



Charlton H. Bonham
Trout Unlimited
828 San Pablo Avenue, Suite 208
Albany, CA 94706
510-528-4164
cbonham@tu.org

April 14, 2005

By E-filing and First-Class Mail

Ms. Debbie Irvin
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0110

Re: Additional Comments of Trout Unlimited and Peregrine Audubon Society, a Chapter of the National Audubon Society on the March 17, 2005 Workshop Regarding Central Coast Water Rights Petition

Dear Ms. Irvin:

We thank the State Water Board (Board) for conducting a public workshop on March 17, 2005 to solicit input on whether the Petition which Trout Unlimited and Peregrine Audubon Society, a Chapter of the National Audubon Society (Petitioners) filed with the Board warrants further consideration by the Board. We believe that the purposes of the workshop, as described in the Board's notice, were met: (1) Petitioners described the Petition; (2) Petitioners and stakeholders discussed whether the issues raised warrant further consideration by the Board; and, (3) Petitioners and stakeholders discussed going-forward procedures. We look forward to the Board's description of going-forward procedures, which we anticipate in the early part of May 2005.

Attached to this cover letter are: (A) brief additional comments of Petitioners regarding the workshop and the purposes of that workshop; (B) Petitioners' Opening Statement at the workshop; and, (C) a Notice of Change of Address.

Thank you for your consideration in this matter. Please contact me at 510-528-4164, or Richard Roos-Collins, at 415-693-3000 extension 103, with additional questions regarding this submittal.

Sincerely yours,

Charlton H. Bonham
California Counsel and Director of California Water
Program
Trout Unlimited

ATTACHMENT A

ADDITIONAL COMMENTS OF TROUT UNLIMITED AND PEREGRINE
AUDUBON SOCIETY, A CHAPTER OF THE NATIONAL AUDUBON SOCIETY
ON THE MARCH 17, 2005 STATE WATER BOARD WORKSHOP REGARDING
CENTRAL COAST WATER RIGHTS PETITION

Petitioners' Additional Comments

“Workshop to Consider the Petition Submitted by Trout Unlimited and the Peregrine Audubon Society, a Chapter of the National Audubon Society (held March 17, 2005)”

April 14, 2005

INTRODUCTION

Trout Unlimited and the Peregrine Audubon Society, a Chapter of the National Audubon Society (Petitioners) have limited additional comments to make regarding the March 17, 2005 Petition workshop, which the State Water Board (Board) noticed and conducted regarding our Petition submitted to the Board on October 27, 2004. Our Petition requests that relevant agencies, including the Board, and stakeholders work together under the direction of the Board to ensure timely and effective regulation of new water diversion in Central Coast Streams, from San Francisco Bay and tributaries to San Pablo Bay north to the Mattole River. Our Petition and our opening statement at the March 17 workshop speak for themselves and answer the question posed in the Board's workshop notice whether the issues raised warrant further consideration by the Board in the affirmative. Indeed, we did not hear stakeholders, or Board members, suggest otherwise.

Therefore, our additional comments are brief and narrowly tailored to three going-forward concerns or considerations.

ADDITIONAL COMMENTS

1. **The Board Should Establish a Collaborative Negotiation Process Emphasizing Stakeholder Involvement and Focused On Problem-Solving Through Working Groups.**

Water is this state's most precious natural resource. Our Petition addresses the water rights system as administered by the Board for the Central Coast streams. We seek reform of that system as necessary to protect steelhead and coho salmon fisheries, riparian habitat, and birds and wildlife dependent on such habitat, in good condition. State laws, including the California Water Code, California Fish and Game Code, and public trust doctrine, require such protection of these public properties.

Because water is so precious to all corners of the regional community, the Board should establish a collaborative negotiation process to address the issues raised in our Petition. Specifically, this process should place significant emphasis on input from relevant stakeholders and their involvement. Such focus and involvement will better ensure durable results.

Second, the Board should organize this collaborative negotiation process topically in working groups. For example, the issues raised in the Petition can be generally

divided into three topics: Application Process, Flow Standards, and Compliance and Enforcement.

