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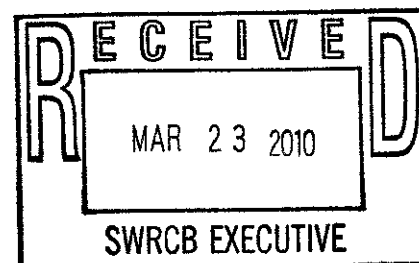
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March 17, 2010

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



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

Dear Ms. Townsend and State Water Board Members:

North Marin Water District (NMWD) provides water service to approximately 61,000 people in the community of Novato from our local Stafford Lake supply (Novato Creek) and with imported Russian River supply from Sonoma County Water Agency. NMWD also provides water service to another 1,800 people in the West Marin communities of Point Reyes Station, Olema, Inverness Park and Paradise Ranch Estates from wells adjacent to Lagunitas Creek. Both Novato Creek and Lagunitas Creek are streams within the geographic area affected by the subject policy.

The State Water Board's (SWRCB) February 2010 revised draft of the subject Policy is complex, and despite changes that were made based on previous comments from NMWD and many other parties, many questions remain as to how the Policy will be applied to future change petitions which may be filed on NMWD's existing water right licenses and permits for diversions from Novato Creek and Lagunitas Creek. A first compilation of NMWD's comments/questions is enclosed (Attachment 1). NMWD respectfully requests additional time for further dialogue and interaction with SWRCB staff to better determine how the proposed Policy may affect our existing licenses and permits.

NMWD commented on earlier versions of the subject Policy with letters dated May 1, 2008, August 24, 2006 and April 6, 2005 (Attachment 2 for your ready reference). District comments in our May 1, 2008 letter continue to apply to the most recent revised draft, and are reiterated in an abbreviated form below:

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.

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

Jeanine Townsend
March 17, 2010
Page 2

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

Thank you for the opportunity to comment. We sincerely hope that additional time will be afforded to evaluate the proposed Policy's effects, and that our comments which are reiterated above will be incorporated into the Policy before it is considered and acted upon by the SWRCB.

Sincerely,



Chris DeGabriele
General Manager

Enclosures

Cc: Paul Helliker, General Manager
Marin Municipal Water District

Grant Davis, General Manager
Sonoma County Water Agency

Robert Maddow
Bold, Polisner, Maddow, Nelson & Judson

Dave Bolland
Association of California Water Agencies

Charlton Bonham
Trout Unlimited

CD/rr
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**NMWD Comments/Questions on the State Water Resource Control Board
Policy for Maintaining Instream Flows in Draft California Coastal Streams
Revised Draft, February 2010**

1. Page 2, Section 2.1 Principles for Maintaining Instream Flows

Water diversions shall be seasonally limited to periods in which instream flows are naturally high.

How will this affect existing permits/licenses if a minor change (e.g., including but not limited to an extension of time to put water to beneficial use for M&I purposes) is requested?

2. Page 4, Section 2.2.1.1 Season of Diversion

The regionally protected criteria limit new water diversions in the policy area to a diversion season beginning on December 15 and ending on March 31 of the succeeding year. How will this affect existing permits/licenses if a minor change is requested?

3. Page 4, Section 2.2.1.2 Minimum By-Pass Flow

The minimum by-pass flow is the minimum instantaneous flow rate of water that is adequate for fish spawning, rearing and passage as measured at a particular point in the stream. The minimum by-pass flow must be met on an instantaneous basis at the point of diversion (POD) before water is diverted.

How will this affect existing permits/licenses if a minor change is requested?

4. Page 6, Section 2.2.2 Site Specific Studies

A site-specific approach may be proposed to develop criteria for parameters other than a minimum by-pass flow, maximum cumulative diversion or season of diversion.

Does this mean regional criteria must always be used for minimum by-pass flow, maximum cumulative diversion or season of diversion, and that site-specific adaptation based on scientific data may never be utilized? How will criteria based on "a site-specific approach" be established and implemented?

