

Policy Statement of the
MENDOCINO COUNTY RUSSIAN RIVER FLOOD CONTROL AND WATER
CONSERVATION IMPROVEMENT DISTRICT

**In the matter of proposed Adoption of a Cease and Desist Order Against Thomas Hill,
Steven Gomes, and Millview County Water District**

Before the State Water Resources Control Board

January 26th, 2010

BACKGROUND

Upper Russian

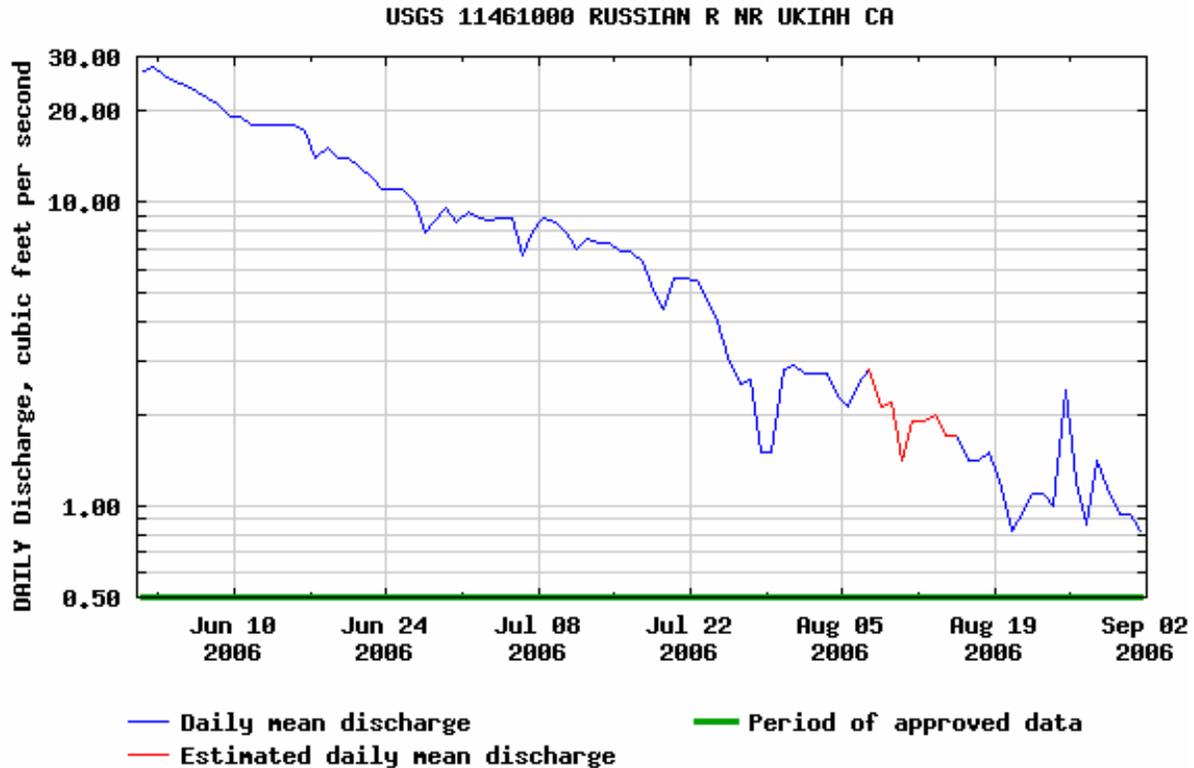
A basic understanding of the morphology of the upper Russian River is necessary in order to understand the Mendocino County Russian River Flood Control and Water Conservation Improvement District's (District) interest in the Waldteufel water right. At the northern end of the Ukiah Valley the Russian river splits into two forks. The upper mainstem, which is commonly referred to as the "West Fork" proceeds in a northerly direction to its headwaters in Redwood Valley. The East Fork heads in an easterly direction to its headwaters in Potter Valley. The disparity in the water supply availability of the two "forks" of the upper Russian River is dramatic.

East Fork

The Coyote Valley Dam was constructed on the East Fork in 1959 to create Lake Mendocino. Lake Mendocino receives runoff from the watershed above the dam, as well as imported flows from the Eel River via the Potter Valley Project. Flows in the East Fork below Coyote are regulated and are set by D1610. Typical summer releases from Lake Mendocino range between 180 and 225 cfs. The Sonoma County Water Agency (Permit 12947A) and the District (Permit 12947B) hold the primary rights to water stored in Lake Mendocino.

