



CALAVERAS COUNTY BOARD OF SUPERVISORS AGENDA SUBMITTAL

ITEM TITLE Discussion and Possible Action Regarding Resolution No. 2014-021 "Resolution Supporting the Wild and Scenic Designation for the Mokelumne River"		BOARD MEETING DATE July 29, 2014	AGENDA NUMBER 12
Dept: Contact: Phone:	County Administrator Lori Norton 754-6025	Supervisory District Number ALL	Recognition _____ Consent _____ Regular <u> X </u>
Published Notice Required?	Yes _____ No <u> X </u>	Estimated Time: 2 hours	
Public Hearing Required?	Yes _____ No <u> X </u>		
() Power Point Presentation – arrange with Administrative Office			
() Resolution () Ordinance () Agreement			
() Budget Transfer (Must be signed by Auditor)			
() Complete Agreement (for agreements more than 20 pages) on file for viewing with Clerk of the Board and also available on the Board of Supervisors website			
(X) Other (specify) Exhibits A - F			
Dept. Head <i>Lori Norton</i>	CAO <i>Lori Norton</i>	Counsel <i>Megan Hatfield</i>	

RECOMMENDATION:

Discussion and possible action regarding Resolution No. 2014-021 "Resolution Supporting the Wild and Scenic Designation for the Mokelumne River". This is a Board policy discussion and staff has no specific recommendation.

DISCUSSION/SUMMARY:

On February 25, 2014, the Board of Supervisors adopted Resolution No. 2014-021 "Resolution Supporting the Wild and Scenic Designation for the Mokelumne River", a copy of which is attached as Exhibit A. The Board requested additional discussion regarding this resolution in response to correspondence received from various parties, both in support and in opposition to the resolution. The following information is relevant to the discussion.

A. Basic Relevant California Water Law Principles:

- All water must be put to reasonable and beneficial use. California Constitution, Art. X, §2.
- No water user owns water but only the usufructuary right to use water. All water in the State of California is held by the State in its capacity as a trustee for the benefit of the public (the "public trust doctrine"). The public trust doctrine requires the State, as a trustee, to manage its public trust resources (including water) so as to derive the maximum benefit for its citizenry. The benefits to be considered and balanced include economic, recreational, aesthetic and environmental; if at any time the trustee determines that a use of water other than the then current use would better serve the public trust, the State has the power and the obligation to reallocate that water in

accordance with the public's interest. Even if the water at issue has been put to beneficial use (and relied upon) for decades, it can be taken from one user in favor of another need or use. The public trust doctrine therefore means that no water rights in California are truly "vested" in the traditional sense of property rights.

B. California Wild and Scenic Rivers Act ("Act") (Pub. Res. Code §5390.50 et. seq).

The Act was passed in 1972, following the passage of the federal Wild and Scenic Rivers Act by Congress in 1968 and includes:

- An express legislative declaration "that certain rivers which possess extraordinary scenic, recreational, fishery, or wildlife values shall be preserved in their free-flowing state, together with their immediate environments, for the benefit and enjoyment of the people of the state" and "that such use of these rivers is the highest and most beneficial use and is a reasonable and beneficial use of water within the meaning of Section 2 of Article X of the California Constitution". §5093.50¹.
- Rivers or segments of rivers included under the Act "shall be classified as one of the following:
 - (a) Wild rivers, which are those rivers or segments of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted.
 - (b) Scenic rivers, which are those rivers or segments of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads.
 - (c) Recreational rivers, which are those rivers or segments of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past. §5093.53.
- Rivers or segments of rivers are designated into the Act by adoption into §5093.54, which lists all currently designated rivers or segments of rivers. Designation may be made pursuant to recommendation by the Secretary of the Resources Agency or as here, by adoption of a bill. §5093.546.
- Designation may include "special treatment areas" which are "those areas defined as special treatment areas in Section 895.1 of Title 14 of the California Code of Regulations, as in effect on January 1, 2004... and also includes areas within 200 feet of the watercourse transition line of a state-designated recreational river segment ...that may be at risk during timber operations. §5093.52(i). Timber operations within "special treatment areas" are subject to the provisions in §5093.68 which includes provisions for the temporary suspension of timber operations in special treatment areas.
- Once designated, the Act provides that "[o]ther than temporary flood storage facilities permitted pursuant to Section 5093.57, no dam, reservoir, diversion, or other water impoundment facility may be constructed on any river and segment thereof designated in Section 5093.54; nor may a water diversion facility be constructed on the river and segment unless and until the secretary [of the Resources Agency] determines that the facility is needed to supply domestic water to the residents of the county or counties through which the river and segment flows, and unless and until the secretary

¹ All references are to the Public Resources Code unless otherwise noted.

determines that the facility will not adversely affect the free-flowing condition and natural character of the river and segment". §5093.55.

As stated, the secretary must make two findings before a dam, reservoir, diversion, or other water impoundment facility may be constructed on a designated river: (1) that the facility is needed to supply domestic water² to the residents; and (2) the facility will not adversely affect the free-flowing condition and natural character of the river or segments of river. Free-flowing is defined as "existing or flowing without artificial impoundment, diversion, or other modification of the river. The presence of low dams, diversion works, and other minor structures does not automatically bar a river's inclusion within the system. However, this subdivision does not authorize or encourage future construction of those structures on any component of the system". §5093.56(d). Rivers or segments of rivers that already have low dams, diversion works or other minor structures are therefore considered free-flowing for purposes of designation into the Act but construction of similar future structures after designation is not authorized or encouraged.

- Once designated, "[n]o department or agency of the state may assist or cooperate, whether by loan, grant, license, or otherwise, with any department or agency of the federal, state, or local government, in the planning or construction of a dam, reservoir, diversion, or other water impoundment facility that could have an adverse effect on the free-flowing condition and natural character of the river and segments thereof..." §5093.56.
- The Act provides no express or implied land use regulation authority. Any such authority must be found in another area of law. §5093.58. Land use regulation is defined as "the regulation by any state or local governmental entity, agency, or official of any activities that take place other than directly on the waters of the segments of the rivers" designated in the Act. §5093.52(f).
- The Act does not change existing eminent domain or condemnation law and property may not be taken for scenic, fishery, wildlife or recreation purposes for inclusion into the Act or for other public use without payment of just compensation. §5093.63. The Friends of the River website states that the Act "has never been used in its 27-year history to condemn or otherwise take land".
- The Act requires all state departments and agencies to exercise their governmental power "in a manner that protects the free-flowing state of each component of the system and the extraordinary values for which each component is included in the system". §5093.61.
- The Act also requires all local government agencies, which includes the County, to exercise any governmental power they may have "in a manner consistent with the policy and provisions of [the Act]". §5093.61. This language may limit the Board's discretion to the extent the Board is asked to make a discretionary decision related to those

² Domestic water use is defined as "the use of water in homes, resorts, motels, organization camps, camp grounds, etc., including the incidental watering of domestic stock for family sustenance or enjoyment and the irrigation of not to exceed one-half acre in lawn, ornamental shrubbery, or gardens at any single establishments. The use of water at a camp ground or resort for human consumption, cooking or sanitary purposes is a domestic use". 23 California Code of Regulations §660. As defined, this use does not include commercial agricultural uses such as crop "Irrigation Use" (§661) or "Stockwatering Use" (§669).

designated areas of the Mokelumne River as the Board would need to comply with the policy and provisions of the Act.

- As stated on the Friends of the River website, "designation into the Act does not affect existing water rights and facilities. However, proposed changes in existing rights and facilities or applications for new water rights and facilities on designated segments are subject to the domestic use restriction and the non-degradation standard [the two-part test referred to above]. Designated segments are considered fully appropriated streams by the California Division of Water Rights".
- The Friends of the River website also states that "the Act was patterned after the 1968 National Wild & Scenic Rivers Act. The state and federal acts share similar criteria and definitions in regard to the purpose of protecting rivers, the identification of free flowing rivers and extraordinary or outstanding values suitable for protection, establishing a study process to include rivers in the system, as well as an identical classification system. The primary purpose of both the state and federal acts is to prohibit new water impoundments on designated rivers."
- The Friends of the River website correctly notes that "state designated rivers may be added to the federal system upon the request of the state's Governor and the approval of the Secretary of the Interior (Sec. 2[a][iii] of the federal act). Adding state rivers to the federal system under this section does not require the approval of the Legislature or Congress. State rivers added to the federal system under this section are to be managed by the state. The river segments initially protected in the state system when it was established in 1972 -- the Smith, Klamath, Scott, Salmon, Trinity, Eel, Van Duzen, and American -- were added to the federal system in 1981 under this method. But later additions to the state system (including the East Carson, West Walker, and South Yuba) have not been subsequently added to the federal system."

C. SB 1199 (Hancock) As amended in the Senate May 28, 2014 (Exhibit B)

SB 1199 amends Section 5093.54 of the Public Resources Code to include specified segments of the North Fork and main stem of the Mokelumne River with certain segments designated as wild, recreational or scenic; segments with PG&E powerhouses not included with the wild and scenic designation; and states that designation will not affect any historic, pending or future "water rights" for the Amador Water Agency, the Jackson Valley Irrigation District, the Calaveras Public Utility District and the Calaveras County Water District.

