



City of St. Helena

*"We will conduct city affairs on behalf of our citizens
using an open and creative process."*

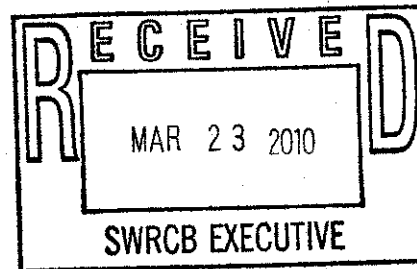
March 23, 2010

1480 Main Street
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Via E-Mail and US Mail

URGENT

Chairman Charles R. Hoppin
And Members
STATE WATER RESOURCES CONTROL BOARD
1001 I Street
Sacramento, CA 95814



Re: **Comment Letter - AB 2121 Policy
And Request for Extension of Time**

Dear Chairman Hoppin and Members:

I write on behalf of the City of St. Helena to request your assistance regarding the proposed Draft Policy For Maintaining Instream Flows In Northern California Coastal Streams. The draft Policy is complex and somewhat difficult to understand how it would apply.¹ We need an opportunity for a better understanding how it would be applied to municipal water service providers such as the City. Previously, the City understood that it was the intention of the Board that the Policy was to apply only to new water users. The City is an existing water user operating under existing water permits from the SWRCB for municipal supply; we anticipated that this draft would clearly provide that existing permitted projects are not subject to the Policy, notwithstanding petitions for extension of time or change which are routinely needed.

Our preliminary assessment is that the Policy might apply to the City if the City petitions for an extension of time or change. If the policy were applied to the City's existing water rights and facilities², it could have drastic impacts to the City's water supply. Unfortunately, I do not exaggerate. Under the regional criteria at least, existing residents and businesses could be deprived of a substantial and essential portion (or all) of this water supply.

The following information is provided to give you an idea of the potential major problems with the draft Policy. The City is the municipal water supply provider to our community. The primary source is water diverted pursuant to permits issued by the SWRCB. Assuming that the policy would be applied to the City's rights in the event of even a minor change or extension, it would be physically infeasible for the City to comply with the new bypass flow requirements set forth in the proposed regionally applicable criteria. If the required infrastructure changes were physically feasible, it would 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. Because the regional criteria are literally infeasible, the City would have no choice. Even with such high cost, there is no certainty or reliability with respect to the outcome. 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.

¹ If we misunderstand the Policy, that would be another reason to re-structure this process. Such an important proposal needs to be comprehensible to the public and the regulated community.

² If the policy applied to new applications only, the City's concerns would be alleviated.

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State Water Resources Control Board
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If applicable, the AB 2121 policy should not cause severe (some would say catastrophic) 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 balanced approach.

We regret the need to raise these issues, but believe it necessary given the potential impacts. We hope that this can be worked out in a cooperative manner.

We respectfully request assistance in furtherance of achieving implementation of AB 2121 in a reasonable manner that can be accomplished. 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.

Our representative is Martha Lennihan, who can be reached at (916) 321-4460, or mlennihan@lennihan.net. I can be reached at (707) 968-2658.

Thank you.

CITY OF ST. HELENA
DEPARTMENT OF PUBLIC WORKS

By: 

JOHN FERONS, DIRECTOR

cc: Victoria Whitney
Dan Pellissier
Jeanine Townsend, Clerk to the Board
Martha Lennihan

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 1480 Main Street, St. Helena, California 94574.

On March 23, 2010 I served the following document:

Comment Letter -- AB 2121 Policy and Request for Extension of Time

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
1001 I Street, 24th Floor
Sacramento, CA 95814

Jeanine Townsend, Clerk to the Board
STATE WATER RESOURCES CONTROL BOARD
1001 I Street, 24th Floor
Sacramento, CA 95814

Victoria Whitney, Division Chief
STATE WATER RESOURCES CONTROL BOARD
1001 I Street, 24th Floor
Sacramento, CA 95814

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

Martha H. Lennihan
LENNIHAN LAW, A Professional Corporation
2311 Capitol Avenue
Sacramento, CA 95816

BY MAIL -- I caused such sealed envelope to be deposited in the mail at St. Helena, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with 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 date 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.ca.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.Pellissier@gov.ca.gov
Martha Lennihan – mlennihan@lennihan.net

commentletters@waterboards.ca.gov
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 23, 2010, at St. Helena, California.


Christina Hartley, Public Works Office Assistant