Third, stakeholders in each working group should be granted flexibility on a scheduled timeline. Each working group should identify the problem statements or issues of concern unique to its topic. Problem statements should then feed into collaborative discussions for the purpose of problem solving. Working group sessions should adhere to a timeline to motivate action. The entire effort should also be subject to a definitive deadline that the Board establishes at the beginning.

Finally, the Board should actively participate in this working group approach at a staff level, and require periodic reporting from the working groups cumulatively before the Board at larger noticed workshops. We envision a possible result of such a process structure to be a suite of recommendations brought forward from working groups to the Board for consideration as resolution to the issues raised in our Petition. As we noted in our opening statement at the March 17 workshop, this structured approach is very similar to that used in hydropower relicensing efforts and used by the Coho Salmon Recovery Team planning process to produce a consensus recovery plan. We are confident that the working groups can deliver recommendations on a schedule consistent with A.B. 2121's deadline.

2. Cost and Capacity To Initiate And Conduct Such A Process Are Important But Not Controlling Factors.

At the March 17, 2005 Petition workshop, Petitioners' clearly heard Board concern about how to afford and staff a collaborative process to find solutions to the problems raised. We accept that concern as legitimate.

However, the Petition identifies problems in the water rights system – often using the Board's own materials – that substantially affect the economy and environment of the entire region. The problems will only worsen in scale and complexity if not addressed now. In 1990, the number of pending applications was relatively few. In 1997, at the time of the Board's Staff Report on these issues, that number was approximately 81. In 2004 when we filed our Petition, that number was approximately 276. Today, it is over 300. We believe the prudent and good government decision is to solve the problems now and avoid greater costs in the long-run.

To that end, we remain convinced that A.B. 2121 may deliver on its financial promise to the Board for assistance in creating guidelines by January 1, 2007. We also believe that success breeds success. If the Board establishes an effective process to address the issues raised in our Petition, and if progress occurs between stakeholders for finding real solutions to these thorny issues, we hold out a reasonable belief that assistance and resources will follow, including possibly from the Legislature. We encourage the Board to take up this effort and build a platform for finally and fairly resolving these decade old issues. Waiting to satisfy all financial or capacity concerns now before beginning this necessary reform will mean greater costs in the long-run and continued government inefficiencies.

Respectfully, these budgetary limitations or concerns are a direct cause of the status quo where permit applications pend for many years and where unauthorized diversions of California's most precious resource are the rule rather than the exception. It will only worsen. Thus, because we accept the legitimacy of the Board's expressed concern, we are fully prepared – and we hope stakeholders and other agencies will agree – to use a collaborative process that, within stakeholder and agency capacities, will result in recommendations on a schedule consistent with A.B. 2121's deadline.

We acknowledge the good intent and hard work of the Board and Division staff. While our Petition alleges that the water rights system is failing in the Central Coast streams, we attribute that largely to budgetary limitations that have worsened substantially in the past decade. It is our hope and expectation that the Board's response will allow for more cost-effective processing of applications – because issues that otherwise will require substantial attention from Division Staff and Board in hearing may be programmatically resolved. We are grateful for the initiatives that the Board and staff have already taken in response to the Petition.

3. **Petitioners Are Fully Committed To A Stakeholder Based Process Instead Of Traditional Adversarial Approaches.**

Our final comment goes to any question that may remain regarding Petitioners' interests and intent, as reflected in several of the written comments the Board has received. We appreciate the frustration in the water user community. We believe we share similar interests as the applicants in developing an equitable system which the Board will apply to make timely and reasoned water allocation decisions in this region. With such a system in place, we believe we would also share an interest with the applicants in getting about the business of making regulatory decisions on the pending applications. Regulatory uncertainty cuts against all stakeholders.