West Fork

The flows on the West Fork are not regulated and are comprised entirely of natural flow. As a result the flows fluctuate dramatically between the winter and summer months. The flows in 2006 are an excellent example of the potential variation in West Fork flows. The peak run-off during the New Years flood of 2006 was an impressive 22,600 cfs (USGS 11461000). However discharge during the subsequent summer receded to less than 1.0 cfs by mid August (see graph).



The disparity in fisheries resources between the East and West Forks is also significant. While the construction of Coyote Valley Dam has excluded anadromous fish from the East Fork of the Russian River, the West Fork still supports populations of Federally-protected steelhead (*Oncorhynchus mykiss*) and Chinook salmon (*Oncorhynchus tshawytscha*).

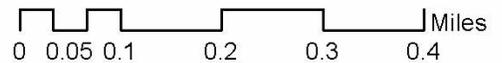
Waldteufel Right

The Waldteufel water right was filed to appropriate water from the West Fork of the Russian River for riparian property that was purchased by J.A. Waldteufel in 1913. The point of diversion (POD) for the Waldteufel right was on the West Fork of the Russian River (Figure 1). The right as originally filed was for a diversion of approximately 2 cfs with a theoretical maximum yield of 1448 acre feet per year.

When Hill and Gomes purchased the remainder of the former Waldteufel property (33 acres vs. the original 165 acres), they also acquired whatever remained of the Waldteufel right. Hill and Gomes purchased the former Waldteufel property for the development of residential homes. Hill and Gomes retained a priority reservation of 125,000 gpd to supply their development, and sold the balance of the right (approximately 1.8 cfs) to Millview CWD.



Figure 1. Location of original and new Waldteufel right points of diversion and their relationship to the USGS Gauge (11461000) and the confluence of the east and west forks of the Russian River.



Projection: State Plane California II, NAD 83
 Source: Russian River Flood Control District,
 Mendocino County, United State Geologic Survey

There is an existing USGS gauging station (11461000) approximately 100 yards upstream of the original Waldteufel POD (Figure 1). Station 11461000 was originally installed in August of 1911, but only ran through September of 1913. Station 11461000 was reinstalled in October of 1952 and has been in operation since that time. With over 50 years of continuous data, Station 11461000 provides excellent insight into water availability at the Waldteufel POD.

While 2.0 cfs is generally available during winter and spring, the average flows for the period of record for the months of July, August and September are 2.5, 0.65, and 0.61 cfs respectively (see Attachment 1). These low summer and fall flows limit the availability of water under the Waldteufel right during certain times of the year. The reservation of bypass flows protective of listed salmonids further expands the period of diversion limitation. The historic USGS records from the West Fork gage (Attachment 1) prove that the water resources necessary to meet the supplies asserted by Hill and Gomes have never existed during the summer and early fall months.

Finally, proponents of the Waldteufel right frequently assert that all pre-1914 rights were considered in D1030 and D1610 as part of the 8,100 af of “existing” water rights. The 8,100 af estimate of existing rights cited in D1030 and D1610 was developed by the District’s engineer Edward F. Carpenter. In Carpenter’s 1959 report entitled “Water Use Survey on the Russian River in Southern Mendocino County” the Area Studied was described on Page 3 as “from the junction of the East and West Forks of the Russian River to the Sonoma-Mendocino County line.” Carpenter’s report also includes a crude map of the Area Studied entitled Plate A. A review of Plate A verifies that the West Fork was not included as part of the Area Studied. Therefore no rights on the West Fork (including the Waldteufel right) were included in Carpenter’s estimate of 8,100 af of existing rights that were considered in the preparation of D1030 and D1610.

Millview CWD

Millview’s existing water rights are constrained during the summer. In order to alleviate this shortfall, Millview CWD has a contract with the District to purchase water to provide a basis of right for summer diversions. However, since purchasing the Waldteufel right, Millview has reduced its purchase of water from the District by assigning a portion of their use to the Waldteufel right. The District’s believes that a review of the data from Station 11461000 clearly shows that the limited flows of West Fork at the Waldteufel POD do not present a remedy for Millview’s existing water rights constraints.

