



CALIFORNIA FARM BUREAU FEDERATION

NATURAL RESOURCES AND ENVIRONMENTAL DIVISION

2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3293 · PHONE (916) 561-5655 · FAX (916) 561-5691

May 1, 2008

Via Email Only

AB2121Policy@waterboards.ca.gov

Ms. Karen Niiya, Senior Engineer
Division of Water Rights
State Water Resources Control Board
1001 I Street, 2nd Floor
P.O. Box 2000
Sacramento, CA 95814

STATE WATER RESOURCES CONTROL BOARD
2008 MAY - 1 PM 11:55
DIV OF WATER RIGHTS
SACRAMENTO

Re: Comment Letter – AB 2121 Policy

Dear Ms. Niiya:

The California Farm Bureau Federation (“Farm Bureau”) appreciates the opportunity to comment on the Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams (“Draft Policy”). Farm Bureau is committed to ensuring that an appropriate instream flow policy is developed and implemented by the State Water Resources Control Board (“Water Board”). Not only is this imperative to relieving the backlog of pending water right applications, but a good instream flow policy for the policy area will be important progress toward achieving a stable balance of water uses while providing water users some confidence in their water supply.

Farm Bureau is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California’s largest farm organization, comprised of 53 county Farm Bureaus currently representing roughly 91,000 members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California’s resources. Each of the five counties potentially impacted by the Draft Policy also has a county farm bureau with a collective membership exceeding some 7,000 farmers and ranchers.

Farm Bureau specifically acknowledges and incorporates by this reference the comments submitted by the law firms of Kronick, Moskovitz, Tiedemann & Girard, P.C. and Ellison, Schneider & Harris, LLC, and the hydrologic engineering firm of Wagner & Bonsignore on behalf of Farm Bureau and other entities and persons (hereinafter “Coalition Comments”). Since the Coalition Comments comprehensively address Farm Bureau’s technical, biological and legal

concerns regarding the Draft Policy, this letter will not attempt to reiterate those points. However, please recognize that Farm Bureau is very concerned that the issues raised by the Coalition Comments are appropriately addressed.

In addition to the Coalition Comments, Farm Bureau also submits the following comments for your consideration.

The A.B. 2121 Mandate

As an instream flows policy is developed it is important to recognize what is and is not mandated by A.B. 2121, which requires the Water Board to “adopt principles and guidelines for maintaining instream flows in coastal streams.” Water Code § 1259.4 (a)(1). “Principles and guidelines” need not, and indeed should not, be the sort of hyper-technical, extremely restrictive, and very specific regional criteria contained within the Draft Policy. Instead, the Water Board should adopt principles that establish instream flow goals, and guidelines that provide planning tools to achieve those objectives.

Principles and guidelines such as these need not be a long, overly technical or complex document. Rather, they should clearly and plainly set instream flow standards while also remaining flexible enough to be applicable throughout the varied conditions of the north coast. The Coalition Comments contain recommendations for such an alternative instream flows policy.

Developing and Implementing an Alternative Policy

Recognizing that it is absolutely necessary to develop a workable instream flows policy, Farm Bureau has been engaged with our members, county farm bureaus, the Wine Institute, Fish Friendly Farming and other stakeholders to develop and implement an alternative to the Draft Policy. We request, and are encouraged to hope, that the Water Board and staff will support these efforts to achieve a balanced approach to diverting water while protecting instream resources within the policy area.

Streams that are not within the Policy Area

In addition to the general comments above, we request clarification about the precise coverage of an instream flows policy. It is our understanding that the Draft Policy, or whatever policy is adopted instead, is intended to apply only to the watersheds referenced in Water Code § 1259.4 (a)(1). Specifically, the “coastal streams from the Mattole River to San Francisco and in coastal streams entering northern San Pablo Bay...” However, a review of the streams listed in Appendix 4 of the Draft Policy, “Streams Within the Policy Area,” revealed a number of streams that do not flow into any of the aforementioned watersheds.

During the February staff workshop held in Santa Rosa, Water Board staff was asked whether this inclusion was intentional or inadvertent. Staff indicated that the Draft Policy was only intended to cover the Water Code 1259.4 (a)(1) watersheds and that streams outside this area would be removed. In order to assist in correcting this mistake, Farm Bureau reviewed Appendix 4 and developed the following list of streams that appear in Appendix 4, but are tributaries to the Eel River or flow into the Pacific Ocean north of the Mattole River and should therefore not be included in the instream flow policy area:

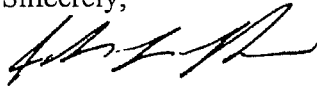
- Baechtel Creek
- Bear Valley Creek
- Benmore Creek
- Cave Creek
- Curley Cow Creek
- Dinner Creek
- Dutch Charlie Creek
- Harmonica Creek
- Highland Creek
- Huckleberry Creek
- Long Branch Creek
- Moody Creek
- Nelson Creek
- Peter Gulch
- Saint Marys Creek
- Section Four Creek
- South Fork Dry Creek
- Standley Creek
- Waldron Creek
- Bear Pen Creek
- Beer Bottle Creek
- Broaddus Creek
- China Creek
- Davis Creek
- Domingo Creek
- Hale Creek
- High Valley Creek
- Hollister Creek
- Kroll Creek
- McNutt Gulch
- Mule Creek
- Peaked Creek
- Rue Gulch, La
- Sebbas Creek
- Sherwood Creek
- South Fork Redwood Creek
- Swartz Creek
- West Fork Sproul Creek

Conclusion

Our review of the Draft Policy has made it clear that the proposed policy is simply too restrictive and rigid to be workable. However, we also recognize that an instream flow policy is necessary for the policy area. For these reasons Farm Bureau is working with our members and other stakeholders to develop an alternative watershed-based approach, described in the Coalition Comments, that will protect instream flows while also ensuring farmers will be able to divert water within the policy area. We will continue to refine and implement this alternative and look forward to working with the Water Board and staff in this process.

Thank you for considering this request. If you have any questions relating to these comments, do not hesitate to call me directly at (916) 561-5667.

Sincerely,



Jack L Rice
Associate Counsel

JLR\mmm

cc: Tam Doduc, Chair, SWRCB (Via First-Class Mail)
Gary Wolff, Chair, SWRCB (Via First-Class Mail)
Charles R. Hoppin, Member, SWRCB (Via First-Class Mail)
Frances Spivey-Weber, Member, SWRCB (Via First-Class Mail)
Arthur G. Baggett, Jr. Member, SWRCB (Via First-Class Mail)