

Hand delivered on  
August 5, 2008 by  
Rudy Light

State Water Resources Control Board Workshop at Ukiah, California  
North Coast Instream Flow Policy  
5 August 2008

Comments by Rudolph H. Light  
P.O. Box 736  
Redwood Valley, CA 95470  
(707) 485-1335

STATE WATER RESOURCES CONTROL BOARD  
NORTH COAST REGION  
2008 AUG - 7 PM 5:00  
OFFICE OF THE SECRETARY

My name is Rudolph Light and I am a landowner with property on the West Fork of the Russian River in Redwood Valley. I am a conservationist and have done extensive river restoration work on my property. I agree with many other landowners that we do need an instream flow policy. However, there are many concerns about the implementation of this Draft Policy as written. I would first like to address the Minimum Bypass Flow.

### 1. Minimum Bypass Flow

If this policy is adopted, especially with the Minimum Bypass Flow and the Maximum Cumulative Diversion requirements, there will never ever be another pond built on a small drainage. Here is a chart using real stream gage data showing that unless your drainage area is at least 6,400 acres or 10 square miles, you'll never be able to build a pond. The reason for this is that the formula used for the MBF in the Draft Policy results in very few collection days when the watershed area is small. The graph shows that in a drainage area of 4 square miles or 2,560 acres, one can divert fewer than 10 days per year. That won't fill any but the tiniest of ponds. On the few very rainy storm days when you can collect above the MBF, the Maximum Cumulative Diversion limitation kicks in.

Below 200 to 400 acres of drainage area, no diversion is possible. According to the commentary written by the engineering firm of Wagner and Bonsignore in response to the Draft Policy, all of the 71 ponds in the Maacama Watershed have a drainage area of less than 550 acres. Sixty of these 71 ponds have a drainage area of 200 acres or less and therefore would never have an allowable diversion day. No diversion would be possible under this policy for a substantial majority of these applicants. This MBF formula must be changed, so that for watersheds of less than 320 acres, no MBF or MCD requirements should be in place at all. Also, the MBF formula should be based on annual flow rather than instantaneous rate. MCD restrictions should be reserved only for large watersheds, measured in tens of square miles.

There must also be recognition of the incredible expense connected with this Policy. Cost estimates provided by Wagner and Bonsignore state that the direct costs of initial implementation of the Policy will cost landowners somewhere between a quarter of a billion and \$1.8 billion and that there will also be high costs incurred by the agencies to administer the Policy.

### 2. Modifications of Licenses

The Draft Policy suggests opening up existing licenses to make them conform to the new guidelines of the Policy. If the existing licenses are opened up to modifications to require the MBF and MCD as the Policy envisions, the ponds will never collect enough water to fill. Modification of

terms may well include forcing a person to tear down the dam of an already licensed pond. This provision allowing for retroactive modifications such as demolishing a dam or adding MBF and MCD requirements should be deleted.

### 3. Historical Notes

At this point I hope you will indulge me a little bit longer. I have been dealing with your process for my application for many years so I hope you can give me five more minutes to present to you some more information that is very important to me. Twenty-one years ago in 1987 when I was 43 years old, I applied for a water right to build a pond at the upper end of Redwood Valley near the West Fork of the Russian River. The pond was engineered, permitted and constructed according to specifications. The pond was built to contain 16.3 acre-feet as specified on the plans, but the application erroneously requested 8.0 acre-feet. The Division of Water Rights engineer inspected our project in 1993, six years after construction, and that was when we first realized there was an error and that we would need an additional supplemental water right which we duly applied for in 1994. Stan Griffin of Trout Unlimited protested this supplemental application. This protest was accepted although nothing written in the protest pertained to this specific project.

I tried for four years to get Stan to visit our pond in an attempt to resolve his protest even though I was at a loss as to understand what his objection really was. I called him many times and he always refused to come. In 1997 and 1998, the Division attempted diligently to process this and other applications but additional grounds for protest were added by Trout Unlimited and were accepted by the Division. Ultimately, the Division went along with Trout Unlimited and stopped the application process; my application along with others became invisible and no progress was made. Delays on the part of the Division and the protestant exemplify what the process has become. Both Trout Unlimited and the Division have kept applicants waiting for years.

