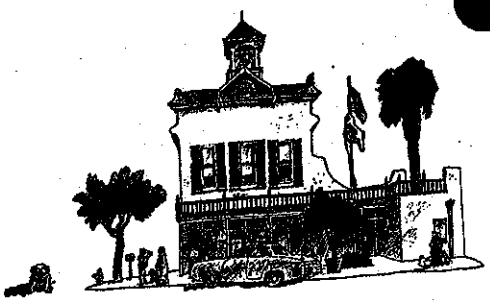


CITY OF CALISTOGA

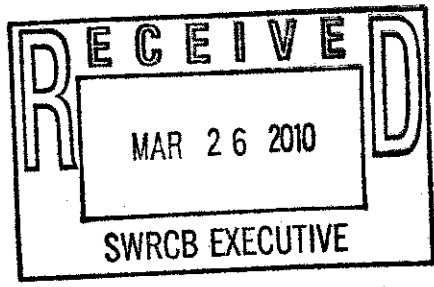
1232 Washington Street • Calistoga, CA 94515
707.942.2800



March 26, 2010

Via E-Mail and US Mail
Urgent

Chairman Charles R. Hoppin
and Members
STATE WATER RESOURCES CONTROL BOARD
1001 I Street, 24th Floor
Sacramento, CA 95814



RE: Comment Letter – AB 2121 Policy

Dear Chairman Hoppin and Members:

I write on behalf of the City of Calistoga to request your assistance regarding the proposed Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams. The draft Policy is very complex and somewhat difficult to understand in terms of how it would be applied; that lack of clear understanding is of real concern for such a momentous body of regulation. Calistoga has not previously commented to the prior drafts of this Policy, as we were monitoring the previous comments made by other public water systems, and were uncertain as to how the latest draft Policy would be revised with respect to the impacts on our City and its operations. At this time, Calistoga requests an opportunity to obtain a better understanding of how the Policy would be applied to municipal water service providers such as the City. Previously, we understood that it was the intention of the Board that the Policy was to apply only to new water users or new water rights applications for new or increased water diversions. Calistoga is an existing water user operating under existing water rights (licenses that were perfected decades ago) from the SWRCB for municipal supply. We anticipated that this draft of the Policy would clearly provide that existing permitted and licensed projects, which are operated per the terms of said permits and licenses, would not be not subject to the Policy.

Our preliminary assessment is that the Policy might apply to the City if the City petitions for any Board actions, even if such actions are minor and do not result in increased water diversions. If the policy were applied to the City's existing water rights and facilities, it could have dramatic impacts to the City's water supply. Under the regional criteria, at least, existing residents and businesses could be deprived of a substantial and essential portion of its water supply.

The City is the municipal water supply provider to our community. If the Policy were applied to the City's existing rights in the event of even a minor change or extension, it could be physically infeasible for the City to comply with the new seasons of diversions, diversion caps, and bypass flow requirements set forth in the proposed regionally applicable criteria. These criteria could leave our City with a severely limited water

supply for lengthy periods of time. Even if the required infrastructure and operational changes were physically feasible, it could be economically impossible for the City to make them.

The Draft Policy contains a site-specific study approach that appears to allow exceptions to the regional criteria. Given the required studies, and the level of detailed control proposed, it would be extremely costly to pursue this alternative. However, if the regional criteria were infeasible, the City would have no choice. Even with such a high cost, there is no certainty or reliability with respect to the outcome of such studies. As with the regional criteria, there does not appear to be any provision to take into account infeasibility or impacts to existing municipal users such as the City. The applicable criteria (the "principles") also appear to prioritize fish over all other beneficial uses of water.

If applicable to Calistoga's existing water rights, the AB 2121 policy could cause severe impacts to the residents and businesses the City serves. The statute requiring this Policy provides the Board with broad discretion, which we ask that you exercise to adopt a more balanced approach.


We regret the need to raise these issues, but believe it necessary given the potential substantial impacts. We respectfully request assistance in furtherance of achieving implementation of AB 2121 in a balanced and reasonable manner. Specifically, we ask:

- That the March 26th comment period be extended by 90 days,
- That the April 27th date be used for a workshop on the Policy, and
- For the opportunity to work collaboratively with you to devise a workable solution.

If the Board does not grant the requested extension to the comment period, then we request that the Policy not be adopted as proposed by Board staff, but instead be revised to account for these substantive comments. I can be reached at (707) 942-2828.

Thank you.

Dan Takasugi, P.E.
Public Works Director/City Engineer

By: 
James M. Smith, P.E.
Senior Civil Engineer

c: Victoria Whitney
Dan Pellissier
Jeanine Townsend, Clerk to the Board
File

PROOF OF SERVICE

I am employed in the County of Napa, State of California. I am over the age of 18 and not a party to the within proceeding; my business address is 414 Washington Street, Calistoga, CA 94515.

On March 26, 2010 I served the following document:

Comment Letter – AB 2121 Policy

on the person(s)/entities below by placing a true copy thereof in a sealed envelope addressed as follows:

Chairman Charlie Hoppin and Members
STATE WATER RESOURCES CONTROL BOARD
101 I Street, 24th Floor
Sacramento, CA 95814

Jeanine Townsend, Clerk to the Board
STATE WATER RESOURCES CONTROL BOARD
101 I Street, 24th Floor
Sacramento, CA 95814

Victoria Whitney, Division Chief
STATE WATER RESOURCES CONTROL BOARD
101 I Street, 24th Floor
Sacramento, CA 95814

Dan Pellissier
Office of Governor Schwarzenegger
State Capitol Building
Sacramento, CA 95814

BY MAIL—I caused such sealed envelope to be deposited in the mail at Calistoga, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after day of deposit for mailing in affidavit.

by sending a true copy thereof via e-mail to the e-mail addresses listed below:

Charlie Hoppin – choppin@waterboards.ca.gov

Frances Spivy-Weber – fweber@waterboards.gov

Art Baggett – abaggett@waterboards.ca.gov

Walt Pettit – wpettit@waterboards.ca.gov

Tam Doduc – tdoduc@waterboards.ca.gov

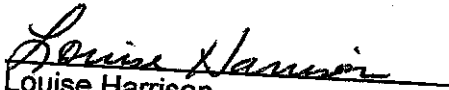
Victoria Whitney – vwhitney@waterboards.ca.gov

Daniel Pellissier – Dan.Pellisier@gov.ca.gov

commentletters@waterboards.ca.gov

Jeanine Townsend - jtownsend@waterboards.ca.gov

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Proof of Service was executed on March 26, 2010, at Calistoga, California.


Louise Harrison
Administrative Analyst
Public Works Department
City of Calistoga