

RUDOLPH H. LIGHT, PH.D.
P. O. BOX 736
REDWOOD VALLEY, CA 95470
(707) 485-1335

KYN
AB2121

STATE WATER RESOURCES
CONTROL BOARD
2009 FEB -9 PM 2:34
DIV. OF WATER RIGHTS
SACRAMENTO

3 February 2009

Karen Niiya, Senior Engineer
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

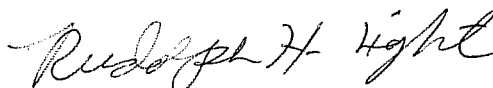
References: AB2121 Draft Policy of December 2007
Comments on Proposed North Coast Instream Flow Policy

Dear Ms. Niiya:

Please add the enclosed material to the Public Comments on the North Coast Instream Flow Policy. These documents consist of a letter and its accompanying Timeline which I sent to Tam Doduc.

Thank you for your cooperation in this matter.

Very truly yours,



Rudolph H. Light

RHL:lep

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STATE WATER RESOURCES
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STATE WATER RIGHTS
SACRAMENTO

3 February 2009

Tam M. Doduc, Board Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Dear Tam,

I am writing to express my great appreciation for taking the time to make a field visit last August to Mendocino County regarding the North Coast Instream Flow Policy. It was a fine day for farm tours, and the geese at our pond were one of the highlights. I'm sending you a few photos you might enjoy as a memory.

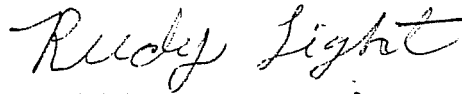
Steve Herrera wrote me recently and included the Permit for our project. When our Compliance Plan is accepted and the required metering systems have been constructed, I look forward to receiving the License.

Bob Wagner of Wagner and Bonsignore suggested I write to you and tell briefly the story of this project as an example of the amount of work and expense it takes to get a water right permit under the current process even though the project was determined to be exempt from CEQA. After careful thought, I agreed. As you learned in meeting me, then hearing my testimony and reading my Commentary, I am very detail and numbers oriented. In fact, a good friend tells me I know how to count everything but calories. So I simply prepared synopses of actual events, listed out-of-pocket costs and hours for me and my assistants. If you wish to read a detailed account of the history of my application process which contains correspondence and documents, I compiled it into two binders. Eric Oppenheimer has a copy.

You have read my Commentary which focused on the NCIF Policy but barely touched on my own specific project, the one you visited. The enclosed timeline deals exclusively with our application, a real example of how the water right process actually works between an applicant and the Division. But this timeline also serves to show how cumbersome and expensive the application process is for a very small project. The timeline is, I think, a strong argument for exempting small projects from excess regulations provided there is water available for wintertime storage. Watershed areas of less than 160 acres can safely be exempted from all requirements except water availability without harm to fish or fish habitat. These streams are too small for anadromous fish to spawn in, and as long as no more than 10% of the annual waterflow is taken, there is no significant flow impairment downstream of the project.

I think my story is similar to many in respect to the hurdles, time and expense incurred, although I keep better records and I took a more proactive role in the process than most people. I hope you will consider this timeline when discussing, formulating and adopting the NCIF Policy and think of how each part of the policy affects an applicant. If you have any questions, please feel free to call or write me. Thanks for looking at this.

Sincerely yours,

A handwritten signature in black ink that reads "Rudy Light". The signature is written in a cursive, slightly slanted style.

Rudolph H. Light

Encl.: Timeline for Application 30349

Copy: Charles R. Hoppin, Board Member
SWRCB

Karen Niiya, Senior Engineer
Division of Water Rights, SWRCB

Bob Wagner, P.E.
Wagner and Bonsignore, CCE
444 North Third Street, Suite 325
Sacramento, CA 95811-0238

RHL:lep

Timeline and Expense for Water Right Application 30349 for Pond on Unnamed Stream in Watershed of West Fork of the Russian River, Redwood Valley, Mendocino County

NOTE: This chronology includes only highlights and selected events, and omits reference to nearly all the correspondence. Applicant's time refers to hours spend by R.H. Light, T.R. Buckner, and L.E. Pedroni; hours include time spent between specified dates. Approximate cost is out-of-pocket expenses to consultants, employees, vendors, and government. Costs are added between specified dates.