The designated segments are found in proposed subdivision (k) as:

- (1) North Fork Mokelumne River from 0.50 miles downstream of the Salt Springs 97-066 Dam to 0.50 miles upstream of the Tiger Creek Powerhouse. (Designated Recreational)
- (2) North Fork Mokelumne River from 1,000 feet downstream of the Tiger Creek Afterbay 97-105 Dam to State Highway Route 26.
- (3) North Fork Mokelumne River from 400 feet downstream of the small reregulating dam at the outlet of the West Point Power House to the Middle Fork Mokelumne River confluence.
- (4) The main stem of the Mokelumne River from the confluence of the North and Middle Forks to 300 feet upstream of the Electra Powerhouse.
- (5) The main stem of the Mokelumne River from 300 feet downstream of the small reregulating dam downstream of the Electra Powerhouse to the Pardee Reservoir flood surcharge pool at 580 feet elevation above mean sea level.

Subdivision (k) also includes:

(6) Nothing in this chapter shall prejudice, alter, delay, interfere with, or affect in any way, the installation, operation, maintenance, repair, and replacement of river flow and water quality monitoring stations and equipment in and along the designated segments of the Mokelumne River; or the construction, operation, maintenance, repair, and replacement of recreational facilities along the Mokelumne River on East Bay Municipal Utility District lands, including scenic trails and rafting facilities, such as take outs, parking lots, and similar recreational facilities.

(7) Nothing in this subdivision shall prejudice, alter, delay, interfere with, or affect in any way, the existing rights of the Amador Water Agency, the Jackson Valley Irrigation District, the Calaveras Public Utility District, and the Calaveras County Water District; the implementation of those rights; any historic water use practices; the replacement, maintenance, repair, operation, or future expansion of existing diversions, storage, powerhouses, conveyance facilities, power lines, or other works by those agencies; or changes in the purpose of use, places of use, points of diversion, or ownership of those existing water rights; nor shall anything in this subdivision preclude the issuance of any governmental authorization needed for utilization of those rights. However, no exercise of rights or practices specified in this paragraph shall operate to increase the adverse effect, if any, of the preexisting facilities or places, or the purposes of use upon the free-flowing and natural character of the river segments designated herein.

(8) Nothing in this subdivision shall prejudice, delay, interfere with, or affect in any way, a water rights application by the Amador Water Agency, the Jackson Valley Irrigation District, the Calaveras Public Utility District, and the Calaveras County Water District and consideration by the State Water Resources Control Board of a water rights application for new water supply projects upstream of Mokelumne River segments protected in this subdivision or on tributaries to the North Fork and main stem Mokelumne River, provided that the application and approval of water rights, and the construction and operation of facilities to access those rights, shall avoid an adverse effect on the free-flowing condition and natural character of the river segments designated in this section as components of the system.

(9) Nothing in this subdivision shall prejudice, alter, delay, interfere with, or affect in any way, Amador Water Agency's water rights application 5647X03 pending before the State Water Resources Control Board.

Subdivisions (k)(6)-(9) were added for the purpose of acknowledging those water entities with pending or possible future water rights applications. Subdivisions k(6)-(8) include language requiring the exercise of those rights, including the construction and operation of facilities to access those rights, shall not operate to increase or have an adverse effect on the free-flowing and natural character of the designated river systems. The construction of a dam or reservoir on the designated segments of the Mokelumne River would have an adverse effect and would not be allowed. In fact, State Water Resources Control Board's (SWRCB) regulations state that no applications for the appropriation of water in connection with construction of a dam, reservoir or other water impoundment facility on a designated river will be accepted. 23 CCR §734(c), copy attached as Exhibit C. Applications proposing a water diversion facility are subject to the two mandatory findings by the Secretary of the Resources Agency. Applications for water appropriations that are not located on designated segments of the river but could affect designated segments are subject to a finding by the SWRCB that the appropriation will not "impair the extraordinary scenic, recreational, fishery, or wildlife values of any designated river". 23 CCR §734(b). Past SWRCB interpretation of this regulation was that an upstream or downstream application is not precluded from being filed or processed if is well below or above the designated segments and does not back water up into a designated segment. ³ Staff has no

³ See March 7, 2005 letter to Assembly Member Lois Wolk from Anne Schneider at Ellison, Schneider & Harris LLP, a well-respected water law firm (which provided water law advice to County Counsel in the past) regarding a water rights application for diversion below proposed designated segments of the Cache Creek. A copy is attached as Exhibit D. See also April 11, 2005 memo to Lois Wolk from Daniel

information on proposed future applications for water diversions so cannot comment on the impact, if any, that designation of the Mokelumne River segments will have for the various water entities opposed to the designation.

However, staff notes that the SWRCB is required to make multiple findings before issuing any water rights permits, even on rivers not designated in the Act and many of those requirements are similar to the requirements of the Act. For example, Water Code requirements include a finding of public benefit derived from all beneficial uses of the water; maintenance of streamflow requirements for fish and wildlife purposes; protection of recreation and preservation and enhancement of fish and wildlife resources; as well as compliance with the California Environmental Quality Act (CEQA).

Finally, specific proposed designations for each segment are specified in Section 5093.545 (p) and are as follows:

(p) Mokelumne River:

1) North Fork Segments:

- | | |
|---|--------------|
| A) From 0.50 miles downstream of the Salt Springs 97-066 Dam to 0.50 miles downstream of the Bear River confluence | Recreational |
| B) From 0.50 miles downstream of the Bear River confluence to 0.50 miles upstream of the Tiger Creek Powerhouse | Wild |
| C) From 1,000 feet downstream of the Tiger Creek Afterbay 97-105 Dam to State Highway Route 26 | Recreational |
| D) From 400 feet downstream of the small reregulating dam at the outlet of the West Point Power House to the southern boundary of Section 12 T6N R12E | Wild |
| E) From the southern boundary of Section 12 T6N R12E to the Middle Fork Mokelumne River confluence | Recreational |

2) Main Stem Segment

- | | |
|--|--------------|
| A) From the Middle Fork Mokelumne River confluence to 300 feet upstream of the Ponderosa Way Bridge | Wild |
| B) From 300 feet upstream of the Ponderosa Way Bridge to 300 feet upstream of the Electra Powerhouse | Scenic |
| C) From 300 feet downstream of the small reregulating dam downstream of the Electra Powerhouse to the Pardee Reservoir flood surcharge pool at 580 feet above mean sea level | Recreational |

D. History and Status of SB 1199

SB 1199 was introduced by Senator Hancock on February 20, 2014. It was considered and passed by the Senate Natural Resources and Water Committee on April 29, 2014 by a vote of 7 ayes and 2 noes. The bill was referred to the Committee on Appropriations, but determined to have negligible costs, and was sent on to the Senate Floor where it passed on May 29, 2014 by a vote of 22 ayes, 12 noes. Six (6) Senators were absent, did not vote, or abstained. SB 1199 passed from its house of origin and on to the Assembly on May 29 and was considered and passed by the Assembly Natural Resources Committee on June 23, 2014 by a vote of 6 ayes and 2 noes. The bill has been referred to the Assembly Appropriations Committee, but again does not contain an appropriation so will likely move directly on to the Assembly Floor when the Legislature reconvenes on August 4.

The bill is co-sponsored by two non-profit groups, Friends of the River, and the Foothill Conservancy. Friends of the River notes that the bill would preserve recreational opportunities for the public, generate economic activity for the local communities, and preserve the right to future water development as provided by existing law. It argues that because of the natural resource value of these segments of the river, it is clearly eligible to be protected in perpetuity. Other supporters point out the numerous hiking, kayaking, and whitewater rafting opportunities on this river.

Opponents are concerned that the designation will foreclose future water rights opportunities.

A full listing of registered support and opposition is listed on Exhibit F as is an analysis of SB 1199 as prepared by the Assembly Committee on Natural Resources for its June 23, 2014 hearing.

FINANCING:

Staff time, primarily County Counsel and County Administrative office time, was necessary to prepare this Agenda submittal and that time was a General Fund cost.

ALTERNATIVES:

Not Applicable.

OTHER AGENCY INVOLVEMENT:

EXHIBIT A

BOARD OF SUPERVISORS, COUNTY OF CALAVERAS
STATE OF CALIFORNIA
February 25, 2014

RESOLUTION
2014- 021

RESOLUTION SUPPORTING THE WILD AND SCENIC
DESIGNATION FOR THE MOKELUMNE RIVER

WHEREAS, The Mokelumne River is an important Calaveras County historic, cultural, economic, recreational, and natural resource; and

WHEREAS, existing water and power development on the Mokelumne River provides water for more than 1.4 million people and power for more than 200,000 homes; and

WHEREAS, the Mokelumne River is beloved by local residents of all income, ages, and abilities who use it for recreation, respite, spiritual renewal, and youth education; and

WHEREAS, the Mokelumne River is critically important to the economic future of Calaveras County because it attracts anglers, boaters, and other visitors interested in river-related recreation who spend money in local businesses; and

WHEREAS, the Mokelumne River will soon be the site of a commercial rafting pilot project, providing the only summer-long river rafting opportunity in Calaveras County, with related benefits to local businesses and youth employment; and

WHEREAS, the Mokelumne River's fish are a source of protein-rich food for many Calaveras County residents; and

WHEREAS, the Mokelumne River is sacred to the native people of Calaveras County and played a key role in the county's development during and after the Gold Rush; and

WHEREAS, the Mokelumne River is eligible for designation as a California state Wild and Scenic River because of its extraordinary cultural, historic, scenic, and water quality values; and

WHEREAS, protecting the Mokelumne River with state Wild and Scenic River designation would be in the best interest of Calaveras County because it would protect important native and historical resources and sites, economic development potential, scenic beauty, and miles of habitat suitable for salmon and steelhead restoration; and

WHEREAS, protecting the Mokelumne River with state Wild and Scenic River designation will not interfere with any water projects planned for Calaveras County or affect existing Calaveras County water rights; and

WHEREAS, designating the Mokelumne as a state Wild and Scenic River respects private property rights and is likely to increase local property values; and

WHEREAS, Protecting the Mokelumne River with Wild and Scenic designation is supported by thousands of local residents, including many public officials and business owners;

THEREFORE BE IT RESOLVED, that the County of Calaveras supports designation of the Mokelumne River as a California state Wild and Scenic River from Salt Springs Dam on the North Fork Mokelumne west to the existing eastern, upstream boundary of Pardee Reservoir, and requests the county's representatives in the California Legislature to introduce and support legislation to bring about state Wild and Scenic River designation.