5. Page 7, Section 2.3 Assessment of the cumulative effects of water diversion on instream flows

Appendix A, Sections A.1.8.1 and A.1.8.2 specify exemption criteria for projects above anadromy.

The exemption criteria are only for Class 2 or Class 3 streams. Why is there not such an exemption for Class 1 streams?

6. Page 8, Section 2.4.1 On-stream Dams On Class 1 Streams

The State Water Board will not approve a water right permit for an on-stream dam on a Class 1 stream unless the following requirements are met:

1. The on-stream dam was built prior to July 19, 2006.
2. Fish passage facilities are constructed. If DFG determines that fish passage facilities are not needed, this determination and DFG supporting reasons shall be provided.
3. The applicant signs an agreement to comply with all conditions.

4. A passive by-pass system or automated computer controlled by-pass system is constructed that conforms to requirements contained in Appendix E.

5. Fish screens are installed.

6. Where needed, mitigation plans for non-native species eradication, gravel and wood augmentation, and /or riparian habitat replacement are developed and implemented.

Compliance with this list would likely preclude any modification to NMWD's existing permits on Novato Creek, even if site-specific scientific data indicates that some elements of the list are not necessary or appropriate under the facts. Why is there no provision for site-specific adaptation of the elements of the list in some circumstances?

7. Page 10, Section 3.2 Geographic Area Covered by the Policy

The regionally protected instream flow criteria for season of diversion, minimum by-pass flow, maximum cumulative diversion and the cumulative diversion analysis requirements do not apply to water diversions from flow-regulated mainstem rivers. However, diversions from these streams shall comply with the rest of this policy including the policy principles and the regionally protected criteria pertaining to on-stream dams.

Lagunitas Creek has been determined to be a flow-regulated mainstem river; Novato Creek is not.

Does this mean that the only policy principle which applies to Lagunitas Creek is to maintain channel structure? How can Novato Creek, which has a permit-required release for fisheries (and schedule determined by DFG), be determined to be a flow-regulated mainstem river?

8. Page 14, Section 3.3.2.1 Petitions Will Not Result in Decrease Flow in the Stream Reach

The policy requirements for diversion season, minimum by-pass flow and maximum cumulative diversion do not apply to petitions that do not result in decreased flow in the stream reach.

Moving the existing NMWD point of diversion from the Coast Guard Wells to the Gallagher Wells could be argued to decrease flow in the stream reach between Gallagher and the Coast Guard, but Lagunitas Creek is a flow-regulated mainstem river - so what set of criteria from the proposed Policy applies?

9. Page 14, Section 3.3.2.1 Petitions That Will Not Result in Decreased Flow in the Stream Reach.

Petitions that do not result in decreased flow in the stream reach but involve moving or adding an on-stream dam shall comply with the permitting requirements for on-stream dams contained in Policy Section 2.4.

Would increasing Stafford Lake storage capacity with stop logs at the existing spillway flood control slot be considered adding an on-stream dam?

10. Page 14, Section 3.3.2.2 Petitions That May Result in Decrease Flow in the Stream Reach

Approval of a petition for change or extension of time may result in an incremental increase in the amount of water diverted as compared to the amount of water that would be diverted if the petition were denied. For permits, the incremental increase is equal to the full face value of the permit minus the amount of water put to beneficial use in compliance with all existing permit conditions.

Does this refer to a permit for which a time extension is sought?

11. Page 20, Section 5.2 By-Pass Flow Monitoring and Reporting Requirements for Automated Computer Controlled By-Pass Systems

If an automated computer controlled by-pass system is implemented, compliance with the minimum by-pass flow requirements shall be demonstrated by hourly recording using automated flow measuring devices. The flow data shall be submitted electronically in a spreadsheet format usable by MS Excel or a similar software program. The hourly data shall be presented both graphically and numerically for the previous reporting period and shall be submitted with Permittee Progress Reports, Reports of License or whenever requested by the State Water Board.