Water matters to every stakeholder in this region. The question should not be to whom it matters most. We have no interest or intent in promoting a continuation of the usual approach to water that pits interests against each other and fails to produce solutions. Thus, we have not pursued resolving issues through litigation. Our Petition clearly solicits the involvement of relevant stakeholders from this regional community to sit down and attempt to find solutions. Stakeholders can come together and forge a negotiated resolution to differences that applies water to the greatest number of beneficial uses in a fair way. The first step in finding solutions is a dialogue. For too long the issues we raise have been ignored to the detriment of Petitioners' interests and to the detriment of the regulated community and water user community. We believe our Petition can serve to change all of this. We look forward to trying to find solutions with those whom we normally fight.

CONCLUSION

Trout Unlimited and Peregrine Audubon Society, a Chapter of the National Audubon Society wish to thank each stakeholder who took the time to attend the March 17 workshop in Sacramento, make comments at that workshop, or submit written comments to the Board regarding our Petition. This involvement is crucial going-

forward. We take all comments and input seriously regardless of the source. We are confident – not certain, but confident – that collaborative solutions are feasible.

We also thank the Board members and Board staff for the opportunity to describe in further detail at the March workshop our Petition. We believe that the issues we raise warrant further consideration. We look forward to the Board's release of its going-forward recommendations in early May.

Respectfully submitted,



Charlton H. Bonham
Trout Unlimited
For Trout Unlimited



Richard Roos-Collins
Julie Gantenbein
Natural Heritage Institute
For Peregrine Audubon Society and Trout Unlimited

ATTACHMENT B

TROUT UNLIMITED AND PEREGRINE AUDUBON SOCIETY, A CHAPTER
OF THE NATIONAL AUDUBON SOCIETY, OPENING STATEMENT AT THE
MARCH 17, 2005 PETITION WORKSHOP

Petitioners' Opening Statement

“Workshop to Consider a Petition Submitted by Trout Unlimited and the Peregrine Audubon Society, a Chapter of the National Audubon Society”

**State Water Resources Control Board
Sacramento, CA (March 17, 2005)**

INTRODUCTION

Good morning. My name is Chuck Bonham, California Counsel for Trout Unlimited. I am joined by Richard Roos-Collins, outside counsel for Trout Unlimited and the Peregrine Audubon Society (a chapter of National Audubon Society). I would also like to acknowledge Roger Foote, President, and Park Steiner, Conservation Chair, for Peregrine Audubon; Stan Griffin, for Trout Unlimited of California; and David Katz, California Director for Trout Unlimited (TU).

We thank the Water Board members, Board staff, and participants for the opportunity to describe in further detail a petition, which TU and Peregrine filed on October 27, 2004. Our Petition requests the adoption of guidelines and procedures to assure coordinated, timely, and effective regulation of water diversions in coastal streams for the protection and restoration of salmon, steelhead, and other public trust resources, from Marin County northwards to the Mattole River. The geographic scope includes the Russian River watershed and those streams in Napa County tributary to San Pablo Bay. We refer to these waters as “Central Coast streams.” The Petition was filed and is pending before the Board, Department of Fish and Game, State Lands Commission, and the affected Counties.

We organize our presentation as follows. We describe the interests of Petitioners, state our claims, and describe the relief that we seek from the Board and the other public agencies. We then respectfully recommend how the Board, other agencies, and other stakeholders may effectively go forward. Finally, we close with personal statements from Peregrine and TU volunteers.

At the outset, we underscore that the Board has worked since the early 1990s to adopt guidelines and procedures for review of permit and license applications in the Central Coast streams. This effort was driven by the Board's recognition that such reform was necessary to prevent further harm to salmon and steelhead fisheries in this region. The Board Staff issued a preliminary Staff Report in 1997. The Staff Report recommends guidelines for review, on the understanding that an application that meets such guidelines will not require an environmental impact report. On several occasions, the Board reviewed the report but did not adopt it. Board Staff undertook consultation with Department of Fish and Game and National Marine Fisheries Service (now NOAA Fisheries) that resulted in their proposed guidelines in 2001. AB 2121, as enacted in 2004, requires the Board to adopt substantive guidelines and related procedures for review of applications in this region, not later than January 1, 2007. We filed this Petition, in part, to assist in the implementation of that law.

Our presentation will take 15 minutes or less. We welcome questions. We look forward to a constructive discussion in this workshop.