ON A MOTION by Supervisor Wright seconded by Supervisor Callaway, the foregoing resolution was duly passed and adopted by the Board of Supervisors of the County of Calaveras, State of California this 25th day of February, 2014, by the following vote:

- AYES: Supervisors Edson, Wright, Callaway, Ponte and Spellman
- NOES: None
- ABSENT: None
- ABSTAINED: None

Debbi Ponte
Chair

ATTEST:

Reverend
Clerk of the Board of Supervisors
of the County of Calaveras

EXHIBIT B

AMENDED IN SENATE MAY 28, 2014

AMENDED IN SENATE MAY 20, 2014

AMENDED IN SENATE MAY 6, 2014

AMENDED IN SENATE APRIL 3, 2014

SENATE BILL

No. 1199

Introduced by Senator Hancock

February 20, 2014

An act to amend Sections 5093.54 and 5093.545 of the Public Resources Code, relating to wild and scenic rivers.

LEGISLATIVE COUNSEL'S DIGEST

SB 1199, as amended, Hancock. Wild and scenic rivers: Mokelumne River.

The California Wild and Scenic Rivers Act includes specified rivers and segments thereof within the California Wild and Scenic River ~~Rivers~~ system, which are subject to various protections under the act. Existing law requires the Natural Resources Agency to coordinate the activities of state agencies whose activities affect the rivers in the system, as specified, and to study and submit to the Governor and the Legislature reports on the suitability or nonsuitability of designated potential additions to the system.

This bill would include within the system specified segments of the Mokelumne River, and would designate those segments as wild, scenic, or recreational.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares both of the
2 following:

3 (a) The Mokelumne River contains extraordinary scenic,
4 recreational, historical, cultural, and water quality values of
5 statewide significance that deserve to be preserved in their
6 free-flowing state for the benefit and enjoyment of the people of
7 the state.

8 (b) In designating the Mokelumne River as a component of the
9 California Wild and Scenic River System, it is the intent of the
10 Legislature that this act will accomplish the preservation of those
11 values.

12 SEC. 2. Section 5093.54 of the Public Resources Code is
13 amended to read:

14 5093.54. The following rivers and segments thereof are
15 designated as components of the system:

16 (a) Klamath River. The main stem from 100 yards below Iron
17 Gate Dam to the Pacific Ocean; the Scott River from the mouth
18 of Shackleford Creek west of Fort Jones to the river mouth near
19 Hamburg; the Salmon River from Cecilville Bridge to the river
20 mouth near Somes Bar; the North Fork of the Salmon River from
21 the intersection of the river with the south boundary of the Marble
22 Mountain Wilderness area to the river mouth; Wooley Creek from
23 the western boundary of the Marble Mountain Wilderness area to
24 its confluence with the Salmon River.

25 (b) Trinity River. The main stem from 100 yards below Lewiston
26 Dam to the river mouth at Weitchpec; the North Fork of the Trinity
27 from the intersection of the river with the southern boundary of
28 the Salmon-Trinity Primitive Area downstream to the river mouth
29 at Helena; New River from the intersection of the river with the
30 southern boundary of the Salmon-Trinity Primitive Area
31 downstream to the river mouth near Burnt Ranch; South Fork of
32 the Trinity from the junction of the river with State Highway Route
33 36 to the river mouth near Salyer.

34 (c) Smith River. The main stem from the confluence of the
35 Middle and South Forks to its mouth at the Pacific Ocean; the
36 Middle Fork from its source about three miles south of Sanger
37 Lake as depicted on 1956 USGS 15' "Preston Peak" topographic
38 map to the middle of Section 7 T17N R5E; the Middle Fork from

1 the middle of Section 7 T17N R5E to the middle of Section 6 T17N
2 R5E; the Middle Fork from the middle of Section 6 T17N R5E to
3 one-half mile upstream from the confluence with Knopki Creek;
4 the Middle Fork from one-half mile upstream from the confluence
5 with Knopki Creek to the confluence with the South Fork; Myrtle
6 Creek from its source in Section 9 T17N R1E as depicted on 1952
7 USGS 15' "Crescent City" topographic map to the middle of
8 Section 28 T17N R1E; Myrtle Creek, from the middle of Section
9 28 T17N R1E to the confluence with the Middle Fork; Shelly
10 Creek from its source in Section 1 T18N R3E as depicted on 1951
11 USGS 15' "Gasquet" topographic map to the confluence with
12 Patrick Creek; Kelly Creek from its source in Section 32 T17N
13 R3E as depicted on 1951 USGS 15' "Gasquet" topographic map
14 to the confluence with the Middle Fork; Packsaddle Creek from
15 its source about 0.8 miles southwest of Broken Rib Mountain as
16 depicted on 1956 USGS 15' "Preston Peak" topographic map to
17 the eastern boundary of Section 3 T17N R1E; Packsaddle Creek
18 from the eastern boundary of Section 3 T17N R4E to the northern
19 boundary of Section 3 T17N R4E; Packsaddle Creek from the
20 northern boundary of Section 3 T17N R4E to the confluence with
21 the Middle Fork; East Fork Patrick Creek from its source in Section
22 10 T18N R3E as depicted on 1951 USGS 15' "Gasquet"
23 topographic map to the confluence with West Fork Patrick Creek;
24 West Fork Patrick Creek from its source in Section 18 T18N R3E
25 as depicted on 1951 15' "Gasquet" topographic map to the
26 confluence with East Fork Patrick Creek; Griffin Creek from its
27 source about 0.2 miles southwest of Hazel View Summit as
28 depicted on 1956 USGS 15' "Preston Peak" topographic map to
29 the confluence with the Middle Fork; Knopki Creek from its source
30 about 0.4 miles west of Sanger Peak as depicted on 1956 USGS
31 15' "Preston Peak" topographic map to the confluence with Middle
32 Fork; Monkey Creek from its source in the northeast quadrant of
33 Section 12 T18N R3E as depicted on 1951 USGS 15' "Gasquet"
34 topographic map to the northern boundary of Section 26 T18N
35 R3E; Monkey Creek from the northern boundary of Section 26
36 T18N R3E to the confluence with the Middle Fork; Patrick Creek
37 from the junction of the East and West Forks of Patrick Creek to
38 the confluence with Middle Fork; the North Fork from the
39 California-Oregon boundary to the confluence with an unnamed
40 tributary in the northern quarter Section 5 T18N R2E as depicted

1 on 1951 USGS 15' "Gasquet" topographic map; the North Fork
2 from the confluence with an unnamed tributary in northern quarter
3 of Section 5 T18N R2E to the southernmost intersection of eastern
4 boundary Section 5 T18N R2E as depicted on 1951 USGS 15'
5 "Gasquet" topographic map; the North Fork from the southernmost
6 intersection of the eastern boundary Section 5 T18N R2E as
7 depicted on 1951 USGS 15' "Gasquet" topographic map to the
8 confluence with Stony Creek; the North Fork from the confluence
9 with Stony Creek to the confluence with the Middle Fork; Diamond
10 Creek from the California-Oregon state boundary to the confluence
11 with High Plateau Creek; Diamond Creek from the confluence
12 with High Plateau Creek to the confluence with the North Fork;
13 Bear Creek from its source in Section 24 T18N R2E as depicted
14 on 1951 USGS 15' "Gasquet" topographic map to the confluence
15 with Diamond Creek; Still Creek from its source in Section 11
16 T18N R1E as depicted on 1952 USGS 15' "Crescent City"
17 topographic map to the confluence with the North Fork Smith
18 River; North Fork Diamond Creek from the California-Oregon
19 state boundary to the confluence with Diamond Creek; High
20 Plateau Creek from its source in Section 26 T18N R2E as depicted
21 on 1951 USGS 15' "Gasquet" topographic map to northern
22 boundary Section 23 T18N R2E; High Plateau Creek from the
23 northern boundary Section 23 T18N R2E to the confluence with
24 Diamond Creek; the Siskiyou Fork from its source about 0.7 miles
25 southeast of Broken Rib Mountain as depicted on 1956 USGS 15'
26 "Preston Peak" topographic map to the confluence with the South
27 Siskiyou Fork; the Siskiyou Fork from its confluence with the
28 South Siskiyou Fork to the confluence with the Middle Fork; the
29 South Siskiyou Fork from its source about 0.6 miles southwest of
30 Buck Lake as depicted on 1956 USGS 15' "Preston Peak"
31 topographic map to the confluence with the Siskiyou Fork; the
32 South Fork from its source about 0.5 miles southwest of Bear
33 Mountain as depicted on 1956 USGS 15' "Preston Peak"
34 topographic map to Blackhawk Bar; the South Fork from
35 Blackhawk Bar to the confluence with the Middle Fork; Williams
36 Creek from its source in Section 31 T14N R4E as depicted on 1952
37 USGS 15' "Ship Mountain" topographic map to the confluence
38 with Eight Mile Creek; Eight Mile Creek from its source in Section
39 29 T14N R4E as depicted on 1955 USGS 15' "Dillon Mountain"
40 topographic map to the confluence with the South Fork; the