At a minimum this is 8,760 records each year.

12. Page 22, Section 8.2, Prioritization of Enforcement

Violations meeting more than one of the criteria should receive a higher priority ranking. State Water Board will assign a relative priority for enforcement for each violation.

Nowhere is it defined how or by whom this relative priority will be established.

Appendix Comments

A.1 Page 81-A-5, Section A.1.4 Determination of the Upper Limit of Anadromy

3.b Identification of an impassable human-caused barrier. The applicant may choose to demonstrate that the upper limit of anadromy is located below a human-caused barrier such as a dam, culvert or bridge. This policy assumes that all human-caused barriers are passable or can be made passable unless the applicant provides information satisfactory to the State Water Board that a man-made barrier is impassable and will never be made passable.

What is an example of satisfactory information?

A.2 Page A-6, Section A.1.4 Determination of the Upper Limit of Anadromy

If the applicant conducts site-specific studies to document the upper limit of anadromy, the State Water Board shall provide study results to DFG for review and comment. DFG shall be provided a reasonable period of time (not less than 30 days) to review and comment on the studies before the State Water Board makes a finding.

NMWD's experience is that DFG can't do anything in 30 days.

A.3 Page A-10, Section A.1.7.3 PODs on Class 1 Streams

A POD location at or below anadromy at which the proposed project's demand is less than 1% of the remaining unappropriated supply will be considered a location at which the proposed project could not adversely affect instream flows.

For Lagunitas Creek, the flow would have to be 67 cubic feet per second to result in the District's existence license right to divert .67cfs. This is not reasonable.

C.1 Page C-2, Section C.1.1.1 Reconnaissance Level Habitat Assessment

The assessment reach shall extend from the upper limit of anadromy to the ocean or to the confluence with a flow-regulated watercourse.

How does this apply to Lagunitas Creek, which has been determined to be a flow-regulated mainstem river and which is also a tidally influenced stream?

G.1 Page G-1, Section G.6.0 Large Consumptive Use Project Receiving Economic Benefit From a Violation or An Unauthorized Diversion

A large project for this proposed Policy means a project that (1) directly diverts one cfs; (2) collects more than 50 acre feet per annum, or stores water via a dam within the jurisdiction of the Department of Water Resources for dam safety, as defined in Water Code Sections 6002 and 6003; or (3) involves one entity that uses numerous diversions that cumulatively satisfy conditions (1) or (2).

This is inconsistent with Water Code Section 1704.4 which defines a minor petition as less than 3 cfs or 200 acre feet per annum storage.

H.1 Page H-1, Section H.1.0 Informal Enforcement Actions for Lower Priority Violations

For low priority violations, State Water Board staff may recommend an informal enforcement action.

Where are "low priority violations" defined? What is "an informal enforcement action" and what kinds of penalties can result?



NORTH MARIN WATER DISTRICT

999 RUSH CREEK PLACE • POST OFFICE BOX 146 • NOVATO, CALIFORNIA 94948 • (415) 897-4133 • FAX (415) 892-8043

May 1, 2008

Ms. Victoria A. Whitney, Deputy Director
Division of Water Rights
State Water Resources Control Board
1001 I Street, 2nd 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.

