



NORTH MARIN WATER DISTRICT

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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.



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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

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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
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cc:

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