1 Prescott Fork from its source about 0.5 miles southeast of Island
2 Lake as depicted on 1955 USGS 15' "Dillon Mountain"
3 topographic map to the confluence with the South Fork; Quartz
4 Creek from its source in Section 31 T16N R4E as depicted on 1952
5 USGS 15' "Ship Mountain" topographic map to the confluence
6 with the South Fork; Jones Creek from its source in Section 36
7 T16N R3E as depicted on 1952 USGS 15' "Ship Mountain"
8 topographic map to the middle of Section 5 T15N R3E; Jones
9 Creek from the middle of Section 5 T15N R3E to the confluence
10 with the South Fork; Hurdygurdy Creek from its source about 0.4
11 miles southwest of Bear Basin Butte as depicted on 1956 USGS
12 15' "Preston Peak" topographic map to the confluence with the
13 South Fork; Gordon Creek from its source in Section 18 T16N
14 R3E as depicted on 1951 USGS 15' "Gasquet" topographic map
15 to the confluence with the South Fork; Coon Creek from the
16 junction of the two-source tributaries in the southwest quadrant of
17 Section 31 T17N R3E as depicted on 1951 USGS 15' "Gasquet"
18 topographic map to the western boundary Section 14 T16N R2E;
19 Coon Creek from the western boundary Section 14 T16N R2E to
20 the confluence with the South Fork; Craigs Creek from its source
21 in Section 36 T17N R2E as depicted on 1951 USGS 15' "Gasquet"
22 topographic map to the confluence with the South Fork; Buck
23 Creek from its source at Cedar Camp Spring as depicted on 1952
24 USGS 15' "Ship Mountain" topographic map to the confluence
25 with the South Fork; Muzzleloader Creek from its source in Section
26 2 T15N R3E as depicted on 1952 USGS 15' "Ship Mountain"
27 topographic map to the confluence with Jones Creek; Canthook
28 Creek from its source in Section 2 T15N R2E as depicted on 1952
29 USGS 15' "Ship Mountain" topographic map to the confluence
30 with South Fork.

31 (d) Eel River. The main stem from 100 yards below Van Arsdale
32 Dam to the Pacific Ocean; the South Fork of the Eel from the
33 mouth of Section Four Creek near Branscomb to the river mouth
34 below Weott; Middle Fork of the Eel from the intersection of the
35 river with the southern boundary of the Middle Eel-Yolla Bolly
36 Wilderness Area to the river mouth at Dos Rios; North Fork of the
37 Eel from the Old Gilman Ranch downstream to the river mouth
38 near Ramsey; Van Duzen River from Dinsmores Bridge
39 downstream to the river mouth near Fortuna.

1 (e) American River. The North Fork from its source to the Iowa
2 Hill Bridge; the Lower American from Nimbus Dam to its junction
3 with the Sacramento River.

4 (f) (1) West Walker River. The main stem from its source to
5 the confluence with Rock Creek near the town of Walker; Leavitt
6 Creek from Leavitt Falls to the confluence with the main stem of
7 the West Walker River.

8 (2) Carson River. The East Fork from the Hangman's Bridge
9 crossing of State Highway Route 89 to the California-Nevada
10 border.

11 (3) The Legislature finds and declares that, because the East
12 Fork Carson River and West Walker River are interstate streams,
13 and a source of agricultural water and domestic water for
14 communities within the Counties of Alpine and Mono where they
15 originate, it is necessary that the following special provisions apply:

16 (A) Nothing in this subdivision shall be construed to prohibit
17 the replacement of diversions or changes in the purpose of use,
18 place of use, or point of diversion under existing water rights,
19 except that (i) no replacement or change shall operate to increase
20 the adverse effect, if any, of the preexisting diversion facility or
21 place or purpose of use, upon the free-flowing condition and natural
22 character of the stream, and (ii) after January 1, 1990, no new
23 diversion shall be constructed unless and until the secretary
24 determines that the facility is needed to supply domestic water to
25 the residents of any county through which the river or segment
26 flows and that the facility will not adversely affect the free-flowing
27 condition and natural character of the stream.

28 (B) Nothing in this chapter shall be construed as quantifying or
29 otherwise affecting any equitable apportionment, or as establishing
30 any upper limit, between the State of California and the State of
31 Nevada of the waters of these streams.

32 (g) (1) The South Yuba River: From Lang Crossing to its
33 confluence with Kentucky Creek below Bridgeport.

34 (2) Nothing in this subdivision shall prejudice, alter, delay,
35 interfere with, or affect in any way, the existing rights of the Placer
36 County Water Agency; the implementation of those rights; any
37 historic water use practices; the replacement, maintenance, repair,
38 operation, or future expansion of existing diversions, storage,
39 powerhouses, or conveyance facilities or other works by the Placer
40 County Water Agency; or changes in the purpose of use, places

1 of use, points of diversion, or ownership of those existing water
2 rights; nor shall anything in this subdivision preclude the issuance
3 of any governmental authorization needed for utilization of those
4 rights, except that no changes shall operate to increase the adverse
5 effect, if any, of the preexisting facilities or places, or the purposes
6 of use upon the free-flowing and natural character of the river
7 segment designated in this subdivision.

8 (h) Albion River. The Albion River from one-fourth mile
9 upstream of its confluence with Deadman Gulch downstream to
10 its mouth at the Pacific Ocean.

11 (i) Gualala River. The main stem Gualala River from the
12 confluence of the North and South Forks to the Pacific Ocean.

13 (j) (1) Cache Creek from one-fourth mile below Cache Creek
14 Dam to Camp Haswell.

15 (2) North Fork Cache Creek from the Highway 20 bridge to the
16 confluence with the main stem.

17 (3) The designation of Cache Creek under paragraphs (1) and
18 (2) shall not prejudice, alter, delay, interfere with, or affect in any
19 way, the existing water rights of the Yolo County Flood Control
20 and Water Conservation District, or public water agencies within
21 the Cache Creek watershed lying in the County of Lake, including
22 the range of operations permitted under these existing water rights;
23 any historic water use practices within existing water rights; or the
24 replacement, maintenance, repair, or future expansion within
25 existing water rights of existing diversion, storage, powerhouse,
26 or conveyance facilities or other works by the Yolo County Flood
27 Control and Water Conservation District or public water agencies
28 within the Cache Creek watershed lying in the County of Lake.

29 (4) The designation of Cache Creek under paragraphs (1) and
30 (2) shall not prejudice, alter, delay, interfere with, or affect any
31 changes to the existing water rights of the Yolo County Flood
32 Control and Water Conservation District, including changes to the
33 purpose of use, place of use, points of diversion, quantity of water
34 diverted, or ownership, or applications by the district for new water
35 rights; provided, that the changes or applications do not involve
36 the construction of a dam, reservoir, diversion, or other water
37 impoundment facility within the segments of Cache Creek
38 designated in paragraphs (1) and (2). Any such change or
39 application shall be subject to all applicable constitutional,

1 statutory, and judicial requirements, including the public trust
2 doctrine.

3 (5) As the waters of the Cache Creek watershed are the sole
4 source of supply within that watershed for the County of Lake, the
5 designation of Cache Creek under paragraphs (1) and (2) shall not
6 prejudice, alter, delay, interfere with, or affect any changes to the
7 existing water rights of the public water agencies within the Cache
8 Creek watershed lying in the County of Lake, including changes
9 to the purpose of use, place of use, points of diversion, quantity
10 of water diverted, or ownership, or applications by these agencies
11 for new water rights; provided, that the changes or applications
12 do not involve the construction of a dam, reservoir, diversion, or
13 other water impoundment facility within the segments of Cache
14 Creek designated in paragraphs (1) and (2). Any such change or
15 application shall be subject to all applicable constitutional,
16 statutory, and judicial requirements, including the public trust
17 doctrine.

18 (6) (A) The designation of Cache Creek under paragraphs (1)
19 and (2) shall not impair or affect in any way activities to manage
20 or remove invasive or nonnative plants and animal species.

21 (B) The designation of Cache Creek under paragraphs (1) and
22 (2) shall not impair or affect in any way activities to remediate
23 mercury pollution; provided, that this activity does not involve the
24 construction of a dam, reservoir, diversion, or other water
25 impoundment facility within the segments of Cache Creek
26 designated in paragraphs (1) and (2).

27 (7) (A) Neither the Governor nor an employee of a state agency
28 or department shall apply to a secretary, department, agency, or
29 other entity of the federal government for the designation of any
30 portion of Cache Creek as a component of the national wild and
31 scenic rivers system under the federal Wild and Scenic Rivers Act
32 (16 U.S.C. Sec. 1271 et seq.).

33 (B) Neither the Governor nor an employee of a state agency or
34 department shall expend funds preparing, filing, or otherwise
35 submitting an application to a secretary, department, or other entity
36 of the federal government for the designation of any portion of
37 Cache Creek as a component of the national wild and scenic rivers
38 system under the federal Wild and Scenic Rivers Act (16 U.S.C.
39 Sec. 1271 et seq.).