Here I am in 2008, at age 64, and still without a supplemental permit for our 1987 pond. The protest remains active, and the Division has bent over backwards for a decade to comply with Trout Unlimited's demands. The Division staff has told me we're fairly close, but I'm not sure. Literally, in this past month, new conditions have been added, ones never considered when the application was accepted nor when the Division said in 1998 that applications would continue to be processed. I'm still counting the days, growing older, waiting, and working diligently to obtain the permit and license.

It is important that the public recognize Trout Unlimited's historical and current role here. Trout Unlimited held up the Division from processing applications for years. Trout Unlimited was the driving force behind AB2121. Trout Unlimited and Peregrine Audubon Society filed the Petition to change the entire water rights permitting system. The Division has embraced Trout Unlimited's goals although the Division may have originally buckled under the threat of a lawsuit. A major selling point of AB2121 and of the Petition was said to be to reduce the backlog of water right applications, to speed up the process for pending applications and streamline the process for new ones. Adopting the Policy will guarantee more delays, require more staff time, and greater expense for all involved

so the selling point of speeding up and simplifying the process is a false one.

After hearing nothing from the Division for seven years regarding my application, in March 2005, I received a notice from the Division of Water Rights about new requirements for a pending application. I was required to hire a qualified engineer to do a WAA/CFII, and to hire an environmental consultant to write CEQA or other environmental documents. But I once again complied with these new terms, and might I add, under threat of cancellation of my application if I did not. Eric Oppenheimer of the Division patiently told me on March 21, 2005 that, "The rules haven't changed, but the procedures have." From my viewpoint the rules are always changing. Now we're in the 15<sup>th</sup> year since my supplemental application was filed and there's neither permit nor protest resolution in sight. The WAA/CFII for my project has been accepted and the environmental consultants are still writing the Public Trust Resources Documents. The Division has added more conditions and requirements even without benefit of the Draft Policy. Imagine what things will be like if the Draft Policy as it is now written is adopted. I've waited 14 years for a permit. With the Policy in place, the wait could easily be 14 more. More realistically, most people will quit trying due to the unjustifiable expense and unworkable restrictions. The resulting consequences of that will be unfortunate and many.

#### 4. Conclusion

We ranchers and farmers have become disposable in the eyes of the Division of Water Rights staff. Trout Unlimited and Natural Heritage Institute and Peregrine Audubon Society first marginalized landowners, then demonized us in the last decade. Many of their supporters echo this and if you don't believe it, read the letters in the Final Scoping Report for the North Coast Instream Flow Policy and the letters pertaining to the Water Right Enforcement Policy Workshop of June 2007. They consider landowners to be primarily responsible for the loss of salmon habitat and loss of fish runs without regard to the effects of the two major diversions, Lake Mendocino and Lake Sonoma. If this Draft Policy goes through as written, the exorbitant cost of complying coupled with the inability to divert water from any but the largest of watersheds will result in many landowners being forced to sell their property. We will have to. It won't just be wild salmon missing from the dinner table.

Most of us do take care of our property and most of us are thrilled when we see fish in the streams. But when we leave and the land is subdivided and the ranches are broken and abandoned, and the fish still haven't come back, I want everyone to remember their role and their part in dispossessing us. If the Water Board cannot work with landowners to encourage both fish and farming, you'll lose both. This policy, if adopted, will guarantee environmental degradation and economic disaster. I urge the Water Board to reject this Policy and work with landowners and others to develop a good policy for these streams and rivers, based on the needs of agriculture as well as anadromous fish. I'd like to see a reasonable policy soon, and working together, we have every expectation of success.

