



**Contact:**

- Chuck Bonham, TU California Counsel, 510-528-4164
- David Katz, TU California Director, 707.543.5877

ENCL. 1

**For Immediate Release: October 1 , 2004**

## **Trout Unlimited Applauds Decision of Governor Schwarzenegger to Sign Measure to Protect Northern California Streams**

Albany, CA -- The decision of Governor Arnold Schwarzenegger to sign legislation yesterday designed to protect northern California streams will have significant positive affects on the health of fragile salmon and trout population in the state, according to the conservation organization Trout Unlimited.

The legislation, AB 2121, requires the State Water Resources Control Board (SWRCB) to produce guidelines and principles to maintain instream flows in coastal streams in northern California from the Mattole River to San Francisco Bay and streams entering northern San Pablo Bay. Presently, the SWRCB does not have the administrative tools necessary to adequately determine how much water should remain instream for salmon and steelhead.

"The decision of the Governor to sign AB 2121 demonstrates his commitment to helping to protect salmon and trout populations in northern California. We share his clear belief that some semblance of order is necessary to make sure that the region's streams are not sucked dry, the fate that has met many streams and rivers throughout the West," said Chuck Bonham, the director of Trout Unlimited's California Water Office, which was instrumental in designing and passing AB 2121.

Bonham said the legislation was necessary because there are approximately 276 applications pending before the SWRCB for new water permits. Without guidelines, the Board has no way to determine whether enough water is available to permit new diversions and how much is needed for threatened salmon and steelhead populations.

In addition, many of the pending applications have been stuck in an administrative limbo. The Board has not acted on many of them in the last decade and most have been pending for at least five years.

"The process is clearly not working - a problem that will hopefully be remedied by the Governor's signature on AB 2121," Bonham said.

AB 2121 requires adoption of guidelines for the SWRCB before January 1, 2007. It gives the Board the discretion to develop and adopt guidelines that include reasonable flexibility. Most importantly, the Board will have the discretion to receive stakeholder input.



# PROTEST

Based on Environmental Considerations, Public Interest, Public Trust, and Other Issues.  
Protests based on Injury to vested rights should be completed on other side of form.

## APPLICATION

1.  (We) Trot Unlimited of Cal. + United Anglers of California  
of 5200 Huntington Ave #300 - Richmond, Cal 94804 } 510-528-5390 (528-5390)  
Mailline address and zip code of protestant(s) } 525-3474, have read carefully a copy  
of, or a notice relative to Application \_\_\_\_\_ / Telephone No. \_\_\_\_\_

\_\_\_\_\_ to appropriate from Unnamed Stream - Trib - West Fork Russian River State name of applicant  
at a point \_\_\_\_\_ Name the source  
\_\_\_\_\_ MDE+M - Co. of Mendocino.  
Describe location of applicant's point of diversion

2. I, (We) protest the above application because:

### (1) ENVIRONMENTAL ISSUES, ETC.:

The appropriation will not best conserve the public interest, will have an adverse environmental impact and/or will adversely affect a public trust use of a navigable waterway

- (a) Public interest protests should clearly indicate how the appropriation will affect the public.
  - (b) Environmental protests should identify specific impacts and provide supporting recitals on issues such as: plants, animals or fish affected, erosion, pollution, aesthetics, etc.
  - (c) Public trust protests must identify the navigable waters to be affected and how the project will impact public trust values.\*
- Protests of a general nature (not project specific) or opposed to constitutional or legislated state policy will not be accepted. A request for information or for studies to be conducted is not a protest.

### (2) OTHER ISSUES:

The appropriation will be contrary to law, will require access rights, will not be in the Board's jurisdiction, or concerns other issues.

Facts and, if applicable, points of law which support the foregoing allegations are as follows:

See Addendum

3. Under what conditions may this protest be disregarded and dismissed? Not at this time - Essential we  
Conditions should be of a nature that the applicant can address and either accept or submit mitigating measures. have benefit of a full environment impact report [E.I.R.] AND  
provisions of the Calif. Environment Quality Act (CEQA) be  
enforced to address all the projects impacts including cumulative  
impacts the project will have on the entire Russian River watershed.

4. A true copy of this protest has been served upon the applicant \_\_\_\_\_

\*For the purpose of filing a protest, navigable waters include streams and lakes that may be seasonally navigable in small recreational watercraft.

DATE September 2, 1994

Attach supplemental sheets as necessary.

NOTE: Protests must be filed within the time specified in the notice of application.

Personally or by mail

Stan Pfeiffer J. D. B. [Signature]  
Protestant(s) or authorized representative sign here  
TA - Stan Pfeiffer, John B. Pfeiffer UAC  
Pres. No. Calif. Exec. Director  
Type or print name and title of representative, if applicable  
5200 Huntington Ave. #300  
Street Address  
Richmond, Cal 94804  
City and State  
-TA (510) 528-5390 (510-525-3474)  
Telephone

ADDENDUM

APPLICATION [REDACTED]

Russian River, is one of California's premier anadromous fisheries. The entire watershed, including West Fork Russian River and all the tributaries are important salmon and steelhead spawning and rearing areas.

Proper water quality and quantity are essential to the fish and their habitat. We have a serious concern that the water in the Russian River and its tributaries have been over appropriated and has had a detrimental impact on the fisheries and their habitat. The lack of water flows are primarily responsible for the fishery decline. Especially effected is the early runs of salmon and steelhead. The proposed impoundment will catch all the early rainfall and effect the downstream hydraulically cycle. It limits the water run off into the lower creek and river. Also does not provide the necessary attraction and access flows for the early runs of salmon and steelhead. An excellent example of the decline is that the Coho (Silver) Salmon, a native species of the Russian River is expected to be listed as threaten or endangered this fall.

We are concerned that flows will not be adequate to dilute sewage problems and agricultural pesticides. City of Santa Rosa and the Town of Windsor have recently been allowed to increase their waste water discharges into the Russian River, and diverted water will lessen the amount of quality water available to dilute the waste water and impact the migrating fish during this period. November through May is a very critical time in the steelhead and salmon life cycle.

Another important factor that concerns us, is the cumulative impacts the diversion will have on the estuary at the mouth of the Russian River, which serves as a nursery habitat for the anadromous juvenile fishery. The lack of flows into the estuary allows the sandbar at the mouth to close, causing warm water temperatures and salinity problems that are detrimental to the fish.

As you probably know, Pacific Gas and Electric Company, has recently announced they are seeking to restrict the flow of water diverted from the Eel River through the Potter Valley power plant into the Russian River. Any restricted flows into the Russian River, will jeopardize the available of water from Redwood Valley — Ukiah to the Pacific Ocean. It is estimated 75% of the water flowing into Lake Mendocino is Eel River water. The loss of Eel River water will definitely effect the amount of water available for instream uses. Under this scenario all water diversion throughout the entire watershed will have to be reevaluated. In the meantime, it is essential that a moratorium be declared on all water right applications, effective immediately.

The Public Trust Doctrine requires sufficient water to be left in the streams to protect the fishery. We are concerned the so-called minimum flows are not sufficient to restore the declining fishery. An Environment Impact Report should address adequate flows to restore the historical runs of salmon and steelhead. Also the State Water Code 1243 of Division 2, part 2, requires protection of all beneficial uses.

The natural habitat and fishery resources of the Russian River watershed belong to the public and in this case, the State Water Resources Control Board is the lead agency and must act as trustee. The Board has the responsibility of assuring the full protection of the fisheries and their habitat. To accomplish this responsibility it is essential an Environment Impact Report be made to address all the cumulative impacts the project will have on the tributaries, Russian River and it's estuary.

For convenience and ease of filing, this protest is being submitted jointly by United Anglers of California and Trout Unlimited of California.



Stan Griffin  
President Northern California  
Trout Unlimited of California  
5200 Huntington Ave., #300  
Richmond, CA 94804 - 5416



John Beuttler  
Executive Director  
United Anglers of CA  
5200 Huntington Ave., 300  
Richmond, CA 94804

Attachment to Application [REDACTED]



Pete Wilson  
Governor

State Water  
Resources  
Control Board

ENCL. 3

Division of  
Water Rights

NOVEMBER 25 1997

TO: INTERESTED PARTIES

Mailing Address:  
P.O. Box 2000  
Sacramento, CA  
95812-2000

WATER RIGHT APPLICATIONS TO APPROPRIATE WATER IN THE RUSSIAN  
RIVER BASIN

1001 P Street  
Sacramento, CA  
95814  
Tel: (916) 657-1359  
Fax: (916) 657-1485

On October 23, 1997, the State Water Resources Control Board (SWRCB) held an informal workshop to review the Division of Water Rights' (Division) recommended actions to be taken on pending water right applications within the Russian River basin. The Division's recommended actions are described in a Staff Report, dated August 15, 1997, that was distributed to over 800 interested parties. During the informal workshop, the SWRCB concurred with the Division's recommendations, while emphasizing that the recommended actions should be considered as a framework for evaluating pending water right applications on a case-by-case basis. Such site-specific evaluation within the recommended framework will result in the development of appropriate permit terms for each specific project.

Therefore, the Division will resume processing pending applications within the Russian River watershed consistent with the process described in the August 15, 1997 Staff Report. As reflected in our Staff Report, the water availability on the mainstem of the Russian River is different than that for the tributaries due to many factors. For the mainstem, we will follow the diversion season established in SWRCB Decision D-1610 and the reservations previously established. In the tributary areas, we will use the framework set forth in the Staff Report.


In the near future, applicants and protestants will be contacted by Division staff, provided with a status of the applications, and advised of activities that must be completed prior to the issuance of a water right permit.

I appreciate your patience and assistance in developing a framework to proceed with the processing of water right applications, in a manner that is sensitive to both the water supply needs and the environmental needs in the Russian River watershed. Although it has taken longer than anticipated, I feel that together we have developed an approach that strikes a reasonable, and yet, protective balance between the out of stream uses of water and instream flow needs taking into consideration the endangered species status of some of our important anadromous fish.

NOVEMBER 25 1997

If you have any questions or would like to discuss this matter further, please call Ernest Mona at (916) 657-1947 (Application and Petition Section) or Frank Roddy at (916) 657-1967 (Environmental Assessment Section).

Sincerely,



Edward C. Anton, Chief  
Division of Water Rights



Cal/EPA

State Water Resources Control Board

In Reply Refer to:332:EM [redacted]

Pete Wilson Governor

Division of Water Rights

APR 24 1998

ENCL. 4

Mailing Address: P.O. Box 2000 Sacramento, CA 95812-02000

TO ENCLOSED MAILING LIST

STATUS OF APPLICATION [redacted]--UNNAMED STREAM TRIBUTARY TO WEST FORK RUSSIAN RIVER IN MENDOCINO COUNTY

901 P Street Sacramento, CA 95814 (916) 657-1954 FAX (916) 657-1485

The following provides: (1) a description of actions taken by the State Water Resources Control Board (SWRCB) relating to pending applications in the Russian River watershed, (2) a description of the proposed appropriation of water under Application [redacted], (3) a summary of the status of Application [redacted], and (4) a description of the activities that must be completed prior to the further processing of the application by the Division of Water Rights (Division).

BACKGROUND

On October 23, 1997, the SWRCB concurred with Division staff recommendations for the conditional approval of pending applications within the Russian River watershed.<sup>1</sup> Division staff recommended approval of pending applications seeking water right permits for wintertime storage and diversion of water during the diversion season of December 15 to March 31, with the inclusion of conditions designed to protect the fishery resources within the Russian River watershed. By letter dated November 25, 1997, interested parties were advised that the staff recommendations would be considered as the framework for evaluating pending applications on a case-by-case basis. Such site-specific evaluation within the framework will result in the development of appropriate permit terms for each specific project.

PROJECT DESCRIPTION

The Division's records show that on [redacted], 1994, Application [redacted] was filed by [redacted] for a water right to appropriate water from an Unnamed Stream tributary to West Fork Russian River. Application [redacted] proposes to store a total of [redacted] acre-feet per annum (afa) from November 1 to April 30 for irrigation, recreation, fire protection, and wildlife enhancement purposes.