RESOURCE CONFLICTS

Relocation of Waldteufel POD

Millview CWD's existing water diversion facility is located downstream of the confluence of the East and West Forks (Figure 1). Millview CWD moved the Waldteufel right POD from the West Fork to their diversion facility downstream of the confluence of the East and West Forks.

The District became involved in the Waldteufel right because it was concerned that the relocation of the Waldteufel POD to below the confluence of the East and West Forks provided Millview CWD access to releases of stored water from Lake Mendocino that are subject to Permits 12947A and 12947B. This concern has been validated by Millview CWD records that show assignment to the Waldteufel right from the new POD when data from Station 11461000 demonstrates that water for diversion was unavailable in West Fork at that time (Attachment 2).

CONCLUSION

Millview's own records show that relocation of the Waldteufel POD to **below** the confluence of the East and West forks has provided illegitimate access to stored water subject to Permits 12947A and 12947B. However, the District believes that there is a simple and practical solution for resolving this conflict. Permanently returning the Waldteufel POD to its original location on the West Fork **above** the influence of the East Fork completely eliminates any conflict between the Waldteufel right and Permits 12947A and 12947B. *If the Waldteufel POD is permanently returned to its original location, the District will no longer have any interest in the Waldteufel right.*



Submitted by Sean K. White

General Manger, MCRRFC&WCID

ATTACHMENT 1

USGS 11461000 RUSSIAN R NR UKIAH CA

00060, Discharge, cubic feet per second,												
YEAR	Monthly mean in cfs (Calculation Period: 1911-10-01 -> 2009-09-30)											
	Period-of-record for statistical calculation restricted by user											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1911										0.039	0.303	3.50
1912	213.6	107.9	368.2	81.3	134.9	5.00	2.50	0.900	1.60	2.00	443.4	291.2
1913	761.2	69.4	74.4	109.2	16.3	7.27	2.03	0.500	0.200			
1952										0.000	0.147	771.8
1953	1,306	77.0	257.6	107.1	75.7	34.6	5.84	1.89	1.27	2.12	69.0	119.7
1954	718.3	455.6	338.7	306.7	30.4	13.5	2.58	0.968	1.11	1.32	25.7	235.0
1955	285.9	73.1	58.8	134.5	42.3	5.71	1.11	0.200	0.100	0.100	27.5	1,639
1956	1,571	882.3	182.8	40.6	24.3	6.96	1.85	0.810	0.477	13.7	11.2	8.55
1957	287.9	562.9	499.5	81.8	127.9	17.8	2.76	0.545	2.55	143.4	150.5	303.4
1958	552.3	1,975	457.5	656.4	40.8	19.9	5.20	0.813	0.380	0.674	11.5	39.6
1959	521.0	563.4	86.4	45.9	11.2	4.32	0.794	0.323	0.210	0.187	0.780	1.77
1960	109.2	984.6	576.5	76.0	42.3	13.4	2.41	0.384	0.100	0.258	55.0	419.9
1961	136.4	639.9	517.8	123.3	61.5	12.5	2.58	0.268	0.183	0.090	60.9	187.1
1962	124.6	675.6	442.9	51.9	17.0	4.65	0.632	0.100	0.123	146.8	58.9	283.6

