

**From:** [Felice Pace](#)  
**To:** [WR-DWR-WREnforcementPolicy](#)  
**Subject:** Revised input on Water Rights Enforcement Policy  
**Date:** Thursday, March 28, 2019 10:42:54 AM  
**Attachments:** [WtrRightsEnforcePolicy\\_NCSFC\\_Input\\_3-25-19.docx](#)

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Hi,

Below and attached is revised input. The actual input is the same but the list of groups endorsing it has changed. Also, this version is signed by Chris Malan, the Coalition's chair, rather than by me.

Please substitute this version for the one sent to you on Monday and please also acknowledge the change.

Thanks.

Felice Pace

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## **NORTH COAST STREAM FLOW COALITION**

**NCSFC**

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To: State Water Resources Control Board

Via Email to: [WREnforcementPolicy@waterboards.ca.gov](mailto:WREnforcementPolicy@waterboards.ca.gov)

RE: Input for development of the Water Rights Enforcement Policy

Date: March 25, 2019

The North Coast Stream Flow Coalition provides the following input to State Water Resources Control Board staff for use in developing the Board's Water Rights Enforcement Policy. The Coalition member organizations endorsing this input are: Community Clean Water Institute; Forest Unlimited; Friends of Del Norte; Friends of the Eel River; Friends of Green Valley Creek; Friends of the Gualala; Friends of the Navarro Watershed; Institute for Conservation Advocacy, Research and Education; Institute for Fisheries Resources; Klamath Forest Alliance; Living Rivers Council; Maacama Watershed Alliance; Pacific Coast Federation of Fishermen's Associations; Save Mark West Creek; Willits Environmental Ctr; Willets/Outlet Creek Watershed Group.

Our Response to questions posed by SWRCB staff:

*1. How Should the Board set statewide enforcement priorities?*

Response 1.0:

There is currently underway an unprecedented and progressive assault on Public Trust Resources via the flow impairment and dewatering of California streams. Therefore the overall top priority must be enforcement actions which are critical to protecting and restoring Public Trust streamflows.

First, it is imperative that enforcement of water rights violations by cannabis growers not dominate enforcement. Significant cannabis growing watersheds accounts for only a small number of the streams state-wide that have been totally dewatered or where Public Trust Resources have been severely damaged due to failure of the SWRCB to effectively enforce existing water rights and water rights limitations, including but not limited to enforcement of stream adjudications, enforcement of in-stream flow rights and enforcement of limits on the quantity of water diverted under a water right. In recent years regulation of cannabis growing has led to a diversion of resources from the protection of Public Trust Resources, including the development of flow criteria and adoption of flow objectives for individual streams as well as the development of Interim Regional Flow Criteria.

**We do not want to see the same thing take place with water rights reinforcement.**

Furthermore, a soon to be published study by Bryan McFadden of the NCRWQCB, looked at watersheds in the Trinity River Basin that have a large number of cannabis grows. Those watersheds were assumed to be dewatered or substantially dewatered as a result of the cannabis grows. However, analysis revealed that water diversions to irrigate livestock pasture and for livestock watering are larger and more important factors in the dewatering those streams and in damaging Public Trust Resources as compared to the extensive number of cannabis growing operations.

The study and peer review draft paper were presented to the NCRWQCB at its February 20-21 meeting:

- The Executive Officer Report for the agenda item is at this link: [https://www.waterboards.ca.gov/northcoast/board\\_info/board\\_meetings/02\\_2019/pdf/11/190204\\_BCM\\_dp\\_CannabisWaterUse\\_%20EOSR.pdf](https://www.waterboards.ca.gov/northcoast/board_info/board_meetings/02_2019/pdf/11/190204_BCM_dp_CannabisWaterUse_%20EOSR.pdf)
- A video of the agenda item from the Board meeting is at this link: [http://cal-span.org/media/Video\\_Files/RWQCB-NC/RWQCB-NC\\_19-02-21/RWQCB-NC\\_19-02-21.mp4#t=10279](http://cal-span.org/media/Video_Files/RWQCB-NC/RWQCB-NC_19-02-21/RWQCB-NC_19-02-21.mp4#t=10279)

The North Coast Stream Flow Coalition urges the SWRCB to guard against enforcement of water rights violations by cannabis growers coming to dominate enforcement actions and thereby soaking up most or even a significant amount of available water rights enforcement funds. The impact of water rights violations by cannabis growers and the damage to Public Trust Resources resulting from cannabis growing is simply much too small a percentage of water rights violations to justify devoting significant enforcement resources to that small area of violations. Furthermore, if it is to be effective in ending and reversing the damage done to Public Trust Resources and those holding valid water rights, water rights enforcement must be applied to all violations and violators in a given watershed or, at minimum, to those violations doing the greatest damage to the Public Trust and

other water right holders.