<sup>1</sup> Staff recommendations can be found in the Staff Report, dated August 15, 1997, titled, "Proposed Actions To Be Taken By The Division Of Water Rights On Pending Applications Within The Russian River Watershed", pp. 36-37.

## APPLICATION STATUS

On August 12, 1994, the Division noticed Applications [REDACTED]. Protests based on environmental concerns were filed by the following parties:

Trout Unlimited of California (environmental): The protest alleges that the proposed appropriation of water will adversely affect environmental/fishery resources. No protest dismissal conditions were offered, pending the completion of an appropriate environmental document.

United Anglers of California (environmental): The protest alleges that the proposed appropriation of water will adversely affect environmental/fishery resources. No protest dismissal conditions were offered, pending the completion of an appropriate environmental document.

## ADDITIONAL ENVIRONMENTAL INFORMATION NEEDS

If the proposed project modifications below are acceptable, no additional environmental information will be required from the applicant.

## SWRCB PROPOSED PROJECT MODIFICATION

The following is a set of proposed project modifications that are consistent with the framework concurred in by the SWRCB, and necessary to qualify the project for a negative declaration under the California Environmental Quality Act (CEQA). Absent specific instream studies, the SWRCB believes that these modifications, together with any information which may be developed as a result of the additional information needs specified above, should qualify this project for a negative declaration under CEQA.

1. Reduce the proposed storage season of November 1 to April 30 to the storage diversion season of December 15 to March 31.
2. Construct a bypass facility to provide for the bypass of minimum flows determined to be necessary for the protection of fish and wildlife.
3. Provide facilities to allow fish to pass around or through the reservoir, if it is determined to be a barrier to fish movement.



**REQUEST FOR INFORMATION**

The applicant is requested to advise the Division, in writing and within 30 days, whether the application(s) will be amended as set forth above. Depending on the applicant's response, the Division will take one of the following actions:

- If the applicant decides to amend the application(s) and modify the project, the Division will continue processing the application(s). Any protests will be resolved pursuant to either Water Code sections 1340 – 1342 (major projects) or sections 1345 – 1348 (minor projects), and a negative declaration or other appropriate environmental document will be prepared.
- If the applicant does not wish to either amend the application(s) and modify the project, the Division will defer further processing of the application(s) until such time as the applicant provides additional supporting information that will allow the development of an appropriate CEQA document.

If you have any questions or wish to discuss this matter further, please call either Ernest Mona at (916) 657-1947 (Applications and Petitions Section) or Frank Roddy at (916) 657-1967 (Environmental Assessment Section).

Sincerely,



Ed Dito  
Program Manager  
Applications and Petitions Section

Enclosure

STATE OF CALIFORNIA  
WATER RESOURCES CONTROL BOARD

ENCL. 5

\_\_\_\_\_  
\_\_\_\_\_  
Unnamed stream tributary to West Fork Russian River,  
Russian River Basin

)  
)  
) WR Application No. \_\_\_\_\_  
)  
)

**ADDITIONAL GROUNDS FOR PROTEST  
BY TROUT UNLIMITED OF CALIFORNIA**

Trout Unlimited of California hereby submits additional grounds for its protest of this water rights application. These grounds are timely since they relate to developments following the deadline for protest.

I. Additional Grounds for Protest

1. The National Marine Fisheries Service (NMFS) has listed the steelhead trout and coho salmon fisheries of the Russian River Basin as threatened under the Endangered Species Act. 61 Fed. Reg. 56,138 (Oct. 31, 1996); 62 Fed. Reg. 43,937 (Aug. 18, 1997).
2. NMFS has proposed to determine that all existing habitat, in the main stem and tributaries thereto, is critical for the survival of the coho fishery in the Russian River Basin. 62 Fed. Reg. 62,741 (Nov. 25, 1997). NMFS will shortly designate critical habitat for the steelhead fishery.
3. In ruling that the survival of these fisheries is threatened, NMFS found that dams and water diversions are among the major causes for the decline. See 61 Fed. Reg. at 56, 141.
4. The Endangered Species Act requires the recovery, not merely the maintenance, of a threatened fishery.
5. The State Water Resources Control Board adopted the "Staff Report: Russian River Watershed" (Aug. 15, 1997) as its policy for processing this and other similarly situated applications. Trout Unlimited has already expressed concern that the Staff Report will not prevent direct and cumulative adverse impacts on these fisheries. We now incorporate McBain and Trush, "Commentary of the SWRCB Staff Report" (March 12, 1998) (attached).

Additional Grounds for Protest  
WR App. No. \_\_\_\_\_

II. Further Proceeding

6. We request that the State Water Board develop the following information pertinent to this application:

- A. Do steelhead or coho salmon use this stream? If so, what is the estimated population and distribution of each fishery in this stream?
- B. What is the unimpaired flow at the proposed point of diversion, by month and year-type?
- C. What is the regulated flow at the proposed point of diversion, by month and year-type?
- D. Under existing water rights (riparian, pre-1914, appropriative, and any other), what is the maximum allowable diversion in this stream at and above the proposed point of diversion, by month and year-type?
- E. Under C or D, does the bypass flow of 60% of the mean daily annual discharge, as proposed in the Staff Report (p. 36), occur?
- F. How would the proposed diversion affect the availability and quality of habitat for each life stage present in the affected stream?
- G. How would the proposed diversion affect geomorphic processes beneficial to the fisheries, as described in McBain and Trush, pp.14-15?
- H. How would the proposed diversion affect the recovery of the listed fisheries?
- I. How would the actual impacts on flows, fisheries, and their habitats be monitored, if the State Water Board approves the application?

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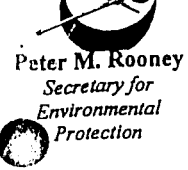
Dated: May 4, 1998

Respectfully submitted,

Richard Roos-Collins, for  
Richard Roos-Collins  
NATURAL HERITAGE INSTITUTE

Attorney for  
TROUT UNLIMITED OF CALIFORNIA

Additional Grounds for Protest  
WR App. No. [REDACTED]



# State Water Resources Control Board

John P. Caffrey, Chairman



## Division of Water Rights

901 P Street • Sacramento, California 95814 • (916) 657-1954 FAX (916) 657-1485  
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000  
Internet Address: <http://www.swrcb.ca.gov>

MAY 28 1998

In Reply Refer  
to:332:EM:050.10

Natural Heritage Institute  
c/o Mr. Richard Roos-Collins  
114 Sansome Street, Suite 1200  
San Francisco, CA 94104

ENCL. 6

Dear Mr. Roos-Collins:

### PROTESTS OF TROUT UNLIMITED--RUSSIAN RIVER WATERSHED

This is in reply to the fourteen letters that have been submitted to date, on behalf of Trout Unlimited of California. Those letters provide additional grounds for protests against the following pending applications within the Russian River watershed.

APPLICATION NUMBER	OWNER	SOURCE WATERSHED
[REDACTED]	[REDACTED]	Maacama Creek
[REDACTED]	[REDACTED]	Windsor Creek
[REDACTED]	[REDACTED]	Hensley Creek
[REDACTED]	[REDACTED]	Maacama Creek
[REDACTED]	[REDACTED]	Sausal Creek
[REDACTED]	[REDACTED]	Windsor Creek
[REDACTED]	[REDACTED]	Gird Creek
[REDACTED]	[REDACTED]	Unnamed Stream trib. to Russian River
[REDACTED]	[REDACTED]	Unnamed Stream trib. Santa Rosa Creek
[REDACTED]	[REDACTED]	Unnamed Stream trib. W.F. Russian River
[REDACTED]	[REDACTED]	Forsythe Creek
[REDACTED]	[REDACTED]	Unnamed Stream trib. to Russian River
[REDACTED]	[REDACTED]	Matanzas Creek
[REDACTED]	[REDACTED]	Green Valley Creek

The Division of Water Rights (Division) is processing the above identified applications in accordance with the provisions of the California Water Code. A notice of each application was distributed to interested parties pursuant to sections 1300-1324. Protests submitted against the applications by Trout Unlimited of California have been accepted.

As you are aware, on October 23, 1997 the State Water Resources Control Board (SWRCB) concurred with Division staff recommendations contained in a Staff Report dated August 15, 1997, proposing an approach for conditionally approving pending applications within the Russian River watershed. Division staff recommended the conditional approval of pending applications seeking water right permits for wintertime storage and diversion of water during the diversion season of December 15 to March 31, if the projects were modified to include project specific conditions designed to protect the fishery resources. Following the SWRCB's concurrence in this approach, the Division initiated action to contact applicants located within tributary watersheds of the Russian River. The applicants are being requested to advise the Division whether proposed project modifications (i.e., season reduction, bypass facilities, etc.) that, in the Division's opinion are necessary to allow the SWRCB to develop an appropriate environmental document pursuant to the California Environmental Quality Act, would be acceptable to the applicant.

If the applicants accept the proposed project modifications, the Division will contact protestants to determine whether the conditions under which the modified project would operate, would satisfy the unresolved protests and result in either the withdrawal or dismissal of the protests. If the protests are withdrawn or dismissed, the Division will prepare the appropriate environmental document and issue a permit pursuant to the submitted application. However, if the protests are not withdrawn or dismissed, the Division will continue to process the applications in accordance with the provisions of either Water Code sections 1345-1348 for minor projects (i.e., direct diversion less than three cubic feet per second or storage less than 200 acre-feet per year), or sections 1340-1342 for major projects (i.e., direct diversion greater than three cubic feet per second or storage greater than 200 acre-feet per year).

Applications processed pursuant to sections 1345-1348 will be considered in a field investigation with all parties in attendance, and the Division will prepare a decision. All parties will be provided with a Notice of Field Investigation and requested to provide any relevant records, evidence or written statements for consideration by the Division. Applications processed pursuant to sections 1340-1342 will be considered in a formal hearing before the SWRCB, and the SWRCB will prepare a decision.

Your letters also requested that the SWRCB develop specified information regarding water flows and affects on the fisheries. Some of this information is contained in the Staff Report. Additional information will be contained in the environmental documentation for each project. However, not all of the information appears necessary in order for the SWRCB to

meet its statutory requirements, if measures are included in any SWRCB action to ensure that the action is not harmful to the fisheries. The SWRCB intends to place conditions on any permit it issues on these projects to ensure that adverse effects to the fisheries do not occur as a result of the permit being issued. However, conditions on issuance of the permits cannot prevent harm that is caused to the fisheries by unrelated actions. The information requested by your letters is the type of information that, if it is not needed for environmental documentation, should normally be submitted or developed by the parties in the course of a field investigation of minor projects or during a formal hearing.

Please contact Ernest Mona at (916) 657-1947 (Applications and Petitions Section) or Frank Roddy (Environmental Assessment Section) at (916) 657-1967 if you have any questions or would like to discuss this matter further.

Sincerely,

ORIGINAL SIGNED BY.

Ed Dito  
Program Manager  
Applications and Petitions Section

cc: Enclosed Mailing List

# NATURAL HERITAGE INSTITUTE

LAW AND CONSULTING FIRM IN RESOURCE CONSERVATION

ENCL. 7

114 SANSOME STREET, STE. 1200  
SAN FRANCISCO, CA 94104  
(415) 288-0550  
FAX: (415) 288-0555  
SENDER'S E-MAIL: RRCOLLINS@N-H-I.ORG

July 7, 1998

Ed Dito  
Program Manager  
Application and Petition Section  
State Water Resources Control Board  
P.O. Box 2000  
Sacramento, CA 95812-2000

Re: Water Right Applications [REDACTED]  
[REDACTED]  
[REDACTED], and [REDACTED]

Dear Mr. Dito:

Thank you for your June 12, 1998 letters in the above proceedings. In answer to your question, Trout Unlimited will not withdraw our protests merely on the basis that the applicants have agreed to amend their applications to conform to the Division of Water Rights' August 1997 Staff Report.

