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JAMES M. BOYD, JR., Of Counsel

March 25, 2010

VIA E-MAIL (comentletters@waterboards.ca.gov) AND MAIL

Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, California 95814

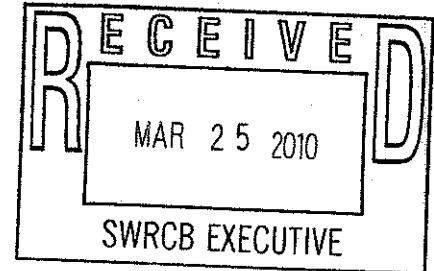
Re: Comment Letter – AB 2121 Policy

Dear Ms. Townsend:

This firm represents the North Gualala Water Company (“North Gualala”). North Gualala holds water-right permits for diversions and beneficial uses of water in local streams in southwestern Mendocino County. North Gualala provides this water to approximately 1,000 municipal customers in its service area. On behalf of North Gualala, I submit the following comments on the State Water Resources Control Board’s February 2010 draft “Policy For Maintaining Instream Flows In Northern California Coastal Streams” (the “Draft Policy”).

On April 29, 2008, on behalf of North Gualala, I submitted comments on the December 2007 draft policy. In those comments, I stated that a project proponent should have the option of preparing a site-specific study for a specific project, and that the SWRCB should favor such site-specific studies over the proposed regional criteria, which were developed from data that were collected on some streams in the five-county study area. I noted that the draft policy appeared to recognize this, but that draft policy also appeared to assume that the proposed regional criteria would be the starting point for any development of instream-flow requirements. I requested that the draft policy be edited to remove this assumption and language characterizing site-specific criteria as “variances” to the proposed regional criteria.

This comment was numbered as Comment 5.0.15, and the Division of Water Rights’ response to it refers to the response to Comment 5.0.4. This latter response generally agrees with Comment 5.0.15, stating that Division of Water Rights staff does not believe that the regional protective criteria “have site specific accuracy,” and that they were not “intended to be used to predict the site specific needs accurately for every stream.” The February 2010 Draft Policy addresses this comment with a new section 2.2.2, which describes site-specific studies, and a new Appendix C, which contains guidelines for site-specific studies. Also, the prior language regarding “variances” has been removed.



Ms. Jeanine Townsend
March 25, 2010
Page 2

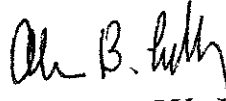
We appreciate the actions that the Division of Water Rights staff has taken to address this comment and we are pleased that the new draft of the policy explicitly recognizes that site-specific studies may be conducted and that the results of these studies may be used to develop proposed site-specific criteria. However, there still may be some confusion regarding whether or not the regional criteria should be considered in situations where site-specific studies have been conducted. To eliminate this potential confusion, we request that the following sentence be added on page 6, at the end of the first paragraph of section 2.2.2:

When a site-specific study has been conducted pursuant to an approved study plan and a report of the study has been prepared, the regional criteria will not be considered for parameters for which proposed site-specific criteria have been developed.

A copy of page 6 of the February 2010 draft, with this proposed addition indicated, is enclosed with this letter.

Thank you for giving us the opportunity to provide these comments.

Very truly yours,



ALAN B. LILLY

ABL:adm
Encl.

The **bankfull flow** is the flow at which channel maintenance is the most effective. The 1.5-year return peak flow is a hydrologic metric that can be used to estimate bankfull flow and effective channel maintenance flows. The **1.5-year instantaneous peak flow** is the annual maximum instantaneous peak streamflow that is equaled or exceeded, on average over the long term, once every one and a half years. The frequency at which this peak flow is expected to occur is referred to as the **recurrence interval**. Limiting the maximum rate at which water is withdrawn by all water diverters in a watershed so that peak streamflows are reduced by no more than a small fraction of the 1.5-year instantaneous peak flow will result in a relatively small change to channel geometry, and will ensure that natural flow variability and the various biological functions that are dependent on that variability are protected.

To ensure maintenance of natural flow variability and protection of the biological functions dependent on it, the maximum cumulative diversion rate is set at the largest value of the sum of the rates of diversion of all diversions upstream of a specific location in the watershed.

The maximum cumulative diversion rate criterion is equal to: five percent of the 1.5-year instantaneous peak flow.

For projects located above anadromy, the maximum cumulative diversion rate criterion shall be evaluated at POIs at and/or below anadromy in order to identify the allowable rate of diversion at project PODs. The maximum cumulative diversion rate puts limitations on the cumulative rate of water withdrawal in a watershed, not necessarily the rate of withdrawal at a point of diversion. The rate of diversion for a project is not necessarily equal to the maximum cumulative diversion rate in a watershed. This is because the project's rate of diversion is based on an evaluation of whether the project, together with existing diversions, causes an exceedance of the maximum cumulative diversion rate criterion at points of interest at and/or below the upper limit of anadromy. Guidelines for calculating the maximum cumulative diversion rate criterion and for determining whether a limit on the rate of diversion is needed are provided in Appendix A, Section A.1.8 and Appendix B Section B.5.2.3.

2.2.2 Site-specific studies

If the diverter believes that the regional criteria are overly protective for a specific project, the diverter may propose site-specific criteria. The diverter may implement one or more of the regional criteria in combination with site-specific criteria. Site-specific studies may be conducted to obtain site-specific criteria that identify more precisely the instream flow needs of a particular location. Appendix C describes the data and reporting requirements for the initial reconnaissance level habitat assessment, the development of the study plan from the results of the initial habitat assessment, and the reports documenting the results of a site-specific study.

A site-specific approach may be proposed to develop criteria for parameters other than a minimum bypass flow, maximum cumulative diversion, or season of diversion. A

When a site-specific study has been conducted pursuant to an approved study plan and a report of the study has been prepared, the regional criteria will not be considered for parameters for which proposed site-specific criteria have been developed.