past Englebright down to the lower Yuba River. If a plan were developed, a significant challenge is seen as how to achieve buy-in among water users that salmon and steelhead can and should be restored upstream of Englebright Reservoir. A number of parties saw volitional passage as a key component and challenge within the fish passage discussion, while others felt that there would be sufficient flexibility among parties to work through the issue of volitional passage. Some wondered if the Yuba was the right place to start an effort to provide for anadromy above the rim dams, noting that it represented a “big first bite.” Still others suggest that any discussion of fish passage is premature and note that there are many restoration opportunities in the basin that should be looked at before considering fish passage.

Economic Impacts

Some interviewees explained that a major issue to be addressed in the basin will be how to limit negative economic impacts from any proposed change in project operations. Some noted that economic impacts would not just affect water purveyors and power generators but also local communities. A total cost benefit analysis will be critical component of any discussion regarding restoration actions and/or changed operations or water deliveries.

Multiple Uses and Competing Demands

Numerous interviewees suggested that the greatest challenge in the Yuba is the many competing demands for limited resources. There are many diverse uses of the water including: water supply for irrigation; in-stream habitat creation; water supply for urban water users; water deliveries for users outside the basin; recreation above and below the projects, among others. Many noted that the overall complex water system moving water between the various forks and rivers presents significant challenges to any effort to understand pros and cons of various options as well as impacts of proposed solutions.

Impacts on Lower River

Some expressed concern that the status of the species in the lower river may not be sufficiently healthy to use as the source population for reintroduction without potential harm to the lower river populations. Others noted that it would be important to remember the beneficial opportunities in the lower river are not forgotten, particularly in Dry Creek and Deer Creek. Still others suggested that the issues in the lower basin (anadromous fish) and the upper basin (residential fish, riparian habitat, recreation, frogs, etc.) are very different and the two should not be crossed.

Climate change

A number of interviewees noted that climate change may create a particular challenge in developing solutions for anadromous fish restoration in the Yuba watershed. Some noted that the hydrology of the past and present is not necessarily the hydrology of the future and expressed concern that the YMPF could develop a solution for current conditions but that may not be sufficient or implementable in the future. Others noted that climate change may cause the lower Yuba to warm more and this would place increased importance on the upstream reaches.

Process Issues

Procedural and Timing

Many interviewees noted that there are significant procedural and timing issues to be addressed in the Yuba River watershed. The most cited example was the disjunctive timing of the three FERC relicensing processes. Some describe the situation as “upside down” moving from the top of the watershed downstream, thereby precluding decision-making for the full watershed. Some believe the regulatory process is timed such that no fish will be considered in the upstream relicensing and subsequently they will not be considered in the YCWA relicensing because of limited habitat data. Some stated the fragmented relicensing processes will limit potential solutions and are seen by some as a critical challenge to be overcome. Many noted that any solution would need to address a balancing of interests, provide for certainty as part of the outcome while also allowing for flexibility and changed conditions. Others noted procedural concerns: that licensees are constrained by the ILP schedule requirements; that federally operated projects are limited by authorized purposes; and that the YMPF itself may interfere with relicensing processes.

Some questioned whether parties will be able to engage in a meaningful conversation/process until the regulatory process has moved forward. They noted that, unlike a relicensing, there is not a regulatory driver for the YMPF and therefore less of an incentive to participate. A number of potential regulatory actions were mentioned that may provide clarification and incentives, including: Section 7, Section 4(e) and 10(j), in addition to lawsuits that could be filed by outside parties. Others wondered whether the regulatory agencies would be able to fully participate in a collaborative process and be bound by the outcome or if in the end they would be limited by their regulatory mandates. Some wondered if the regulators had already determined what needed to be accomplished for restoration (i.e. fish passage) and, if so, whether the YMPF could truly be a collaborative process.

Funding

Some interviewees suggested that securing funding would be a major challenge in implementing any agreed upon restoration action, especially large actions like fish passage facilities. Of particular concern to some was how a determination would be made about who would contribute what amount toward actions. Some suggested that the bigger obstacle might be obtaining congressional authorization and appropriations. On the other hand, numerous interviewees expressed optimism that a collaborative effort such as the YMPF could build momentum for and ultimately be successful in seeking funding at either the state or federal level.

Data

There were significant differences of opinion among parties as to how much data is available and how much data would be needed to answer questions such as whether and/or how to proceed with fish passage in to the Upper Yuba. Some suggested that a clear assessment should be conducted of what information is available and what information would need to be gathered.

Similarly, there is a range of opinions regarding the usefulness of information developed in past efforts, such as the Upper Yuba River Studies Program (UYRSP). Some pointed to the UYRSP as a well-intentioned collaborative effort that produced insufficient information because there was not agreement among the parties on the tools used and how they were applied. Others see the data that originated from the UYRSP as acceptable, available, and a key data source for decision-making going forward. Still others see data from the UYRSP as largely sufficient, but potentially in need of some updating, particularly with regard to temperature. Many noted that to successfully develop solutions,

the YMPF would need good science and economic analysis to help determine the potential impacts to water supply and hydro-generation.

Tribal and Cultural Interest

Some noted that it would be very important to have tribal perspectives incorporated into potential policy-making. In the past, the tribal voices have not always been sufficiently represented and as a result solutions have not always been acceptable to the tribes. It was also noted that unified tribal representation could be challenging, given diversity of interests among the tribes, divisions between tribes and various economic interests.

Relationship Issues

Trust

Some noted that a positive outcome of the YMPF process could be improved relationships between parties that have historically been at odds with one another. Some referenced the Yuba Accord as an example of a collaborative effort that built strong working relationships between diverse interests. Some expressed concern that the YMPF could risk these relationships by positioning parties against each other in a new process.