INTERESTS OF PETITIONERS

Let me begin by briefly describing the interests of the two Petitioners.

TU is a national conservation organization and has approximately 135,000 members nationwide, and is dedicated to protecting, conserving, and restoring North America's native trout and salmon resources. TU members and staff use and enjoy salmon and steelhead waters throughout the Petition's geographic scope for recreational, educational, and aesthetic purposes. In California alone, TU has approximately 10,000 members. TU members regularly undertake physical restoration projects within the Petition's geographic scope; for example, TU is implementing an extensive non-regulatory program under which almost two million dollars of private and public funds have been invested in restoration projects in the region.

The State's water rights system directly affects TU's mission to protect, conserve, and restore the remarkable salmon and steelhead fisheries. Since at least 1991, TU members have monitored the Board's performance in the face of a small flood of permit applications within the geographic scope. TU has participated in the review of applications for new and modified water right permits within the geographic scope. During this period, TU has also participated in 6 State Water Board workshops and 12 site visits related to applications for new surface water right permits.

The Peregrine Audubon Society represents approximately 250 individual and family memberships in inland Mendocino County. It is centrally located within the geographic scope of the Petition. Peregrine is a chapter of the National Audubon Society, a nation-wide conservation organization supporting a membership of approximately 550,000 through more than 500 local chapters. Audubon has over a 100-year legacy of action, advocacy, stewardship, and research. It has been instrumental in conservation and protection actions throughout its entire history. Audubon was the lead plaintiff in the Mono Lake Cases.

Peregrine's mission is to actively promote the preservation of birds, wildlife, and their natural habitats. Peregrine has been represented on the Russian River Watershed Council since its inception in 1998. The Watershed Council seeks to solve problems through collaboration of citizens, municipalities, and agencies. The Board's water rights system directly affects Peregrine's ability to fulfill its mission. In Mendocino County, Peregrine has also been actively involved in issues of air quality and riparian protections.

PETITION CLAIMS

We turn now to the claims in the Petition.

As you know, water is this state's most precious natural resource. Our Petition addresses the water rights system as administered by the Board for the Central Coast streams. We seek reform of that system as necessary to protect steelhead and coho salmon fisheries, riparian habitat, and birds and wildlife dependent on such habitat, in

good condition. State laws, including the California Water Code, California Fish and Game Code, and public trust doctrine, require such protection of these public properties.

At the top of page 2, the workshop notice lists the Petition's specific claims that the water rights system is being administered in a manner which does not comply with those laws. We repeat now only the most fundamental facts.

First, more than 300 permit applications are pending in the Central Coast streams. We believe that the Board has not taken final action on any such applications in this region since 1990. The Board has not adopted substantive guidelines for review of such applications to protect the anadromous fisheries, and that failure may cause the long delay in processing individual applications. Further, the Board has not published a schedule for its processing of any such application. Thus, an applicant cannot know whether their application will be reviewed in 2005 or 2015.

Second, the Board and other agencies that have regulatory authority over diversions do not currently have adequate procedures for cooperation. Thus, a County permits grading under its ordinances and General Plan, the Department of Fish and Game permits streambed alterations under Fish and Game Code section 1603, and the Board permits diversions under the Water Code – but these public agencies do not typically cooperate in the environmental reviews for their respective decisions. As a result, factual and legal issues are addressed repetitively, causing substantial and unnecessary delays and costs to applicants as well as other stakeholders.

Third, since 1990, hundreds of new diversions have occurred in the Central Coast streams. Many of these diversions appear to be unauthorized – they are not based on any apparent water rights, and they have not undergone environmental review required by the California Environmental Quality Act (CEQA) and other law. Permit applications have not been filed for many of these diversions. We believe that the Board's enforcement practice has the unintended effect of allowing such unauthorized diversions. The Board Staff does not inspect systematically for such diversions. We estimate that, at the current pace, it will take decades for Board Staff to inspect all of the apparently unauthorized diversions that exist today in just this region. Further, the typical penalty for an unauthorized diversion once found is the filing of a permit application and payment of a filing fee. Respectfully, this enforcement practice penalizes the many good citizens who file permit applications and then wait to divert until they receive regulatory approvals. We also believe that the delay and uncertainty associated with the review of permit applications discourages the unauthorized diverters from even applying. Who can wait 10 years or more for approval of water needed for an agricultural or other beneficial use?

