



MARIN MUNICIPAL WATER DISTRICT

STATE WATER RESOURCES
CONTROL BOARD

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DR. OF WATER RIGHTS
SACRAMENTO

220 Nellen Avenue Corte Madera CA 94925-1169

www.marinwater.org

April 30, 2008

Ms. Victoria A. Whitney, Deputy Director
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento CA 95812-2000

Re: Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams

Dear Ms. Whitney:

The Marin Municipal Water District (MMWD) would like to take this opportunity to submit comments on the December 2007 Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams. We have reviewed the draft policy and errata memos issued. Our two main comments are:

- The exemptions included in the draft policy for the Russian River below Coyote Dam and for Dry Creek below Warm Springs Dam should be extended to include all streams within the policy area where minimum instream flow requirements have previously been established by the Division of Water Rights or the Department of Fish and Game for the protection of fishery resources.
- The policy tries to develop a one-size-fits-all approach to defining instream flow requirements that, in California, really needs to be evaluated on a case by case basis.
- Petitions for change to existing water rights for community water supply should be exempt from the Policy

Accordingly, the exemptions stated in Section 3.2 should be applied to MMWD operations on Lagunitas Creek and Walker Creek, in Marin County, just as they are proposed to be applied to Sonoma County Water Agency operations on the Russian River and Dry Creek. The Russian River and Dry Creek exemptions are stated as being provided because State Water Board Decisions 1030 and 1610 previously established minimum instream flows for the protection of the fishery resources. State Water Board Order WR95-17 for Lagunitas Creek, has also previously established instream flow requirements "needed to protect fishery resources in Lagunitas Creek Marin County from the effects of water diversion by Marin Municipal Water District." Water Right Permit 16892 for Walker Creek, was amended to include fish and wildlife protection and

enhancement as a stated purpose, to acknowledge the agreement between MMWD and the California Department of Fish and Game to establish minimum instream flows in Walker Creek for the benefit of fish. There is no fair reason or distinguishing feature why Decisions 1030 and 1610, which are hardly recent decisions, would warrant an exemption from the policy, while Order WR95-17 and Permit 16892 would not.

Also, the policy can not be applied to all streams and still allow a continuation of existing water uses. For example, if the draft standards were to be applied retroactively, the instream flow requirements would be so high that they likely would consume all of MMWD's Lagunitas Creek and Walker Creek reservoir systems' municipal water supply yield. The chart below demonstrates how the minimum bypass flow requirement is highly biased against smaller streams, in high rainfall areas, like Lagunitas and Walker Creeks.

Reservoir/Creek	Unimpaired Flow	Policy Bypass Flow	Percent of Average Annual
Peters Dam (Lagunitas Creek)	28,000 AFA	79 cfs	200%
Seeger Dam (Nicasio Creek)	30,000 AFA	66 cfs	160%
Soulajule Dam (Walker Creek)	15,000 AFA	45 cfs	215%

The policy is currently written so that it will apply only to new applications for diversions and petitions that would decrease flow in a stream reach. The policy should not be modified to be retroactively applied to existing water rights.

Section 3.3 states that the Policy applies to applications to appropriate water, small domestic use and livestock, stock pond registration and water right petitions. The Policy is not clear on the applicability to change petitions for existing licensed or permitted water rights for community water supply (municipal and industrial purposes). The change petition could include: place of use, extension of time, or change in point

Victoria A. Whitney
April 30, 2008
Re: Instream Flow Policy Comments

Page 3

of diversion to meet a competing water quality requirement. A change petition exclusion for existing water right holders will provide certainty for MMWD and other retail water providers to existing community water supply needs. Change petition exclusion would also reduce the State Board's Policy compliance obligation and ultimate cost and staff work.

Thank you for the opportunity to provide these comments. Please contact me if you have any questions or would like additional information.

Sincerely,

A handwritten signature in cursive script that reads "Paul Helliker".

Paul Helliker
General Manager