ATTACHMENT 2

Ms. Victoria A. Whitney, Deputy Director
May 1, 2008
Page 2

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



NORTH MARIN WATER DISTRICT

999 RUSH CREEK PLACE • POST OFFICE BOX 146 • NOVATO, CALIFORNIA 94948 • (415) 897-4133 • FAX (415) 892-8043
August 24, 2006

VIA FACSIMILE

Ms. Karen Niiya or Mr. Eric Oppenheimer
State Water Resources Control Board
P.O. Box 2000
1001 I Street, 14th Floor
Sacramento, CA 95812-2000

Subject: ~~North Coast~~ Instream Flow Policy Substitute Environmental Document
File: 731

Dear Ms. Niiya/Mr. Oppenheimer:

North Marin Water District (NMWD or District) provides domestic water service to a population of approximately 57,000 in the greater Novato area of northern Marin County. The majority of the District's Novato water supply is imported from the Russian River under contract with Sonoma County Water Agency. Additional supplies are delivered from our permitted and licensed local source, Stafford Lake, a surface water storage reservoir on Novato Creek. NMWD also provides water service to approximately 1,700 people in western Marin County in the vicinity of Point Reyes Station. That source of supply is from shallow wells adjacent to Lagunitas Creek near Tomales Bay.

The District has previously reviewed and commented on the October 2004 Petition submitted by Trout Unlimited and the Peregrine Chapter of the National Audubon Society to the State Water Resources Control Board (SWRCB), and is familiar with the proceedings being conducted by the SWRCB concerning this proposed policy.

NMWD acknowledges and concurs with the need for improvements to the SWRCB's administrative processing of water right applications, and the need to balance competing water demands for consumptive use and for environmental purposes, including protection of anadromous fisheries.

NMWD is supportive of adopting a SWRCB timeline to act on water right applications. NMWD also concurs generally regarding the need for improved water rights enforcement, including use of some form or forms of penalties for illegal diverters. NMWD does, however, urge caution in application of the draft California Department of Fish and Game (DFG) and National Marine Fisheries Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Coastal Streams (Guidelines), because we do not believe that a "postage stamp" or "one size fits all" approach is appropriate. NMWD has specific comments for the SWRCB's consideration, and an example to substantiate our precaution regarding use of postage stamp Guidelines.

Comments:

1. The Project Description in the subject Notice of Preparation states: "The policy is likely to address the State Water Board's administration of water right applications; small domestic use and livestock stock pond registrations; existing permits and licenses; change petitions, including transfers, time extensions and wastewater change petitions." However, the Guidelines apply to only new water right permits.

NMWD recommends that the policy and Guidelines apply only to new water right permits.

2. Should our Comment 1 not be accepted, NMWD recommends that minor petitions for change to existing permits or licensed water rights not be subject to the proposed Guidelines. Minor petitions are often needed to refine or "fine tune" water rights and operations thereunder, without re-opening the balancing which occurred when the right was issued.
3. NMWD recommends that permit applications for diversions from streams, which are tributary to existing on-stream surface water storage reservoirs, be excluded from the proposed Guidelines.
4. The policy must include flexibility to enable appropriate water use in situations where the Guidelines are not applicable. Please see the precautionary example below.

Precautionary example where "postage stamp" Guidelines are inappropriate:

NMWD's existing diversion from wells located adjacent to Lagunitas Creek under permitted and licensed rights is in the tidal reach of the stream, which is tributary to Tomales Bay. In 1992 a hearing was held before the SWRCB to address issues regarding diversion of water from Lagunitas Creek by Marin Municipal Water District, NMWD and Waldo Giacomini. The resulting Order (WR 95-17) amended the parties' water rights and required changes in water diversion practices to protect fishery resources and to prevent unauthorized diversion and use of water from Lagunitas Creek. The Order determined that, due to the low natural flow of Lagunitas Creek and the existence of senior water rights, there ordinarily would be no water available for diversion by NMWD (due to its junior priority) during July through October of dry years. NMWD was ordered to notify the SWRCB of an alternative source of water to be used by its 1700 West Marin customers during those periods.