The workshop notice asks: do the issues raised by this Petition deserve the Board's consideration? The facts speak for themselves. The Petition identifies problems in the water rights system – often using the Board's own materials – that substantially affect the economy and environment of the entire region. The problems will only worsen in scale and complexity if not addressed now. In any event, AB 2121 answers your question affirmatively: the Board must consider the issues raised by this Petition. This statute requires the Board to change the status quo – to adopt substantive guidelines by January 1, 2007 and related procedures, including the publication of the Board's schedule for action on pending applications. We turn now to the remedies our petition seeks.

PETITION REMEDIES

The Petition asks the Board, other State agencies, and the Counties to improve their existing procedures. It does not require any new statute. We purposefully elected not to pursue judicial relief at this time. We strongly prefer for the public agencies which administer the water rights system to reform their procedures, without incurring the cost and other adverse consequences of litigation.

The workshop notice restates our Petition's requested remedies. Again, we summarize in order to start today's discussion. These remedies reflect basic principles of good government, including coordination, transparency, and accountability.

First, the Board and other public agencies will adopt Memoranda of Understanding to coordinate the environmental review of the several permit applications required for a water diversion. We believe that CEQA requires such coordination. Regardless of the legal mandate, this remedy is just common sense.

Second, the Board will publish its schedule for processing all pending applications, as well as new applications as filed. AB 2121 requires this remedy.

Third, the Board will adopt substantive guidelines for the review of permit and license applications. These guidelines must be adequate to prevent harm to the anadromous fisheries protected under the federal and state Endangered Species Acts. They may serve the additional purpose of making an applicant's environmental review more streamlined for individual applications that comply with the deadlines. The 2002 preliminary guidelines prepared by DFG and NOAA Fisheries are the starting point for this effort. AB 2121 requires the Board to adopt such guidelines not later than January 1, 2007.

Fourth, the Board and other public agencies will systematically enforce the Water Code and other laws to end the pattern and practice of unauthorized diversions throughout this region. We ask for nothing more, or less, than the rule of law. We believe that we are at a crossroads with a choice between a perpetuation of the Wild West approach to water use or not. It is not right that an unauthorized diversion that harms public trust properties creates a business advantage, but that is the reality today. We underscore that we are not focused on punishment – just an enforcement system that motivates all diverters to comply with the law, which requires permits before diversions occur.

GOING FORWARD

AB 2121 requires the Board to adopt substantive guidelines by January 1, 2007. This is an ambitious schedule. We are prepared to recommend a detailed plan of action to comply with AB 2121 and otherwise resolve the claims stated in the Petition. In order to start the discussion today, we make only fundamental recommendations for going-forward.

First, time is of the essence. Whatever process you choose, we should start soon, and you should establish and keep to a schedule.

Second, the process should be collaborative. The public agencies named in the Petition plainly should participate actively in the process. As importantly, other stakeholders – including applicants, other diverters, and the Petitioners – should work together in an effort to develop collaborative solutions. We are confident – not certain, but confident – that such collaborative solutions are feasible.

Third, you should recognize that inertia is the enemy of a systematic reform like this. We should not use workshops or other large meetings as the primary forum for the collaborative discussions which must occur. Instead, we recommend that you establish working committees, by topic, to develop collaborative problem statements and then potential solutions. This approach is the tried-and-true organization used in hydropower relicensing proceedings, and it will work here too. This approach also mimics the recent Coho Salmon Recovery Team planning process, made up of 21 members from a wide range of interest, professions, and perspectives.

We thank you for your attention. We now call on Mr. Park Steiner and Mr. Stan Griffin to explain, in their own words, why they hope that the Board and other public agencies will act on this Petition.

