



WATER DEPARTMENT

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April 30, 2008

Karen Niiya, Senior Engineer
Division of Water Rights
State Water Resources Control Board
101 I Street, 2nd Floor
Sacramento, CA 95814

Re: Comment Letter – AB 2121 Policy

Dear Ms. Niiya:

The City of Santa Cruz is not within the jurisdiction of the proposed North Coast Instream Flow Policy (Policy), but is interested in that Policy as a reflection of how the State seeks to regulate water rights and resources.

The City supports the intent of the Policy, to protect instream resources on a watershed basis. However, we are concerned that it may not be well designed for several reasons.

As the SWRCB realizes, with the increasing demands (including increased recognition of the importance of fisheries), it is essential to manage water resources effectively and efficiently. This is mandated by State law, including the Constitution, but is also eminent common sense. Technical analyses of the Policy indicate that the proposed Policy will not manage water in this way. In fact, the Policy may overestimate the water to be re-allocated from off stream to instream use, in some instances, and does not take into account the real manner in which off stream use is or can be achieved, such that impacts to fisheries are reduced or avoided entirely. Timing and method of diversions are examples.

The limiting factors for fisheries, such as salmonids, differ in different watersheds. Increasing the quantity of water when, for example, turbidity and sedimentation is the limiting factor, may be a waste rather than an improvement.

The public trust doctrine calls for a balancing of the competing considerations. We understand that such balancing may not be permissible for endangered species, but it is required in other cases. In all situations it is important to ensure effective and efficient use of a limited and precious resource such as water.

Another consideration is the methodology whereby potentially significant curtailments to water rights and uses will be administered. As it stands, the policy ignores junior versus senior water

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Re: Comment Letter – AB 2121 Policy

Page: 2

Date: April 30, 2008

rights, in spite of applying in the appropriative water rights system which is predicated on seniority. Possibly more importantly, it applies not to those causing the most harm but to those who happen to need a regulatory approval, such as an extension of time, or a change to their water right. This does not seem like a fair or effective approach. It means that needing a regulatory approval is to be avoided at all cost. It will discourage changes that would otherwise bring the water right holder into compliance or increase water use efficiency, the very type of actions the State should encourage.

We urge the State Board to proceed with care in light of the significant ramifications and impacts of such a policy.

Sincerely

A handwritten signature in black ink, appearing to read "Bill Kocher", with a long horizontal flourish extending to the right.

Bill Kocher, Director
City of Santa Cruz Water Department