In 1995 NMWD worked out a cooperative physical solution with Giacomini to acquire a portion of his senior water right, in exchange for NMWD delivery of irrigation water to the Giacomini Ranch. Since that time, in an attempt to perfect a change in place/purpose of use for the more senior water right acquired from Giacomini (which was originally permitted and licensed for irrigation on the Giacomini Ranch) NMWD has:

- Reduced the portion of the senior water right acquired from Giacomini by 40%, well below the portion originally proposed to the SWRCB.
- Agreed to operate without a summer dam on Lagunitas Creek, thus subjecting NMWD's water supply for 1700 people to potential salinity intrusion from the tidal influence of Tomales Bay.
- Agreed to dedicate an existing junior water right to instream use purposes, thus insuring that this water would not be available for NMWD's use or for other appropriators in normal years.
- Enhanced the NMWD water conservation programs in the Point Reyes Station area to regularly inform NMWD customers of the District's water supply status and of necessary conservation measures (including water shortage contingency measures tied to community wide water demand); and finally
- Agreed to a volumetric limit on the total amount of NMWD diversions during summer

months of dry years.

Notwithstanding these measures to balance fishery and community water supply needs, NMWD has been stymied from obtaining SWRCB approval of its minor change petition to ensure a safe and reliable source of water supply for the 1700 people in the Point Reyes Station area. The California Department of Fish and Game (DFG) protested our petition for change to limit the annual volume diverted (and NMWD has agreed to this limit), and has most recently requested a limit on NMWD's instantaneous diversions. NMWD has clearly demonstrated that this simply cannot work absent protection of municipal supplies from salinity intrusion (e.g., installing a summer dam on Lagunitas Creek). The Guidelines and DFG's request for an instantaneous diversion limit are both immaterial in the geographic location of NMWD's diversion since the area is tidally influenced and all parties agree that in the summer months of all years, no anadromous fish reside, spawn or migrate in the vicinity of the NMWD diversion.

The District respectfully requests that these comments be included in the record of the SWRCB's and considered in the proposed policy. NMWD hopes that this example points out that the Guidelines are not appropriate in all circumstances and there must be measures in any Guidelines and Procedures adopted by the SWRCB to accommodate the widely different circumstances that occur on the streams in the area in question.

Should you have any questions about NMWD comments, please contact the undersigned.

Sincerely,



Chris DeGabriele
General Manager
(415) 897-4133

cc:

Mr. Dave Bolland
Regulatory Affairs Specialist
Association of California Water Agencies
910 K Street, Suite 100
Sacramento, CA 95814-3512

Mr. Randy Poole
Sonoma County Water Agency
P.O. Box 11628
Santa Rosa, CA 95406

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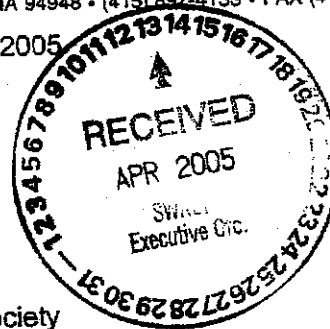


NORTH MARIN WATER DISTRICT

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April 6, 2005

Ms. Debbie Irvin, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100



Subject: Petition Submitted by Trout Unlimited and the
Peregrine Chapter of the National Audubon Society
Concerning Central Coast Streams

Dear Ms. Irvin:

North Marin Water District (NMWD or District) provides domestic water service to a population of approximately 57,000 in the greater Novato area of northern Marin County. The District's Novato water supply is principally imported from the Russian River under contract with Sonoma County Water Agency. Supplemental supplies are delivered from our permitted and licensed local source, Stafford Lake, a surface water storage reservoir on Novato Creek. NMWD also provides water service to approximately 1,700 people in western Marin County in the vicinity of Point Reyes Station. That source of supply is from shallow wells adjacent to Lagunitas Creek near Tomales Bay.

The District has reviewed and considered the October 27, 2004 Petition submitted by Trout Unlimited and the Peregrine Chapter of the National Audubon Society, and is familiar with the proceedings being conducted by the SWRCB concerning this Petition.

NMWD acknowledges and concurs with the entities that filed the Petition that there is a need for improvements to the State Water Resources Control Board's (SWRCB) administrative processing of water right applications, and the need to balance competing demands for water for consumptive use and for environmental purposes, including protection of anadromous fisheries.