- 1 (8) To the extent that this subdivision conflicts with other
2 provisions of this chapter, this subdivision shall control.
- 3 (k) (1) North Fork Mokelumne River from ~~0.25~~ 0.50 miles
4 downstream of the Salt Springs 97-066 Dam to the national forest
5 boundary; 0.50 miles upstream of the Tiger Creek Powerhouse.
- 6 (2) North Fork Mokelumne River from ~~300~~ 1,000 feet below
7 downstream of the Tiger Creek Afterbay 97-105 Dam to ~~300~~ feet
8 upstream of the Electra Diversion 97-114 Dam and West Point
9 Power House. State Highway Route 26.
- 10 (3) North Fork Mokelumne River from ~~300~~ 400 feet downstream
11 of the small reregulating dam at the outlet of the West Point Power
12 House to the Middle Fork Mokelumne River confluence.
- 13 (4) The main stem of the Mokelumne River from the confluence
14 of the North and Middle Forks to 300 feet upstream of the Electra
15 Powerhouse.
- 16 (5) The main stem of the Mokelumne River from 300 feet
17 downstream of the small reregulating dam downstream of the
18 Electra Powerhouse to the ~~upper extent of~~ Pardee Reservoir
19 ~~downstream of Highway 49.~~ flood surcharge pool at 580 feet
20 elevation above mean sea level.
- 21 (6) *Nothing in this chapter shall prejudice, alter, delay, interfere*
22 *with, or affect in any way, the installation, operation, maintenance,*
23 *repair, and replacement of river flow and water quality monitoring*
24 *stations and equipment in and along the designated segments of*
25 *the Mokelumne River; or the construction, operation, maintenance,*
26 *repair, and replacement of recreational facilities along the*
27 *Mokelumne River on East Bay Municipal Utility District lands,*
28 *including scenic trails and rafting facilities, such as take outs,*
29 *parking lots, and similar recreational facilities.*
- 30 (7) *Nothing in this subdivision shall prejudice, alter, delay,*
31 *interfere with, or affect in any way, the existing rights of the*
32 *Amador Water Agency, the Jackson Valley Irrigation District, the*
33 *Calaveras Public Utility District, and the Calaveras County Water*
34 *District; the implementation of those rights; any historic water*
35 *use practices; the replacement, maintenance, repair, operation,*
36 *or future expansion of existing diversions, storage, powerhouses,*
37 *conveyance facilities, power lines, or other works by those*
38 *agencies; or changes in the purpose of use, places of use, points*
39 *of diversion, or ownership of those existing water rights; nor shall*
40 *anything in this subdivision preclude the issuance of any*

1 governmental authorization needed for utilization of those rights.
 2 However, no exercise of rights or practices specified in this
 3 paragraph shall operate to increase the adverse effect, if any, of
 4 the preexisting facilities or places, or the purposes of use upon the
 5 free-flowing and natural character of the river segments designated
 6 herein.

7 (8) Nothing in this subdivision shall prejudice, delay, interfere
 8 with, or affect in any way, a water rights application by the Amador
 9 Water Agency, the Jackson Valley Irrigation District, the Calaveras
 10 Public Utility District, and the Calaveras County Water District
 11 and consideration by the State Water Resources Control Board of
 12 a water rights application for new water supply projects upstream
 13 of Mokelumne River segments protected in this subdivision or on
 14 tributaries to the North Fork and main stem Mokelumne River,
 15 provided that the application and approval of water rights, and
 16 the construction and operation of facilities to access those rights,
 17 shall avoid an adverse effect on the free-flowing condition and
 18 natural character of the river segments designated in this section
 19 as components of the system.

20 (9) Nothing in this subdivision shall prejudice, alter, delay,
 21 interfere with, or affect in any way, Amador Water Agency's water
 22 rights application 5647X03 pending before the State Water
 23 Resources Control Board.

24 (I) Rivers that qualify for inclusion in the system may be
 25 recommended to the Legislature by the secretary.

26 SEC. 3. Section 5093.545 of the Public Resources Code is
 27 amended to read:

28 5093.545. The classifications heretofore established by the
 29 secretary for the rivers or segments of rivers included in the system
 30 are revised and adopted as follows:

	Rivers	Classification
31		
32		
33	(a) Klamath River: The Klamath River from the	
34	FERC Project 2082 downstream boundary	
35	in Section 17 T47N R5W as shown on	
36	Exhibit K-7 sheet 1 dated May 25, 1962, to	
37	the river mouth at the Pacific Ocean	Recreational
38	(b) Scott River:	
39	(1) The Scott River from Shackleford Creek to	
40	McCarthy Creek	Recreational

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|----|------|---|--------------|
| 1 | (2) | The Scott River from McCarthy Creek to | |
| 2 | | Scott Bar | Scenic |
| 3 | (3) | The Scott River from Scott Bar to the | |
| 4 | | confluence with the Klamath River | Recreational |
| 5 | (c) | Salmon River: | |
| 6 | (1) | The Salmon River from the Forks of | |
| 7 | | Salmon to the Lewis Creek confluence | Recreational |
| 8 | (2) | The Salmon River from the Lewis Creek | |
| 9 | | confluence to the Wooley Creek confluence | Scenic |
| 10 | (3) | The Salmon River from the Wooley Creek | |
| 11 | | confluence to the confluence with the | |
| 12 | | Klamath River | Recreational |
| 13 | (4) | The South Fork of the Salmon River from | |
| 14 | | Cecilville to the St. Claire Creek confluence | Recreational |
| 15 | (5) | The South Fork from the St. Claire Creek | |
| 16 | | confluence to the Matthews Creek | |
| 17 | | confluence | Scenic |
| 18 | (6) | The South Fork from the Matthews Creek | |
| 19 | | confluence to the Forks of Salmon | Recreational |
| 20 | (7) | The North Fork of the Salmon River from | |
| 21 | | Marble Mountain Wilderness boundary to | |
| 22 | | Mule Bridge Campground in Section 35 | |
| 23 | | T12N R11W and Section 12 T11N R11W | Wild |
| 24 | (8) | The North Fork from Mule Bridge | |
| 25 | | Campground to the Forks of Salmon | Recreational |
| 26 | (9) | Wooley Creek from the Marble Mountain | |
| 27 | | Wilderness area boundary to the ½ mile | |
| 28 | | upstream of the confluence with Salmon | |
| 29 | | River | Wild |
| 30 | (10) | Wooley Creek downstream ½ mile above | |
| 31 | | the confluence with the Salmon River | Recreational |
| 32 | (d) | Trinity River: | |
| 33 | (1) | The Trinity River from 100 yards below | |
| 34 | | Lewiston Dam to Cedar Flat Creek | |
| 35 | | confluence | Recreational |
| 36 | (2) | The Trinity River from the Cedar Flat Creek | |
| 37 | | confluence to Gray Falls | Scenic |
| 38 | (3) | The Trinity River from Gray Falls to the | |
| 39 | | west boundary of Section 2 T8N R4E | Recreational |

1	(4)	The Trinity River from the west boundary	
2		of Section 2 T8N R4E to the confluence	
3		with the Klamath River at Weitchpec	Scenic
4	(5)	The North Fork of the Trinity River from	
5		the Trinity Alps Primitive Area boundary to	
6		north boundary Section 20 T34N R11W	Wild
7	(6)	The North Fork from the north boundary	
8		Section 20 T34N R11W to mouth	Recreational
9	(7)	The South Fork Trinity River from Forest	
10		Glen to Hidden Valley Ranch	Wild
11	(8)	The South Fork from Hidden Valley Ranch	
12		to the Naufus Creek confluence in Section 8	
13		T1N R7E	Scenic
14	(9)	The South Fork from the Naufus Creek	
15		confluence in Section 8 T1N R7E to the	
16		Johnson Creek confluence near the	
17		boundary of Sections 13 and 14 T2N R6E	Wild
18	(10)	The South Fork from the Johnson Creek	
19		confluence near the boundary of Sections 13	
20		and 14 T2N R6E to the boundary of	
21		Sections 25 and 36 T2N R6E	Scenic
22	(11)	The South Fork from the boundary of	
23		Sections 25 and 36 T2N R6E to the	
24		footbridge near the mouth of Underwood	
25		Creek in Section 17 T4N R6E Humboldt	
26		Base and Meridian	Recreational
27	(12)	The South Fork from the footbridge near the	
28		mouth of Underwood Creek in Section 17	
29		T4N R6E to Todd Ranch in Section 18 T5N	
30		R5E	Wild
31	(13)	The South Fork from Todd Ranch in Section	
32		18 T5N R5E to the confluence with Main	
33		Trinity	Scenic
34	(14)	New River from the Salmon Trinity	
35		Primitive Area boundary to the junction	
36		with the East Fork New River in Section 23	
37		T7N R7E	Wild

