



CITY OF FORT BRAGG

Incorporated August 5, 1889
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CITY OF FORT BRAGG
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Karen Niiya
Senior Engineer
Division of Water Rights
State Water Resources Control Board
1001 I Street, Second Floor
Sacramento, CA 95814

Via Overnight Mail and Facsimile (fax #: 916 341-5400)

Re: Comment Letter – AB 2121 Policy

Dear Ms. Niiya

The following comments are submitted by the City of Fort Bragg with regard to the AB 2121 DRAFT Instream Flow Policy (“Policy”) for Northern California Streams. These comments are in the spirit of working with the State Water Resources Control Board (“SWRCB”) to create a policy that is clear and fair, and which does not yield unintended results.

With respect to some general comments, the City of Fort Bragg recognizes water as a precious resource having finite limits which renew from year to year providing humans and wildlife with a multitude of beneficial uses. We support the concept of developing a policy that sustains the freshwater ecosystem and at the same time allocates and preserves stream flows fairly and uniformly to people and their communities. The massive document that forms the Policy speaks to the level of effort and dedication that your staff has made in order to define such a policy. The size of the Policy however also indicates its complexity, which unfortunately makes it difficult for water users to understand and comply with, and which may also lead to the Policy being applied unevenly and unfairly.

Water that falls as rain on the mountains and valleys of Mendocino County are most fairly reserved for human and fish entities within Mendocino County. It is unfair to suggest that entities within this county cannot lawfully partake of these waters while other users downstream and in other parts of the State are allowed to divert the water so necessary to the health of humans and the economy in this State. In a way, the Policy establishes the North Coast area as

environmental mitigation for the rest of the State, which remains essentially free to divert water as before.

The City's more specific comments are set forth below.

I. Uncertainty Regarding the Policy's Application to Existing Water Users

A primary concern for water users such as the City of Fort Bragg is the scope of the Policy's application. In discussions with SWRCB staff, staff has stated that water diversions presently permitted or licensed are not subject to this proposed Policy. The City of Fort Bragg believes that exempting existing licenses and permits from the Policy is the correct approach. However, SWRCB staff has also indicated that while the Policy might not apply directly to existing permits and licenses, the SWRCB has the discretion to apply the Policy on a case-by-case basis to such existing permits and licenses. This creates confusion and uncertainty regarding the scope of the Policy's application.

An example of the present confusion regarding the application of the Policy to existing diversions is indicated with the licensing process. Presently, Sections 3.3 and 6.0 of the Policy strongly indicate that the licensing process is not included as being an action covered under the Policy. However, in conversations with SWRCB staff about the Policy, staff has indicated that in fact the Policy might apply to the licensing process for existing permits and that the Policy's application would be determined upon a case-by-case discretionary basis.

Obviously, such an ad hoc application of the Policy will cause an unreasonable amount of uncertainty and confusion among present water users. Substantial monetary investments are being made in reliance on existing permits and licenses. Additionally, critical planning and building decisions have been made, and are being made, based in reliance on these existing permits and licenses. Therefore, it is vital that the Policy make it clear that existing permits and licenses are exempt from the Policy's application and that ad hoc discretionary application of the Policy will be expressly prohibited.

II. Other Comments and Areas of Concern

As surface waters become increasingly precious, the measurement of these waters becomes increasingly important. It will therefore be critical to find sources to fund USGS streamflow gauges and rainfall gauges in the geographic area subject to this policy.

As noted above and as noted by other commenter's (including scientific peer reviewers), the Policy raises the issue of uncertainty and may in fact result in unanticipated impacts. For example, groundwater recharge is the reason most of our rivers and streams continue to flow throughout the dry summer once the winter rains have subsided. It is foreseeable that by decreasing the availability of future surface water diversions, increased groundwater "diversions" will

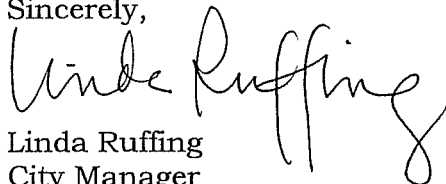
result. However, groundwater is not always subject to the same degree of regulation as surface water. It is therefore recommended that the SWRCB should consider developing standardized techniques and procedures for new groundwater wells that test the connection between groundwater and surface water because over drafting groundwater's could potentially result in reduced instream flows during the summer.

The SWRCB should also consider that by diverting peak flows to new water rights, flood flows may perform less morphological channel maintenance work that has in the past scoured away accumulated alluvial deposits. The lack of scouring flows may actually reduce instream flows by encouraging the smothering of channels with accumulated alluvial gravels such that instream flows go sub-surface. The Policy carries a range of hazards not found in day-to-day diversions. For example, new areas would need to be located to store the water for domestic, industrial or agricultural uses. Additionally, those diversions would come at a time when the force and cutting power of water is at its most intense level, raising risks for property damage, severe erosion, loss of riparian habitat or other negative effects. Further, the Policy neglects to address what happens in those years when very high flows do not occur.

Further, as the Policy is now written, future authorized diversions would occur only during a few high flow days each year. The diverted water is to be stored for use during the remainder of the year. Water stored over long periods of time is likely to degrade in quality as it becomes warm and stagnates. Water in that condition may be acceptable for irrigation and livestock, but without a sophisticated water treatment facility, it is unlikely to be desirable as a healthful water resource for domestic water supplies.

Thank you again for allowing the City of Fort Bragg to provide these comments. If you have any questions, or would like any additional information, please contact David Goble at (707) 961-2823; Ext. 117.

Sincerely,

A handwritten signature in cursive script that reads "Linda Ruffing". The signature is written in black ink and is positioned to the right of the typed name.

Linda Ruffing
City Manager