## Failure to Assure No Harm to Listed Fisheries

We are grateful for the limitation on the diversion season to December 15 to March 31, the commitment to construct a bypass facility for minimum flow if necessary for fish and wildlife protection, and the provision of a fish passage facility if necessary. These are significant amendments in the applications and, more generally, significant improvements in the State Water Board's pre-1997 policy for the Russian River. In sum, these commitments will help mitigate the adverse impacts which these applications would otherwise have caused. Nonetheless, the applicants have not agreed to undertake, and the Division has not requested, those additional measures necessary to assure that the applications will not cause any additional harm to the coho and steelhead fisheries listed under the Endangered Species Act, as required by that law, the Porter-Cologne Act, and other applicable laws. As amended, the applications will not contribute to the recovery of these fisheries, as also required by these laws.



Remaining Conditions for Withdrawal of Protests

You asked us to state any additional conditions on which we will withdraw our protests. Although it is premature to specify such conditions, we underscore our continuing grounds for protest.

As stated in our May 4, 1998 "Additional Grounds for Protest," the records in these proceedings may not be adequate to determine likely impacts on flows. As one example, the Division has not disclosed the total permitted and actual diversions and the available flow in each tributary, at the point of each proposed diversion, by month and year-type. As the National Marine Fisheries Service (NMFS) found, all existing habitat in all tributaries is critical to the survival of the anadromous fisheries in this basin. 62 Fed. Reg. 62,741 (Nov. 25, 1997). It is impossible to predict how an application will affect such critical habitat, absent an understanding how much flow is now available and, after the proposed diversion, will remain, in a given tributary.

The Staff Report states (pp. 22, 32) that the Division has calculated available flow by tributary, at least for an average year-type. We should review all such calculations, which the Staff Report does not disclose for most tributaries.

Further, the amended applications, like the Staff Report, appear to be based on the assumption that a diversion season of December 15 through March 31 will avoid adverse impacts on spawning, incubation, and out-migration. That may be accurate in average circumstances. However, the Staff Report makes no allowance for non-average circumstances, which occur routinely, such as delayed spawning as a result of low attraction flows in a dry year.

Another continuing ground for protest is that the amended applications, like your Staff Report, do not propose any method for evaluating the actual cumulative impacts on the listed fisheries. The Staff Report concludes that diversions which include the recommended limitations will likely maintain fisheries in good condition. The Staff Report (p. 28) cites two grounds for the conclusion. The first is a comparison of average annual flows with Instream Flow Incremental Methodology (IFIM) modeling results for several tributaries in this basin and elsewhere. Even assuming that the comparison applies to the specific tributaries affected by these applications, IFIM alone is not an adequate basis for predicting cumulative or even direct impacts on fisheries. See D. Castleberry et al., "Uncertainty and Instream Flow Standards," 21 Fisheries 20 (1996) (Attachment 1). The Staff Report also cites to other water rights decisions as the second basis for the conclusion that a conforming new diversion will have no significant impact on these fisheries. Which decisions? Do coho or steelhead use the waters subject to those other decisions? Has the State Water Board monitored the actual impacts of those decisions?

As a further continuing ground for protest, we are aware of no coordination between the Division and the agencies which have approval or concurrence authority under federal laws for the proposed facilities and activities. Any application which will involve channel modification will require: a Clean Water Act (CWA) section 404 permit, issued by the U.S. Army Corps of Engineers after consultation with the U.S. Environmental Protection Agency; a CWA section 401 certification or waiver, issued by the Regional Water Quality Control Board; and consultation by the Corps with the National Marine Fisheries Service (NMFS) pursuant to Endangered Species Act section 7. We remain concerned that the Division and these other agencies may proceed to make their respective decisions without an informed understanding what regulatory conditions, in total, will be placed on any given application. The fisheries will continue to suffer if the regulatory agencies continue the practice of "the left hand doesn't know what the right hand is doing." Your June 12<sup>th</sup> letters offer no information regarding the status or direction of those related proceedings. Our withdrawal of protests will depend, in part, on the level of coordination between the water right and related proceedings.

Finally, the Division has not proposed any measures to assure compliance with the conditions in an approved permit. We understand that the State Water Board and California Department of Fish and Game (CDFG) have extremely limited capabilities to conduct field inspections of existing diversions in this basin. Yet the amended applications appear to provide no basis for compliance, other than the applicants' good faith. We need more than such good faith to prevent further adverse impact to fisheries threatened with extinction. In the Staff Report (p. 37) and your May 28, 1998 letter to us, you anticipate that new permits will include specific compliance measures, to be developed on a case-by-case basis. So, for each of these applications, what compliance measures do you now propose?

In sum, the listed fisheries in this basin will not recover just because the State Water Board (including your Division) has good intentions or makes informed predictions in review of applications for new diversions. Your predecessors who granted the existing water rights also had good intentions and made informed judgments. Nonetheless, the cumulative impact of their decisions, along with other limiting factors subject to other regulatory controls, is that the listed fisheries are threatened with extinction. Recovery requires improvement in actual habitat conditions. The amended applications, like your Staff Report, do not provide adequate assurances that the actual impacts on listed fisheries will be neutral at worst.

#### Next Steps

Your June 12<sup>th</sup> letters stated that the Division will proceed with Field Investigations for minor projects with unresolved protests. We understand that is the next step required by the Water Code. Since Field Investigations tend to focus on the individual circumstances of

Ed Dito  
July 7, 1998  
page 4

applications, we respectfully request that the Division use its discretion and authority to first address our generally applicable grounds for protest in a more systematic manner.

We disagree with your conclusion, as stated in your May 28<sup>th</sup> letter, that we or any other party should have primary responsibility for submitting the information sought in our "Additional Grounds for Protest," or for developing that information in the course of a Field Investigation. As one example, we requested that the State Water Board determine how much water is available for appropriation in each affected tributary, before acting on an application for new diversion. That determination is a fundamental precondition for approval of an application. Surely you do not mean that the State Water Board may approve an application without developing an adequate record as to availability of unappropriated water.

We request the following steps for further review of the above applications.

1. The Division should disclose all information in your records responsive to the following questions regarding hydrologic impact of each application:
  - A. What is the unimpaired flow at the proposed point of diversion, by month and year-type?
  - B. What is the regulated flow at the proposed point of diversion, by month and year-type?
  - C. Under existing water rights (riparian, pre-1914, appropriative, and any other), what is the maximum allowable diversion in this stream at and above the proposed point of diversion, by month and year-type?
  - D. Under B or C, does the bypass flow of 60% of the mean daily annual discharge, as proposed in the Staff Report (p. 36), now occur?
2. The Division should disclose all information responsive to the following questions regarding physical and biological impacts:
  - A. Do any steelhead or coho salmon use this tributary in the vicinity of the proposed diversion?
  - B. How will the proposed diversion affect the availability and quality of habitat for each life stage present in the affected tributary?

- C. How will the proposed diversion affect geomorphic processes beneficial to the fisheries, including passage of spawning gravel, as described in McBain and Trush's "Commentary" (March 12, 1998), pp.14-15?

3. The Division should convene a meeting or workshop -- which would include experts from the NMFS, U.S. Fish and Wildlife Service, CDFG, and any interested applicants or protestants -- to discuss methods or techniques which are feasible in these circumstances to:

- A. monitor actual flows into and out of the point of diversion, and report such data, on a real-time basis;
- B. monitor presence or movement of fish in a given year, to assure that an authorized diversion will not cause adverse impacts on spawning, incubation, or out-migration;
- C. provide for fish and gravel passage, and then monitor the effectiveness of such passage after construction; and
- D. monitor cumulative impacts of any new permits.

4. The Division should convene a meeting or workshop -- which would include permit officials from the agencies with permitting authorities under the Clean Water Act and Endangered Species Act, and any interested applicants and protestants -- to discuss:

- A. regulatory coordination in review of the applications; and
- B. existing compliance practices for water rights facilities in the Russian River Basin, and additional measures which may be appropriate for these applications.

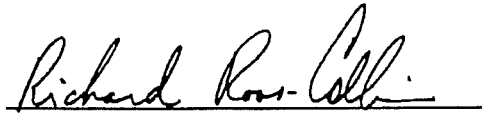
5. The Division should undertake Field Investigations only once these steps have occurred.

Ed Dito  
July 7, 1998  
page 6

I will call you and Mr. Johns later this week to discuss next steps.

Thank you for your consideration of this letter.

Sincerely,

A handwritten signature in cursive script, reading "Richard Roos-Collins", is written over a horizontal line.

Richard Roos-Collins  
NATURAL HERITAGE INSTITUTE

Attorney for  
TROUT UNLIMITED OF CALIFORNIA

cc: Attached service lists

# NATURAL HERITAGE INSTITUTE

LAW AND CONSULTING FIRM IN RESOURCE CONSERVATION

114 SANSOME STREET, STE. 1200  
SAN FRANCISCO, CA 94104  
(415) 288-0550  
FAX: (415) 288-0555  
SENDER'S E-MAIL: RRCOLLINS@N-H-I.ORG

July 24, 1998

ENCL. 8

Ed Dito  
Program Manager  
Application and Petition Section  
State Water Resources Control Board  
P.O. Box 2000  
Sacramento, CA 95812-2000

**Re: Pending Water Right Applications for the Russian River Basin**

Dear Mr. Dito:

This is a follow-up to our July 6, 1998 letter regarding water rights applications in this basin.

As we stated, one of our fundamental concerns is that any new or amended permit prevent any adverse impact on salmon and steelhead fisheries. In order to evaluate alternative conditions which may provide that assurance, we request that you provide information regarding existing water rights in this basin.

1. How many permits and licenses, pre-1914 rights, and riparian rights exist?
2. What is the total authorized diversion under those rights?
3. What is the total actual diversion under those rights, by year from 1990 to the present, or on a long-term basis?
4. How many field inspections did the Board conduct of actual diversion or storage facilities, by year from 1990 to the present, to evaluate compliance with the conditions of existing rights?
5. In response to complaints (23 C.C.R. § 821), on your own motion (23 C.C.R. § 823), or under any other authority, how many enforcement proceedings did the Board initiate regarding diversions in excess of rights, by year from 1990 to the present, in this basin? Please state the outcomes of any such proceedings.

Ed Dito  
July 7, 1998  
page 2

6. Has the Board conducted a survey, or otherwise formed an estimate, of the number of diversions in excess of rights, or the quantity of water so diverted, in this basin?

7. In 1988 the California Advisory Committee on Salmon and Steelhead Trout cited a Board survey as concluding that 35% of diversions are in excess of rights, statewide. See Attachment 1. In your judgment, is that estimate applicable to this basin? Also, please provide a copy of the survey.

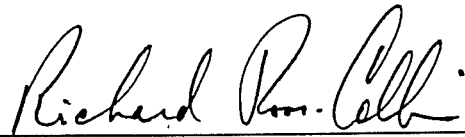
8. Does any existing permit or license in this basin require monitoring of (a) direct or (b) cumulative impact on anadromous fisheries or their habitat? Please provide a copy.

9. Does any existing permit or license for a minor project (3 c.f.s. of direct diversion, or 200 acre-feet or less of storage a year) in this basin require monitoring of inflow, bypass flow, or both?

10. Does the Board have authority to require public access to a monitoring station for inspection?

Thank you for your consideration of this letter.

Sincerely,



Richard Roos-Collins  
NATURAL HERITAGE INSTITUTE

Attorney for  
TROUT UNLIMITED OF CALIFORNIA

Enc.

cc: Attached service list

In Reply Refer  
to:332:EM [REDACTED]

**JUL 28 1998**

Natural Heritage Institute  
c/o Richard Roos-Collins  
114 Sansome Street, Suite 1200  
San Francisco, CA 94104

ENCL. 9

Dear Mr. Roos-Collins:

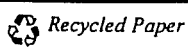
**WATER RIGHT APPLICATIONS** [REDACTED]  
[REDACTED]  
[REDACTED]

Thank you for your July 7, 1998 letter responding to the Division of Water Rights' (Division) June 12, 1998 letters relating to the processing of the above referenced water right applications. The Division requested Trout Unlimited of California (TUC) to advise the Division whether TUC's protests submitted against the applications would be withdrawn. The basis for TUC's withdrawal of its protests would have been the applicants' agreement to modify their projects in accordance with proposed project modification designed for the protection of fishery resources within the Russian River watershed. Your letter indicates that TUC will not withdraw its protests against the applications.