1963	223.9	328.8	294.2	770.4	100.8	13.8	5.66	1.29	0.427	3.28	261.7	64.7
1964	486.7	73.5	74.5	27.2	13.8	7.33	0.645	0.181	0.050	0.052	228.6	1,663
1965	872.8	144.8	66.2	311.0	34.0	11.7	2.30	1.01	0.507	0.935	165.1	171.1
1966	651.9	340.4	195.2	75.7	15.9	5.04	0.981	0.168	0.197	0.110	135.9	371.8
1967	713.6	155.7	383.1	387.7	64.5	22.3	2.73	0.929	0.270	1.44	3.74	88.4
1968	422.0	427.3	211.1	40.2	13.4	3.86	0.135	0.299	0.055	0.436	11.4	926.8
1969	1,202	1,017	291.0	71.4	23.1	6.92	1.24	0.153	0.154	1.35	3.75	367.3
1970	1,765	350.7	145.5	31.9	13.2	4.93	1.11	0.052	0.000	2.06	209.1	864.8
1971	716.7	58.9	465.1	99.6	27.9	10.8	2.03	0.136	0.249	0.215	11.9	177.2
1972	256.0	256.0	201.6	102.8	19.2	6.11	1.43	0.005	0.049	3.25	109.2	377.2
1973	964.0	592.3	384.1	95.6	18.1	4.80	0.296	0.040	0.083	7.20	682.4	658.4
1974	956.7	445.5	872.9	442.3	36.6	9.28	3.68	0.465	0.243	1.12	4.84	65.6
1975	215.1	1,196	1,201	132.4	37.9	6.43	0.571	0.027	0.056	6.21	34.7	78.6
1976	21.9	280.1	115.2	111.8	11.4	2.27	0.067	0.160	0.056	0.015	2.29	2.54
1977	9.24	14.3	33.4	4.33	3.15	0.219	0.000	0.000	0.000	0.000	43.2	431.8
1978	1,178	739.4	449.6	258.5	30.1	7.45	1.82	0.000	0.735	0.283	2.24	3.48
1979	278.7	606.6	252.1	54.3	55.3	4.97	0.804	0.000	0.000	16.8	308.9	297.0
1980	818.0	646.4	280.8	112.1	27.7	8.87	2.01	0.213	0.275	0.167	1.50	71.7
1981	385.2	220.1	243.4	50.6	11.8	1.58	0.059	0.000	0.056	15.6	534.0	916.4
1982	579.1	641.1	439.5	623.3	42.8	12.7	4.23	0.576	1.14	9.62	354.2	671.4
1983	653.3	1,185	1,436	586.5	148.6	26.3	10.8	2.52	2.70	3.44	666.6	1,111

1984	150.9	273.3	175.6	107.4	30.7	9.13	1.68	0.684	0.336	5.18	442.5	162.9
1985	43.3	255.4	211.1	60.3	12.0	3.41	0.974	0.100	1.29	1.32	40.1	139.8
1986	438.1	1,609	600.8	48.0	19.1	4.66	2.49	1.57	1.10	1.91	4.15	11.1
1987	163.4	281.7	389.5	35.8	9.59	2.64	0.269	0.000	0.300	1.44	9.50	449.8
1988	573.2	63.3	20.0	14.7	9.99	3.33	0.546	0.219	0.025	0.450	158.7	163.9
1989	175.8	32.0	789.6	123.4	21.2	8.00	1.99	0.613	1.73	9.46	10.4	5.75
1990	236.3	216.2	112.6	18.0	115.8	40.6	2.70	0.315	0.589	0.729	1.72	3.15
1991	3.82	15.3	508.7	31.6	7.56	3.21	0.235	0.246	0.183	0.544	5.80	37.3
1992	95.4	644.7	269.7	52.0	6.36	2.43	0.966	0.016	0.567	3.23	10.3	504.6
1993	944.3	490.7	198.4	120.0	61.1	57.4	6.58	1.73	1.48	1.56	4.99	67.8
1994	149.0	376.4	49.7	31.1	16.9	3.20	0.217	0.140	0.154	0.653	25.3	137.5
1995	1,986	221.2	1,218	232.5	201.3	24.0	7.43	2.14	1.19	1.18	2.66	280.1
1996	856.8	671.2	321.3	146.2	86.8	17.1	3.44	1.05	1.29	1.34	25.6	899.7
1997	1,021	176.4	117.0	45.7	18.6	8.60	1.70	0.962	1.49	4.73	114.3	204.3
1998	1,342	1,781	364.4	249.9	109.0	52.6	9.68	3.75	2.17	2.96	87.5	179.1
1999	222.1	1,052	519.4	198.3	36.1	11.1	2.92	1.48	1.02	1.22	23.0	39.6
2000	277.8	772.5	257.7	56.4	26.0	6.40	2.30	1.04	0.829	3.34	6.14	20.5
2001	112.9	409.4	216.7	24.2	10.1	3.15	0.980	0.000	0.179	0.999	174.6	701.1
2002	417.5	227.5	169.3	42.5	16.9	5.78	0.755	0.031	0.036	0.568	6.17	1,093
2003	514.5	144.1	255.9	660.2	215.5	13.4	4.96	0.963	1.01	1.43	1.08	746.8
2004	458.8	1,189	169.5	40.1	14.6	5.27	1.68	0.899	1.38	5.57	6.57	356.0