Parties and community support

Some interviewees said that for the YMPF process to be successful it will need to get buy-in from all parties, as well as broader support from local community members. It was noted that securing community support for some actions may be challenging, especially if there was a negative economic impact or impacts to recreation.

D. Barriers and Obstacles to Addressing Identified Issues

Substantive Barriers

Opinions on Habitat Suitability

Some interviewees expressed and others observed a significant debate on the amount and quality of habitat available above Englebright Reservoir. Some interviewees suggested that temperature and passage data from past studies is insufficient and cannot be relied on; they also referenced a perspective that there is a lack of data available for the North Fork Yuba. Other interviewees believe that habitat suitability is fairly well established. Many interviewees stated that the depth of disagreement surrounding this topic could be a barrier to resolution of the issues.

Out of Basin Impacts

Some parties observed that hoped for outcomes in the Yuba watershed may be difficult to achieve given the amount of inter-basin water transfers as well as the number of out-of-basin connections. For example, some explained that any reduction of flows to Western Placer creeks may result in a loss of critical habitat, recreation, and revenue in those areas. These interviewees explained that it will be important to ensure that actions in the Yuba will provide better habitat than that which already exists in the Placer drainages. Others expressed concern that the money made through out-of-basin water delivery may create a disincentive for some parties to develop solutions and efforts that benefit the Yuba watershed. Still others referenced the Oroville licensees' efforts to seek mitigation credit for work in the Yuba through the Oroville Habitat Expansion Agreement (HEA) and noted that this approach could create a challenge if other parties want credit for these same mitigation efforts. Some wondered if there would be challenging jurisdictional issues with various

parties becoming involved in each other's processes, including parties from outside of the Yuba watershed.

Process Barriers

Data Availability and Credibility

Some interviewees offered considerable skepticism regarding the credibility and validity of science describing the watershed. These observers see a need for considerably more study on habitat suitability in the upper reaches before issues like fish passage can be addressed. Some interviewees that were generally comfortable with status of existing science suggested that additional data may be needed in some areas. A number of interviewees were concerned that the YMPF will simply be used by some parties as a data gathering exercise to stall progress and action on key issues. Among many interviewees a fundamental threshold question is how much data will be needed before decisions can be made.

Lack of Agreed-Upon Outcome

A number of interviewees noted that a challenge to convening a large scale collaborative process to address Yuba River resource issues was the lack of a single organizing object or outcome around which the process could be focused – i.e., a clear and identifiable outcome that would encompass all of the major issues.

Use of Consultants

A number of interviewees expressed concern about a single consultant group representing the licensees in the three Yuba basin relicensing processes. They noted that given the inter-related nature of the watershed, parties are often concerned about transparency, and they are not or do not feel certain that they negotiating directly with the licensees. Consequently, there is a perception that parties may not always be aware of the full implication or impact that a decision made in one relicensing effort may have throughout the watershed.

Alignment with other Processes

There are multiple FERC relicensing efforts moving forward in the Yuba basin, each on a slightly different timeline. In addition, Englebright Dam and Daguerre Point Dam are federally operated and subject to federal requirements. For progress to be made in initiating the YMPF, parties must determine how the group's activities and efforts would relate to other ongoing processes. Some interviewees suggested that the parties must first confirm their own and others' interests so they know and understand what they will be negotiating in this forum vis-à-vis other forums. Others noted that there are cultural and institutional differences between the parties involved, each with unique obligations, ways of doing business, and understandings of what collaboration means. Interviewees explained that it will be important for parties to learn about, understand and discuss these differences up front. Others expressed concern that, if not done well, the YMPF has the potential to undermine positive relationships developed in other processes.

Participation

Interviewees noted that a collaborative process may present challenges in terms of key parties' ability to participate. Interviewees noted that the representatives of some organizations and institutions may be reluctant to participate, not out of a lack of interest, but because of limited resources. Others who may not be paid to represent an interest or are self-employed have to accept a loss of time or potential income in order to participate. Some parties were concerned that that lack of or insufficient participation from managers and decision-makers could stifle the potential for progress.

They stated that getting the right people to the table and the right “match of seniority at the table” would be a critical component to success. Some wondered, if a collaborative agreement were reached, if the regulator would be able to be bound by the agreement.

“Keeping Whole”

A barrier identified by a number of interviewees was differing understandings of what “being kept whole” means. Some parties understand it to mean keeping entities the way they are, while others believe that, change may occur as long as all parties’ interests are met.

Changes in Management

A number of interviewees identified the transition of Colgate Powerhouse from PG&E to YCWA as an unknown variable that may have significant implications on how the YMPF could proceed.

Funding

A concern was expressed by some parties about the funding source for the YMPF process including technical studies. Others were optimistic that the diverse group of parties would successfully secure funding for both process and substantive needs.

Politics/Legal

A number of interviewees noted that state and federal politics could interfere with addressing identified issues. In particular, some interviewees stated that the status of California politics would favor water over other resources and present an obstacle to overall YMPF progress.

Timing

Nearly all interviewees noted that timing was a critical and extremely challenging topic for the YMPF. Many observed that the timing of FERC relicensing efforts was a significant potential barrier to initiating a collaborative forum. Some suggested that the YMPF should work to coordinate some or all portions of the three relicensing efforts into a single venue and timeline; others felt that the YMPF would be better served as a forum for developing measures for the use in the YCWA relicensing; and still others were more comfortable with the YMPF remaining independent of any of the relicensing efforts. Some interviewees were concerned that resource decisions should not be pushed in to the confines of a narrow regulatory process like a FERC relicensing as it would limit flexibility and potentially minimize the group’s ability to develop sound resource management decisions. Some interviewees stated that the separate and distinct timeframes of FERC relicensing efforts in the basin was a major barrier to the YMPF striving to address issues on a watershed basis. Of particular concern was the fact that anadromous fish have not been considered in the Yuba-Bear or Drum-Spaulding relicensing efforts to date. Others were concerned that if the YMPF moves more slowly than other regulatory efforts, they would not be able to meet the requirements of the Oroville Habitat Expansion Agreement, which requires near-term action.