Aug. 5, 2008  
Submitted by Rudy Light

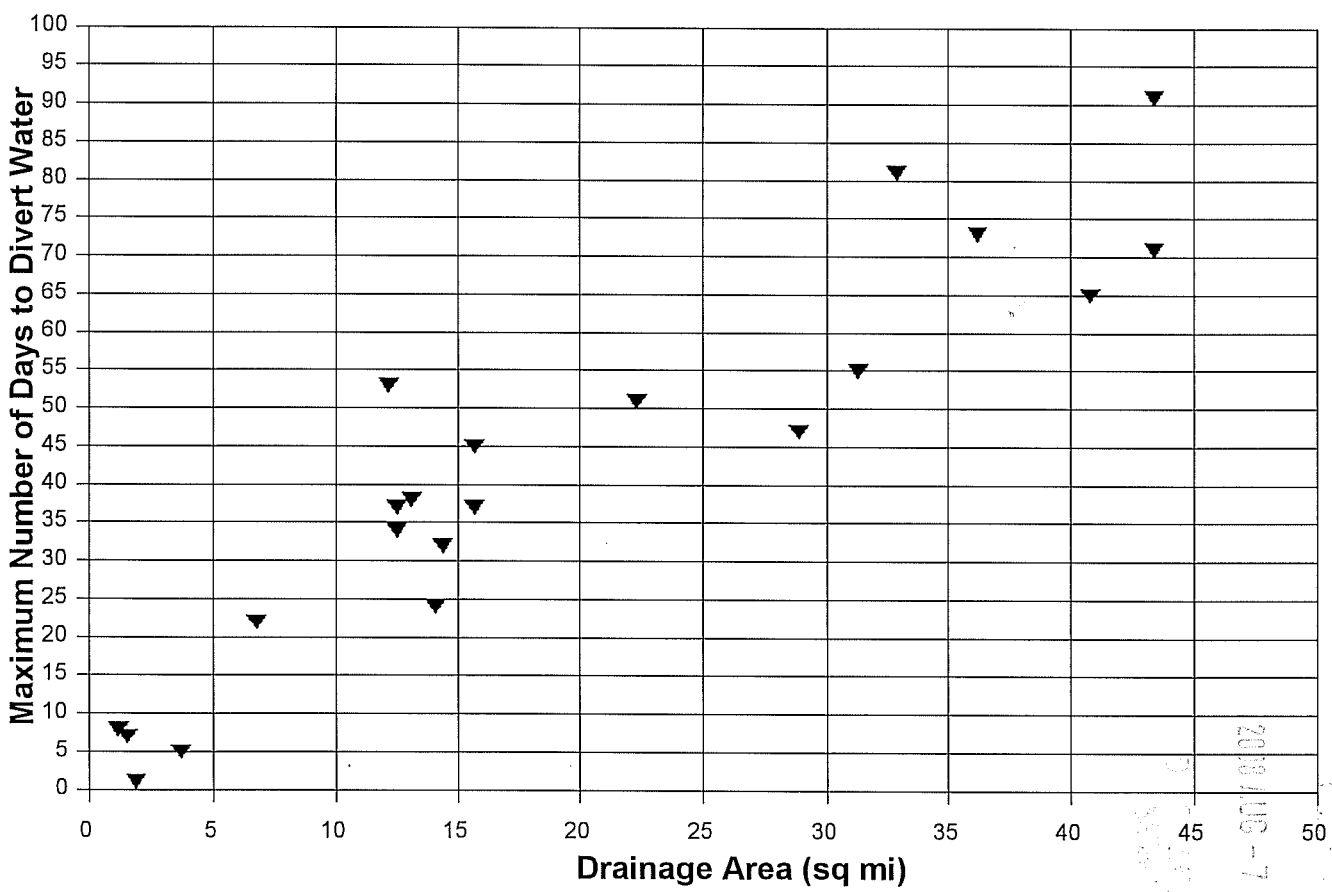
### NUMBER OF ALLOWABLE DIVERSION DAYS VS. DRAINAGE AREA

The calculations were made on the assumption that a person would divert at the gage site, and takes into account actual recorded stream flows, but not senior diverters and other such factors. By assuming the diversion takes place at the gage site, there is no need to make any adjustment for a Drainage Area differing in size from that of the gage site Drainage Area and no precipitation records are necessary. The Drainage Area is all the watershed above the gage. These calculations need include only stream gage data, and correctly illustrate what happens to the MBF based on real information provided by the USGS (nwis.waterdata.gov/ca/nwis).

