

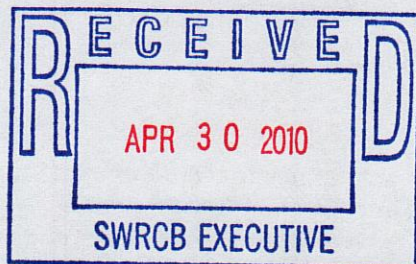
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April 30, 2010

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Re: Comment Letter AB 2121 Policy – Policy for Maintaining Instream Flows in Northern California Coastal Streams

Dear Ms. Townsend and State Board Members:

North Marin Water District (NMWD) submits the following comments on the latest "Red lined Revisions Dated April 27, 2010" of the Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams.

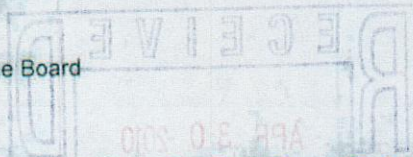
Comment 1: Section 3.3.2.4 - Voluntary modification of authorized diversions for the enhancement of fish and wildlife resources

We appreciate the additional revisions added to this section and have suggested changes as reflected on the hand-annotated comments attached hereto so that the Deputy Directors exception approval can be applied not only for a storage project but other changes as listed in this section. Incorporation of our comments should enable NMWD to follow through with the planned Section 1707 - Instream Dedication of Lagunitas Creek Water Right Permit 019724 (Application 25062) in conjunction with the planned change in point of diversion for Lagunitas Creek License 4324B (Application 13965B) pursuant to the policy.

Comment 2: Section 3.4 Review Procedures for Water Right Applications and Petitions

NMWD surmises that these added policy provisions are intended to streamline the processing of water right Applications and Petitions. We recommend that a time certain to file a protest be specifically identified so that the Division of Water Rights may "bar the door" from late protestants. NMWD's experience in 2002 to change the place/purpose of use for License 4324B (Application 13965B) on Lagunitas Creek was receipt of a late protest to the petition from the Department of Fish and Game after concluding settlement terms with protesting environmental groups (Trout Unlimited, Tomales Bay Association, Sierra Club Marin Group). While the Division originally rejected this DFG protest, it was later reinstated resulting in significant delay (~4 years) and changed terms and conditions from those originally contemplated.

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Comment 3: Appendix C - Guidelines for Site Specific Studies; Sections C.1.1.2.2. - Site Specific Maximum Cumulative Diversion; C.1.2.4. - Cumulative Diversion Analysis; and C.1.3 - Alternative Site Specific Approaches

So much detail has been added to this Appendix it is not clear whether these sections are now mandatory in a site specific approach or suggested alternatives to include in a site specific approach. If the added language is a mandatory requirement some preliminary study by a fisheries biologist for potential projects by NMWD on Novato Creek would be necessary to evaluate potential impacts. If the added language is a requirement, NMWD requests additional time to conduct that preliminary review.

Thank you for the opportunity to comment.

Sincerely,

Chris DeGabriele
General Manager

Cc: Paul Helliker, General Manager
Marin Municipal Water District

Grant Davis, General Manager
Sonoma County Water Agency

Robert Maddow
Bold, Polisner, Maddow, Judson, Nelson

Mark Rentz
Association of California Water Agencies

Charlton Bonham
Trout Unlimited

CD/rr

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However, some petitioned changes may result in changes in flow of a particular stream reach, particularly those changes that affect the location of a point of diversion or those that result in a change in the timing or location of return flows from the approved use. Any increase in diversion or reduction in return flows corresponds to a decrease in streamflow. If the Deputy Director determines that the incremental decrease in streamflow resulting from the approval of a petition has the potential to impair instream beneficial uses, then the incremental decrease in streamflow shall be evaluated for adverse effects to fish and wildlife using the cumulative diversion analysis instream flow assessment methods established in this policy. ~~The results of the evaluation may be used to develop terms and conditions for amended permits and licenses. Only the stream reaches potentially affected by the proposed change need be evaluated. The evaluation shall consider the effect of the proposed change on instream flows needed for fishery resources at locations where anadromy exists, after consideration of the flow reductions caused by all authorized diverters.~~ The results of the evaluation may be used to develop terms and conditions of approval. Any such terms and conditions shall be tailored to address the incremental impacts of the change on instream flows.