Alternative Forums

Some interviewees wondered whether certain parties would find value in coming to the table to identify comprehensive solutions if their needs were already being met elsewhere. Put another way, some interviewees worried that parties would be reluctant to “lay down their swords” and refrain from pursuing regulatory, political or legal approaches to achieving their goals. Some interviewees expressed reluctance to pursue a collaborative approach to broader watershed issues when their interests could be met in a specific regulatory process. They surmised that if discussions were

happening at multiple tables, the multitude of information-sharing forums, transparency and process alignment challenges would inhibit YMPF efforts.

Yuba Accord

Many interviewees praised the Yuba Accord as a successful example of a collaborative process in the Yuba basin. However, interviewees had differing expectations and understandings of the stability and duration of the Yuba Accord. Some stated that, given the constraints on the system, the Accord flows represented an agreement on the best potential flows for fish. Others saw the Accord flows as a step in the right direction and a safeguard until additional studies could be done to determine what sufficient flows would be. In addition, there is uncertainty among some parties about what will happen after 2016 when signatories are no longer obligated to support the agreement.

Relationship

Prior Experiences with Collaborative Processes

Interviewees raised concerns stemming from their experience with the UYRSP. Many of the interviewees who were participants in the UYRSP process expressed frustration with the process or its outcome. Some interviewees expressed concern that their needs had not been met by the process despite efforts to communicate their issues. Other interviewees who participated in the process felt that not all of the participants were communicating their issues and objectives clearly and in good faith. In the end, these concerns led many participants to look for alternative methods to achieve their goals. The collaborative process ended with no clear winners and losers; most were frustrated at the amount of time and money spent in the process. Few if any participants went away satisfied with the results or the process. Some interviewees acknowledged that this experience created distrust between some of the parties and a reluctance to engage in a data collecting collaborative process.

Distrust in General

Some interviewees acknowledged that there is some distrust among various interest groups based on perceptions and misunderstandings of how parties have interacted in past collaborative processes.

Communication

Some interviewees felt that the way in which the YPMF involves and communicates with additional stakeholders such as local communities could play a crucial role in its ability to develop a plan that is implementable, resilient, and durable over time.

Non-Collaborators

The perception of some interviewees is that there are parties on all sides of the issues with strong interests who are not solution-oriented. Some interviewees also observed that particular parties may appear to engage in a collaborative process yet will concurrently pursue their distinct and potentially differing agendas outside of the collaborative process.

Value-based Differences, Misconceptions and Misperceptions

Interviewees recognize that what many of the identified issues represent are differences or disagreements that are, at their core, value-based in that they stem from sincere beliefs and ideas that are at odds with the beliefs of others rather than from a difference in the understanding of facts or likely outcomes. Some interviewees noted that these value-based differences sometimes exist at a deeper level in what they observed as misconceptions on the part of some interest groups in the

basin with respect to the ideas, beliefs or values of other interest groups. It seemed to these interviewees that these misconceptions created barriers to communication and issue resolution. Other interviewees observed that some entities tended to have what was interpreted as misconceptions about the basin itself including its hydrology, history, and potential for growth that were so strongly held that they functioned more like value-based differences. Interviewees suggested that these misconceptions and value-based differences served as significant barriers to resolving issues in the basin.

E. Potential Outcomes of Continuing with the “Status Quo”

Interviewees expressed a broad range of perspectives on what would happen if the status quo were to continue, as well as offering their views on fears and best/worst case scenarios. Responses included:

Extinction

- Extinction is likely if anadromous species are not able to get above the rim dams; the Yuba is a great candidate for helping species to avoid extinction.
- When a species is at the brink, there is only a certain amount of time to implement solutions and right now every effort matters. If we fail, it will likely result in the extinction of Central Valley Spring Chinook and steelhead.
- It would result in extirpation of Spring Chinook and significantly diminished populations of steelhead.

Litigation

- The projects would probably get relicensed and then parties would move to courts, where the fish passage issue and ESA issues will need to be addressed. All the while, populations of anadromous fish in the basin and Central Valley will continue to decline.
- We would probably end up in litigation and eventual regulatory action, probably by NMFS. Some runs might go extinct. Resident trout will continue to survive, and these would provide broodstock should the worst (extirpation of anadromous salmonids) occur.
- Would likely result in long, adversarial FERC process that will likely result in litigation.
- NMFS would probably end up issuing a jeopardy opinion that would probably result in litigation.

Funding

- The group will work hard to develop a unique solution that will become an “unfunded mandate.”
- A single party will be left to pay for all major restoration activities.

Social Dissatisfaction

- There are many people watching and pulling for the success of this effort and the recovery of anadromy in the Yuba. If we fail here it would be a big blow to society.
- There are many great relationships that have been hard fought and a long time in developing. There is a major concern that doing this effort “wrong” could unravel the success parties have achieved in other collaborative efforts.

The status quo is positive

- The status quo is great; hoping nothing changes.

Disjointed Regulatory Approach

- If the YMPF does not move forward it will be a “train wreck” for the watershed through three piecemeal relicensing efforts that are concurrent in some ways but fail to consider the full watershed in a cohesive fashion.
- There is no collaborative agreement and FERC receives a huge number of conflicting terms and conditions for the proposed licenses.
- The ILP process moves forward at the same rate regardless of what happens with the multi-party forum concept.

Wasted Time

- The group spends a significant amount of time doing good work and building commitments and then one party walks away at the end.
- We do nothing and discover that the Yuba could have been the key to anadromous fish health for the state. Parties are then forced to provide passage and have wasted years that could have been helping the populations.
- If the YMPF does not go forward, then parties will spend the next two years arguing about studies in the current FERC processes. YCWA relicensing would be different and parties’ would push hard for passage in that forum. The Biological Opinion on the license would likely result in a jeopardy opinion for Spring Chinook. The licensees would then argue over flow requirements and how to meet them. All of this will result in a piecemeal restoration plan by the later part of the decade.