You have also suggested that the Division complete a series of steps for further review of the applications. Some of the evaluations you suggest are currently being performed. However, the Division intends to proceed with the further processing of the applications in accordance with the provisions of Water Code sections 1345-1348 for minor projects. Accordingly, a field investigation will be scheduled for each project and a Notice of Field Investigation will be distributed to all parties at least 20 days prior to the field investigation.

Please contact Ernest Mona at (916) 657-1947 (Application and petition Section) or Frank Roddy at (916) 657-1967 (Environmental Assessment Section), if you have any questions or wish to discuss this matter further.

*California Environmental Protection Agency*





Mr. Richard Roos-Collins

-2-

Sincerely,


**ORIGINAL SIGNED BY:**

Ed Dito  
Program Manager  
Application and Petition Section

Enclosure

cc: Enclosed Mailing List

*California Environmental Protection Agency*

 Recycled Paper

-75-

C

# NATURAL HERITAGE INSTITUTE

LAW AND CONSULTING FIRM IN RESOURCE CONSERVATION

114 SANSOME STREET, STE. 1200  
SAN FRANCISCO, CA 94104  
(415) 288-0550  
FAX: (415) 288-0555  
SENDER'S E-MAIL: RRCOLLINS@N-H-I.ORG

ENCL. 10

August 21, 1998

Ed Dito  
Program Manager  
Application and Petition Section  
Division of Water Rights  
State Water Resources Control Board  
901 P Street  
Sacramento, CA 95814

Re: Water Right Applications nos. [REDACTED]

Dear Mr. Dito:

Thank you for your July 28, 1998 letter responding to our July 7<sup>th</sup> letter regarding these pending applications for new water rights in the Russian River Basin.

You decline our proposal for certain procedures intended to resolve the issue whether the mitigation measures in the amended applications will be adequate to prevent further harm to the fisheries listed under the Endangered Species Act. We proposed workshops or other structured discussions with the National Marine Fisheries Service and other regulatory agencies, open to all parties in these proceedings, to address this central issue. We also requested that the Division disclose the basis for your apparent conclusion that unappropriated water in each of the affected streams will be adequate to comply with the 1997 Staff Report's requirements for bypass flows.

Your letter does not deny that the SWRCB has the authority to undertake the procedures we proposed. Your letter implies that our procedures are unnecessary, since some of the evaluations "...are currently being performed." Because of the passive voice and generality of the statement, we are uncertain who is evaluating which of the specific issues raised in our letter, and on what schedule. More importantly, we did not just ask for the Division to evaluate these issues. We proposed procedures by which your data, methods, and conclusions may be tested by experts representing Trout Unlimited and other interested agencies and parties.

Ed Dito  
August 21, 1998  
page 2

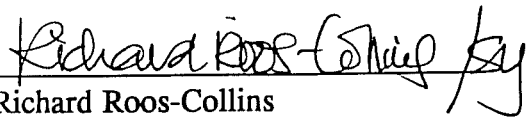
You state that the Division will proceed with Field Investigations, as required by the Water Code sections 1345-1348 for minor projects with unresolved protests. We understand the law requires that procedure. We do not understand how, alone, it will resolve the specific issues raised in our July 7<sup>th</sup> letter. A site visit, which will occur during a single day, will not be informative on the issue whether unappropriated water will be available for both the proposed diversion and the required bypass flows, during the entire diversion season in all year-types. It will not be informative on the issue whether the mitigation measures will be adequate to protect all life stage of the listed species. Under basic scientific principles, it is impossible to evaluate current physical and biological conditions of the fishery habitat in a given stream, much less predict future conditions, on the basis of such casual and limited observations.

We appreciate and hope that Field Investigations may contribute to better working relations between the applicants and protestants in these proceedings. However, that procedure is merely the minimum required by the Water Code in this circumstance. Even for a minor project, the Division has express authority, under 23 C.C.R. § 760(b)(4) and other law, to hold a hearing or undertake other appropriate procedures if the Field Investigation does not resolve a protest. We intend to file a formal motion with the Board itself requesting approval of the further procedures we have proposed for these and other pending water right applications in this basin.

I will be out of my office until August 28. Please notify my paralegal, Stephanie Yang, if you schedule any Field Investigations or other actions related to these applications during this period. You may reach her at the above number.

Thank you.

Sincerely,

  
Richard Roos-Collins  
NATURAL HERITAGE INSTITUTE

Attorney for  
TROUT UNLIMITED OF CALIFORNIA

cc: Attached service list

# NATURAL HERITAGE INSTITUTE

LAW AND CONSULTING FIRM IN RESOURCE CONSERVATION

114 SANSOME STREET, STE. 1200  
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(415) 288-0550  
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SENDER'S E-MAIL: RRCOLLINS@N-H-I.ORG

ENCL. 11

August 21, 1998

Ed Dito  
Program Manager, Application and Petition Section  
Division of Water Rights  
State Water Resources Control Board  
901 P Street  
Sacramento, CA 95814

**Re: Russian River Basin (SWRCB DWR no. 332:EM:050:10)**

Dear Mr. Dito:

Thank you for your August 5, 1998 letter responding to our July 24<sup>th</sup> letter requesting information regarding existing water rights in this basin. Trout Unlimited is grateful for your efforts to respond fully to our requests.

We have further questions based on your responses. For ease of reference, we organize these further questions in the same manner as the original.

1. Please list the appropriative, riparian, and other existing rights in this basin. The table in your response provides total numbers in five categories. So that we can better understand the cumulative pattern of water use, please organize the requested list by stream, name or assigned number, authorized storage or diversion, and category of right. We make this request pursuant to your generous offer (in response no. 8) to provide a complete list.

Please provide a companion list of all pending water rights applications (81 as of December 31, 1997, and 30 since that date).

Finally, we request that you put Trout Unlimited on the mailing list for notice of any further applications in the Russian River Basin. Please provide such notice to:

Stan Griffin  
Trout Unlimited of California  
828 San Pablo Avenue, No. 244  
Albany, CA 94706-1603

Richard Roos-Collins  
Natural Heritage Institute  
114 Sansome Street, Ste. 1200  
San Francisco, CA 94104.

2. Do the Statements of Diversion and Use estimate actual use, or state the maximum claim for use, under riparian rights?
3. You decline to estimate the actual use under the 1,330 existing rights in the basin. You suggest that we review your records, instead. We respectfully ask: how can the Division be assured that the unappropriated water in any tributary stream, or in the main stem itself, is adequate for protection of salmon and steelhead fisheries against further harm, if the Division does not itself have an estimate of actual use? We ask this question in two contexts. First, the Division is considering 111 applications for new diversions, and a precondition for approval is your finding that unappropriated water is available both for the diversion and for the by-pass flow necessary for fisheries protection. Second, the SWRCB will be called on to assist the National Marine Fisheries Service in the development of a recovery plan for these fisheries under the Endangered Species Act. Since the California Department of Fish and Game has repeatedly testified that flow regulation is a primary cause for the degradation of these fisheries, recovery will require an accurate understanding of how much flow is diverted, and how much remains, under existing rights.
4. You estimate that the Division issued 106 licenses on the basis of inspections since 1990. Is this estimate for this basin, or for the entire state? Please list such licenses in this basin, so that we may review the inspection reports.
5. No further question.
6. Are you aware of any other enforcement surveys ever undertaken by the Division in this basin, in addition to the 1998 survey of Maacama Creek described in your letter?
7. If the Division cannot estimate the extent of diversions in excess of rights in this basin, what assurance do you have that the bypass flow required by the 1997 Staff Report will actually occur in any stream where you approve a new water right application on the

Ed Dito  
August 21, 1998  
page 3

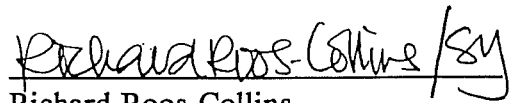
condition requiring such flow?

8. We asked whether the Division has ever required monitoring of direct or cumulative impacts on fisheries. You respond that many permits and licenses include terms designed to protect fisheries. Those terms, such as bypass flow requirements, are based on the Division's findings what mitigation measures will provide such protection. Of course, we understand that the Division makes such findings and includes such terms in water rights. Our original question was addressed to post-approval monitoring to determine whether the terms have the intended benefits. So we ask again: does any existing permit or license in this basin require monitoring of direct or cumulative impact on fisheries or their habitat? Examples of possible monitoring protocols include: measurement of stream depth necessary for spawning, passage, or some other activity; or observation of the behavior of individual fish:
9. Same question.
10. No further question.

I will be out of my office until August 28. Please notify my paralegal, Stephanie Yang, if you need clarification or otherwise wish to discuss any of the requests in this letter. You may reach her at the above number.

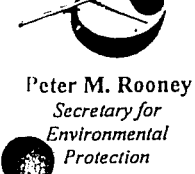
Thank you.

Sincerely,

  
Richard Roos-Collins  
NATURAL HERITAGE INSTITUTE

Attorney for  
TROUT UNLIMITED OF CALIFORNIA

cc: Attached service list



Peter M. Rooney  
Secretary for  
Environmental  
Protection



Pete Wilson  
Governor

# State Water Resources Control Board

John P. Caffrey, Chairman

Division of Water Rights  
901 P Street • Sacramento, California 95814 • (916) 657-0765 FAX (916) 657-1485  
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000  
Internet Address: <http://www.swrcb.ca.gov>

SEP 16 1998

In Reply Refer  
to: 332:EM [REDACTED]  
[REDACTED]

Richard Roos-Collins  
Natural Heritage Institute  
114 Sansome Street, Suite 1200  
San Francisco, CA 94104

ENCL. 12

Dear Mr. Roos-Collins:

WATER RIGHT APPLICATIONS - [REDACTED]  
[REDACTED]  
[REDACTED]

This is in reply to your August 21, 1998 letter regarding the water right applications described above. By letter dated July 28, 1998 we advised you that the Division of Water Rights (Division) will continue to process these applications in accordance with the provisions of the Water Code. In your most recent letter, you request that the Division schedule a series of public workshops. In addition, you request that the Division disclose the basis for the conclusion that water is available for appropriation. You state that you are seeking to test the data, methods, and conclusions that are the basis for the proposed findings that water is available.

**Public Participation Process** While developing its proposed approach to process pending applications, the State Water Resources Control Board (SWRCB) held three public workshops to receive comments and recommendations relating to actions that should be taken on pending water right applications within the Russian River watershed. Approximately 150 people attended each of those public workshops. Based on comments received at those workshops, the Division developed, and is implementing, a multi-staged process to address water right issues within the watershed. As the first step in that process, the Division developed a hydrologic model to evaluate the availability of water and also developed project operating conditions that are designed to protect fishery resources within the watershed.

The results of the Division's evaluation are described in a staff report dated August 15, 1997 that provides a detailed description of the analysis of water availability, the proposed measures to protect fishery resources and the proposed approach for acting on pending applications within the Russian River watershed. As described in the staff report, Division staff conclude that sufficient water is available to allow diversion during the peak winter runoff period and, at the

same time, to provide adequate flow to protect the fish and other public trust resources. Division staff recommend that pending applications for wintertime storage and diversion of water be approved, provided the projects are modified to include specific conditions that: limit the allowable season of diversion, limit the rate of diversion, require bypass of flows needed for fish, and implement measures to insure compliance with these terms.