3.3.2.43 Voluntary modification of authorized diversions for the enhancement of fish and wildlife resources

Persons who divert water under any legal basis of right, including riparian and permitted and licensed water rights, may petition the State Water Board pursuant to Water Code section 1707 for a "change for purposes of preserving or enhancing wetlands habitat, fish and wildlife resources, or recreation in, or on, the water." The section 1707 petition may be coupled with an application for a water right or a petition to amend an existing permit or license in order to modify an existing project so that diversion will occur in a manner that minimizes impacts to fish and wildlife. For example, a riparian right holder may file an application for offstream winter storage in lieu of summertime riparian direct diversion coupled with a petition to dedicate riparian flows under section 1707.

The Deputy Director may approve an exception to one or more of the diversion criteria for all or part of an application if ~~the application is for a storage project and~~ the Deputy Director finds that (1) the applicant's existing diversions under another valid basis of right will be reduced ~~as a result of the applicant's ability to divert to storage,~~ and (2) the benefit to fishery resources of the ~~shift in timing of diversions,~~ outweighs the potential impacts to fishery resources of the ~~storage project.~~

application

Other changes that result in enhanced conditions for fish and wildlife may include:

1. removal of an artificial barrier to the migration of anadromous fish;
2. replacement of onstream storage with offstream storage;
3. relocation of a point of diversion to reduce impacts to aquatic resources,
4. changes to frost protection practices undertaken pursuant to an existing water right that improve habitat for aquatic resources (which could include moving a point of diversion, adding or expanding storage in order to reduce

- instantaneous demand during frost events, improving efficiency, or implementing alternative frost protection techniques); and
5. other activities that have the effect of creating fish and wildlife habitat with improved streamflows.

The State Water Board will expedite, where feasible, processing of petitions that will result in enhanced conditions for fish and wildlife, including section 1707 petitions and any water right applications or petitions to amend existing permits or licenses that accompany them. Expedited water right processing may occur if the following conditions are met:

1. Documentation is provided showing the change will enhance conditions for fish and wildlife, including proof of past riparian use, if relevant;
2. The petitioner or applicant consults with other agencies, including DFG, NMFS, the Regional Water Quality Control Boards, and other agencies with jurisdictional authority, and the agencies provide written approval or support for the proposed change;
3. The proposed change is consistent with the principles of this policy; and
4. For water right applications, (1) a water availability analysis is submitted pursuant to Water Code section 1375, subdivision (d) that takes into account the **face value demand** of all known **senior diversions**, including senior pending water rights, and (2) the applicant agrees to conditions of approval that will ensure that the water that is the subject of the section 1707 petition will remain instream for purposes of protecting wetlands habitat, fish and wildlife resources, or recreation in or on the water.

3.3.3 Small domestic use and livestock stockpond registrations

A person can obtain a right to appropriate water for a small domestic or livestock stockpond use by registering the use with the State Water Board. (Wat. Code, § 1228 et seq.) A registration of water use must include a certification that the registrant agrees to comply with all conditions required by DFG, including conditions on the construction and operation of the diversion work. (*Id.*, §1228.3, subd. (a)(7).)

An appropriation pursuant to a registration within the policy area is subject to the following conditions:

1. No water may be stored or diverted under the registration by means of an onstream dam constructed on a Class I or Class II stream after July 19, 2006.
2. DFG imposes conditions consistent with the principles of this policy that are stated in Section 2.1. DFG's authority to impose conditions on small domestic use and livestock stockpond use registrations includes, but is not limited to, the