F. Willingness to Participate in Periodic YMPF Meetings and Functions to Work Toward a Consensus-Based Agreement

In general, most parties were open to the possibility of proceeding with the YMPF. Many emphasized the importance of knowing that their interests and issues would be addressed and that they would be making incremental and ultimately overall progress via the YMPF process. A number were interested in initiating the YMPF so long as it did not stymie or interfere with progress in other processes. Still others were more hesitant to even participate at this early stage, noting a concern that sitting at the table during the convening meetings may be perceived by some as willingness to participate, when it was merely a way to consider whether or not to participate.

G. Information and Data Gaps

Opinions varied on the amount of data available. Following is a brief summary of the information and data gaps interviewees identified:

Requisite Data

- Understanding of the amount of data available and required varies drastically between parties
- Insufficient baseline data
- Insufficient documentation of the traditional uses and cultural properties in the Yuba watershed
- Information gaps can largely be addressed through the ongoing FERC relicensing processes and the River Management Team. Needed information not gathered in relicensing efforts or by the RMT can be collected. The significant gap is not information, rather the political will to use it cooperatively to achieve a common restoration goal. Funding is also lacking, but will be much easier to obtain if political will and cooperative management are mustered.

Tools

- There needs to be agreement on the tools and how they are applied.
- Some expressed concerns about the “Ripple Model” and its benefits.

Responsibility

- Questions regarding actual impacts of the upriver projects on the lower river.
- What is the State’s responsibility in the Yuba (i.e. CA Debris Commission)?

Water (Flow and Temperature)

- What is the most efficient use of water in the system for all users and resources?
- What cost would be incurred by the purveyors for increasing the “in-stream” work of the water to benefit temperature and habitat?
- How much water is available in the upper river and when?
- What are the migratory flows above Englebright Reservoir?
- Temperature data is needed in North Fork
- Updated temperature data is needed for the Middle and South Forks
- What are the potential changes and impacts to the New Bullards Bypass reach?
- What would the impacts of changed conditions be on Western Placer Creeks?
- What are the impacts of upstream users on the downstream watershed?
- What will happen to the Yuba Accord flows after 2016?

Habitat

- Can upstream habitat support anadromous species? If so, how many fish?
- What would be the conditions of habitat under potential changed conditions in the Yuba?
- What is the habitat suitability in the North Yuba?
- What habitat might be available after the relicensing efforts are complete?

Passage

- What are the reintroduction options and alternatives?
- What are the potential passage scenarios that might be implemented and effective in the Yuba?
- What are the economics of fish passage?
- Are there volitional passage options?
- Are there barriers that might prevent passage in the upper river?
- There is not enough information about how fish will do if they get above the dams
- What would the impacts be on Western Placer Creeks?

Economics

- What are the forgone power costs under various alternatives?
- What are the potential economic costs and benefits of reintroduction?

H. Suggestions for Additional Parties

- USGS – may or may not need to be at the table but will be an important source of data
- Ramon Martin - AFRP Project Manager
- Commercial fishing interests
- State Lands Commission should be kept informed
- Mining interests

- Flat water interests (Dave Monroe at Skippers Cove)
- Interest representing the Feather River
- Landowners
- Nevada County and Sierra County Board of Supervisors
- Sierra Pacific Industries

IV. Convening Process Recommendations

A. Overview and Reflections on Collaboration

As neutrals, the Kearns & West team does not take positions on substantive issues. Rather, the Kearns & West team's expertise is in the design and implementation of processes that provide the greatest opportunity for diverse interests to engage in a collaborative process that may lead to resolution of complex natural resource and public policy issues.

In February 2010, NOAA Fisheries contracted with Kearns & West to conduct a convening assessment to determine the potential for a collaborative process in the Yuba River watershed. Kearns & West is providing its convening analysis and process recommendations to participants of the convening process as a proposal for whether and how to move forward with a collaborative approach. The process recommendations are available to the group to assist in assessing the potential for a collaborative; the group is under no obligation to accept the recommendations. Additionally, if the parties choose to move forward, there is no obligation or expectation that they will choose Kearns & West to help with implementing that process.

In assessing whether the Yuba River issues are amenable to collaborative resolution, it is important to identify whether the key elements or characteristics are present that are likely to make collaboration productive and successful. A consensus-building, agreement-focused process is more likely to succeed if it has the following characteristics:

- Clear Objectives. The parties can agree on the overall objectives for the collaborative process (whether it be an agreement on a course of action, the identification of new options, a joint fact finding on the impacts of various options, joint projects, improved communication about interests and concerns, or another clearly articulated objective).
- Manageable Issues. The parties can agree on a manageable number of interdependent or related issues. There must also be a sufficiently well-developed factual basis on which to hold a meaningful discussion and resolution of the issues.
- Identifiable Representative Parties. The parties interested in or affected by the outcome of the collaboration are readily identifiable, capable of identifying from among themselves participants that can adequately represent all affected interests, and few enough in number to allow for a manageable process. Participants are able to represent and reflect the interests of their constituencies.
- Good Faith Participation. The parties can come to the table with genuine interest in participating in good faith. They feel themselves as likely, if not more likely, to achieve their overall goals using a collaborative approach as they would through whatever alternatives are available to them.
- Adequate Resources and Time. The parties can obtain adequate resources to participate, including technical support, and there is adequate time to conduct a meaningful and well-designed process.

- Action-Forcing Deadline. There is some sort of legislative, administrative or judicial deadline or opportunity, or some other forcing mechanism requiring a decision within the foreseeable future.
- No Delay. The collaborative effort will not cause unreasonable delay.
- Implementation Mechanism. A mechanism exists to implement a consensus agreement, if one is reached.