<u>Date</u>	<u>Part 1: Original Application for 8.0 acre-feet</u>	<u>Approx. Hours of Applicant's Time</u>	<u>Approx. Cost \$</u>
Oct. 3, 1986	• first water right application, including 1603; no protests filed but DFG inspected and gave 1603 to us on Nov. 13, 1986	6	225
Oct 22, 1986	• Division assigns application number	-	-
Sep. 15, 1987	• Categorical Exemption Class 4 issued	-	-
Oct. 15, 1987	• Permit 20156 issued	3	100
1987	• engineering and construction of pond	15	18,400
1987-1994	• Progress Reports filed annually	3	-
June 21, 1993	• Division engineer inspects project; my clerical error discovered on original application regarding volume applied for; inspector states the need for a supplemental application to make a correction for an additional 8.3 acre-feet	16	150
Mar. 14, 1995	• License granted for original application for 8.0 acre-feet; supplemental application pending	1	-
<u>TOTAL</u>		<u>44 hours</u>	<u>\$18,875</u>

Part 2: Supplemental Application 30349 for 8.3 acre-feet

Feb. 17, 1994	• submitted supplemental application to Division and 1603 to DFG; Division wanted revisions to DFG forms; DFG helps me to complete forms	20	850
Apr. 13, 1994	• application accepted and assigned Application 30349; Division wants more revisions of DFG environmental documents; I revise DFG material	12	150
Aug. 12, 1994	• application complete; posted Aug. 22, 1994	25	100
Sep. 2, 1994	• Stan Griffin of Trout Unlimited (TU) and John Beuttler of United Anglers file joint protest; there are no other protests	-	-
Sep. 1994 to Dec. 1997	• I wrote about 9 letters and had at least 6 telephone conversations with TU and sent about 6 letters and had 8 phone calls to the Division regarding desire to resolve protest; I requested site visits from TU and Stan Griffin refused; I asked for a site visit from Division and was ignored; no one at Division helped me or even responded with substantive letters	60	1,040
Aug. 15, 1997	• Division issues Staff Report which said water is available for appropriation for pending applications, but states diversion should be in winter only	5	-
Sep. 4, 1997	• Division Workshop in Ukiah; staff emphasizes "There is plenty of water for storage as long as you get it at the right time." - Frank Roddy and Ernest Mona	5	-

<u>Date</u>		<u>Approx. Hours of Applicant's Time</u>	<u>Approx. Cost \$</u>
Sep. 16, 1997	• Division Workshop in Santa Rosa; staff affirms that for small projects the Division "will take Staff Report to the Board, get their concurrence, and then begin issuing water right permits." - Jerry Johns	21	144
Late 1997 or early 1998	• TU hires Natural Heritage Institute (NHI) and McBain and Trush; both tear Staff Report to shreds; NHI begins its list of demands to reform the water rights procedure; NHI threatens to sue SWRCB	-	-
Apr. 24, 1998	• Division proposes terms for my application based on the Staff Report: a) diversion season to be changed from Nov. 1 - Apr. 30 to Dec. 15 - Mar. 31; b) establishes need for bypass flow facility and bypass flow requirement; c) if needed for fish passage, install fish ladder for anadromous fish; staff writes, "If the proposed project modifications are acceptable, no additional environmental information will be required from the applicant." - Ed Dito	6	108
Apr. 28, 1998	• I agree in writing to modify my application for terms a and b; term c not applicable	1	-
May 4, 1998	• TU/NHI file additional grounds for protest, none specific to this project	-	-
May 20, 1998	• I write to the Division and request that the original TU protest and additional grounds for protest be dismissed; Division never responds to my letter; application remains in limbo	5	-
May 28 - Sep. 16, 1998	• correspondence back and forth between Division and NHI; NHI files several more letters containing new additional grounds for protest against many or all pending applications; Division affirms to me in writing on at least 3 occasions that, "The Division intends to continue processing these applications." - Ed Dito	10	-
Sep. 1998 - Mar. 8, 2005	• landowners/applicants become invisible to Division staff; I hear nothing from Division for 6 ½ years although I tried a few more times to talk to TU and resolve their protest; no success	5	-
Mar. 9, 2005	• Division issues intent letter which requires me to sign MOU, hire environmental and engineering consultants, and a personal representative to fulfill numerous newly written requirements; these requirements apply to all pending and new water right applications; new requirements include the applicant paying for a WAA/CFII report, Public Trust Resource Assessment, CEQA or other environmental documents; letter states an application may be canceled if the applicant does not respond within 30 days	-	-
July 5, 2005	• I hire consultants, meet with them; my signed MOU is delivered to the Division	296	3,744
Nov. 4, 2005	• I, two consultants from Analytical Environmental Services (AES), Tevis Armstrong (my representative) and my attorney meet in Sacramento at the Division with Eric Oppenheimer and Christy Spector to set up a workplan to meet all the new application requirements	139	3,894
Dec. 29, 2005	• DFG sets Points of Interest (POIs) for WAA/CFII and wants entire watershed of the West Fork (64,300 acres) and East Fork (70,000 acres) of the Russian River to be analyzed; much discussion and correspondence to settle this issue of inappropriate POIs which is solved by Aaron Miller of the Division in May 2006	52	5,248

