



325 Imola Ave. West PMB 614
Napa, Ca. 94559
707-255-7434 Fax: 707-259-1097
cmalan@starband.net

DRAFT due April 16 to the SWRCB

March 17, 2005

To: State Water Resources Control Board
1001 I Street, 14th Floor
Sacramento, Ca. 95812-2000

Re: Notice of Public Workshop on Petition Submitted by Trout Unlimited (TU) and the
Peregrine Chapter of the National Audubon Society (NAS)

Earth Defense for the Environment Now (EDEN) and Living Rivers Council (LRC)
supports and confirms the problems identified by TU and NAS petition for administrative
change in the pattern, practice, and policy of the SWRCB.

EDEN has submitted legal comments on 4 water diversions in Napa County in the last 3
years stating legal violations of CEQA and complete lack of water analysis on
applications and proposed application approvals by the SWRCB. Three of these legal
protests are pending before the SWRCB. One application was withdrawn and the land has
subsequently been put into a land trust.

EDEN and LRC identify these problems on the Napa River and have witnessed these
problems in the field for the past 4 years. EDEN and LRC has hiked all tributaries to the
Napa River and has seen first hand the devastating impacts from lack of enforcement for
water resources:

1. Water diversion applications lack water availability analysis.
2. Water availability analysis must be made public on each application and be included in files for CEQA review by the public.
3. Existing water diversion and appropriated water projects are not enforced in accordance with submitted applications approvals or withdrawn applications. The SWRCB should invoke their on-going jurisdiction and enforce illegal activity.

4. Water rights regarding riparian rights are not enforced. We have seen pipes in the creeks sucking water out of streams during summer and fall resulting in fish kills. (October 15-April 30th water is illegally being withdrawn with no enforcement of the Water Codes)
5. Due to lack of flow in the Napa River resulting in fish kills, the SWRCB should be requiring flow meters/gauging stations.
6. The SWRCB should be enforcing illegal withdrawals of water. The SWRCB does not support the Department of Fish and Game's (DFG) enforcement of water codes. The DFG has been reluctant to enforce water codes due to lack of the SWRCB following through with enforcement upon their investigations. When the public calls DFG (the enforcement arm for SWRCB) for assistance and enforcement on water code violations, DFG has stated they do their work but nothing happens after that. DFG states that 'it goes no where' because they do not get the follow through from the SWRCB. EDEN can site full records on two tributaries of the Napa River where DFG has tried enforcement but has NOT been backed by the final authority the SWRCB to enforce minimum flows. This must be remedied to the SWRCB supporting and backing up DFG.
7. The response time for violations and enforcement is severely lacking. Due to this we have seen severe fish kills (documented and photographed).
8. The SWRCB has on-going jurisdiction and should invoke this to recover flows. Due to illegal water diversions and lack of enforcement the problem of minimum flows is exacerbated and the conditions of the Napa River is impaired due to lack of flow.
9. There are creeks in the Napa watershed that have been completely devastated due to lack of flow causing fish kills every year. Some reaches have no flow below dams due to appropriative rights. The SWRCB does not enforce flow being maintained for fisheries resources below dams in Napa County.
10. A full investigation should occur internally into the SWRCB's legal charge to follow the water code laws. Applications for water diversion and appropriations should not be a mere administrative act to legalize an illegal taking of water. Strong enforcement should be a policy of the SWRCB as many rivers and streams are already over appropriated, have severe lack of water and endanger public resources.
11. The SWRCB does not have enough staff to service the public in a timely fashion. Upon request for help and enforcement, we are met with excuses of being under staffed. This must be remedied.
12. Off stream wells are severely diminishing riparian resources and causing low flows in streams and rivers.
13. The SWRCB does not address growth inducing impacts in their environmental review as lead agency on water applications for diversions or appropriations. This must be your charge. Our fresh water resources are in serious peril. If the SWRCB does not take control of water appropriations, diversion, riparian rights, and off site wells effecting riparian recharge continued negligence of the SWRCB charge will lead to public disarray, litigation, environmental degradation leading to economic down falls.

14. The SWRCB rarely requires Environmental Impact Reports for projects within your jurisdiction. EIR should be required on impaired watersheds.
15. As rivers and streams dry up stagnation of fresh water resources will occur. This is a public health hazard already occurring in the Napa River watershed. West Nile virus can occur as stagnant pools lack fresh water flow creating breeding habitat for mosquitoes.
16. Healthy robust riparian habitats are a deterrent against the Glassy Winged Sharp Shooter, the vector insect which is threatening the wine industry. Lack of flow creates riverine habitats that will degrade and force the insect carrying Pierce's Disease into lush green foliage provided by nearby vineyards.

The SWRCB must not fail the public trust and should move to expedite full charge of their authority to recover public resources to health and for future generations. California water policy must be sustainable.

For further information please call: Chris Malan, 707-255-7434

Thank you.