The Kearns & West team considered the above elements as it analyzed the convening interview results and utilized these characteristics to assist in evaluating the feasibility of initiating a proposed collaboration as well as the capacity of the parties to complete the process successfully.

B. Recommendations for Whether to Proceed with a Collaborative Process

Kearns & West contacted approximately 56 people and conducted 49 interviews to understand diverse stakeholder perspectives on the issues and concerns related to anadromous fish recovery, water management, and the potential for a Yuba River Multi-Party Forum (*please see Appendix B*).

The unique environmental, regulatory, political, social, and historical context of the Yuba River presents opportunities to achieve significant benefits through a collaborative process. However, these complexities also hold potential to undermine collaborative success. If parties elect to proceed with the YMPF, then close attention will need to be paid to the many elements that must be considered in the forum's efforts. Focusing too narrowly to any single topic at the expense of others will likely not result in an acceptable outcome for all parties.

It is Kearns & West's assessment that the YMPF has potential for success under the right conditions and process alignment. Most of the parties see a Multi-Party Forum as having clear benefits beyond what might be accomplished through regulatory processes. Most interviewees expressed a willingness to participate in the YMPF with some caution and caveats. Given the complexity of the Yuba watershed, a diversity of opinions were offered regarding what the forum's objective should be, the interests and issues to be addressed and what a successful outcome would look like. To help align the diverse interests, we recommend proceeding first with specific process agreements toward developing a collaborative approach to address Yuba River issues.

Kearns & West often utilizes a set of essential process elements that we recommend stakeholders address early in any collaborative effort. These help to address the type of challenges that are often faced at the outset of any complex multi-party process. We encourage parties to discuss these topics together and develop a common understanding of how they want to structure the dialogue with each other before beginning discussion of substantive topics. Given the process sophistication of participants in the YMPF, we understand that people may be frustrated with spending time discussing process-related topics, but a willingness to do so allows parties to begin to build a foundation of understanding that will help carry the process through the more difficult substantive conversations.

Essential Process Elements

Establishing Process Leadership

Effective leadership will be essential to keep the group functioning in an organized, constructive and productive manner. Therefore, the selection of a convening entity is important. A convening entity

is the organization that agrees to take on responsibility for initiating and managing the process. Often, a convening entity is also a participant in the process, giving that party a multi-faceted role. A number of parties were mentioned by interviewees as potential convening entities for the YMPF, including: YCWA, USACE, FERC, and NOAA Fisheries.

Ensuring Good Faith Participation

To ensure good faith participation, all necessary parties must believe they have something to gain by participating in a collaborative process. There are a number of parties identified by interviewees that may have attractive alternatives to a collaboratively negotiated agreement as the means to accomplish their goals. It will be necessary to craft a process that will offer enough likelihood of meeting or exceeding their goals or expectations to bring them to the table.

Interviewees identified a level of skepticism and distrust between some parties. To achieve success in the YMPF, parties will need to build credibility and develop trust through good faith participation. In Kearns & West experience, this often takes time and is best accomplished if all parties willingly engage in the collaborative process and “prove up” their good faith through their actions and commitments over time. Parties should strive to state their concerns regarding good faith participation in a respectful, forthright manner so that the group may craft a process that genuinely addresses obvious and underlying concerns. Lack of trust between parties does not present an insurmountable barrier to success of the YMPF.

Establishing Operating Principles

To make the process viable, there will need to be mutually developed, explicit and resilient operating principles. The process must provide assurance that all parties will abide by any agreed-upon process rules and that parties will not attempt unilateral efforts to sabotage or undermine the process as it proceeds or the agreement once it is reached.

Identifying Issues, Objectives and the Outcome

A significant challenge identified by interviewees was a lack of a clear outcome or purpose around which the process should be focused. Many parties see the ideal outcome as recovery of anadromous species while simultaneously meeting the needs of other water users. However, the opinions vary dramatically on how best to accomplish this outcome and a clear immediate regulatory requirement to drive the process forward does not appear evident. We encourage parties to discuss and potentially pursue a multi-faceted, comprehensive outcome that could encompass the various resource components so that stakeholders may have the greatest likelihood of effectively aligning and utilizing limited resources. We recommend that the parties spend a period of time discussing the pros and cons of a broad to narrow focus for the YMPF and strive to agree at the onset for sideboards around the purpose, approach and anticipated outcome of the YMPF process.

Managing Time and Resources

Finally, there are the important challenges related to acquiring necessary funding, resources, and staffing; creating a clear action-forcing deadline to drive the process forward, and avoiding an unwanted delay for other ongoing processes that may be caused by the collaborative effort.

While these process challenges all caution against proceeding too fast, the attitudes and determination of the interviewees suggest it is worth taking initial steps to create a bridge toward a well-functioning, constructive collaborative approach. There is an attitude among many interviewees that a collaborative process would produce more desirable outcomes and could succeed

with the right leadership, by identifying and bringing the right parties to the table, agreeing on clear objectives and measurable outcomes, and having a well-defined and manageable set of issues for the process.

C. Process Ideas and Suggestions from Interviewees

Interviewees offered a variety of process ideas, suggestions and potentially useful approaches to addressing the challenges in the Yuba River watershed. Many parties complimented NOAA Fisheries on their effort to convene the YMPF. Some noted that the agency has a history of being a fairly strict regulatory agency and applauded the effort to develop an interest-based approach. In keeping with this sentiment, many interviewees desire a collaborative process seeking a basin-wide agreement, explaining that a regulatory approach is less desirable for the parties and the resources.