Copies of the staff report were distributed to 800 individuals, public agencies and environmental groups for review and comment. Division staff also met with representatives of the Department of Fish and Game and the National Marine Fisheries Service to discuss the proposed approach described in the staff report. In addition, Division staff discussed the methodology with you on several occasions. On October 23, 1997 the SWRCB held a public workshop to discuss the recommendations contained in the staff report. At the workshop, the SWRCB concurred with Division staffs' recommendations and proposed approach for acting on the pending applications.

In view of the number of public workshops and meetings that the SWRCB and its staff have conducted before, during, and after release of the staff report, Division staff do not believe that substantial new information would be provided at another public workshop.

**Water Right Process** Following the SWRCB's concurrence with the staff report, the Division sent letters, dated April 10, 1998 and March 24, 1998, to parties who had submitted water right applications and requested that the applicants advise the Division whether they would agree to amend their application and modify their project to include proposed conditions to protect fishery resources. As described in those letters, if the applicants agreed to the proposed conditions, the Division would continue to process the applications and would prepare the appropriate environmental document, in accordance with provisions of the California Environmental Quality Act (CEQA).

The Division then contacted all parties who submitted protests against the applications. The protestants were asked whether they would withdraw or dismiss their protest, in view of the proposed approach described in the staff report and the applicant's willingness to modify their project. Trout Unlimited of California advised the Division that it would not withdraw its protests against the applications.

As described to you in our July 28 letter, the Water Code describes specific procedures for processing protested minor applications with unresolved protests. Water Code section 1345, states that: "The Division of Water Rights shall conduct a field investigation of all minor protested applications. The board shall notify the parties of the field investigation to enable the parties to attend and present information to the board". The Division may request information before, during, or after the field investigation (sec. 1346). Based upon the field investigation and other information obtained, "The Division of Water Rights shall issue a decision unless the board



in its discretion determines that additional proceedings should be conducted under section 183.<sup>1</sup> A decision of the Division of Water Rights is subject to review as provided in Chapter 4 (commencing with section 1120).<sup>2</sup> The Division intends to continue processing these applications, in accordance with these provisions of the Water Code.

**Water Availability** Prior to the field investigation, the Division staff will conduct an analysis of water availability for each project.<sup>3</sup> Division staff will also prepare an Initial Study, in accordance with CEQA requirements. In addition to an environmental assessment of the project, the Initial Study will include information relative to water availability for each project. A copy of the Initial Study will be provided to all parties in conjunction with the Notice of Field Investigation. All parties, including Trout Unlimited, will have an opportunity to review and comment on the analysis of water availability conducted by Division staff, or to submit an independent analysis of water availability, as part of the protest resolution process required under section 1345 for minor protested applications.

**Conclusions** In conclusion, we intend to process these applications and other protested minor applications as outlined above. The field investigation is the next step in the water right process. The field investigation will provide an opportunity for the applicant, experts representing Trout Unlimited and/or other protestants and interested parties to evaluate and comment on the Division's data, methods, and conclusions. Contrary to your assumption that a field investigation does not involve technical examination of physical and biological conditions, the SWRCB can request such material for its evaluation before, during, and after a field investigation.

You indicate in your letter that you intend to file a formal motion with the SWRCB requesting approval of your proposed procedures for processing all applications within the Russian River watershed. The SWRCB will review your motion when it receives it.

---

<sup>1</sup> Under section 183, the SWRCB may hold a hearing and conduct any investigations to carry out the powers vested in it.

<sup>2</sup> Under section 1122, the Board may order a reconsideration of all or part of a decision or order on the board's own motion or on the filing of a petition of any interested party. Under section 1126, any party aggrieved by any decision or order may, not later than 30 days from the date of final action by the board, file a petition for a writ of mandate for review of the decision or order.

<sup>3</sup> A prerequisite to the issuance of a water right permit issued by the SWRCB is that unappropriated water must be available to supply the applicant (Water Code section 1375). Unappropriated water does not include water being used by others under senior or prior rights, nor does it include the quantity of water required for the preservation and enhancement of fish and wildlife, other beneficial uses of water, and competing applications for appropriation.

Please contact me at (916) 657-1954, Ernest Mona at (916) 657-1947 (Application and Petition Section) or Frank Roddy at (916) 657-1967 (Environmental Assessment Section), if you have any questions or wish to discuss this matter further.

Sincerely,

*Ed Dito*

Ed Dito  
Program Manager  
Application and Petition Section

Enclosure

# STATE WATER RESOURCES CONTROL BOARD MEETING AND WORKSHOP AGENDA

Thursday, August 3, 2000 - 9:00 a.m.

First-Floor Hearing Room  
Paul R. Bonderson Building  
901 P Street, Sacramento

Questions regarding this agenda call Maureen Marché (916) 657-0990 or fax 657-0932. This notice and associated staff reports can be accessed electronically through our Internet address: <http://www.swrcb.ca.gov>. (Note: agenda items should be available electronically on July 26, 2000.)

Workshop includes informal discussion of items to be presented for action at a future business meeting. People who are interested in items on the agenda are urged to attend workshops as they may miss valuable discussion that will not be repeated at the Board meeting. NOTE: There is no voting at workshops. Items requiring Board action must come to a Board meeting.

Please note time limitations on presentations may be imposed.  
The State Board requests that oral testimony be summarized.  
Submittal of written comments is encouraged to ensure  
that all comments will be included in the  
record before the Board.\*

ENCL. 13

ITEMS 1-5 WILL BE DISCUSSED STARTING AT 9:00 A.M., THURSDAY, AUGUST 3, 2000

ITEMS 6-9 WILL BE DISCUSSED STARTING AT 1:00 P.M., THURSDAY, AUGUST 3, 2000

## Board Meeting

### PUBLIC FORUM

Any member of the public may address and ask questions of the Board relating to any matter within the Board's jurisdiction, provided the matter is not on the Board's agenda or pending before the Board or a Regional Board.

*Note: Presentations at the Public Forum will be limited to 5 minutes or otherwise at the discretion of the Chairman.*

### WATER QUALITY

1. Consideration of a Resolution Approving the Selection of Ag Drainage Consultants to Analyze Potential Alternatives to Address Problems Related to Subsurface Agricultural Drainage in the San Luis Unit of the Central Valley Project. (The Board will consider whether to adopt the proposed resolution.)

## Workshop

### CLEAN WATER PROGRAMS

2. Consideration of Adoption of the Small Communities Grant Program Project Priority List. (The Board will consider, at a Board meeting, whether to adopt the proposed resolution approving the Small Communities Grant Program Project Priority List.)

3. Consideration of a Resolution Adopting the Proposed Amendments to the Underground Storage Tank Cleanup Fund Regulations. (The Board will consider, at a Board meeting, whether to adopt the proposed resolution approving the regulations.)

\*\*4. Consideration of Approval of the Extension of the Expiration Date for the \$47 million State Revolving Fund (SRF) Commitment for the Los Osos Community Services District, Los Osos/Baywood Park Wastewater Project C-06-4014-110. (The Board will consider, at a Board meeting, whether to adopt the proposed resolution to extend the expiration date of the SRF loan commitment.)

CLEAN WATER PROGRAMS PETITION. (note Item 5 will not be discussed earlier than 11:00 a.m.)

5. In the Matter of the Petition of G. W. Singletary for Review of a Determination of the Division of Clean Water Programs, State Water Resources Control Board, Finding Petitioner Ineligible to Participate in the Underground Storage Tank Cleanup Fund. SWRCB/OCC File UST-145. (The Board will consider, at a Board meeting, whether to adopt the proposed order upholding the Division's decision.)

WATER QUALITY (Note: Items 6-9 will be discussed starting at 1:00 p.m.)

6. Consideration of Approval of a Resolution for Certification Pursuant to the California Environmental Quality Act (CEQA) of the Final Programmatic Environmental Impact Report (Final PEIR) Covering General Waste Discharge Requirements for Biosolids Land Application. (The Board will consider, at a Board meeting, whether to adopt the proposed resolution.)

7. Consideration of Adoption of General Waste Discharge Requirements for Discharge of Biosolids to Land for Use as a Soil Amendment in Agriculture, Silviculture, Horticulture, and Land Reclamation Activities. (The Board will consider, at a Board meeting, whether to adopt the proposed resolution.)

\*\*8. Consideration of Adoption of a Resolution Approving a State Revolving Fund Loan of \$2 Million to the Sierra Foothills Conservancy for the Sonny Meadows Mitigation Bank Project and to Update the Current Statewide Project Priority List to Include the Project (Loan No. C-06-6076-110). (The Board will consider, at a Board meeting, whether to adopt the proposed resolution.)

WATER RIGHTS

9. Report on the Division of Water Rights' Revised Proposal on Actions to be Taken for Environmental Review of Pending Water Right Applications Within the Russian River and Mid-California Coastal Watersheds. (Information item).

**Closed Session Items**

(Please note Closed Sessions are not open to the public)

WATER QUALITY PETITION

The Board will be meeting in closed session to deliberate on a decision to be reached following a formal hearing it conducted in the Matter of the Petitions of the Cities of Bellflower, et al., City of Arcadia, and Western States Petroleum Association (Review of January 26, 2000 Action of the Regional Board, and Actions and Failures to Act by Both the Regional Board and its Executive Officer Pursuant to Order No. 96-054, Permit for Municipal Storm Water and Urban Run-Off Discharges With Los Angeles County [NPDES No. CAS614001]), Los Angeles Region. SWRCB Files A-1280, A-1280(a), and A-1280(b). (This closed session is authorized by Government Code section 11126, subdivision (c)(3).)

PERSONNEL The Board will be meeting in closed session to discuss the appointment, evaluation of performance or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing. Authorized under Government Code Section 11126(a)(1).

\*In order to be fully considered at the meeting, all written comments must be received by 5:00 p.m., Monday, July 31, 2000. Mailing address: PO Box 100, Sacramento, CA 95812-0100; FAX 916-657-0932

\*\*These items are expected to be routine and noncontroversial and there will be no discussion unless requested by a Board Member, staff or interested party. If such a request is made, the item will be considered separately.

STATE WATER RESOURCES CONTROL BOARD  
WORKSHOP SESSION - DIVISION OF WATER RIGHTS  
AUGUST 3, 2000

ITEM 9

**SUBJECT:**

REPORT ON THE DIVISION OF WATER RIGHTS' REVISED PROPOSAL ON ACTIONS TO BE TAKEN FOR ENVIRONMENTAL REVIEW OF PENDING WATER RIGHT APPLICATIONS WITHIN THE RUSSIAN RIVER AND MID-CALIFORNIA COASTAL WATERSHEDS

**DISCUSSION:**

On August 15, 1997, Division of Water Rights (Division) staff released a staff report entitled, "Russian River Watershed: Proposed Actions to be taken by the Division of Water Rights on Pending Water Right Applications within the Russian River Watershed" (Russian River Report). The Russian River Report was developed in response to concerns about the potential impacts new water diversions may have on coho salmon and steelhead (both of these species are listed as threatened on the federal Endangered Species list). Division staff concluded that typically adequate water can be available for appropriation in the winter under certain conditions, but no water is available in the spring, summer, or fall without the potential of causing adverse environmental impacts. Accordingly, Division staff recommended approval of pending applications in the tributaries of the Russian River for winter diversion and/or storage, with the inclusion of the terms outlined in the Russian River report. The staff advised the State Water Resources Control Board (SWRCB) of the proposed approach at a workshop on October 23, 1997. The Division advised the SWRCB that it would apply the procedures in the Russian River Report to pending applications on a case-by-case basis.

Subsequent to the release of the Russian River Report, interested parties raised concerns about the Division's proposal and proposed alternatives by the National Marine Fisheries Service (NMFS) and Trout Unlimited. Division staff held several meetings with the NMFS, Trout Unlimited, and the California Department of Fish and Game (DFG) discussing the measures that should be taken to protect fisheries resources within the Russian River as well as other coastal streams. As a result of these discussions, the Division retained Dr. Peter Moyle and Dr. G. Mathais Kondolf to conduct a peer review of all of the proposals. Division staff convened a workshop on January 31, 2000 during which the proposals were presented to the peer review panel, with commentary from other interested parties. The workshop was attended by Division staff, the NMFS, Trout Unlimited, the DFG, California Sportfishing Protection Alliance, and Wagner & Bonsignor and Napa Valley Vineyard Engineering representing water users.

