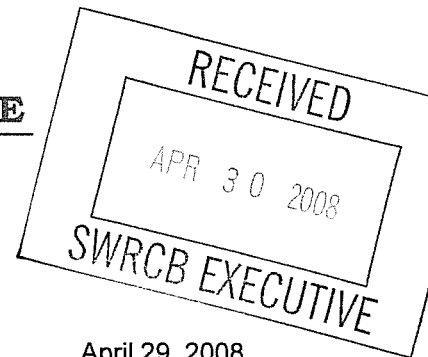




NORTH BAY AGRICULTURE ALLIANCE

29000 Skaggs Island Road
Sonoma, CA 95476
707-255-8939

Representing over 50,000 acres of San Pablo Bay shorelands



April 29, 2008

State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-0100
Attn: Ms. Karen Niiya, Sr. Engineer

COPY

Subject: Comments on the Draft Instream Flow Policy, AB2121.

Chair DODUC, Vice Chair WOLFF, Members BAGGETT, HOPPIN, and SPIVY-WEBER:

We appreciate your intent to streamline the water right administration process and reduce the application backlog. However, the proposed Draft Policy will produce the opposite effect. It will make both applications and processing more costly and time-consuming, and the outcome less certain. There are many comments submitted by other organizations and individuals that address the same issue with detailed explanations.

We also understand your concern about the legal ramifications of the ESA. The Draft Policy tries to avert possible problems by incorporating high bars against water diversion into the Water Code. This is a mistake in two ways. First, our duty is to maintain the Water Code's internal consistency and integrity. ESA is an external factor that has to be dealt with as such. Imagine one day, for example, a Homeland Security law demands some water right decisions to be changed to an opposite direction. Do we want the Water Code revisions to flip-flop every time when overriding restrictions come about from other bodies of law?

The second problem is that the high bars set in the Draft Policy are not scientifically and economically justifiable. Again, there are many other comment letters that explain this point fully. It suffices to say that the formulae and conditions proposed in the Draft Policy will obliterate many of our members' farming without helping any fish, because these members don't have ground-water and are totally dependent on the collected surface water, and because there have been no salmonid ever found in their small watersheds.

In conclusion we propose that your Board direct staff to take the following actions:

1. Work with the present and prospective applicants to devise a generalized policy statement that sets forth a basic mechanism for addressing the external legal restrictions on water diversion.
2. Set a minor application category (e.g., those involving diversions of up to 3 cu. ft/S or storage up to 200 ac-ft/yr) that will require no environmental impact study unless it is in a critical habitat area.
3. For those watersheds where listed species are normally found, encourage the applicants to work with CDFG and NMFS and develop a watershed-based water management plan while providing them with reliable data on the unappropriated water quantity. Once the plan meets support by these agencies and an application is submitted accordingly, it should be assured of a permit.
4. Process all pending applications according to the Code in effect at the time of application.
5. Dismiss any "protest" that does not meet the stipulated conditions on the protest form.

Respectfully submitted,

Mike Morris
President

cc: Sonoma County BoS, Sen. Pat Wiggins, Sen. Carole Migden, Assmb. Noreen Evans, Sonoma County FB, Sonoma Cnty Winegrape Comn, SCWA, Mendocino County FB, CFBF, W&B, ES&H, KMT&G, D. Rice, SWRCB, V. Whitney, SWRCB, Press Democrat

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