NMWD is supportive of Trout Unlimited's suggestion regarding development and adoption of a SWRCB timeline to act on water right applications. NMWD also concurs generally with Trout Unlimited's suggestions regarding the need for improved water rights enforcement, including use of some form or forms of penalties for illegal diverters. NMWD does, however, urge caution in application of the draft California Department of Fish and Game (DFG) and National Marine Fisheries Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Coastal Streams (Guidelines), because we do not believe that a "postage stamp" or "one size fits all" approach is appropriate. NMWD has two specific comments for the SWRCB's consideration, and one example to substantiate our precaution regarding use of postage stamp Guidelines.

Comments:

1. NMWD recommends that minor petitions for change to existing permits or licensed water rights not be subject to the proposed Guidelines. Minor petitions are often needed to refine or "fine tune" water rights and operations thereunder, without re-opening the balancing which occurred when the right was issued.



2. NMWD recommends that permit applications for diversions from streams, which are tributary to existing on-stream surface water storage reservoirs, be excluded from the proposed Guidelines.

Precautionary example where postage stamp Guidelines are inappropriate:

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In 1995 NMWD worked out a cooperative physical solution with Giacomini to acquire a portion of his senior water right, in exchange for NMWD delivery of irrigation water to the Giacomini Ranch. Since that time, in an attempt to perfect a change in place/purpose of use for the more senior water right acquired from Giacomini (which was originally permitted and licensed for irrigation on the Giacomini Ranch) NMWD has:

- Reduced the portion of the senior water right acquired from Giacomini by 40%, well below the portion originally proposed to the SWRCB.
- Agreed to operate without a summer dam on Lagunitas Creek, thus subjecting NMWD's water supply for 1700 people to potential salinity intrusion from the tidal influence of Tomales Bay.
- Agreed to dedicate an existing junior water right to instream use purposes, thus insuring that this water would not be available for NMWD's use or for other appropriators in normal years.
- Enhanced the NMWD water conservation programs in the Point Reyes Station area to regularly inform NMWD customers of the District's water supply status and of necessary conservation measures (including water shortage contingency measures tied to community wide water demand); and finally
- Agreed to a volumetric limit on the total amount of NMWD diversions during summer months of dry years.

Notwithstanding these measures to balance fishery and community water supply needs, NMWD continues to be stymied from obtaining SWRCB approval of its minor change petition to ensure a safe and reliable source of water supply for the 1,700 people in the Point Reyes Station area. The SWRCB staff seems to accept any new objections raised by the DFG staff regardless of whether the objections were raised in a timely fashion or otherwise in compliance with the regulations of the SWRCB. DFG staff has most recently requested a limit on NMWD's instantaneous diversions, but the District has clearly demonstrated that this simply cannot work absent protection of municipal supplies from salinity intrusion (e.g., installing a summer dam on Lagunitas Creek). The Guidelines and DFG's request for an instantaneous diversion limit are both immaterial in the geographic location of NMWD's diversion since the area is tidally influenced and all

SWRCB re Trout Unlimited
April 6, 2005
Page 3 of 3

parties agree that in the summer months of all years, no anadromous fish reside, spawn or migrate in the vicinity of the NMWD diversion.

The District respectfully requests that these comments be included in the record of the SWRCB's proceedings regarding the subject Petition and the proposed Guidelines. NMWD hopes that this example points out that the Guidelines are not appropriate in all circumstances and there must be measures in any Guidelines and Procedures adopted by the SWRCB to accommodate the widely different circumstances that occur on the streams in the area in question.

Sincerely,


Chris DeGabriele
General Manager

cc:

Mr. Dave Bolland
Regulatory Affairs Specialist
Association of California Water Agencies
910 K Street, Suite 100
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Mr. Randy Poole
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