The peer review panel completed their review on June 12, 2000. Copies of the review were distributed on June 10, 2000 to all of the participants of the January workshop. The peer review recommends using the NMFS approach, with the addition of a separate depth criteria

for smaller streams that are used by anadromous fishes, and with consideration of the cumulative effects of water projects on the duration of high flows.

Division staff has considered the results of the peer review and the NMFS proposal in a staff report dated July 18, 2000 and entitled, "Russian River and Other mid-California Coastal Watersheds: Proposed Actions to be taken by the Division of Water Rights for the Environmental Review of pending Water Right Applications" and modified the criteria accordingly. Copies of the Russian River Report, peer review report, and the draft guidelines from the NMFS and the DFG have been forwarded to the Board Members for their information.

Division staff recommends that the criteria outlined in the July 2000 Staff Report be considered for inclusion in the environmental review of all pending water right applications within the Russian River and other mid-California coastal watersheds. Pending applications will be evaluated on a case-by-case basis and appropriate measures will be included in any permits issued. Division staff believes small water projects can be permitted with the criteria so that the individual and cumulative effects of these projects are reduced to non-significant levels. Applicants that desire to operate their projects other than under these conditions will need to submit fishery studies and other supporting documentation to demonstrate that fishery resources will not be adversely affected or they will need to prepare an Environmental Impact Report.

**POLICY ISSUES:**

Should the Division continue the processing of water rights as outlined in the July 2000 Staff Report?

**FISCAL IMPACT:**

This activity is included within the Division's authorized budget.

**REGIONAL BOARD IMPACT:**

Division staff will continue to coordinate with staff of the North Coast and San Francisco Bay Regional Water Quality Control Boards in addressing the water quality concerns related to applications for water rights.

**STAFF RECOMMENDATION:**

Unless directed otherwise, Division staff will continue processing pending applications as outlined in the July 2000 Staff Report.

Policy Review:           *PK*          

Fiscal Review:           *N/A*          

Legal Review:           *BP*

State Water Resources Control Board  
Division of Water Rights

STAFF REPORT

RUSSIAN RIVER AND OTHER MID-CALIFORNIA  
COASTAL WATERSHEDS

Proposed Actions to be taken by the Division of Water Rights for  
Environmental Review of Pending Water Right Applications

July 20, 2000

**Background**

In the process of reviewing water right applications and issuing water right permits, the State Water Resources Control Board (SWRCB) must comply with the provisions of the California Environmental Quality Act (CEQA) and the California Endangered Species Act. The Division of Water Rights (Division), as part of its environmental review of water right applications, must identify and consider the potential environmental impacts of the proposed project. The environmental review addresses potential impacts of the diversion and use of water on aquatic and terrestrial habitat, fish and wildlife resources, water quantity and quality, archeological and cultural resources, and other issues required by the CEQA.

Due to the declining populations of steelhead and coho salmon within the Russian River and other coastal watersheds, and the subsequent listing of these species by the National Marine Fisheries Service (NMFS) under the federal Endangered Species Act (ESA), the Division endeavored to identify a set of criteria designed to protect steelhead and coho salmon within the Russian River watershed from the effects of pending water right applications. On August 15, 1997, Division staff released a staff report entitled, "Russian River Watershed: Proposed Actions to be taken by the Division of Water Rights on Pending Water Right Applications within the Russian River Watershed" (Russian River Report). Division staff concluded that, under certain conditions, adequate water is available for appropriation in the winter, but no water is available in the spring, summer or fall without the risk of harming fishery resources. Further, Division staff found that projects with the criteria set forth below would not likely have a significant effect on steelhead or coho salmon. Accordingly, Division staff recommended the processing of pending minor applications in the tributaries of the Russian River for winter diversion or storage, with the inclusion of the following terms that were designed to protect fishery resources. These terms would be applied on a case-by-case basis.

- Allowable season of diversion of December 15 to March 31;
- Minimum bypass flow equal to 60% of the average annual unimpaired flow;
- Limitations on the maximum rate of diversion to address possible cumulative impacts;

- Prevention of barriers to fish passage;
- Construction of fish screens; and
- Establishing a method to demonstrate compliance with the bypass terms.

The SWRCB reviewed Division staff's intended actions at a workshop on October 23, 1997. The Division staff advised the SWRCB that they would apply the procedures outlined in the Russian River Report for the environmental review of pending water right applications on a case-by-case basis. The Division began implementing these recommendations within the Russian River and other coastal watersheds following the workshop. The Division is continuing to evaluate the potential environmental effects of the pending applications related to other issues (terrestrial wildlife, habitat, archeology, etc.).

## Proposals by Others

McBain and Trush, an environmental consulting firm retained by Trout Unlimited, submitted a commentary dated March 12, 1998 commenting on the Russian River Report. They followed this up with an additional commentary dated May 4, 1999 proposing alternate criteria for approving diversions within the Russian River watershed. McBain and Trush modified these recommendations in an e-mail dated January 10, 2000 and recently provided a draft report related to their recommendations dated July 10, 2000.

The NMFS submitted a letter dated October 23, 1998 stating that the methods described in the Russian River Report for developing flow regimes were not acceptable and were inadequate for protecting salmonids listed under the ESA. The NMFS developed another set of criteria for the protection of salmonids for the approval of water diversions in a submittal dated January 11, 2000. The NMFS is also protesting all recent water right applications within watersheds where salmonids listed under the ESA occur. The listed terms for dismissal of their protests include most of the recommendations submitted on January 11<sup>th</sup>.

The NMFS, in conjunction with the California Department of Fish and Game (DFG), prepared "draft guidelines" for protecting fisheries resources downstream of water diversion in mid-California coastal streams based on the NMFS' proposal presented to the peer review panel discussed below. These "draft guidelines" are considered recommendations of these agencies since neither is proposing to formally adopt these guidelines as regulations. The recommendations are generally consistent with those presented at the January workshop by the NMFS:

- Allowable season of diversion of December 15 to March 31. Instantaneous inflow to the point of diversion must equal instantaneous outflow to downstream reaches past the point of diversion outside the diversion season;
- No additional permitting of small onstream reservoirs;
- Minimum bypass flow equal to the unimpaired February median flow;
- Protection of the natural hydrograph and avoidance of cumulative impacts by:
  1. Maximum rate of diversion less than 5% of the unimpaired 1.5 year storm event;
  2. The cumulative maximum rate of instantaneous withdrawal at the point of diversion shall not exceed 15% of the estimated "winter 20% exceedance flow";
- Provide adequate passage and screen facilities where salmonids occur;



- Quantification of all water rights being sought or claimed by the applicant; and
- Establishment of compliance and monitoring measures.

## Peer Review

Division staff held several meetings with the NMFS and Trout Unlimited discussing the measures that should be taken to protect fisheries resources within the Russian River, as well as other coastal streams. Based on the recommendation of the parties, the Division retained the services of two independent scientists from the University of California to conduct a peer review of the Russian River Report, the NMFS recommendations, and the recommendations of Trout Unlimited. Dr. Peter Moyle, of the University of California at Davis, and Dr. G. Mathais Kondolf, of the University of California at Berkeley, conducted a peer review of all of the proposals. This peer review began with a workshop on January 31, 2000 during which the proposals were presented to the peer review panel, along with commentary from other interested parties. The workshop was attended by about 30 individuals representing Division staff, the NMFS, Trout Unlimited, the DFG, California Sportfishing Protection Alliance, Wagner & Bonsignor and Napa Valley Vineyard Engineering representing water users.

The peer review panel completed their review on June 12, 2000. Copies of the review have been distributed to all of the participants of the January workshop. Due to the uncertainty in establishing flows to protect fishery resources, the peer review recommended using the NMFS approach, with the addition of a separate depth criteria for smaller streams that are used by anadromous fishes, and with consideration of the effects on the duration of high flows. The peer review panel also proposed methods to minimize habitat for introduced species that have had a negative effect on native species (*e.g.*, bullfrogs).

## Division Staff Recommendations

Division staff has reviewed the peer review report dated June 12, 2000 and generally agrees with its recommendations. Division staff believes that water right projects that conform to the conditions set forth below will not have a significant effect on salmonid species within the Russian River and other mid-California watersheds. In general, these conditions apply to smaller projects, which generally fall within the Water Code description for minor projects (200 acre-feet of storage or less or 3 cfs or less direct diversion). Larger projects usually require site specific fishery studies to determine potential impacts and appropriate mitigation. Applications will be evaluated on a case-by-case basis to determine which conditions may apply to each project.

Each application will still need to be evaluated for other potential environmental impacts that are specific to each proposed project. The peer review panel's suggestion to minimize habitat for introduced species, due to their negative effect on native species, will continue to be considered during the environmental review of pending water right applications. The CEQA requires that all potential impacts of a proposed project be evaluated.

## Environmental Review of the Entire Project Under All Bases of Water Rights

The SWRCB, for most applications for a water right, is the Lead Agency as defined by the CEQA. The Lead Agency must provide environmental review of the project as a whole. In

the case of water development projects, this would include the evaluation of the use of water for the entire project, regardless of the basis of the water right.

The Division will determine the baseline condition from which the proposed project is evaluated during the preparation of the appropriate environmental documentation. This begins with the evaluation of the pre-project use of water under any valid basis of water right for the project site. The applicant will provide a description of the pre-project use of water, including documentation of the validity of the basis of water right for these diversions. For CEQA purposes, the basis for the impact analysis is the change in the environment that may occur from this baseline condition. If the pre-project use of water is under a claim of riparian or pre-1914 water right, the person diverting the water is required to comply with Water Code section 5100 *et seq.* and file a statement of diversion and use.

The incremental environmental effects of the increase in water diversion and use between the proposed project and that under the pre-project conditions will be disclosed by the applicant and evaluated. In order to avoid the necessity of complex environmental studies or disclosure of adverse environmental effects through an Environmental Impact Report (EIR), conditions will be proposed to mitigate for the adverse environmental effects of the proposed project. This will include terms (1) to limit water use under the water right permit to certain seasons and conditions as set forth below, and (2) to ensure that water use beyond pre-project levels under other water rights (*e.g.* pre-1914 or riparian) does not occur as a result of approving the water right application, if such an increase could cause significant adverse environmental effects. Division staff has been working with various parties to develop a water right permit term that limits the amount of water diverted under any basis of water right to that set forth in the environmental review.

### **No New Migration Barriers**

Onstream reservoirs have the potential to block fish passage and negatively affect stream processes needed to maintain healthy habitats for salmonids (*e.g.*, gravel recruitment). The NMFS/DFG suggest that no existing, unauthorized, onstream reservoirs should be permitted and no approvals should be granted for new onstream reservoirs. Division staff believes that any project that blocks current spawning migration routes has the potential of causing significant adverse effects and should not be permitted absent an EIR. The Division shall continue to encourage applicants to design their projects for offstream storage. For existing, unauthorized diversions, the same criteria listed below will be applied on a case-by-case basis. In some cases, these facilities may need extensive modification or may need to be removed.

### **Season of Diversion**

The Russian River Report proposed a season of diversion of December 15 to March 31 based primarily upon hydrologic analysis and life stage evaluation of the anadromous fish species present. All of the alternate proposals have also proposed this season. The peer review agreed that this season is appropriate for avoiding significant effects on salmonid species outside of this season. Division staff recommends that the typical season of diversion of December 15 to March 31 be retained to prevent further effects on salmonid species during the critical spring, summer, and fall months.

The NMFS/DFG recommend that instantaneous inflow to the point of diversion equal instantaneous outflow to downstream reaches past the point of diversion outside the diversion season. For small impoundments, this could require flow bypass facilities. Division staff agrees that this is the preferable method of operation for new water rights, however, the Division will evaluate the need for this condition for each application.

