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CLUB

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STATE WATER RESOURCES
CONTROL BOARD
2008 MAY -1 AM 11:55
DIVISION OF WATER RIGHTS
SACRAMENTO

SUBJECT: Comment on AB2121 Draft Policy for Maintaining In-stream Flows in Northern California Coastal Streams and the Substitute Environmental Document

Dear Ms. Doduc and Members of the Board:

We write to express our great disappointment with the Draft Policy for *Maintaining In-stream Flows in Northern California Coastal Streams* (Policy) developed and circulated for comment by the Water Rights Division (WRD). The *Policy* does not reflect the intent of the legislature and does not support public trust values. As written, the policy will not result in flows or barrier removal efforts sufficient to maintain and restore the beneficial uses of North Coast rivers and streams including threatened, endangered and at risk species of Pacific salmon.

The draft policy is deficient in a number of ways including:

- The WRD study focuses on how much winter flow salmon and steelhead need for migration and spawning, but doesn't even discuss low summer and fall conditions that are known to be more limiting.
- No action is discussed regarding removal of more than 1771 illegal diversions and dams in the Policy area acknowledged in Appendices. It is apparent that the WRD has not enforced California Water Code § 1052, 1055, 1243, and 1375, leading to an

epidemic of illegal dams that block migration and have dried up North Coast salmon and steelhead streams.

- The Policy does not cover riparian water rights, which do not require a Permit and, consequently, will likely confound Policy implementation.
- The Policy fails to meet California Environmental Quality Act (CEQA) requirements of dealing with cumulative effects:
 - All the diversions acting together cause problems off site.
 - Changes due to land use have caused reduced water supply and water availability that need to be considered in Water Rights Permit issuance.
 - Groundwater withdrawal is ignored, although it is likely to increase as a result of the *Policy*, and is recognized as contributing to surface water depletion and loss of fisheries productivity in the region.
- The Policy proposes to use Watershed Groups to fund studies, assess flow availability, and mitigate all problems related to diversions. These groups are defined as “a group of diverters in a watershed who enter into a formal agreement to effectively manage the water resources.” This has the appearance of the WRD relinquishing its authority to diverters!

Engineers and scientists who study irrigation tell us that efficiency can be improved from 10-70%, but the draft policy does not create an incentive for irrigators to make needed changes and improve efficiency.

We strongly urge the Board to reject the *Draft Policy* and revise it to include issues outlined in this letter, and comments by fisheries scientist Patrick Higgins done on behalf of the Redwood Chapter of the Sierra Club. Most importantly, public trust doctrine and values need to be the foundation for in-stream flows in Northern California coastal streams.

While we understand that the geographic scope of the Draft Policy was driven by AB 2121, we believe that the WRD should expand the focus to include the Klamath and Eel rivers, which have greater potential for fish recovery and equal or greater identified water rights enforcement needs.

Attached is a list providing contact person and contact information for each signing organization. Please keep each of us informed by providing future drafts and notices of meetings and decisions relevant to the policy/AB 2121 implementation. Electronic copies of documents and electronic notice of meetings are preferred.

Sincerely,

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