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To: Karen Niiya, Senior Engineer
 Division of Water Rights
 State Water Resources Control Board
 Sacramento, Ca. 95814

Re: Comments AB2121 Policy

EDEN and LRC have been protesting water rights applications in the Napa River watershed for 5 years. The Napa River has chronic low flows from April to December. Chinook and steelhead die each year due to insufficient flows. The Napa River is over appropriated. There are 371 illegal instream dams that deprive the watershed of much needed fresh water. Come late spring, summer and fall many reaches of the mainstem Napa River are isolated pools with high temperatures that kill aquatic life. Large riparian pumps, off stream wells within close proximity of the wetted edges of the streams suck riparian water to further deprive the watershed of riparian ground water. Salt water intrusion plagues the watershed. What once was a robust rich aquatic ecosystem is now a highly degraded watershed first and foremost deprived of fresh water sources.

I personally have observed and documented while kayaking down the Napa River from Calistoga to Yountville no fresh water tributaries flowing in the Napa River. The streams are over appropriated and the fresh flows that once seeped and flowed towards the Napa River are now dry for much of the spring, summer and fall.

The SWRCB has failed to enforce water laws in much of the State causing a culture of 'water grabs' that is prevalent and pervasive. Due to a lack of enforcement in the State our fresh water sources, in particular the Pacific North coastal streams are aquatic ecosystems in grave peril.

1. The NOAA/DFG Joint Guidelines for maintaining instream flows are more protective than the AB2121 Policy (Dec.1-March 31) . Time of diversion should not be October 1- March 31. Salmonids rely on hydrologic storm pulses that signal their migration up the streams. Allowing diversions during early fall and winter storms jeopardizes fall salmonid migration and juvenile fish struggling to survive in low flow conditions.
2. Continued and prolonged diversion periods further exacerbates water quality. Most North coast streams are listed as impaired by the State Regional Water Quality Control Boards. Streams in this AB2121 Policy area are impaired for sediment, temperature, nutrients, mercury and pathogens. Additional time for diversion periods, (Oct. 1-March 31st proposed in the Policy Doc.) further deprives the aquatic resources of first flows and fresh water there- by increasing the likelihood that pollutants will continue to concentrate and kill aquatic life.
3. The Policy calls for water availability analysis, WAA, by applicants. Will the SWRCB call for peer review of each WAA? Will the public have access to these reports?

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4. The baseline of 10 year mean annual unimpaired flow is a questionable baseline for unimpaired flows due to:
1.) lack of stream gauge data 2) lack of long term data- the 10 year benchmark is already an impaired baseline and should NOT be used as a baseline to determine unimpaired flows. Ten years ago streams in the policy area have already suffered impaired flows from historic conditions. EDEN and LRC suggests that this 10 year flow baseline criteria are a FALSE baseline thereby violating CEQA. California streams 200 years ago were robust with salmon and steelhead. Fish data shows us that Coho, Chinook and steelhead numbers started plummeting in the 1970's mostly from lack of fresh water habitats. This is all documented and available to the SWRCB through NOAA and DFG. Using the 10 year unimpaired flow is already a highly deprived base flow that has been a detrimental flow contributing to the decline in salmonid populations for over 30 years. Illegal dams have contributed to impaired flows. The 10 year baseline flow considered 'unimpaired' by the AB2121 Policy falsely characterizes the conditions of streams and is the basis for the calculations of minimum bypass flows MBF and maximum cumulative diversions, MCD. EDEN and LRC objects to the 10 year baseline unimpaired flow and supports an alternative to the AB2121 Policy to the 5.3 Maximum Protectiveness Alternative.
5. The AB2121 Policy does NOT consider drought conditions. Droughts are a common occurrence in California. We are currently suffering drought like conditions. Given this project, AB2121 Policy should thoroughly consider drought conditions and construct drought condition policies.
6. AB2121 lacks a thorough analysis of this project on the effects of global warming and climate change. Healthy streams will become increasingly vital to the survival of life as the planet continues to warm. If our streams are over appropriated and riparian areas are degraded and polluted, these landscapes will be unable to sustain life. Local economies and humans will need to rely more and more on local resources to promote a safe and reliable food and water resources base in each watershed. Additionally, this is cause for the SWRCB to adopt an alternative project that provides maximum protectiveness. Restoring aquatic function and healthy flows will increase water availability and restore healthy ecosystems.
7. AB2121 Policy should expand and make clear that NEW dams off site shall require CEQA.
8. The policy should implement water conservation policy as a requirement and factor this policy into the appropriation request.
9. AB2121 Policy fails to see water in a longitudinal perspective, i.e., applications must take into consideration the impacts that the diversion will have on riparian aquifer groundwater and groundwater. If the watershed is historically losing riparian ground water reaches over time? Riparian ground water has gaining and losing reaches. Water diversions impact riparian aquifer groundwater thereby causing increased losing reaches or dry creek beds. This Policy fails to adequately determine the status of ground water/riparian groundwater. This deficiency is fatal to the Policy.
10. The Policy relies heavily on the water users reporting monitoring results. The Policy needs to insure data monitoring and reporting available to the public.
11. The Policy allows on stream dams in class III streams. These high order streams frequently are recharge areas for groundwater along with wetland features. When the dams over flow they carry pollution throughout the class III and class I streams. The Policy should require an NPDES permit and subject to SWRCB's approval and comments through CEQA .
12. Variances to the policy should require a hearing before the SWRCB, notification to all stakeholders in the watershed and posting of funds to restore other aquatic habitats in the watershed as a mitigation.
13. The Policy sets parameters for determining MBF/MCD in the watershed to the upper limits of anadromy. The Policy must include upper limits of anadromy above an instream dam even if the dam is impassible by fish. If the dam does NOT provide fish passage then it is an illegal dam.
14. Adoption of the highest protections of flows will provide an economic benefit to the public from less pollution, increased fisheries health, less pestilence and disease. Highest protection discourages water transfers and

AB2121 Policy Document is short sighted and domestic water user friendly and promotes depravation and degradation of aquatic ecosystems.

Northern coastal streams suffer depravation of fresh water flows. EDEN and LRC urge the SWRCB to assert your continuing authority to quickly restore flows to the project area and adopt the 5.3 Maximum Protectiveness Alternative. Adoption of the highest protection for fish and wildlife will ultimately provide HEALTHY sustainable fresh water resources and ecosystem function for domestic supply while at the same time providing state security in troubled times of global warming and natural disasters.

Thank You,
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