### Bypass Flow

Due to the uncertainty of setting stream flows for the protection of fish and fish habitat, the peer review recommends using the unimpaired February median flow to establish a bypass flow instead of the 60% of the average annual flow described in the Russian River Report. The February median flow is approximately twice that of the 60% of the average annual unimpaired flow (*i.e.*, 120% of the average annual unimpaired flow). Division staff believes that even with a higher bypass requirement, sufficient water will still be available for appropriation during the diversion season in many areas. Subsequently, Division staff is recommending using the February median as the bypass flow where needed to protect fish habitat or provide appropriate contributions to fish habitat downstream. In small streams where anadromous fish are present, a depth criteria of approximately 8 to 12 inches may be used where the median February flow does not provide adequate habitat to protect anadromous fish directly below the point of diversion.

### Cumulative Effects

In order to make a finding of no significant impact to fishery resources, there should be no significant alteration of the natural hydrology of the stream in normal and wetter years. The NMFS/DFG suggest that the maximum rate of diversion should be less than 5% of the unimpaired 1.5 year storm event, and the cumulative maximum rate of instantaneous withdrawal at the point of diversion shall not exceed 15% of the estimated "winter 20% exceedence flow". The existence of authorized onstream storage facilities within a watershed makes this evaluation of cumulative effects impractical. Also, the NMFS recognizes in their recommendations that preventing the overall reduction to peak flows is an acceptable method of evaluating cumulative impacts. Division staff has been using a graphical comparison of the unimpaired hydrograph and the impaired hydrograph, including all known diversion within a watershed, to evaluate the impacts of the proposed project and all other diversions on the flow of the affected stream. Significant alteration of the natural hydrograph through the loss of peak flows in normal years due to water diversions will be considered a cumulative effect requiring the preparation of an EIR or more detailed environmental review. Division staff proposes to continue to evaluate cumulative effects in this manner.

### Fish Passage and Screening Facilities

The Russian River Report recommended the use of fish passage and screening facilities where salmonid species occur at the point of diversion. The NMFS, the DFG, Trout Unlimited, and the peer review also express this need. Division staff will continue to require these measures where necessary.

July 20, 2000

**Compliance and Monitoring**

In order for mitigation criteria to be effective, compliance and monitoring is necessary. The Division requires water right holders to develop compliance and monitoring plans that must be approved by the Division Chief prior to the diversion of water. The Division will continue to require compliance and monitoring.

EJO / KN

MARGRETT  
CHAIR  
MANESTAD  
FINE KEHOE  
LOWENTHAL  
MACHADO  
OLE HICKEN



California Legislature

Senate Committee

on

Natural Resources and Water

SHEILA JAMES KUEHL  
CHAIR

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August 30, 2006

ENCL. 14

Attn: Karen Niiya and Eric Oppenheimer  
Division of Water Rights  
State Water Resources Control Board  
1001 I Street, 14<sup>th</sup> Floor  
P.O. Box 2000  
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Email: [FlowPolicy@waterboards.ca.gov](mailto:FlowPolicy@waterboards.ca.gov)

STATE WATER RESOURCES  
CONTROL BOARD  
2006 AUG 31 AH 9:11  
DIV. OF WATER RIGHTS  
SACRAMENTO

Re: North Coast Instream Flow Policy (A.B. 2121)  
Substitute Environmental Document

Dear Ms. Niiya and Mr. Oppenheimer:

As you may know, I was the author of A.B. 2121, which was signed into law by Governor Schwarzenegger. The law requires the Board to adopt principles and guidelines for maintaining instream flows in coastal areas in northern California. I am pleased to see that the Board has opened the scoping period and formally begun the work of adopting that instream flow policy.

For far too long, ineffective regulation of water diversions has threatened salmon, steelhead, and other important public trust resources. At the same time, the lack of adequate policies for maintaining instream flows has made processing new permit applications in the area very difficult. The Board's adoption of sound principles and guidelines for instream flows will be a strong first step toward the recovery of salmon and steelhead and reaching decisions on the backlog of pending applications.

At a minimum, the North Coast Instream Flow Policy must include scientifically based safeguards to protect instream flows, maintain a natural hydrograph, regulate destructive in-channel reservoirs, provide fish passage and screens where helpful, and guard against cumulative impacts resulting from multiple diversions. The policy must also include measures that ensure proper monitoring and compliance. I am pleased that the Notice of Preparation declares that the policy will include an enforcement element.

Appendix A

Thank you for your consideration. If you have any questions, please contact William Craven of my staff, at 916-651-4116.

Sincerely,



Senator Sheila Kuehl, Chair  
Senate Natural Resources and Wildlife Committee



**Contact:**

- Chuck Bonham, TU California Counsel, 510-528-4164
- David Katz, TU California Director, 707.543.5877

ENCL. 15

**For Immediate Release: October 1 , 2004**

## **Trout Unlimited Applauds Decision of Governor Schwarzenegger to Sign Measure to Protect Northern California Streams**

**Albany, CA --** The decision of Governor Arnold Schwarzenegger to sign legislation yesterday designed to protect northern California streams will have significant positive affects on the health of fragile salmon and trout population in the state, according to the conservation organization Trout Unlimited.

The legislation, AB 2121, requires the State Water Resources Control Board (SWRCB) to produce guidelines and principles to maintain instream flows in coastal streams in northern California from the Mattole River to San Francisco Bay and streams entering northern San Pablo Bay. Presently, the SWRCB does not have the administrative tools necessary to adequately determine how much water should remain instream for salmon and steelhead.

**"The decision of the Governor to sign AB 2121 demonstrates his commitment to helping to protect salmon and trout populations in northern California. We share his clear belief that some semblance of order is necessary to make sure that the region's streams are not sucked dry, the fate that has met many streams and rivers throughout the West,"** said Chuck Bonham, the director of Trout Unlimited's California Water Office, which was instrumental in designing and passing AB 2121.

Bonham said the legislation was necessary because there are approximately 276 applications pending before the SWRCB for new water permits. Without guidelines, the Board has no way to determine whether enough water is available to permit new diversions and how much is needed for threatened salmon and steelhead populations.

In addition, many of the pending applications have been stuck in an administrative limbo. The Board has not acted on many of them in the last decade and most have been pending for at least five years.

**"The process is clearly not working - a problem that will hopefully be remedied by the Governor's signature on AB 2121,"** Bonham said.

AB 2121 requires adoption of guidelines for the SWRCB before January 1, 2007. It gives the Board the discretion to develop and adopt guidelines that include reasonable flexibility. Most importantly, the Board will have the discretion to receive stakeholder input.



# AB 2121 offers bad water policy; raises concerns

AG ALERT

By Kate Campbell 20 OCT  
Assistant Editor 2004

In a move that has baffled and alarmed agricultural water experts, Gov. Arnold Schwarzenegger signed Assembly Bill 2121 on the final day of the bill signing session. This last minute legislation jolts state water policy and raises a number of disturbing questions and concerns for California's farmers and ranchers.

Where this new water legislation will

lead is unclear, experts said. California Farm Bureau Federation and other agriculture and business organizations already have been meeting with state officials to discuss future implementation of AB 2121.

The new law requires the State Water Resources Control Board to establish in-stream flow standards for the North Coast, allows their development for the rest of the state, and permits the board to use a set of "draft" guidelines, written in secret

with the help of special interests, until final standards are developed.

As yet there has been no public oversight of these guidelines or standards, there were no public hearings in the Legislature before AB 2121 was adopted and few answers about policies and procedures that will lead to future implementation.

The governor wrote a special signing  
See WATER, Page 20

## Water

Continued from Page 1

message to go along with approval of AB 2121 that acknowledges funds needed for the board to prepare these new standards aren't actually available. This means the board will need to look elsewhere for the money, perhaps adding to what the Farm Bureau says is a burdensome and illegal water-rights fee charged to landowners. Farm Bureau is protesting this levy in court.

In his signing message, Schwarzenegger said, "The SWRCB should begin developing this policy only if the \$1.5 million transfer from the Resources Trust Fund to the SWRCB pursuant to the 2004 Budget Act is made. If adequate funding is not made available to the SWRCB, then the work should be postponed until funding is available.

"As part of this comprehensive effort to develop guidelines for water right administration on Northern California coastal streams, I urge the SWRCB to focus on the Russian River first," Schwarzenegger said. "I am also concerned that the deadline in the bill is unattainable, even if adequate funding is provided, given the complexity and importance of adopting in-stream flow guidelines."

Schwarzenegger said he is asking the Legislature to follow up next session with a bill to extend the deadline and provide additional funding as necessary for developing in-stream flow standards.

The draft guidelines, which AB 2121 allows the SWRCB to consider adopting, were created in 2000 and have yet to be adopted through the formal rulemaking process. The content of the draft guidelines is controversial.

For instance, the draft guidelines require a "specific proposal to provide periodic channel maintenance and flushing flows that are representative of the natural hydrograph."

Farm Bureau water experts note that these types of proposed large water flows need to be evaluated objectively to determine the impact on public safety, along with fisheries needs and those of water users.

Calling AB 2121 the "worst kind of back room legislation," CFBF President Bill Pauli said, "This drastic bill to regulate water rights comes closely on the heels of the administration's decision to list the coho salmon as endangered in North Coast streams.

"These two actions in combination pose a clear threat to the viability of agriculture in the North Coast area, with the ominous possibility of greater statewide impact," Pauli said. "These decisions are particularly disturbing when one considers the investment of time, money, effort, research and planning that Farm Bureau members and staff have dedicated to voluntary efforts to recover fish species in the North Coast.

"CFBF believes that this bill impairs private property rights, threatens jobs and livelihoods, increases government red tape, and flies in the face of public participation in government decision making," Pauli

ENCL. 16



said. "California's farmers and ranchers can now look forward to higher fees, less stable water rights and more regulation."

Although a number of county Farm Bureaus and individual members took time to write, fax, email, and call the governor's office asking him to veto this bill, they could not prevent AB 2121 from being signed. Pauli emphasized that, nonetheless, he was thankful for their timely action.

In addition to Farm Bureau members, those joining in the call for a veto of AB 2121 included the Association of California Water Agencies, California Building Industry Association, California Business Properties Association, California Chamber of Commerce, Northern California Water Association, Regional Council of Rural Counties and Wine Institute.

Initially the legislation will affect watersheds in Humboldt, Lake, Marin, Mendocino and Sonoma counties. Estimates by the water board's staff put the cost to implement AB 2121 at \$7.5 million, while the state budget has suggested \$1.5 million might be available during the next fiscal year.

The state water board said there are about 190 pending water right applications on the Russian River—many of them for small to mid-sized wineries—and about 1,435 existing water right permits and licenses.

SWRCB spokesperson Liz Kanter said that because it would take a sig-

nificant amount of staff time to research and determine how many acre-feet of water these water right permits allow holders to take from the watershed, the answer to how much water is involved will have to be developed by interested parties willing to search public records.

"This information is available in several forms," Kanter said, "such as the face value of all permits and licenses. The determination is further complicated by the amount of water that is imported from the Eel River."

Kanter said the Russian River was chosen to go first under AB 2121 because it represents the greatest numbers and diversity of permit holders, including imports, exports, hydroelectric, recreation and agriculture in the Northern California coastal region.

She also said the new Resources Trust Fund, which would provide the financial resources to implement AB 2121, has not been funded, "but we are developing a Budget Change Proposal to try to get funding. At this point we will not be asking permit holders for more money to fund this."

She said the 1997 SWRCB staff report on the Russian River, which will be on the board's Web site soon, provides background information and the nature of the problems in the Russian River watershed that led to the development of the Department of Fish and Game/National Oceanic and Atmospheric Administration Fisheries Draft Guidelines discussed in AB 2121.

"We are still in the infancy stages of how this will be implemented," Kanter said. "The governor has asked that the Legislature follow up next session with a bill to extend deadlines."