Numerous interviewees see the forum as an opportunity to look at the Yuba watershed in a comprehensive manner. They suggest that the forum should seek creative ways of using water that is available and look for restoration opportunities throughout the watershed. Some noted that making water available for fish does not have to mean that other parties lose access to it for their own purposes. Others expressed a deep interest in the forum keeping in mind the impacts and opportunities that involve parties out of the basin, including the HEA from the Oroville relicensing and the Western Placer creeks.

A number of interviewees suggested that the YMPF take a science-based approach to addressing issues. Some suggested that one helpful way to begin would be to ask the more reluctant parties to identify information needs and data gaps and how they could be addressed. Others cautioned against the YMPF becoming a technical group and recommended that discussion remain at the policy level and be informed by studies and technical information.

Some parties were concerned that at the convening phase of the forum, the meeting included looking at fish passage, expressing concern that some parties had already arrived at a solution and were simply looking for a means to accomplish their solution. They suggested that the YMPF approach should be phased, beginning with an assessment of restoration opportunities throughout the watershed as well as an assessment of the quality and quantity of habitat available or potentially available. Based on the opportunities identified and a determination of whether upstream habitat would be sufficient to support anadromy, the YMPF could look at whether and how passage might be accomplished. Others warned that a lengthy discussion of whether to do passage over Englebright Dam may not sustain all parties' interest in YMPF and suggested that the group would need to first consider whether passage is feasible or desirable. If the answer to this question was yes, then the group should endeavor to answer how best to accomplish passage while protecting the interests of the parties that would be affected.

Some parties stated that near-term and long-term funding was a critical component of any solution developed by the YMPF. A number of interviewees were hopeful that diverse representation of the YMPF presented an opportunity to provide funding for restoration activities in the Yuba. They stated that funding will be easier to secure with the efforts of a representative and collaborative group in the Yuba watershed and see possibilities in congressional authorization, federal appropriations, and/or earmarks. Others see the YMPF as a potential opportunity for funding of research on traditional uses and cultural resources in the Yuba Basin which would provide important background information for policy level decision-making.

All parties stated that determining who would convene the YMPF would be a crucial component of deciding whether and how to proceed. However, when asked who should convene the YMPF, parties expressed a variety of answers. Some suggested that NOAA Fisheries could be the convener. Others noted that if NOAA Fisheries were to be the convener, it would need to be clear about its goals. They stated that if this was just about passage, then it might be more effective to have the process be led by USACE and NOAA Fisheries. Others stated that YCWA was the most likely convener, noting that YCWA has potential economic and regulatory benefits to bringing the parties together. Still others felt that FERC could convene the group and use the YMPF as a forum for aligning the relicensing processes in the basin.

Many interviewees said that it would be important to determine how this process relates to relicensing efforts in the Yuba, explaining that until this topic is carefully discussed and agreed upon it will be difficult to proceed. Some interviewees suggested that licensees may feel safer in the FERC process because FERC has made it clear that they do not need to address anadromous issues. Thus there may be less interest in participating in the YMPF. Others expressed optimism that the resource manager's and group's ability to look at the full watershed would be greatly enhanced if FERC were willing to slow down and align the relicensing efforts in the Yuba. They noted that this would require commission approval but would greatly enhance the potential for positive outcomes in the Yuba watershed. Others think it would be better to coordinate the YMPF with the YCWA relicensing only. And still others think the YMPF does not or should not be connected to any of the relicensing efforts.

A number of interviewees noted that the timing of the process has to be right and that there would need to be "off ramps" if the process does not appear to be working. Some suggested that it may be helpful to create a "date certain" timeline and if sufficient progress had not been made then parties would re-evaluate the value or timing of the YMPF. All parties wished to participate in the YMPF only if there was real potential for progress. Resources for participation are limited and many cannot afford to spend time on a process that will not be fruitful. Others noted that it would be important for parties to build trust and that this would take time.

With regard to structure, many participants stated that the YMPF would benefit from the use of subgroups to address particular issues. Some suggested that the larger group may not meet as often and could be convened to address bigger issues, consider recommendations from subgroups and make decisions. Others noted that it would be important to limit the size of the table.

Several mentioned that facilitation support would be helpful and recommend that the facilitation team take the time to really understand the issues, interests, and intent of the parties. Others cautioned that group's work should focus on content; that many parties had participated in collaborative forums before and were very familiar with process tools, so little time should be spent on this area.

Interviewees stated that all parties would need to see a clear benefit for the YMPF to be successful. Some stated that the process should bring parties together and would need to provide the water purveyors with certainty. Some noted that a successful process would allow all parties to clearly state their interests and explore alternatives without risk of being misrepresented or misunderstood. Others noted that a process like this presents an opportunity to develop significant relationships that will endure and assist in future efforts.

D. Kearns & West Process Design Recommendations

Kearns & West recommends that with relevant process design, agreed-upon protocols to ensure that parties come to the table willingly and in good faith, and agreement on a clear outcome and timeframe, an effective and constructive collaborative process could be implemented to address issues in the Yuba Basin. After reviewing and synthesizing the information we collected during the convening interviews, we have developed a proposed process design for stakeholder consideration.

We recommend that the process start with initial steps as described below. We also suggest collaborative efforts begin by assessing who the convening entity should be and how this process might relate to FERC relicensing efforts in the basin. If a convening entity is identified, jurisdiction for topics confirmed, the YMPF objective agreed-upon, and sufficient interest among potential parties to continue discussions confirmed, there appear to be many of the key elements present for a successful YMPF effort to address issues in the Yuba basin.

Initial Steps and Process Components

Convening Entity

We recommend that the parties identify and confirm a convening entity that would agree to take a leadership role in implementing the collaborative process in a manner that is credible to all stakeholders. The convener should be an entity or organization willing to take on the long-term leadership and process support role for the collaborative effort. Interviewees identified Yuba County Water Agency, US Army Corps of Engineers, the Federal Energy Regulatory Commission, and the National Marine Fisheries Service as potential convening entities. Under certain circumstances, it is possible that multiple agencies may serve as convening entities. However, for multiple conveners to be successful, they must each have credibility with participants and share a common vision for the process and substance to be addressed.