2005	427.7	161.0	460.9	261.4	242.8	56.0	10.6	2.24	0.864	1.91	34.8	1,531
2006	824.3	423.7	833.4	736.0	53.8	16.7	5.99	1.68	0.469	2.56	15.1	297.8
2007	65.6	586.0	134.3	46.1	19.1	4.82	1.34	0.431	0.545	3.88	7.90	157.9
2008	845.0	564.9	77.5	26.4	12.8	3.27	0.412	0.094	0.152	0.892	8.54	89.3
2009	37.0	369.5	260.5	26.6	77.5	6.41	0.711	0.011	0.000			
Mean of monthly Discharge	548	505	349	163	48	12	2.5	0.65	0.61	7.5	100	372

** No Incomplete data have been used for statistical calculation

ATTACHMENT 2

Explanation

The table entitled *Millview County Water District Water Rights Accounting* was submitted to the District by Millview. It shows their assignment of water used to the various rights and contracts. This table was used to analyze their reported water use under the Waltuefel right in 2008.

According to the West Fork gauge there was more than enough water in the West Fork to cover the reported use shown for the months of January-May. The amount reported for June thru August is 38.760 million gallons per month. This is essentially a 2 cfs diversion running 24/7. The number for June should actually be less than the amount reported for July and August as there were less days in the month of June. Notes on the adjacent column depict conversions of their monthly use in million gallons to AF.

The 3 page spreadsheet entitled *Water availability analysis for the Walteufel right, Summer 2008* I made a simple spreadsheet for June, July and August to compare the amounts reported in the table, with the amount potentially available in the West Fork during each month according to the USGS gage. The spreadsheet has seven columns.

Column 1 is the month.

Column 2 is the daily flow in the West Fork according to the USGS gauge

Column 3 is entitled called reservation. This column deducts the Hill and Gomes reservation (0.2 cfs) when it becomes meaningful. It has an effect on the amount available to Millview whenever the flow drops below 2.2 cfs, as it begins to exert priority over the remaining Waltuefel right.

Column 4 is the sum of Column 2 and 3 and reflects the flow available for Millview to assign to the Waltuefel right for that day.

Column 5 converts the available flow to a max theoretical acre foot diversion per day.

Column 6 is the theoretical max acre foot diversion per day.

Column 7 is entitled "unavailable". Column 7 shows the difference in water reported in *Millview County Water District Water Rights Accounting* minus what was actually available per the monthly spreadsheet calculations.

Millview County Water District
Water Rights Accounting

2008

Month	Permit 13936 Diversion 11/1-6/30	License 492 Diversion 6/1-8/15	Stmt.-SOO272 Diversion 1/1-12/31	Calpella/Ukiah RRFCD Diversion	Millview RRFCD Diversion	Total Million Gallons
JANUARY			23.601	7.599	0.000	31.20
FEBRUARY			26.587	3.193	0.000	29.78
MARCH			25.527	1.403	0.000	26.93
APRIL			32.608	1.882	0.000	34.49
MAY			38.760	2.310	12.670	53.74
JUNE	2 CFS x 30 DAYS		38.760	2.915	23.605	65.28
JULY	2 CFS x 31 DAYS		38.760	3.670	27.130	69.56
AUGUST	2 CFS x 31 DAYS		38.760	3.254	28.976	70.99
SEPTEMBER				3.415	64.815	68.23
OCTOBER				1.448	38.622	40.07
NOVEMBER				1.170	23.280	24.45
DECEMBER				1.571	22.368	23.94
TOTAL	0.00	0.00	263.36	33.83	241.47	538.66

ACRE FEET 0.00 0.00 808.23 103.82 741.03 1653.08

Permit 13936 Application 17587
License 492 Application 3601
1914-S000272

3 CFS Nov 1 Thru July 1 Maximum Diversion 1440 Acre Feet
.18 CFS JUNE 1 THRU AUG. 15 Maximum Diversion 26.82 Acre Feet
2 CFS Jan 1 THRU Dec. 31 Maximum Diversion = 1447 Acre Feet

Supplied City of Ukiah Emergency Inter-tie Connection January 5 942 MG & February 2.254 MG