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| 1 | (15) | New River from the junction with the East | |
| 2 | | Fork New River in Section 23 T7N R7E to | |
| 3 | | 100 yards below Panther Creek | |
| 4 | | Campground in Section 18 T6N R7E | Recreational |
| 5 | (16) | New River from 100 yards below Panther | |
| 6 | | Creek Campground in Section 18 T6N R7E | |
| 7 | | to the Dyer Creek confluence in Section 25 | |
| 8 | | T26N R6E | Scenic |
| 9 | (17) | New River from the Dyer Creek confluence in | |
| 10 | | Section 25 T26N R6E to the confluence | |
| 11 | | with Trinity River | Wild |
| 12 | (e) | Smith River: | |
| 13 | (1) | Smith River from the confluence of the | |
| 14 | | Middle and South Forks to its mouth at the | |
| 15 | | Pacific Ocean | Recreational |
| 16 | (2) | Middle Fork Smith River from its source | |
| 17 | | about 3 miles south of Sanger Lake as | |
| 18 | | depicted on 1956 USGS 15' "Preston Peak" | |
| 19 | | topographic map to the middle of Section 7 | |
| 20 | | T17N R5E | Wild |
| 21 | (3) | Middle Fork Smith River from the middle | |
| 22 | | of Section 7 T17N R5E to the middle of | |
| 23 | | Section 6 T17N R5E | Scenic |
| 24 | (4) | Middle Fork Smith River from middle of | |
| 25 | | Section 6 T17N R5E to one-half mile | |
| 26 | | upstream from the confluence with Knopki | |
| 27 | | Creek | Wild |
| 28 | (5) | Middle Fork Smith River from one-half | |
| 29 | | mile upstream from the confluence with | |
| 30 | | Knopki Creek to the confluence with South | |
| 31 | | Fork Smith River | Recreational |
| 32 | (6) | Myrtle Creek from its source in Section 9 | |
| 33 | | T17N R1E as depicted on 1952 USGS 15' | |
| 34 | | "Crescent City" topographic map to the | |
| 35 | | middle of Section 28 T17N R1E | Recreational |
| 36 | (7) | Myrtle Creek from the middle of Section 28 | |
| 37 | | T17N R1E to the confluence with the | |
| 38 | | Middle Fork Smith River | Recreational |

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| 1 | (8) | Shelly Creek from its source in Section 1 | |
| 2 | | T18N R3E as depicted on 1951 USGS 15' | |
| 3 | | "Gasquet" topographic map to the | |
| 4 | | confluence with Patrick Creek | Recreational |
| 5 | (9) | Kelly Creek from its source in Section 32 | |
| 6 | | T17N R3E as depicted on 1951 USGS 15' | |
| 7 | | "Gasquet" topographic map to the | |
| 8 | | confluence with the Middle Fork Smith | |
| 9 | | River | Recreational |
| 10 | (10) | Packsaddle Creek from its source about 0.8 | |
| 11 | | miles southwest of Broken Rib Mountain as | |
| 12 | | depicted on 1956 USGS 15' "Preston Peak" | |
| 13 | | topographic map to the eastern boundary of | |
| 14 | | Section 3 T17N R1E | Recreational |
| 15 | (11) | Packsaddle Creek from the eastern | |
| 16 | | boundary of Section 3 T17N R4E to the | |
| 17 | | northern boundary of Section 3 T17N R4E | Recreational |
| 18 | (12) | Packsaddle Creek from the northern | |
| 19 | | boundary of Section 3 T17N R4E to the | |
| 20 | | confluence with the Middle Fork of Smith | |
| 21 | | River | Recreational |
| 22 | (13) | East Fork Patrick Creek from its source in | |
| 23 | | Section 10 T18N R3E as depicted on 1951 | |
| 24 | | USGS 15' "Gasquet" topographic map to | |
| 25 | | the confluence with the West Fork Patrick | |
| 26 | | Creek | Recreational |
| 27 | (14) | West Fork Patrick Creek from its source in | |
| 28 | | Section 18 T18N R3E as depicted on 1951 | |
| 29 | | USGS 15' "Gasquet" topographic map to | |
| 30 | | the confluence with the East Fork Patrick | |
| 31 | | Creek | Recreational |
| 32 | (15) | Griffin Creek from its source about 0.2 | |
| 33 | | miles southwest of Hazel View Summit as | |
| 34 | | depicted on 1956 USGS 15' "Preston Peak" | |
| 35 | | topographic map to the confluence with the | |
| 36 | | Middle Fork Smith River | Recreational |

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| 1 | (16) Knopki Creek from its source about 0.4 | |
| 2 | miles west of Sanger Peak as depicted on | |
| 3 | 1956 USGS 15' "Preston Peak" topographic | |
| 4 | map to the confluence with the Middle Fork | |
| 5 | Smith River | Recreational |
| 6 | (17) Monkey Creek from its source in the | |
| 7 | northeast quadrant of Section 12 T18N R3E | |
| 8 | as depicted on 1951 USGS 15' "Gasquet" | |
| 9 | topographic map to the northern boundary | |
| 10 | of Section 26 T18N R3E | Recreational |
| 11 | (18) Monkey Creek from the northern boundary | |
| 12 | of Section 26 T18N R3E to the confluence | |
| 13 | with the Middle Fork of Smith River | Recreational |
| 14 | (19) Patrick Creek from the junction of East and | |
| 15 | West Forks of Patrick Creek to the | |
| 16 | confluence with the Middle Fork Smith | |
| 17 | River | Recreational |
| 18 | (20) North Fork Smith River from the | |
| 19 | California-Oregon boundary to the | |
| 20 | confluence with an unnamed tributary in the | |
| 21 | northern quarter Section 5 T18N R2E as | |
| 22 | depicted on 1951 USGS 15' "Gasquet" | |
| 23 | topographic map | Wild |
| 24 | (21) North Fork Smith River from the | |
| 25 | confluence with an unnamed tributary in the | |
| 26 | northern quarter of Section 5 T18N R2E to | |
| 27 | the southernmost intersection of the | |
| 28 | eastern boundary of Section 5 T18N R2E | |
| 29 | as depicted on 1951 USGS 15' "Gasquet" | |
| 30 | topographic map | Scenic |
| 31 | (22) North Fork Smith River from the | |
| 32 | southernmost intersection of the eastern | |
| 33 | boundary Section 5 T18N R2E as depicted | |
| 34 | on 1951 USGS 15' "Gasquet" topographic | |
| 35 | map to the confluence with Stony Creek | Wild |
| 36 | (23) North Fork Smith River from the | |
| 37 | confluence with Stony Creek to the | |
| 38 | confluence with the Middle Fork of the | |
| 39 | Smith River | Recreational |

1	(24)	Diamond Creek from the California-Oregon state boundary to the confluence with High Plateau Creek	Recreational
2			
3			
4	(25)	Diamond Creek from the confluence with High Plateau Creek to the confluence with the North Fork Smith River	Recreational
5			
6			
7	(26)	Bear Creek from its source in Section 24 T18N R2E as depicted on 1951 USGS 15' "Gasquet" topographic map to the confluence with Diamond Creek	Recreational
8			
9			
10			
11	(27)	Still Creek from its source in Section 11 T18N R1E as depicted on 1952 USGS 15' "Crescent City" topographic map to the confluence with the North Fork Smith River	Recreational
12			
13			
14			
15	(28)	North Fork Diamond Creek from the California-Oregon state boundary to the confluence with Diamond Creek	Recreational
16			
17			
18	(29)	High Plateau Creek from its source in Section 26 T18N R2E as depicted on 1951 USGS 15' "Gasquet" topographic map to the northern boundary Section 23 T18N R2E	Recreational
19			
20			
21			
22			
23	(30)	High Plateau Creek from the northern boundary Section 23 T18N R2E to the confluence with Diamond Creek	Recreational
24			
25			
26	(31)	Siskiyou Fork of Smith River from its source about 0.7 miles southeast of Broken Rib Mountain as depicted on 1956 USGS 15' "Preston Peak" topographic map to the confluence with the South Siskiyou Fork of the Smith River	Wild
27			
28			
29			
30			
31			
32	(32)	Siskiyou Fork of the Smith River from the confluence with the South Siskiyou Fork of the Smith River to the confluence with the Middle Fork of the Smith River	Recreational
33			
34			
35			

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| 1 | (33) | South Siskiyou Fork of the Smith River | |
| 2 | | from its source about 0.6 miles southwest of | |
| 3 | | Buck Lake as depicted on 1956 USGS 15' | |
| 4 | | "Preston Peak" topographic map to the | |
| 5 | | confluence with the Siskiyou Fork of the | |
| 6 | | Smith River | Wild |
| 7 | (34) | South Fork Smith River from its source | |
| 8 | | about 0.5 miles southwest of Bear Mountain | |
| 9 | | as depicted on 1956 USGS 15' "Preston | |
| 10 | | Peak" topographic map to Blackhawk Bar | Wild |
| 11 | (35) | South Fork Smith River from Blackhawk | |
| 12 | | Bar to the confluence with the Middle Fork | |
| 13 | | Smith River | Recreational |
| 14 | (36) | Williams Creek from its source in Section | |
| 15 | | 31 T14N R4E as depicted on 1952 USGS | |
| 16 | | 15' "Ship Mountain" topographic map to | |
| 17 | | the confluence with Eight Mile Creek | Recreational |
| 18 | (37) | Eight Mile Creek from its source in Section | |
| 19 | | 29 T14N R4E as depicted on 1955 USGS | |
| 20 | | 15' "Dillon Mountain" topographic map to the | |
| 21 | | confluence with the South Fork Smith River | Recreational |
| 22 | (38) | Prescott Fork of the Smith River from its | |
| 23 | | source about 0.5 miles southeast of Island | |
| 24 | | Lake as depicted on 1955 USGS 15' | |
| 25 | | "Dillon Mountain" topographic map to the | |
| 26 | | confluence with the South Fork Smith River | Recreational |
| 27 | (39) | Quartz Creek from its source in Section 31 | |
| 28 | | T16N R4E as depicted on 1952 USGS 15' | |
| 29 | | "Ship Mountain" topographic map to the | |
| 30 | | confluence with the South Fork Smith River | Recreational |
| 31 | (40) | Jones Creek from its source in Section 36 | |
| 32 | | T16N R3E as depicted on 1952 USGS 15' | |
| 33 | | "Ship Mountain" topographic map to the | |
| 34 | | middle of Section 5 T15N R3E | Recreational |
| 35 | (41) | Jones Creek from the middle of Section 5 | |
| 36 | | T15N R3E to the confluence with the South | |
| 37 | | Fork of the Smith River | Recreational |

