



E.D.E.N.  
1325 Imola Ave. West  
PMH614  
Napa, Ca. 94558  
[www.napaeden.org](http://www.napaeden.org)  
[www.livingriverscouncil.org](http://www.livingriverscouncil.org)



August 17, 2006

State Water Resources Control Board  
P.O box 2000, 1001 I Street, 14<sup>th</sup> Floor  
Sacramento, Ca. 95812-2000

Contact: Karen Niiya or Eric Oppenheimer

### **SUBSTITUTE ENVIRONMENTAL DOCUMENT SCOPING COMMENT**

1. EDEN has been submitting protests to the SWRCB for four years on the Napa River. This River is literally dying from lack of water. Recent kayaking down the river by EDEN members has brought forth alarming conditions. Many streams do not have adequate flows. Lack of flow is killing off whole watersheds to anadromous fish and exacerbating already poor water quality. Illegal dams should not be permitted and required to be removed. If the SWRCB dismisses illegal use by asking people to simply apply for the water, and then accept the application, it sets an agency wide precedent that grabbing water illegally will be ultimately forgiven. We can not afford this kind of policy that harms the public benefit in a civil society.
2. On stream dams or reservoirs, everywhere in the watershed, in the future must be prohibited. Stream habitat below dams is altered hydrologically and changes the geomorphology of the stream. These impacts are environmentally significant. On stream dams and reservoirs that are illegal should be removed at the property owner's expense and placed off stream. Verification of amount of water use by the user must be made by the SWRCB. The actual place of use should remain a condition of any diversion permit. In practice some illegal users waste water, don't need it but store it anyway or top off their reservoirs by pumping from the stream. Reservoir capacity should be limited to the amount of permitted use.
3. SWRCB may decide to set guidelines that streams above reservoirs may not fall within AB2121. On the Napa sediment TMDL the SWQCB final EIR excluded streams above dams from TMDL guidelines because the SWQCB contends that the fish above the dam are not protected species. We would disagree with this guideline or policy. AB2121 does not specify that streams above a dam shall not fall under this law. Fish trapped above barriers could become anadromous if given the chance. Salmon and steelhead trapped by dams carry the

same DNA as ocean going fish. Therefore, they can be protected specie. Minimum flows must apply to all streams above barriers such as dams. The US Supreme Court ruled on May 15<sup>th</sup> that under the Clean Water Act, a hydroelectric dam in the state of Maine must release sufficient flows for fish into US navigable waterways and provide for fish passage. (SD Warren Co v. Maine Board of Environmental Protection, et al, Case 04-1527) This ruling applies to all dams in all jurisdictional waters.

4. The Environmental Check List (ECL) on page 12 states that Population and Housing will have no impact. There are housing subdivisions on the North coast currently seeking water rights in wildlands. Wildland conversion to subdivisions that seek a new use for prior water rights must apply for a new water withdrawal permit from the SWRCB. Housing and population depend on the availability of water. CEQA requires the SWRCB to determine any significant impacts within the ECL. Wildland conversion to agriculture and then conversion houses will put a higher demand on existing water rights. The SWRCB should set strong policy and enforcement that change of use to housing shall require a full CEQA review. The SWRCB can not escape this discussion and shirk responsibility. Examples of this: A vineyard developer converts wildlands to vineyards and has water diversions for the vineyard. The developer than converts the acreage to houses and uses the water right for houses.
5. Unless the SWRCB determines water availability, they will not meet the intent of AB2121. This law requires that minimum flows be established. Therefore, each watershed should be determined as to what water is available. The SWRCB shall determine what water has been taken illegally in order to establish current availability for the future.
6. SWRCB should determine when a watershed is over allocated and cease issuing new water withdrawal permits. In other words, the watershed is 'SHUT'.
7. SWRCB should publicly provide complete GIS mapping updates on water availability in watersheds. This could notify potential users how much water could be used for what purposes.
8. SWRCB (WB) must include policy, guidelines for drought years and maintaining minimum flows.
9. The jurisdiction of the SWRCB concerning ground water is unclear. Riparian ground water is essential for maintaining minimum instream flows. If users start pumping riparian ground water in lieu of using their on stream reservoirs, flows may be jeopardized. Off stream pumping of riparian ground water must be clearly defined with published guidelines.
10. Encouraging off stream storage presents other problems such as: conversions from wildlands to storage could cause significant environmental impacts. This would require a CEQA review.
11. All construction projects recommended in the SED must be subject to CEQA. The SED should discuss this.

12. On stream barrier removal may cause release of toxic materials to the stream. Examples of this could be mercury and copper laden in soils and released to the stream as construction begins and the stream regains its course.

**Alternative One:** All illegal water users must cease all water withdrawals and apply for legal use, and then remedy their water grab with either switching to dry farming, construction of off stream reservoirs, or adopting alternate crops. As a policy of the SWRCB, the public use of water must be primary. The SWRCB will not grandfather in illegal users as this sends a message to future applicants it pays to grab water illegally and makes a mockery of the SWRCB.

**Alternative Two:** Watershed Stewardship Programs: Waivers from compliance to the SWRCB regulations shall not be granted. However, illegal users could be in an Enforcement Diversion Program that requires the property owner to comply with a set of requirements time sensitive such as: 1) Establish a Watershed Stewardship where most land owners are encouraged to participate 2) Bioassessment of the watershed to establish baseline water quality information with yearly on-going monitoring with adaptive management 2) Peer Review annually 3) Active remedies of problems and reports to the stewardship. 4) A stewardship leader is hired by the watershed to manage the program, hold meetings, and report to the water board all recommendation, remedies and improvement. 5.) Water gauges installed for year around monitoring. 6.) All construction is subject to CEQA. NGOs become important as they can energize the success of this Enforcement Diversion Program and act a non biased party. If the Watershed Stewardship fails the Enforcement Diversion Program (time sensitive), then strict enforcement takes place, such as large fines, jail, removal and restoration.

**Thank you  
Chris Malan  
Manager LRC and EDEN  
707-255-7434  
John Stephens  
LRC and EDEN  
Council Chair  
707-251-0106**