The selection of a convening entity for the YMPF will hinge in part on the group's determination of how its efforts may or may not relate to ongoing or future FERC relicensing efforts. For example, should the group determine that the YMPF will be an umbrella under which the three relicensing will proceed, then FERC may be best suited to fill the convener role. On the other hand, if the YMPF will have only peripheral connection to the relicensing efforts, NOAA Fisheries or the USACE (or a combination of the two) might convene the group. In this sense, a determination about convening entity and discussion related to the purpose of the group will likely need to happen concurrently.

Kearns & West wonders whether the Yuba County Water Agency may be willing to consider the convening role for this process. The YCWA was identified by interviewees as having many potential assets of a convener. YCWA's success in developing the Yuba Accord and the upcoming relicensing of its power facility in 2016 situate it uniquely as a potential convening entity. YCWA would have to desire to be the convener and wish to proceed with the YMPF. Moreover, it would have to clearly articulate its role as a convening entity, helping to ensure that the process is well-designed and funded. The YCWA would have to distinguish between its own interests and agenda and its role and responsibilities on behalf of the process. Numerous interviewees noted that limited resources may be a significant burden and deterrent to potential conveners and to be successful, creative funding sources may be required.

We recommend that the convening entity obtain the process expertise of a neutral facilitator. A neutral can partner with the convening entity to provide process support and facilitation for the collaborative group. This will help ensure that the overall process is balanced and runs smoothly, and increases the likelihood of a successful outcome. Participants and the convening entity should identify the necessary experience for potential neutral candidates and select accordingly.

Purpose of the Forum

Many interviewees stated that a specific purpose for the forum is needed before the group proceeds too far. Kearns & West suggest that the purpose of the forum should be comprehensive enough to address all parties' interests related to recovery of anadromous species and protection of other water uses. The group might also consider crafting a vision statement to help build a common understanding of interests, hopes and expectations for the Yuba basin, as well as clear relevance to the action oriented elements of the collaborative approach.

Policy Group

Kearns & West recommends the creation of a central Policy Group (approximately twenty individuals). This group would consist of a broadly representative and balanced group of stakeholders. It would take on a leadership role and act on behalf of all represented interests in the YMPF. Among the recommended key tasks for the Policy Group would be determining the convening entity, developing a clear purpose for the YMPF, drafting a vision statement, and identifying key issues to be addressed. In addition, the Policy Group would serve as the primary decision-making body for issues addressed by the YMPF, assessing whether its efforts were aligned or in conflict with other entities and the possibility of overseeing proposed implementation efforts.

Openness and transparency will be essential characteristics of the group, allowing all stakeholders in the basin to understand YMPF composition, vision and goals, decision-making process, and outcomes. The Policy Group could meet quarterly in a public setting where anyone could attend, observe and comment, as needed. We recommend the Policy Group represent key interests in the watershed. Proposed members should be able to articulate the diverse interests of their constituents. In addition, they should be willing to seek to understand other parties' interests. They should be credible to the stakeholders they represent and to others around the table, be able to communicate effectively with both their own constituencies and with other stakeholders as needed, be willing to consider the interests of others as well as their own interests, be able to move beyond positional negotiation towards achieving results that benefit all parties, and be available to attend scheduled meetings and conduct agreed upon between-meeting tasks over the course of the process.

We recommend that key interests nominate one or two people to represent their interests on the Policy Group using the above criteria or characteristics. We suggest the following proposed categories of representation:

- YCWA
- PG&E
- Federal Agencies
- Tribal Interests
- NGO/Conservation Interests
- Convener (with opportunity for dual role of participant)
- NID
- PCWA
- State Agencies
- Recreational Interests

Technical Subgroup(s)

There is considerable divergence of opinion surrounding the relevant science or data. We recommend that Policy Group members work with the convening entity to identify key data gaps. A technical subgroup should be formed to fill the data gaps, including selecting the appropriate tools and approaches. It will be important to select a group of experts that have credibility with the diverse interests and stakeholders. This will involve identifying and soliciting acceptable technical subgroup members, identifying resources to support the team's process, and outlining and agreeing on the roles, responsibilities, and process by which the team will function. The technical subgroup may include select representatives from the Policy Group who possess particular technical expertise. However, the technical subgroup may not be fully representative and may also draw on technical experts from outside the YMPF. Some interviewees identified the USGS as an important source of technical information and expertise related to flow issues.

Once the team is assembled, the technical subgroup(s) would be available as needed to help address identified information needs or answer key questions to assist the Policy Group in its problem-solving efforts. The team would be available to help identify, gather, and analyze the data or information needed to make effective and credible policy decisions. The technical subgroup(s) would assess the information, clearly delineate what is known and not known, provide impartial answers to key questions, and be critical to allowing progress in the collaborative process.

Other Subgroups. We also recommend creating subgroups tasked with addressing the identified issues. The Policy Group would form these subgroups composed of a small, representative group of stakeholders with a specific interest or expertise related to the issue. Once a subgroup has completed its work, it could present its proposed resolution to the Policy Group for further discussion and endorsement. Given the complexity of the regulatory processes operating the Yuba basin, the YMPF may find it useful to designate a few individuals to a small legal/policy group. This group would assist the Policy Group by monitoring political/legislative developments at a state and federal level and would be available, as needed, and to discuss and provide guidance to the Policy Group on key legal and policy decision.

For the greatest likelihood of success, we encourage the efforts of the YMPF to provide for scheduled and noticed meetings; participation that is inclusive and representative of all those with a significant interest in the outcome; those who have ability to prevent or enable implementation of the outcome; a well-defined and agreed-upon set of operating principles with recognized incentives for compliance and consequences for non-compliance; and a process that clearly defines how decisions will be made.

