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Sustainable Conservation

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# Fax

To: Ms. Karen Niiya  
Mr. Eric Oppenheimer

From: Ashley Boren

Fax: 916-341-5400

Pages: 3

Phone: 916-341-5300

Date: 4/29/08

Re: \_\_\_\_\_

CC: \_\_\_\_\_

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● Comments:



Sustainable Conservation

29 April 2008

Ms. Karen Niiya and Mr. Eric Oppenheimer  
State Water Resources Control Board  
Division of Water Rights  
P.O. Box 2000  
Sacramento, CA 95812-2000

Subject: The Draft Policy for Maintaining Instream Flows in Coastal Streams of Northern California

Dear Ms. Niiya and Mr. Oppenheimer:

We are writing to offer comments regarding the draft policy proposed by SWRCB toward the implementation of A.B. 2121 and the associated principles and guidelines for maintaining instream flows in Northern California coastal streams (encompassed in the added Water Code section 1259.4).

We understand the draft policy contains a diversion season less restrictive than the one recommended in the 2002 draft guidelines issued by CDFG-NMFS, and it seems written to address applications for water rights seeking diversions above and beyond all the existing water withdrawals in a given basin. However, it appears the draft policy does not envision that a conservation-minded entity might simply request a shift in the season of diversion, and not an increased allocation of water.

A shift in the season of diversion from summer to winter could benefit both farmers and fishes if peak winter flows are captured and stored in off-stream ponds for use as irrigation water during the hot and dry summer months. Farmers would benefit from the certainty of knowing how much irrigation water they have available before starting the growing season, and fishes would benefit from decreases in summer diversions and corresponding increases in instream flows.

As you refine the draft policy further, please draw a distinction between at least two sets of potential applicants – those requesting a diversion that would represent a net increase of diversions measured on a basin-wide scale, and those requesting a shift in the season of diversion, but whose diversions would represent a neutral, or even reduced, level of withdrawal from a basin-wide perspective. The latter scenario could actually represent a net benefit, and this should be acknowledged and rewarded with regulatory and economic incentives, e.g., expedited permitting by regulatory agencies, and transfers of water rights amongst water users in a given basin.

If the draft policy is implemented as written, we are concerned it might result in a scenario whereby existing diverters, including those who installed unauthorized diversions, would simply apply to SWRCB for variance. While any award of a variance

from SWRCB would be accompanied by a mandate for the diverter to find other ways to ensure that diversions are limited to periods of relatively high flow and to mitigate for cumulative effects, special studies might be needed to measure the potential impacts of the existing and continuing withdrawals before any final decision is made. This could lead to an open-ended process that resembles the status quo, and moves us no closer toward recovering imperiled anadromous fisheries or toward providing increased certainty to water users.

It seems like the multitude of diverters who built and/or maintain unauthorized diversions would not be adversely affected by the draft policy beyond the apparently reinforced mandate to allow for fish passage. By the same token, the draft policy does not offer incentives for removing/dismantling the unauthorized diversions, but it certainly should.

Finally, while the draft policy seems grounded with a detailed technical framework, it seems unrealistic to assume that SWRCB will be able to carry-out the monitoring, evaluation, and adaptive management necessary to ensure that program goals are met and regulatory compliance is achieved. As you refine this draft policy further, SWRCB should identify staffing needs and funding sources to ensure programs implemented under A.B. 2121 lead to positive and measurable results for both natural resources and our agricultural communities.

If you wish to discuss our comments, please contact Tim Vendlinski, Director, Restoration on Private Lands Program at (415) 977-0380 (ext. 302) or [tvendlinski@suscon.org](mailto:tvendlinski@suscon.org).

Sincerely,



Ashley Boren  
Executive Director