

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS
ORDER WR 2018-0089-EXEC

In the Matter of Water Right Application A032557

Humboldt Resort Improvement District Number 1

**ORDER DENYING REQUEST FOR A CASE-BY-CASE EXCEPTION
AND REJECTING APPLICATION**

SOURCE: Humboldt Creek

COUNTY: Humboldt

BY THE EXECUTIVE DIRECTOR:¹

On December 28, 2015, Humboldt Resort Improvement District Number 1 (Applicant) filed Application A032257 (Application) to appropriate water by permit with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division).

The State Water Board's Policy for Maintaining Instream Flows in Northern California Coastal Streams (Policy) was re-adopted on October 22, 2013, and became effective on February 4, 2014. Section 2.4.1 of the Policy precludes acceptance of water right applications for onstream dams on a Class 1 stream. The Policy characterizes Class 1 streams as streams where fish are always or seasonally present, either currently or historically, and habitat to sustain fish exists.

The Application proposes the diversion of water from Humboldt Creek by means of a proposed onstream dam. Humboldt Creek is within the geographic area encompassed by the Policy and fish are present in Humboldt Creek, making it a Class 1 stream as defined by the Policy. Because the Application proposes an onstream dam on a Class 1 stream, the Application cannot be accepted by the State Water Board pursuant to Policy Section 2.4.1. However, the Policy also provides in Section 9.0 that the State Water Board may grant a request for a case-by-case exception to specific Policy provisions upon request by an applicant or petitioner. The Division notified the Applicant that the Application was subject to rejection pursuant to Policy section 2.4.1 unless the Applicant submitted a request for a case-by-case exception. In response, the Applicant submitted a request for a case-by-case exception to Policy section 2.4.1 to allow the State Water Board to accept the Application.

The State Water Board shared the request for a case-by-case exception and related documentation with the California Department of Fish and Wildlife (CDFW), and requested comments from CDFW regarding the nature of the request and the potential effects on fish and habitat to sustain fish should the request be granted. In response, CDFW staff provided comments and recommended denying the request and rejecting the Application because of the potential adverse effects of the proposed onstream dam. The Policy states that a request for a case-by-case exception may be granted where the State Water Board determines that 1) the exception will not compromise maintenance of instream flows in the Policy area and 2) the public interest will be served.

¹ State Water Board Resolution No. 2012-0061 delegates to the Executive Director the authority to conduct and supervise the activities of the State Water Board.

The primary objective of the Policy is to ensure that the State Water Board administers water rights in a manner that maintains instream flows needed for the protection of fishery resources. An onstream dam is a structure in a stream channel that can interrupt instream flows by impeding or blocking the passage of water downstream; impede the movement of fish in a stream and block access to essential spawning and rearing habitat; interrupt movement of gravel, woody debris, and benthic macroinvertebrates essential for fish spawning and rearing habitat; and create habitat that favor non-native species. The Policy therefore includes a restriction on the construction and permitting of new onstream dams.

Humboldt Creek supports fish and habitat that sustain fish. According to CDFW staff, Humboldt Creek is an anadromous fish stream that supports North California steelhead trout, which are listed by the National Marine Fisheries Service as threatened under the federal Endangered Species Act. The construction of an onstream dam on Humboldt Creek, as proposed by the Application, would interrupt instream flows to such an extent that adverse impacts to fish in Humboldt Creek are likely to occur. CDFW staff commented on the Applicant's request for a case-by-case exception that the proposed onstream dam would alter sediment transport, impair the stream's hydrology, and has the potential to result in a take of a federally-threatened fish species. Thus, the maintenance of instream flows in the Policy area and the protection of fishery resources would be compromised if the Applicant's request for a case-by-case exception is granted.

Acceptance of the Application is also not in the public interest. The onstream dam proposed by the Applicant would likely result in take of a federally-threatened fish species, contrary to the public interest in sustaining habitat that supports federally threatened fish and fisheries in general. The Applicant claims that the proposed project is needed for drought resiliency, fire protection, and as a potential source of water for other nearby communities. However, the Applicant has not completed full beneficial use of water under their current water right permit. The Applicant has not substantiated its need for additional water supply nor has the Applicant provided evidence that it has thoroughly explored other options to provide for the contingency of future extreme drought conditions, including offstream storage and increased conservation measures.

Based on the foregoing, granting the request for a case-by-case exception to Policy provision 2.4.1 would compromise the maintenance of instream flows in the Policy area and is not in the public interest. Therefore, the request for case-by-case exception is denied, and the Application is rejected in accordance with the Policy section 2.4.1.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT:

1. The request for a case-by-case exception to Policy Section 2.4.1 is denied.
2. The Application is rejected.

5/29/18
Date



Eileen Sobeck
Executive Director