The formula in the Draft Policy:

- $Q_{MBF} = 9.4 Q_m (DA)^{-.48}$
- $Q_{MBF}$  = minimum bypass flow
- $Q_m$  = mean annual flow at gage
- DA = drainage area in square miles

This exercise shows how many days per year that the MBF is exceeded on small and large Drainage Areas if one were to divert water at or near the gage site for each of these streams, and thus how many days during a year that water could permissibly be diverted using a diversion season of October 1 to March 31. Tabulated data used to prepare this graph are on the following page.



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<b>STREAM NAME</b> M = Mendocino County S = Sonoma County	<b>USGS Number</b>	<b>Drainage Area (mi<sup>2</sup>)</b>	<b>Annual Flow (A-ft)</b>	<b>Q<sub>m</sub> Annual Flow (cfs)</b>	<b>Q<sub>MBF</sub> (cfs)</b>	<b>Q<sub>MBF</sub> / Q<sub>m</sub></b>	<b>Number of Days Flow &gt; MBF</b>
Dry Creek near Hopland (M)	11464050	1.19	1,560	2.16	18.63	8.63	8
Soda Creek near Boonville (M)	11467850	1.53	1,879	2.60	19.89	7.66	7
Dunn Creek near Rockport (M)	11468850 *	1.88	2,096	2.90	20.13	6.95	1
Willits Creek near Willits (M)	11472160	3.72	6,418	8.87	44.36	5.00	5
Colgan Creek near Sebastopol (S)	11465700	6.78	7,261	10.03	37.62	3.75	22
Warm Springs Creek near Asti (S)	11464860	12.2	21,299	29.42	83.24	2.83	53
Santa Rosa Creek near Santa Rosa (S)	11465800	12.5	13,285	18.35	51.32	2.80	34
Pudding Creek near Fort Bragg (M)	11468540	12.5	15,065	20.81	58.19	2.80	37
Big Sulfur Creek near Cloverdale (S)	11463170	13.1	30,993	42.81	117.05	2.73	38
West Fork Russian River near Redwood Valley (M)	11460940	14.1	19,442	27.04	71.38	2.64	24
Albion River near Comptche (M)	11468010	14.4	14,970	20.68	54.03	2.61	32
Franz Creek near Kellogg (S)	11463940 *	15.7	17,542	24.23	60.74	2.51	37
Salmon Creek near Bodega (S)	11460920	15.7	18,664	25.78	64.62	2.50	45
Pena Creek near Geyserville (S)	11465150	22.3	32,086	44.32	93.87	2.12	51
San Antonio Creek near Petaluma (S)	11459300	28.9	13,647	18.85	35.25	1.87	47
Feliz Creek near Hopland (M)	11462700	31.3	34,544	47.71	85.89	1.80	55
MF Ten Mile near Fort Bragg (M)	11468600	32.9	57,186	78.99	138.8	1.76	81
Big River near Comptche (M)	11468070	36.2	40,081	55.36	92.93	1.68	73
Laguna de Santa Rosa Cr near Cotati (S)	11465680	40.8	25,332	34.99	55.46	1.58	65
Tomki Creek near Willits (M)	11471800	43.4	73,678	101.77	156.63	1.54	71
Maacama Creek near Kellogg (S)	11463900	43.4	59,039	81.55	125.47	1.54	91
Rancheria Creek near Boonville (M)	11467800	65.6	100,503	138.8	175.2	1.26	95
Garcia River near Point Arena (M)	11467600	98.5	246,649	340.7	353.7	1.04	130
Russian River near Ukiah (M)	11461000	100	128,059	176.9	182.3	1.03	124
Navarro River near Navarro (M)	11468000	303	367,998	508.3	307.7	0.61	132

\* = two to four years of gage data