CONCLUSION BY MR. PARK STEINER, PEREGRINE AUDUBON

Thank you for the opportunity to appear today. I am Park Steiner, the Conservation Chair and former President, for Peregrine Audubon Society in Mendocino County. I have been a resident of the county since 1972 and a member of Peregrine Audubon Society since its inception in 1982. I am a field biologist and have been involved in fisheries and wildlife project work since 1980. I was also a Field Biology instructor at Mendocino College for five years. I became a private consultant in 1985 and have provided service to over 40 private and agency clients in Mendocino and adjacent counties since then.

One of the most fulfilling projects of my career was compiling and authoring a history of the decline of salmonids in the Russian River. The resultant document became somewhat of the standard reference for resource agencies working within the basin as they attempted to assess the status of a once bountiful fishery. This project heightened my personal awareness of the desperate need to resolve regulatory issues affecting not only water rights, but instream flow needs, riparian protections, and maintenance or restoration of other habitat parameters.

During my work as a fisheries biologist and consultant during the past 25 years, water issues have always played a primary role. Finding workable solutions to the water problems has been one of my primary concerns, and is likewise shared by Peregrine Audubon Society. Peregrine's concern is not only with the intimate relationship between instream flows and fisheries, but also with how these flows play a critical role in supporting riparian habitats with their abundant and diverse wildlife. We chose the petition process since we believe it holds the greatest potential collaboration between stakeholders to resolve the problems.

Some Peregrine Audubon members hold water rights. They are willing to invest thousands of dollars in stream restoration, but they have found the process so daunting, or in some cases, threatening to their water rights, that they abandoned their efforts. We now stand on a threshold of an opportunity and are optimistic that in the future these members may be supported by the process and be encouraged to restore and protect these valuable public trust resources. We are very encouraged that the Board is dedicating its limited resources to consider the issues we raise in the Petition.

Peregrine Audubon thanks the Board for its efforts and we are eager to participate and assist.

CONCLUSION BY MR. STAN GRIFFIN, TROUT UNLIMITED

Thank you for the opportunity to appear today. My name is Stan Griffin and I am the Northern California President of Trout Unlimited's California Council.

I would like to make two short personal statements. First, I am a volunteer. I have been focused on the issues raised in our petition because we must solve these water rights problems or we will not recover our Coho salmon and steelhead in the Russian River watershed. If we do not fix these problems and recover these fish, the region will suffer in the long-run. I still remember the old-timers telling me about the remarkable recreational fishery that existed in the basin.

Second, I have been involved as a volunteer in these issues since 1990. In fact, I filed Trout Unlimited's first protest to an application for a new diversion in 1991, on behalf of salmon and steelhead. My declaration to the Petition, which is Exhibit 2, describes my history with these issues in much more detail.

I want to leave you with one final thought. Today, I am 85 years old. I have been working on these issues for more than a decade. I respectfully request that the Board act on our Petition and help lead the stakeholders to solutions. We need to solve these important issues now.

ATTACHMENT C

NOTICE OF CHANGE OF ADDRESS

THE STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
CALIFORNIA DEPARTMENT OF FISH AND GAME
STATE LANDS COMMISSION
MARIN, SONOMA, NAPA, MENDOCINO, AND HUMBOLDT COUNTIES

In the Matter of: (1) Applications for Water Rights and Related)
Regulatory Approvals and (2) Unauthorized Diversions Affecting)
Steelhead and Coho Salmon Fisheries in Central Coast Streams in)
Marin, Sonoma, Napa, Mendocino, and Humboldt Counties)
_____)

NOTICE OF CHANGE OF ADDRESS

Please change the address of Petitioners' counsel, Natural Heritage Institute, on any service or mailing list for this proceeding as follows:

Richard Roos-Collins
Julie Gantenbein
NATURAL HERITAGE INSTITUTE
100 Pine Street, Ste. 1550
San Francisco, CA 94111
(415) 693-3000
(888) 589-1974 (efax)
rrcollins@n-h-i.org
jgantnbein@n-h-i.org.

Dated: April 14, 2005

Respectfully submitted,

Richard Roos-Collins / 6/7/05

Richard Roos-Collins
NATURAL HERITAGE INSTITUTE