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|----|------|--|--------------|
| 1 | (42) | Hurdygurdy Creek from its source about 0.4 | |
| 2 | | miles southwest of Bear Basin Butte as | |
| 3 | | depicted on 1956 USGS 15' "Preston Peak" | |
| 4 | | topographic map to the confluence with the | |
| 5 | | South Fork Smith River | Recreational |
| 6 | (43) | Gordon Creek from its source in Section 18 | |
| 7 | | T16N R3E as depicted on 1951 USGS 15' | |
| 8 | | "Gasquet" topographic map to the | |
| 9 | | confluence with the South Fork Smith River | Recreational |
| 10 | (44) | Coon Creek from the junction of the two | |
| 11 | | source tributaries in the southwest quadrant | |
| 12 | | of Section 31 T17N R3E as depicted on | |
| 13 | | 1951 USGS 15' "Gasquet" topographic | |
| 14 | | map to the western boundary of Section 14 | |
| 15 | | T16N R2E | Recreational |
| 16 | (45) | Coon Creek from the western boundary of | |
| 17 | | Section 14 T16N R2E to the confluence | |
| 18 | | with the South Fork Smith River | Recreational |
| 19 | (46) | Craigs Creek from its source in Section 36 | |
| 20 | | T17N R2E as depicted on 1951 USGS 15' | |
| 21 | | "Gasquet" topographic map to the | |
| 22 | | confluence with the South Fork Smith River | Recreational |
| 23 | (47) | Buck Creek from its source at Cedar Camp | |
| 24 | | Spring as depicted on 1952 USGS 15' | |
| 25 | | "Ship Mountain" topographic map to the | |
| 26 | | confluence with the South Fork Smith River | Recreational |
| 27 | (48) | Muzzleloader Creek from its source in | |
| 28 | | Section 2 T15N R3E as depicted on 1952 | |
| 29 | | USGS 15' "Ship Mountain" topographic | |
| 30 | | map to the confluence with Jones Creek | Recreational |
| 31 | (49) | Canthook Creek from its source in Section 2 | |
| 32 | | T15N R2E as depicted on 1952 USGS 15' | |
| 33 | | "Ship Mountain" topographic map to the | |
| 34 | | confluence with the South Fork Smith River | Recreational |
| 35 | (f) | Eel River: | |
| 36 | (1) | The Eel River from 100 yards below Van | |
| 37 | | Arsdale Dam to the confluence with Tomki | |
| 38 | | Creek | Recreational |

- | | | | |
|----|------|--|--------------|
| 1 | (2) | The Eel River from the confluence with | |
| 2 | | Tomki Creek to the middle of Section 22 | |
| 3 | | T19N R12W | Scenic |
| 4 | (3) | The Eel River from the middle of Section | |
| 5 | | 22 T19N R12W to the boundary between | |
| 6 | | Sections 7 and 8 T19N R12W | Recreational |
| 7 | (4) | The Eel River from the boundary between | |
| 8 | | Sections 7 and 8 T19N R12W to the | |
| 9 | | confluence with Outlet Creek | Wild |
| 10 | (5) | The Eel River from the confluence with | |
| 11 | | Outlet Creek to the mouth at the Pacific | |
| 12 | | Ocean | Recreational |
| 13 | (6) | The South Fork of the Eel River from the | |
| 14 | | mouth of Section Four Creek near | |
| 15 | | Branscomb | Recreational |
| 16 | (7) | The South Fork of the Eel River from | |
| 17 | | Horseshoe Bend to the middle of Section 29 | |
| 18 | | T23N R16W | Wild |
| 19 | (8) | The South Fork of the Eel River from the | |
| 20 | | middle of Section 29 T23N R16W to the | |
| 21 | | confluence with the main Eel near Weott | Recreational |
| 22 | (9) | Middle Fork of the Eel River from the | |
| 23 | | intersection of the river with the southern | |
| 24 | | boundary of the Middle Eel-Yolla Bolly | |
| 25 | | Wilderness Area to the Eel River Ranger | |
| 26 | | Station | Wild |
| 27 | (10) | The Middle Fork of the Eel River from Eel | |
| 28 | | River Ranger Station to Williams Creek | Recreational |
| 29 | (11) | The Middle Fork of the Eel River from | |
| 30 | | Williams Creek to the southern boundary of | |
| 31 | | the northern quarter of Section 25 T22N | |
| 32 | | R12W | Scenic |
| 33 | (12) | The Middle Fork of the Eel River from the | |
| 34 | | southern boundary of the northern quarter of | |
| 35 | | Section 25 T22N R12W to the boundary | |
| 36 | | between Sections 4 and 5 T21N R13W | Wild |
| 37 | (13) | The Middle Fork of the Eel River from the | |
| 38 | | boundary between Sections 4 and 5 T21N | |
| 39 | | R13W to the confluence with main Eel at | |
| 40 | | Dos Rios | Recreational |

1	(14)	The North Fork of the Eel River from the	
2		Old Gilman Ranch to the middle of Section	
3		8 T24N R13W	Wild
4	(15)	The North Fork of the Eel River from the	
5		middle of Section 8 T24N R13W to the	
6		boundary between Sections 12 and 13 T24N	
7		R14W	Recreational
8	(16)	The North Fork of the Eel River from the	
9		boundary between Sections 12 and 13 T24N	
10		R14W to the confluence with main Eel	Wild
11	(g)	Van Duzen River:	
12	(1)	The Van Duzen River from the	
13		Dinsmore Bridge to the powerline crossing	
14		above Little Larrabee Creek	Scenic
15	(2)	The Van Duzen River from the powerline	
16		crossing above Little Larrabee Creek to the	
17		confluence with the Eel River	Recreational
18	(h)	Lower American River: The Lower American	
19		River from Nimbus Dam to its junction	
20		with the Sacramento River	Recreational
21	(i)	North Fork American River:	
22	(1)	The North Fork from the source of the	
23		North Fork American River to two and	
24		one-half miles above the Forest Hill-Soda	
25		Springs Road	Wild
26	(2)	The North Fork from two and one-half	
27		miles above the Forest Hill-Soda Springs	
28		Road to one-half mile below the Forest	
29		Hill-Soda Springs Road	Scenic
30	(3)	The North Fork from one-half mile below	
31		the Forest Hill-Soda Springs Road to	
32		one-quarter mile above the Iowa Hill	
33		Bridge	Wild
34	(4)	The North Fork from one-quarter mile	
35		above the Iowa Hill Bridge to the Iowa Hill	
36		Bridge	Scenic
37	(j)	West Walker River:	
38	(1)	West Walker River from Tower Lake to the	
39		northern boundary of Section 10 T5N R22E	Wild

- 1 (2) West Walker River from northern boundary
2 of Section 10 T5N R22E to the eastern boundary
3 of Section 23 T6N R22E Scenic
- 4 (3) West Walker River from the eastern
5 boundary of Section 23 T6N R22E to the eastern
6 boundary of Section 24 T6N R22E Recreational
- 7 (4) West Walker River from the eastern
8 boundary of Section 24 T6N R22E to the
9 confluence with Little Walker River Scenic
- 10 (5) West Walker River from the confluence
11 with Little Walker River to the confluence
12 with Rock Creek Recreational
- 13 (6) Leavitt Creek from Leavitt Falls to the
14 confluence with West Walker River Scenic
- 15 (k) East Fork Carson River: East Fork
16 Carson River from Hangman's Bridge
17 crossing of State Highway 89 to the
18 California-Nevada border Scenic
- 19 (l) (1) The South Yuba River:
20 (A) The South Yuba River from Lang
21 Crossing to the confluence with
22 Fall Creek Scenic
- 23 (B) The South Yuba River from the
24 confluence with Fall Creek to the
25 confluence with Jefferson Creek
26 below the Town of Washington Recreational
- 27 (C) The South Yuba River from the
28 confluence with Jefferson Creek
29 to Edwards Crossing Scenic
- 30 (D) The South Yuba River from
31 Edwards Crossing to its
32 confluence with Kentucky Creek
33 below Bridgeport Scenic
- 34 (2) This subdivision shall become operative
35 January 1, 2001.
- 36 (m) Albion River: The Albion River from one-fourth
37 mile upstream of its confluence with
38 Deadman Gulch downstream to its mouth at
39 the Pacific Ocean Recreational
- 40 (n) Gualala River: The main stem Gualala