Kearns & West recommends that this collaborative effort be implemented through incremental steps to provide an opportunity to build trust and credibility between diverse and often polarized interests. More specifically, we suggest that parties seek to agree upon the key questions of: 1) Who the convening entity would be; 2) How this process would relate to FERC relicensing efforts in the Yuba; and 3) What the desired goal of the forum will be. Kearns & West recommends that parties agree to a time limited good faith effort to address these issues. Should alignment not occur by that time, parties would be free to pursue their interests through other forums. If parties agree to move forward with the YMPF, the convening report identifies numerous potential issues to be addressed.

V. Summary and Conclusion

In conclusion, the Yuba River Multi-Party Forum Convening Report summarizes the highlights of an informative and productive convening interview process. Participants were forthright about their hopes and expectations as well as their concerns. Parties provided their ideas, insights, wisdom, and a wealth of information.

Recovery of anadromous fish and water resource management in the Yuba River watershed present a complex set of topics that deserves serious, dedicated attention and requires a complex set of process recommendations. People care deeply about these issues and are dedicated to identifying and implementing long-term solutions that improve and protect resources for future generations. Stakeholders would be interested in participating in a collaborative process if it is designed to achieve meaningful results in an inclusive manner. We hope that this Convening Report will provide useful process recommendations to assist stakeholders in considering whether and how to design and implement a collaborative approach that results in enduring agreements and outcomes.

APPENDIX A
YUBA RIVER MULTI-PARTY FORUM
CONVENING PROCESS

Convening Interview Questions

Introduction: We are mediators with Kearns & West; a neutral, private firm that assists people in addressing complex environmental and public policy issues.

Goal/Purpose: Kearns & West was hired by The National Marine Fisheries Service (NMFS) to provide neutral third party process assistance to the Yuba River Multi-Party Forum (YMPF) efforts. We are interviewing a number of people that represent the range of perspectives on issues and concerns related to the Yuba River basin. Our goal in interviewing stakeholders is to help assess the potential for initiating a collaborative, consensus-based process to address the identified issues and to recommend a design for such a process. This interview process is confidential and we will not attribute comments made by individuals. At the conclusion of the interview process, we will summarize the discussions and provide feedback to all members of the YMPF.

Questions:

1. Please tell us about your background, your involvement and interest with respect to the YMPF?
2. What should be the purpose of the YMPF? If possible, please attempt to frame your answer in the form of a vision or mission statement that can be considered by the larger group.
3. What do you perceive as the major issues and challenges that need to be addressed in the Yuba River basin over the short, medium and longer-term and why?
4. What are the barriers/obstacles to addressing the identified issues and concerns? How might they be overcome?
5. What approach or process would be most useful in addressing the above topics and why? What would *not* be a useful or acceptable approach and why?
6. What do you think would happen if the “status quo” continued? Are there any “fears/worst case scenarios” that should be considered?
7. Would you be willing to participate in periodic YMPF meetings and functions to work toward a consensus-based agreement? If so, in what way? If not, why not? Who else do you think needs to be involved and why?
8. Do you think there are information/data gaps and if so, what are the sources of data and resources you think should be utilized and considered?
9. Is there anyone else you think we should be interviewing and why?
10. Do you have any questions for us?
11. Do we have your correct phone, fax, address, etc.? What is your preferred method of contact (phone/fax/email)?

APPENDIX B
YUBA RIVER MULTI-PARTY FORUM CONVENING PROCESS
List of Individuals Contacted/Interviewed

Federal Agencies

- Federal Energy Regulatory Commission (Tim Welch, John Mudre, Alan Mitchnick)
- National Marine Fisheries Service (Rick Wantuck, Howard Brown, Brian Ellrott, Steven Edmonson, Bob Hoffman, Kathryn K., Maria Rea, Larry Thompson)
- US Army Corps of Engineers (Scott Clark, Lisa Clay, Thomas Chapman, Doug Grothe, Michael Mahoney, Randy Olsen, Mitch Stewart)
- US Fish and Wildlife Service (Alison Willy, Elizabeth Campbell, Deborah Giglio-Willoughby, Mark Gard, Daniel Welsh)
- US Forest Service (Mike K., Dennis Smith, Marilyn Tierney, Craig Wilson,)

Non-Governmental Organizations

- American Rivers (Steve Rothert)
- American Basic Council of Watersheds (Gregg Bates)
- Foothill Water Network (Julie Leimbach)
- Sierra Club (Allan Eberhart)
- South Yuba River Citizens League (Jason Rainey, Gary Reedy)
- Trout Unlimited (Brian J. Johnson)
- American Whitewater (Bob Center)
- California Sport Fishing Protection Alliance (Chris Shutes)
- Federation of Fly Fishers (Frank Rinella)

State Agency Representatives

- California Department of Fish and Game (Robert Hughes, Beth Lawson, MaryLisa Lynch, Annie Manji, Sandy Morey)
- California Department of Water Resources (Cassandra Enos, Heidi Rooks, Chris Wilkinson)
- Water Resources Control Board (Jeffrey Parks, David Rose, Jennifer Watts, Victoria Whitney)

Tribal Interests (Maidu Tribe)

- Tsi-Akim Maidu and Sierra Salmon Alliance (Tyrone Gorre, Bill Jacobson)

Water Agencies

- Nevada Irrigation District (Ron Nelson)
- Placer County Water Agency (Andy Fecko, Ben Ransom)
- Yuba County Water Agency (Curt Aikens, Paul Bartkiewicz, Tib Belz, Rich Golb, Tom Johnson, Steve Onken)

Utilities

- Pacific Gas & Electric (David Moller, Gene Geary, Kevin Goishi, Liv Imset, Paul Kubicek, Mary Richardson)