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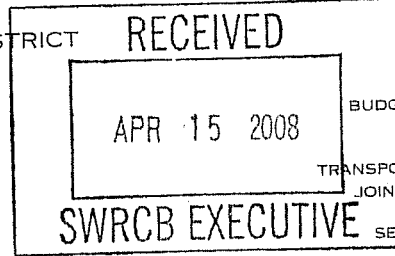
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California State Senate

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April 9, 2008

Ms. Tam M. Doduc, Chair
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-0100

Re. Draft Policy for Maintaining Instream Flows in Northern California Streams

Dear Chair Doduc and Members:

As you know, Assembly Bill 2121 (2004) was enacted to remedy a water right permitting system that has crawled to a standstill in the North Coast region while the State Water Resources Control Board (SWRCB) considered various fisheries protection measures. AB 2121 requires the SWRCB to establish practical scientific principles and guidelines for evaluating water diversions in order to maintain instream flows in the North Coast region. The SWRCB's Draft Instream Flow Policy has been a substantial undertaking, but it falls short of addressing the underlying problems plaguing the water right system. The Policy must be reevaluated and revised.

We share the concerns of many stakeholders that more time is necessary for a proper review and critique of the Draft Policy. We also support the Mendocino County Board of Supervisors and Mendocino County Water Agency's request to conduct additional public workshops. While we understand the SWRCB has granted an additional 75 days for review of the 800+ page Draft Policy, this extension is still inadequate to properly evaluate it or to examine other possible alternatives.

Additional public review is essential because the Draft Policy does not discuss its practical implementation. Analyses of the Policy by water user and environmental stakeholders indicate that the Draft Policy's proposed diversion limitations, referred to as the "regional criteria", were developed using data from larger watersheds not representative of typical North Coast diversions. These regional criteria are disproportionately burdensome in smaller watersheds. It is projected that 85% of the pending projects are so small and are located in such small watersheds that they cannot comply with the Draft Policy's stringent criteria. These projects would be forced into a vague site-specific study process or a yet undefined process to request an "exception" from the Policy criteria. The Policy also does not assess the potential benefits or impacts to the stream systems, or weigh these potential benefits against the economic or social costs of compliance.

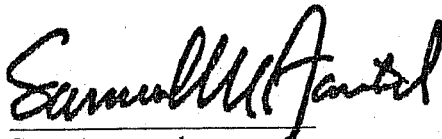
Ms. Tam M. Doduc
April 9, 2008
Page 2

An extension is especially important because the Policy would cost the regulated community millions of dollars to comply (the SWRCB documents estimate up to \$3,000,000 per project). The most effective way to develop a policy that has such large geographical, economical, and water right implications is to hold a true scientific hearing to receive written evidence, testimony and produce staff and consultants for public examination. The regulated stakeholders should be given a fair opportunity to present their own evaluation and examine the evaluations, opinions and documents of SWRCB staff and consultants. The only way to accomplish this is for the SWRCB to hold an evidentiary hearing on the Draft Policy.


The solution to problems in the North Coast and in the water right system generally lies within the Board's direction to the Chief of the Division of Water Rights to "re-engineer" the water right system. A set of rigid diversion criteria may never be flexible enough to address the actual conditions in every North Coast stream. Some alternatives to consider may be to allow applicants to provide the appropriate hydrological and biological studies, have the SWRCB establish and follow a clear decision-making process, and to restore functionality to the water right administrative system. One approach the Board may wish to examine is the one referenced in the State Auditors' report regarding the coordinated "watershed approach" that is currently underway in a North Coast stream system. This appears to be a scientifically sound and efficient approach for evaluating site specific hydrologic and fisheries impacts and for water right administration generally, than regional criteria of a blanket policy.

We strongly encourage the SWRCB and staff to reconsider the schedule and approach of the Draft Policy.

Sincerely,



Sam Aanestad
Senator, 4th District



Bob Dutton
Senator, 31st District

cc: Mr. Gary Wolff, Vice Chair, SWRCB
Mr. Arthur G. Baggett, Jr., Member, SWRCB
Mr. Charles R. Hoppin, Member, SWRCB
Ms. Frances Spivey-Weber, Member, SWRCB
Jim Wattenburger, Chair, Mendocino County Board of Supervisors and Mendocino County Water Agency Board of Directors
Sonoma County Board of Supervisors
California Farm Bureau Federation