In addition to expressing disappointment that the governor would sign a bill of such importance that was in print only four days before the Legislature adjourned, Mendocino County Farm Bureau Executive Administrator Carre Brown said, "This is the kind of gut-and-amend bill the governor had guaranteed the public he would not sign."

She said farmers and ranchers in Mendocino County already use voluntary best management practices to protect fish and aquatic populations in the county's streams and watercourses. These practices have been developed through ongoing research, education and practical application, she said.

CFBF Water Resources Director Tony Francois said, "Codifying these underground regulations in the state Water Code is the worst kind of stealth legislation. It was broadly opposed when it was passed by the Legislature."

During Senate and Assembly votes, the bill earned only 22 and 41 votes in each house respectively. The Assembly vote involved six "no" votes from Democratic members, including the chairman and three other Democratic members of the Assembly Water, Parks and Wildlife Committee. The bill's analysis identifies no sponsors and no supporters.

AG ALERT  
20 OCT 2004

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http://www.tucalifornia.org/pressreleases.htm



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Peregrine Audubon Society

ENCL. 17

NEWS RELEASE: October 28, 2004

Conservation Groups Petition State Water Board to Address Water Usage from Rivers in Northern California

Trout Unlimited and Audubon Society say that current system is dysfunctional and negatively impacts water users and fish and wildlife alike

Santa Rosa, Calif. -- Two California conservation groups have asked the California State Water Resources Control Board (Water Board) to address the inadequate regulation of water withdrawals in streams from San Francisco Bay north to the Mattole River.

Trout Unlimited (TU) and the National Audubon Society's Peregrine Chapter of Mendocino County filed a formal petition with the Water Board on Thursday asking that a process be undertaken to assure that adequate water is left in streams for steelhead and coho salmon as required by state law and the public trust doctrine. The petition complements a TU legislative success this year that resulted in the passage and signing of Assembly Bill 2121, which requires the Water Board to develop instream flow guidelines and principles for these coastal streams by January 2007.

"This petition was filed to bring some sense of consistency and wise management to the use of water from northern California's streams and rivers. It is designed to move a process forward that will, in the long term, benefit both the region's communities and those species that depend on adequate flows in those waters," said Chuck Bonham, TU's California Counsel and Director of its California Water Project.

There are roughly 276 applications for new water rights pending before the Water Board in watersheds in the north coast communities. Many of these are in the Russian River and Navarro River watersheds. The number of total pending applications in total in all of Marin, Sonoma, Napa, Mendocino and Humboldt counties could be even higher. Records also show that there are at least 1,406 existing water diversions within the Russian River watershed in just Mendocino and Sonoma counties alone.

Bonham said currently there is no coordinated inter- or intrastate agency policy or procedure to deal with the onslaught of applications or for making complicated water allocation decisions that adequately consider demand while balancing the needs of fish and wildlife. Consequently, many of the water right applications have been before the Water Board for more than 10 years without a single final agency decision.

In addition to the administrative backlog and regulatory uncertainty, in many watersheds unauthorized water diversions are widespread. Research conducted in preparing the petition found that some small watersheds had unauthorized water diversions as high as 77 percent.

David Katz, TU's California Director, said the petition asks the Water Board to lead a workshop process to create a system whereby order and balance will be brought back to the water allocation process. "One of the reasons why we pursued this approach rather than legal action is because we believe that, with the leadership of the Water Board, the stakeholders should be able to develop workable solutions that address water demand and the needs of fish and wildlife."

The organizations say they welcome all legitimate stakeholder views and their participation; including landowners, farmers, water agencies, local, state and federal agencies, environmentalists and people who want to protect fish.

"Clearly, water allocation decisions matter to the entire community. The solutions to these problems are well within the administrative discretion of the relevant agencies and local authorities, and we are confident that lasting, stakeholder-driven solutions can be found for fish and the broader community," said Roger Foote, President of the Peregrine Chapter of the National Audubon Society, in Mendocino County.

California's north coast counties were once home to vibrant populations of native steelhead and coho salmon populations, all of which are in dramatic decline. The fisheries are now subject to the Endangered Species Act because of their threatened status. Today, coho salmon populations are estimated at only 6-15 percent of their abundance during the 1940s, and coho abundance has declined at least 70 percent since the 1960s.

"We owe it to the next generation to bring more focus and thought to our water management decisions and systems in our north coast counties. That goal should be common to everyone and is really nothing more than requesting good government and a vision to achieve it," said Bonham.

03/15/2005

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WATER RESOURCES CONTROL BOARD → 3415620

Trout Unlimited Public Workshop  
March 17, 2005  
hard cc: Board, Debbie Irvin

Mar-15-2005 11:10am From-

916-323-2232

electronic cc:  
Exec, OCC, EM  
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March 15, 2005

Ms. Debbie Irvin  
Clerk to the Board  
State Water Board  
P.O. Box 100  
Sacramento, CA 95812-0100

ENCL. 18

Re: Petition of Trout Unlimited and Peregrine Chapter of the National  
Audubon Society Concerning Minimum Streamflows

Dear Ms. Irvin:

Last year I authored a bill, A.B. 2121, signed by Governor Schwarzenegger, that requires the Board to adopt principles and guidelines for maintaining instream flows in certain coastal streams in northern California. I believe that the issues raised by the referenced petition merit further consideration and action. The petition will also assist the State Water Board in the implementation of AB 2121.

As the petition explains, the beneficial uses and public trust resources of fish and wildlife in coastal streams in northern California counties from San Francisco Bay to the Mattole River (Marin, Sonoma, Napa, Mendocino, and southern Humboldt) will remain at risk of adverse impact without State Water Board guidelines and procedures in place to assure coordinated, timely, and effective regulation of water diversions in these important coastal streams. As the Board knows, almost 300 applications for new surface water diversions are pending in this region, some of which have been pending for almost a decade. Action on the petition will help establish a path forward out of this regulatory backlog. The petition, at its heart, proposes an open and collaborative effort to develop necessary guidelines and procedures. It will also help provide adequate protection of valuable public trust resources like salmon and steelhead, while still allowing diversions to meet consumptive use needs.

Action on the petition will also greatly assist the State Water Board in fulfilling its obligation under AB 2121 to adopt principles and guidelines for maintaining instream flows in certain coastal streams in northern California. This obligation must be met before January 1, 2007. Many of the recommendations in the petition and requirements in AB 2121 reflect basic improvements that will benefit the public. For example, AB 2121 requires the State Water Board to publish an annual chart of the pending applications for new diversions, including a description of status, proposed actions, and

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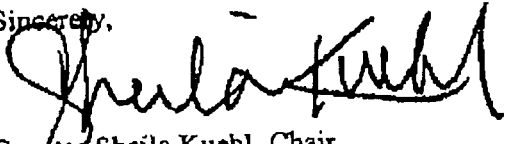
T-140 P 003/003 F-548

proposed date for final decision. Such guidelines and procedures will serve to reduce the regulatory uncertainty that presently exists.

For these reasons, and the many others detailed in the petition, I encourage the State Water Board to embrace the recommendations proposed by Trout Unlimited and Peregrine Chapter of National Audubon Society, to develop an open and collaborative process to resolve the issues raised, and to bring efficiency to the regulation of applications for new water rights in this region.

Thank you for consideration in this matter. If you have any further questions, please feel free to contact Bill Craven of my staff at 445-5441.

Sincerely,



Senator Sheila Kuehl, Chair  
Senate Natural Resources and Water Committee

# Natural Heritage Institute

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## Other Offices

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August 25, 2006

*VIA ELECTRONIC AND FIRST CLASS MAIL*

Karen Niiya  
Division of Water Rights, State Water Resources Control Board  
P.O. Box 2000  
Sacramento, CA 95812  
[KYNiiya@waterboards.ca.gov](mailto:KYNiiya@waterboards.ca.gov)

ENCL. 19

**Re: Notice of Preparation of Substitute Environmental Document for North Coast Instream Flow Policy**

Dear Ms. Niiya,

Trout Unlimited (TU) and the Peregrine Audubon Society (Peregrine) provide these comments in response to the "Notice of Preparation of a Draft Substitute Environmental Document" for the proposed North Coast Instream Flow Policy issued by the State Water Resources Control Board, Division of Water Rights on July 19, 2006. We provide brief comments below, but incorporate herein our "Petition for Timely and Effective Regulation of New Water Diversions in Central Coast Streams" (Oct. 27, 2004) (Petition), *available at* <http://www.tucalifornia.org/CentralCoastPetition.pdf>, for the State Water Board's consideration in developing the scope of the Substitute Environmental Document (SED).

We filed the Petition to seek reform of the water rights system – beginning with review of applications for water right permits and ending with compliance – as necessary to protect steelhead and coho salmon fisheries, riparian habitat, and birds and wildlife dependent on such habitat, in good condition. We expressed serious concern that the coho and steelhead fisheries within the North Coast are threatened with extinction, due in large part to water diversions. We also expressed concern that, despite the significant impact to fisheries, the State Water Board does not have written guidelines (namely, policies which guide substantive review of water right permit applications) for the purpose of deciding how much water is divertible for water supply, and how much must remain to protect the coldwater fisheries in good condition. We claimed that this is inconsistent with state law which provides that the State Water Board may approve a permit application for unappropriated water, only on conditions that protect fish and wildlife as a beneficial use of water (*see* Water Code § 1243) and prevent impairment of water quality standards (*see id.*, §§ 1243.5, 1258). *See* Petition at ¶¶ 156-161.

Ms. Karen Niiya  
August 25, 2006  
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One of the remedies we requested was that the State Water Board adopt guidelines for the substantive review of permit applications. We agreed that the Draft "Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Streams" (2002) (NMFS-DFG Draft Guidelines) should be the starting point for the Board's adoption of substantive guidelines, but requested that the Board consider the following amendments and any others agreed to by, what is now called, the North Coast Water Rights Working Group.

- (A). The guidelines will apply to modified as well as new permit applications.
- (B). Each permit will specify management objectives for fish and associated riparian habitats in the reach affected by a diversion. The objectives will be measurable either directly or through an indicator, or by indicators of riparian health such as canopy, standards for which have been developed for timber harvest practices or as determined through stream surveys and GIS analysis. The management objective for a given reach will be sufficient to maintain or restore a functional range of naturally occurring spawning and rearing habitat where salmonids can exist. Similarly, management will also be for protection or restoration of functional riparian systems and associated wildlife.
- (C). The design of each storage or diversion facility will, without active intervention (such as an operator's control), limit diversion to the allowed maximum and allow the required bypass flow. A licensed engineer will certify the adequacy of such design.
- (D). Each point of diversion will include continuous monitoring and reporting of diversion, or (if infeasible) an alternative that provides the functional benefit.
- (E). Each point of diversion will include real-time monitoring and reporting of physical conditions necessary to achieve a quantifiable management objective for the affected reach, such as inflow, outflow, water quality conditions, depth or width of wetted channel, or some combination.
- (F). State Water Board or RWQCB staff, alone or with DFG or NOAA Fisheries staff, will have reserved authority to inspect a point of diversion without prior notice. Peace officer status will not be necessary.
- (G). State Water Board will have reserved authority to remedy cumulative impacts on fisheries, riparian habitat, and associated wildlife under applicable law (including ESA), in addition to general reservation to protect public interest. The term will specify the procedures for exercise of this authority, including a duty to periodically assess the cumulative impacts.

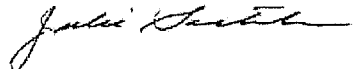
See Petition at ¶ 202.

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As stated above, rather than restating our comments on enforcement and other relevant issues, we request that the Board consider our Petition in developing the scope of the SED. We also expect to file more specific, supplemental comments in the future, both in our capacity as Petitioners and in our capacity as participants in the North Coast Water Rights Working Group.

Thank you for this opportunity to provide comments. We look forward to working with the State Water Board in its efforts to reform the water rights system as necessary to protect the steelhead and coho fisheries and other public trust resources associated with these waters.

Sincerely,



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On behalf of

TROUT UNLIMITED and  
PEREGRINE AUDUBON SOCIETY