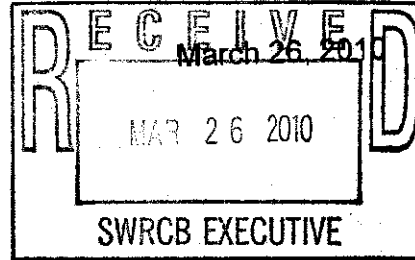




MARIN MUNICIPAL WATER DISTRICT

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Mr. Charles Hoppin
Chairman
State Water Resources Control Board
1001 I Street
Sacramento, CA 95812

RE: Proposed Policy for Maintaining Instream Flows in Northern California Streams
(AB 2121)

Dear Mr. Hoppin:

The Marin Municipal Water District (MMWD) would like to take this opportunity to comment on the February 2010 revised Draft Policy for Maintaining Instream Flows in Northern California Streams.

First we were pleased to see that our comments on the December 2007 draft of this policy, regarding the exemption from the draft policy for streams where the instream flow requirements have already been established, have been addressed in a positive way. More specifically, the draft's inclusion of a definition of a "Flow-regulated mainstem river" that would be excluded from some portions of the draft policy and your assurances in your response to previous comments that "Permittees and licensees who are in compliance with their permits and licenses will not be affected by the policy" are both somewhat reassuring.

However, the draft Policy still seems to be an attempt to use an empirical approach to determining in stream flows when it would seem that a more site specific approach would be required to address the diversity of situations on North Coast streams.

As an example, MMWD's current instream flow requirements were set after many years of study, many pages of written and oral comments by interested and affected parties and several weeks of public testimony. Analyzing and balancing the requirements of the various parties and the environment took Division of Water Rights staff several years after all of the data was received. Over the 13 years since that the Decision on these instream flows was finalized, the requirements have done a good job of protecting instream flow values while allowing a continued reliable water supply for MMWD's almost 200,000 customers.

However, as pointed out in our previous comment letter, under the terms of the draft policy none of the District's water supply projects would be permitted. It seems inappropriate that such an empirical policy would yield results so different from the exhaustive site specific studies done and public process completed by District and the Division of Water Rights such a short time ago.

This is of concern in that, while the draft policy exempts the terms of current permits and licenses, it states that petitions to modify those permits and licenses must comply with the draft policy. This would place MMWD and others in the position of losing its existing water rights should it decide to petition for a Temporary Urgency Change to its permits or should it petition for a Change in Place of Use of Method of Diversion. We continue to believe that petitions to change existing water rights for community water supply should be exempt from the policy.

We also have some additional comments on specific draft policy sections. IN Section 2.2.1.1, states that the diversion season will be limited to December 15 till March 31. This seems to inappropriately narrow, especially without any specific study of the magnitude of the proposed diversion to the hydrology of the area. In many areas of the North Coast there is water available outside of this narrow window that could be diverted without significant environmental impact. This section seems to be in opposition to Section 106 of the Water Code that states that water supply for domestic and irrigation use are the highest priority water uses in the State. If the Division of Water Rights believes that no water is available for diversion outside this narrow window it would seem that it should be handled by the Section 1205-07 process for declaring those streams as fully appropriated during those time periods and not by this draft Policy.

We also note that Section 3.1 states that the draft Policy instream flow criteria were based on the needs of the "largest native fish in the policy area" and then goes on to make the completely unfounded statement that this will "be protective of smaller native fish...". This statement was made without a shred of evidence or support and is directly contradictory to the Division of Water Right's findings on Lagunitas Creek that the needs of some of the smaller species in the creek, an endangered shrimp in particular, would have to be met by balancing that need against the opposite requirements of the "larger" fishes in the stream.

In Section 3.2 the draft Policy states that it applies to all streams and tributaries draining to the Pacific Ocean from the Mattole River to San Francisco and streams tributary to north San Pablo Bay. However, the impacted streams presented in Appendix K include a number of streams draining to San Rafael and San Francisco Bays and some water bodies that are not streams at all. Examples of the former, all in Marin County, would be Bill Williams Creek, Corte Madera Creek, Arroyo Corte Madera Del Presidio, Fairfax Creek, Larkspur Creek, Novato Creek, Spike Buck Creek, and San Rafael Creek. Examples of the later would be Pacific Ocean, San Francisco Bay, San Pablo Bay and Tomales Bay.

Mr. Charles Hoppin
March 26, 2010
Page 3 of 3

Section 3.3.2.3 implies that the Section 1707 petition process, whereby existing water rights can be dedicated to environmental uses, allows riparian water rights, which traditionally do not allow diversion to storage, to be converted into appropriative storage diversion rights and then compounds this unusual invitation by stating that such applications would be given expedited processing. Since Section 106 states that domestic and irrigation uses are the highest priority it would seem that this extraordinary offer would contradict the Water Code and go against the very reason for this Policy in the first place, the inability of the Division of Water Rights to process the large backlog of North Coast water rights applications.

We believe that the current version of the draft policy is only a marginal improvement over the December 2007 version. We also believe that it will take additional time to produce a workable plan to allow additional beneficial use of water from North Coast watersheds while still protecting the important environmental resources there.

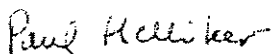
To that end, we suggest that the Division of Water Rights consider adopting the recent plan developed for Fish and Game Code Section 1602 permits. That is:

1. The applicant submits a detailed plan and appropriate CEQA compliance work to the Department;
2. The Department has 30 days to determine whether the submittal is complete enough to allow adequate assessment of the project and, if not, how it could be made adequate.
3. After the submittal is deemed adequate, the Department has 60 days to issue a permit with appropriate conditions.

This system seems to work well with the smaller projects that make up much of the Section 1602 permits and should be adaptable to the small diversion permits, as defined in Section 2503 of the Water Code, that seem to be much of the water rights application backlog in the North Coast area.

Thank you for the opportunity to again comment on the draft Policy. Please feel free to contact me at (415) 945-1460, if I can provide any further information on my comments.

Sincerely,



Paul Helliker
General Manager