<u>Date</u>		<u>Approx. Hours of Applicant's Time</u>	<u>Approx. Cost \$</u>
Apr. 27, 2006	• TU attorney Brian Johnson and I, my assistant and my attorney conduct a site visit; TU refuses to consider dropping protest and instead adds more demands	462	4,987
June 19, 2006	• Tevis Armstrong submits WAA/CFII; no response from Division for 8 ½ months	219	3,762
Mar. 2, 2007	• Division requests a few revisions to WAA/CFII and sets 60-day deadline for resubmission	56	3,653
Apr. 26, 2007	• revised WAA/CFII submitted to Division; no response from Division for nine months	239	7,621
Feb. 1, 2008	• Tevis Armstrong telephones staff to inquire about status of WAA/CFII	17	2,279
Feb. 8, 2008	• WAA/CFII accepted	-	-
May 14, 2008	• Division site visit conducted by staff members Bill Cowan and Francine Mejia, accompanied by my consultants and my assistants; Bill Cowan calls TU one or more times in next few days to discuss permit terms for this project; Bill Cowan will later write a Field Report dated July 1, 2008 and permit terms dated September 8, 2008	84	5,487
Jul. 29, 2008	• Public Trust Resource Assessment submitted to Division by AES	138	4,537
Aug. 1, 2008	• Division significantly rewrites Public Trust Resource Assessment report and requests revisions	-	-
Aug. 26, 2008	• Public Trust Resource Assessment resubmitted by AES; Division accepts it	1	1,601
Sep. 8, 2008	• Division staff forwards WAA/CFII, Public Trust Resource Assessment, Division Field Report and proposed permit terms to TU attorney; I receive copies	-	-
Oct. 8, 2008	• TU writes to Division staff and continues objections to this project	21	2,350
Oct. 22, 2008	• Division writes to inform me of permit terms	2	-
Oct. 22, 2008	• 14 years and 2 months after TU filed protest, Division cancels TU's protest	-	-
Dec. 4, 2008	• Division issues Notice of Exemption, Category 1 for my supplemental application	43	1,326
Dec. 9, 2008	• Division writes order approving issuance of Permit	-	1,655
Dec. 9, 2008	• 14 years and 10 months after I filed my supplemental application, Division issues Permit; Division requires a Compliance Plan to be included as part of overall conditions; Permit terms and Compliance Plan terms include a) diversion season to be Dec. 15 - Mar. 31; b) staff gauge to measure depth of water to calculate pond volume; c) bypass flow system with meter to measure bypass flow; d) meter to measure consumptive irrigation use	-	-
Jan. 30, 2009	• Compliance Plan submitted to Division; more steps to be completed in 2009	43	306
	<u>TOTAL</u>	<u>1,987 hours</u>	<u>\$54,842</u>

Summary:

After 14 years and 8 months from the date the supplemental application was accepted with expenses of \$39,341 to consultants and attorneys, 1,246 hours of my time (at \$60 per hour = \$74,760), 758 hours of my employees' time (at \$18 per hour = \$13,644) and miscellaneous expenses of \$2,163, the permit for 8.3 acre-feet was finally issued. The license has not yet been granted because we need to pass the Compliance Plan through the Division and through the Department of Fish and Game. Once accepted, we can then construct the bypass metering system with an estimated cost of \$5,261 and the consumptive metering system with its estimated cost of \$7,713.

In 1997 and 1998, the Division stated water was available for winter storage, and this has never been in dispute by anyone. At that time, the Division required me, and I agreed, to a) limit the season of diversion to the period December 15 through March 31; b) develop a bypass system; I said I would use the valve at the bottom of the outside of the dam to bypass all water before December 15, and bypass a certain quantity while the pond filled.

Conclusion:

The Permit terms of 2008 and Compliance Plan now under development are almost identical to what was agreed upon 10 years ago in 1998. The only difference is the new requirement to meter actual irrigation use. All the studies I was required to pay for have come to essentially the same conclusion as the Division's Staff Report of 1997 and with their recommended terms of 1998.

One thing distinguishes this project from hundreds of others: the Division actually dismissed a Trout Unlimited protest.

**Mendocino County
Farm Bureau Tour**

**Light Ranch
Redwood Valley
5 August 2008**