Water availability analysis for the Walteufel right, Summer 2008

June 2008	Flow	Reservation	Available	Conversion	AFD	Unavailable
1	9.3		2	1.98	3.96	
2	9		2	1.98	3.96	
3	8.3		2	1.98	3.96	
4	8		2	1.98	3.96	
5	8.1		2	1.98	3.96	
6	7.7		2	1.98	3.96	
7	7.1		2	1.98	3.96	
8	6.8		2	1.98	3.96	
9	7.6		2	1.98	3.96	
10	6.3		2	1.98	3.96	
11	6.3		2	1.98	3.96	
12	5.6		2	1.98	3.96	
13	5.4		2	1.98	3.96	
14	5.5		2	1.98	3.96	
15	5.4		2	1.98	3.96	
16	5.2		2	1.98	3.96	
17	3.7		2	1.98	3.96	
18	NR		2	1.98	3.96	
19	NR		2	1.98	3.96	
20	NR		2	1.98	3.96	
21	NR		2	1.98	3.96	
22	1.4	-0.2	1.2	1.98	2.376	
23	1.4	-0.2	1.2	1.98	2.376	
24	1.4	-0.2	1.2	1.98	2.376	
25	1.5	-0.2	1.3	1.98	2.574	
26	1.6	-0.2	1.4	1.98	2.772	
27	1.9	-0.2	1.7	1.98	3.366	
28	1.6	-0.2	1.4	1.98	2.772	
29	1.5	-0.2	1.3	1.98	2.574	
30	1.5	-0.2	1.3	1.98	2.574	

Total

106.92

8.08

July 2008	Flow	Reservation	Available	Conversion	AFD	Unavailable
1	1.5	-0.2	1.3	1.98	2.574	
2	1.2	-0.2	1	1.98	1.98	
3	1	-0.2	0.8	1.98	1.584	
4	1	-0.2	0.8	1.98	1.584	
5	1	-0.2	0.8	1.98	1.584	
6	1.1	-0.2	0.9	1.98	1.782	
7	1	-0.2	0.8	1.98	1.584	
8	0.6	-0.2	0.4	1.98	0.792	
9	0.4	-0.2	0.2	1.98	0.396	
10	0.5	-0.2	0.3	1.98	0.594	
11	0.4	-0.2	0.2	1.98	0.396	
12	0.5	-0.2	0.3	1.98	0.594	
13	0.7	-0.2	0.5	1.98	0.99	
14	0.7	-0.2	0.5	1.98	0.99	
15	0.7	-0.2	0.5	1.98	0.99	
16	0.5	-0.2	0.3	1.98	0.594	
17	0.5	-0.2	0.3	1.98	0.594	
18	0.5	-0.2	0.3	1.98	0.594	
19	0.4	-0.2	0.2	1.98	0.396	
20	0.2	-0.2	0	1.98	0	
21	0.2	-0.2	0	1.98	0	
22	0.3	-0.2	0.1	1.98	0.198	
23	0.3	-0.2	0.1	1.98	0.198	
24	0.3	-0.2	0.1	1.98	0.198	
25	0.4	-0.2	0.2	1.98	0.396	
26	0.5	-0.2	0.3	1.98	0.594	
27	0.5	-0.2	0.3	1.98	0.594	
28	0.4	-0.2	0.2	1.98	0.396	
29	0.4	-0.2	0.2	1.98	0.396	
30	0.4	-0.2	0.2	1.98	0.396	
31	0.8	-0.2	0.6	1.98	1.188	

Total

25.146

93.854

August 2008	Flow	Reservation	Available	Conversion	AFD	Unavailable
1	0.7	-0.2	0.5	1.98	0.99	
2	0.4	-0.2	0.2	1.98	0.396	
3	0.3	-0.2	0.1	1.98	0.198	
4	0.3	-0.2	0.1	1.98	0.198	
5	0.1			1.98	0	
6	0			1.98	0	
7	0			1.98	0	
8	0			1.98	0	
9	0			1.98	0	
10	0			1.98	0	
11	0			1.98	0	
12	0			1.98	0	
13	0			1.98	0	
14	0			1.98	0	
15	0			1.98	0	
16	0			1.98	0	
17	0			1.98	0	
18	0			1.98	0	
19	0			1.98	0	
20	0			1.98	0	
21	0			1.98	0	
22	0			1.98	0	
23	0			1.98	0	
24	0			1.98	0	
25	0			1.98	0	
26	0			1.98	0	
27	0			1.98	0	
28	0			1.98	0	
29	0			1.98	0	
30	0			1.98	0	
31	0			1.98	0	

Total

1.782

117.218

Total AF unavailable for June-August 2008

219.152

* note that "availability" assumes zero bypass flows