



To	Karen Niya	From	Chris DeGabriele
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## NORTH MARIN WATER DISTRICT

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May 1, 2008

Ms. Victoria A. Whitney, Deputy Director  
 Division of Water Rights  
 State Water Resources Control Board  
 1001 I Street, 2<sup>nd</sup> Floor  
 Sacramento, CA 95814

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

Dear Ms. Whitney:

Thank you for the opportunity to comment on the State Water Resources Control Board Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams (Policy). The Policy establishes principles and guidelines for maintaining instream flows in coastal streams to meet the requirements of Water Code Section 1259.4 (AB 2121).

North Marin Water District (NMWD) provides water service to the West Marin communities of Point Reyes Station, Olema, Inverness Park and Paradise Ranch Estates from wells adjacent to Lagunitas Creek; and provides water service to the community of Novato from our local Stafford Lake supply (Novato Creek), and with imported Russian River supply from Sonoma county Water Agency.

NMWD comments on the Policy follow:

1. **Extend Policy exemptions to all streams where minimum instream flow requirements have previously been established by the Division of Water Rights or the Department of Fish and Game for the protection of fishery resources.**

It is noted that the regionally protected instream flow criteria for season of diversion, minimum by-pass flow, maximum cumulative diversion and instream flow analysis requirements do not apply to water diversion from (i) the Russian River downstream of Lake Mendocino; and (ii) Dry Creek downstream of Lake Sonoma. The State Water Board has established minimum instream flows for these streams in its Decisions 1030 and 1610. The minimum flow requirement in those decisions was selected in part to "preserve the fishery and recreation in the [Russian River] and in Lake Mendocino to the greatest extent possible while serving the needs of the agricultural, municipal, domestic and industrial uses which are dependent on the water." (The State Water Board Decision 1610, Section 13.2).

Similarly, Water Right Order 95-17, Order Amending Water Rights and Requiring Changes in Water Diversion Practices to Protect Fishery Resources and to Prevent Unauthorized Diversion and Use of Water, establishes minimum flows and measures to protect fishery resources in Lagunitas Creek from the effects of water diversion by Marin Municipal Water District and NMWD. Marin Municipal and NMWD have worked closely with the State Water Board to comply with WR 95-17, and NMWD urges the State Water Board to place no further obligations such as compliance with the above Policy on the NMWD Lagunitas Creek Water Rights.



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Additionally, Permit 18800 (A025927) for Novato Creek requires reservoir releases into the channel below Stafford Dam in accordance with schedules requested by the Department of Fish and Game for the benefit of fish. NMWD urges the State Water Board to place no further obligations such as compliance with the above Policy on the NMWD Novato Creek Water Rights.

**2. Petitions for change to existing water rights for community water supply should be exempt from the Policy.**

Section 3.3 states that the Policy applies to applications to appropriate water, small domestic use and livestock, stock pond registration and water right petitions. The Policy is not clear on the applicability to change petitions for existing licensed or permitted water rights for community water supply (municipal and industrial purposes). The change petition could include: place of use, extension of time, or change in point of diversion to meet a competing water quality requirement. A change petition exclusion for existing water right holders will provide certainty for NMWD and other retail water providers to existing community water supply needs. Change petition exclusion would also reduce the State Board's Policy compliance obligation and ultimate cost and staff work.

**3. Institute the Policy on a trial basis and make Policy adjustments thereafter.**

The Policy is detailed and voluminous. It's not known if there are sufficient State Board resources to implement the Policy and work off the backlog of water right applications now pending. And, while comprehensive, there may be unintended consequences from its implementation (as suggested by Academic Peer reviewers). It's recommended that the Policy be implemented on a trial basis either for a time certain or a specific number of applications to gauge effectiveness and make adjustments as necessary to streamline the process and avoid unknown and unintended consequences.

Thank you for the opportunity to comment on the above Policy.

Sincerely,



Chris DeGabriele  
General Manager

Cc: Paul Helliker, General Manager  
Marin Municipal Water District  
  
Robert Maddow  
Bold, Polisner, Maddow, Nelson & Judson

CD/tr