Response 1.1:

If the largest (in volume of water) violations are prioritized, virtually all enforcement will be in the Central Valley and maybe places like the Salinas Valley or Napa and Sonoma Counties. But smaller watersheds and smaller volume but big impact violations need attention too. Some smaller volume violations may, in fact, be higher priority due to the presence of and threats to ESA and C-ESA listed species. For these reasons, each region should be assigned staff resources. Enforcement priorities should be developed *for each region* in consultation with stakeholders (riverkeepers, water rights holders, public interest/public trust organizations) based on likely impact of the violation on:

- ESA and California ESA listed species
- Public Trust Streamflows
- Other Public Trust Resources including traditional swimming holes
- Tribal Trust Resources
- Aquatic Ecosystems
- Holders of valid surface water rights
- Impacts to groundwater, including groundwater that is interconnected with surface flows and groundwater dependent ecosystems.

2. How would you suggest the Board deploy its limited enforcement resources to promote compliance?

Response 2.0:

- Long-standing Public Trust Complaints and long-standing damage done to those holding valid water rights must be a priority: The policy should instruct staff to examine SWRCB files in order to determine which basins and watersheds have the longest-standing complaints for impacts to Public Trust Resources and to water rights holders. Those long-standing Public Trust complaints should be a priority. Staff should also consider the number of complaints that have been filed for each watershed in the state.
- Basins where there are adjudicated in-stream flow rights that are not being met should be a priority.
- Watersheds that provide critical habitat for species listed pursuant to the Endangered Species Act (ESA), California Endangered Species Act (C-ESA) and commercially/tribally valuable salmon species must be a priority and in particular those salmon watersheds that have inadequate streamflow which is related to stream diversions.

In addition:

- The Water Rights Enforcement Policy should use the same principles that were used in the Water Quality Enforcement Policy including “*progressive enforcement*” and “*timely and consistent*” enforcement. Intentional lawbreakers should not be treated as stakeholders even if they have a water right: “*There comes a time when this cooperative approach should make way for a more forceful approach.*” Don’t waste time seeking “voluntary” compliance from violators who delay correcting violations, including but not limited to excessive and out of season diversion, illegal impoundments, etc. Delay is a tactic widely used by those who are illegally diverting water or diverting in excess of the rights they hold; SWRCB should not be careful not to inadvertently collude with that tactic.
- Include a component that seeks to educate the public and water right holders about the Public Trust and Public Trust Resources and why it is important for the SWRCB to enforce the water rights system. Staff assigned to each region should design education activities for that region. But don’t spend more than 5% of resources on education; emphasize free coverage by public interest broadcasters.
- The Policy should call for SWRCB to coordinated water rights enforcement with the Department of Fish and Wildlife and with Regional Water Boards. Where applicable, enforcement of applicable Water and Fish & Game Codes should be simultaneous or, at minimum, coordinated.
- Because many and perhaps most irrigated pasture operations are known to divert full irrigation amounts during periods outside the legal irrigation season, that is, when those irrigators hold only quantity-limited stock-watering rights, and because those out-of-irrigation-season diversions occur during salmon migration and spawning and have a large impact on threatened and endangered salmon, the enforcement policy should prioritize enforcement of water rights on pasture irrigation diversions in watersheds where ESA and C-ESA listed salmon are at risk.
- Within each region, plan enforcement priorities on a six year horizon so that areas of concentration shift over time in response to changing conditions and needs.

To summarize:

The NORTH COAST STREAM FLOW COALITION encourages SWRCB staff to carefully consider this input as it creates a draft Water Rights Enforcement Policy. We ask for a policy that devotes resources to each (water quality) region of the state, which coordinates enforcement with DFW and Regional Water Boards and which prioritizes enforcement within each region based on the harm that is being done to the Public Trust in water and that is being sustained by Public Trust Resources. Do not allow enforcement on cannabis growers to soak up most of the water rights enforcement resources. Instead prioritize those watersheds where at risk salmon and other Public Trust Resources have been most damaged by illegal diversions and impoundments and by out-of-irrigation-season diversions for irrigation.

Because it results in major harm to ESA and C-ESA listed salmon, focus significant enforcement resources on the widespread practice among those who hold water rights to irrigate pasture of continuing to irrigate under stock-watering rights at times of the year when irrigation is supposed to have ended, including during salmon migration and spawning. Ending the misuse of stock-watering rights to irrigate pasture during the fall salmon migration and spawning season is low hanging enforcement fruit with potential for great benefit to at risk salmonids.

We look forward to reviewing and commenting on the Draft Water Rights Enforcement Policy.

Sincerely,

Signed Via Email

Chris Malan, Coalition Chairperson