1	River from the confluence of the North and	
2	South Forks to the Pacific Ocean	Recreational
3	(o) Cache Creek:	
4	(1) North Fork Section:	
5	From Highway 20 two miles downstream to	
6	the confluence of Cache Creek and the North	
7	Fork Cache Creek	Scenic
8	(2) Main stem Section:	
9	(A) ¼ mile downstream of Cache Creek	
10	Dam to the confluence with Davis Creek	Wild
11	(B) The Davis Creek confluence to 1 mile	
12	downstream of the Davis Creek confluence	Scenic
13	(C) 1 mile downstream of the Davis Creek	
14	confluence to western boundary of	
15	Section 6 T12N R4W	Wild
16	(D) Western boundary of Section 6	
17	to the confluence with Bear Creek	Scenic
18	(E) The Bear Creek confluence to Camp	
19	Haswell	Recreational
20	(p) Mokelumne River:	
21	(1) North Fork Segments:	
22	(A) From 0.25 0.50 miles downstream of the	
23	Salt Springs Reservoir 97-066 Dam to 0.50 miles	
24	downstream of the Bear River confluence	Recreational
25	(B) From 0.50 miles downstream of	
26	the Bear River confluence to	
27	the national forest boundary 0.50 miles upstream	
28	of the Tiger Creek Powerhouse	Wild
29	(C) From 300 1,000 feet below downstream of	
30	the Tiger Creek	
31	Afterbay 97-105 Dam to 300 feet upstream of	
32	the Electra Diversion Dam and West Point	
33	Power House State Highway Route 26	Recreational
34	(D) From 300 400 feet downstream of the	
35	small reregulating dam at the outlet of the	
36	West Point Power House to the southern	
37	boundary of Section 12 T6N R12E	Wild
38	(E) From the southern boundary of	
39	Section 12 T6N R12E to the Middle Fork	
40	Mokelumne River confluence	Recreational

- 1 (2) Main Stem Segment:
- 2 (A) From the Middle Fork Mokelumne River
- 3 confluence to 300 feet upstream of *the*
- 4 Ponderosa Way Bridge Wild
- 5 (B) From 300 feet upstream of the Ponderosa
- 6 Way Bridge to 300 feet upstream of the Electra
- 7 Powerhouse Scenic
- 8 (C) From 300 feet downstream of the
- 9 small reregulating dam downstream of the
- 10 Electra Powerhouse to the upper extent of
- 11 Pardee Reservoir ~~downstream of~~
- 12 ~~Highway 49~~ *flood surcharge pool at 580 feet*
- 13 *above mean sea level* Recreational
- 14

EXHIBIT C

§734. Applications Within the California Wild and Scenic Rivers System.

- (a) No application which proposes an appropriation of water in connection with construction of a dam, reservoir, or other water impoundment facility on any river designated in Public Resources Code Section 5093.54 will be accepted for filing.
- (b) An application which proposes an appropriation of water which could affect any river designated in Public Resources Code Section 5093.54, will be accepted for filing. The Secretary of the Resources Agency will be provided special notice of any such application.

No permit shall be issued if the board finds that the appropriation would impair the extraordinary scenic, recreational, fishery, or wildlife values of any such designated river.

- (c) An application which proposes an appropriation of water in connection with construction of a water diversion facility on any river designated in Public Resources Code Section 5093.54, other than a dam, reservoir, or other water impoundment facility, will be accepted for filing; provided, no permit shall be issued on any such application unless the Secretary of the Resources Agency first determines (1) that such facility is needed to supply domestic water to the residents of the county or counties through which the river flows, and (2) that such facility will not adversely affect its free-flowing condition or natural character. Such determination shall be in addition to other findings which the board is required by law to make.

Authority: Section 1058, Water Code.

Reference: Sections 5093.55, 56 and 5093.61, Public Resources Code; and Section 1252, Water Code.

History: 1. New Section filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

For history of former Section 734, see Registers 78, No. 9, 71 No. 43, and 60, No. 5.

§735. Napa River, Special.

- (a) Budding grape vines and certain other crops in the Napa Valley may be severely damaged by spring frosts. During a frost, the high instantaneous demand for water for frost protection by numerous vineyardists and other water users frequently exceeds the supply in the Napa River stream system. This results in uncoordinated diversions and possible infringements upon other rights. Therefore, all diversions of water from the stream system between March 15 and May 15 determined to be significant by the board or a court of competent jurisdiction shall be considered unreasonably and a violation of Water Code Section 100 unless controlled by a watermaster administering a board or court approved distribution program. Diversions for frost protection and

EXHIBIT D

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GREGGORY L. WHEATLAND

March 7, 2005

Assembly Member Lois Wolk
California State Capitol
Post Office Box 942849
Sacramento, CA 94249-0008

Re: AB 1328 – Cache Creek Wild and Scenic Rivers Act Designation – Effect on
Yolo County Flood Control and Water Conservation District Water Rights
Application No. 30409

Dear Lois:

The Yolo County Flood Control and Water Conservation District (District) filed water rights Application No. 30409 (A. 30409) with the State Water Resources Control Board (SWRCB) on October 20, 1994. The District's application is for water for groundwater recharge for a proposed conjunctive use project. District counsel has advised the District that unless

a provision [is added to AB 1328] to allow the processing of the District's water right application, application 30409 could be cancelled, and the District could be precluded from filing a new water right application that would divert water that flows through the designated reach.¹

Based on the following information and analysis, it is our opinion that the AB 1328 designation of certain reaches of Cache Creek as a component of the California Wild and Scenic Rivers System would not result in the cancellation of A. 30409, nor would the District be precluded from filing a new application with the same or similar downstream points of diversion. Designation of reaches of Cache Creek above Camp Haswell would be considered by the SWRCB in its determination whether to issue a permit for A. 30409; the scope of the SWRCB's inquiry, however, will encompass essentially the same range of issues whether the reaches of Cache Creek upstream of the proposed project are components of the California Wild and Scenic Rivers System or not.

¹ Memorandum from Paul B. Bartkiewicz to Tim O'Halloran, General Manager (February 28, 2005), at 5.

I. Background and Status of A. 30409

A. Scope of 1994 Application

The SWRCB issued a notice of A. 30409 on February 17, 1995. Application 30409 would allow: (1) the diversion of up to 95,000 acre-feet of water per year at a maximum rate of 500 cubic feet per second (cfs) from Cache Creek at the existing Capay diversion dam, and (2) up to 23,700 acre-feet per year at a maximum rate of 125 cfs at a second, new point of diversion further downstream on Cache Creek at a proposed inflatable dam. Total maximum diversion at both dams is not to exceed 95,000 acre-feet per year. Water diverted at both dams would be conveyed through existing canals to offstream recharge basins. The diversion season would be November 1 through April 15 each year.

B. Protests to Application

In response to the SWRCB's notice, ten protests were accepted by the SWRCB:²

1. United States Fish and Wildlife Service (USFWS) Protest

Noting that A. 30409 would allow diversion of "... about one-third of the average annual discharge of Cache Creek below the Cache Diversion Dam", the USFWS's protest raised concerns regarding adverse impacts to valuable riparian habitat and aquatic resources downstream of the diversion points. Further reductions of flows from Cache Creek to the Delta could "incrementally reduce Delta habitat quality and fish populations", including "Federally-listed and proposed species including winter-run chinook salmon. . ." USFWS provided several protest dismissal conditions³ and reserved the right to "further refine dismissal terms upon full disclosure by the applicant, in an EIR, of project impacts and alternatives."

² A protest to A. 30409 was also filed by the Conaway Conservancy Group, but not until August 1995. The SWRCB refused to accept the late protest, but noted that the Group's proposed permit terms for protection of prior rights would be included in any permit that is issued. The Chief of the SWRCB Division of Water Rights indicated that ten other protests had been accepted, three based on prior rights and seven based on environmental and public trust considerations. (SWRCB letter to Conaway Conservancy Group (September 27, 1995))

A protest was also filed by Harry H. Dewey and Marian Dewey dated May 26, 1995. Protests had been due April 17, 1995, and a hand-written note on the Dewey protest in the SWRCB files indicates that the protest was not accepted.

³ The USFWS protest included three initial protest dismissal conditions:

1. Submit to the SWRCB minimum flows for the portion of Cache Creek between the proposed diversion points and the Cache Creek Settling Basin. The applicant would provide appropriate assurances to the Service that these flows would be adequate to maintain existing riparian and aquatic resources along this portion of Cache Creek, and to not preclude future riparian restoration in the same reach.
2. Operate in a manner that would a) not result in or contribute to any adverse impacts on existing fish and wildlife habitat and populations in the Delta, and b) not hinder restoration of fish and wildlife habitat and populations in the Delta.

2. California Department of Fish and Game (CDFG) Protest

CDFG noted that:

Cache Creek in the project area supports a warmwater fishery in normal and wet years, but has gone dry during the last drought. Riparian habitat along the stream and upland areas in potential recharge pond sites support a wide variety of plants and animals including several State listed species.

CDFG noted that the project had potential “. . . to both improve and adversely impact the fish and wildlife resources of the area.” CDFG indicated that it would provide protest dismissal terms following review of a CEQA document “acceptable to Department of Fish and Game.” CDFG specifically asked that the District work closely with CDFG district biologists.

3. California Department of Water Resources (DWR) Protest

DWR’s protest was based on potential injury to DWR’s vested water rights. DWR requested inclusion of a modified ‘Term 91’ in any permit to be issued for A. 30409. A modified Term 91 would prohibit diversion by the District that would:

. . . adversely affect the operation of the Central Valley Project or State Water Project. . . An adverse effect shall be deemed to result from permittee’s diversion at any time the USBR and DWR have declared the Delta to be in balanced water conditions . . . or at any other time as such diversion would directly or indirectly [result in] . . . release [of] water from [USBR or DWR] storage or to reduce their diversion or rediversion of water from the Delta. . .

4. County of Yolo Protest

Yolo County strongly supported the District’s proposal “in concept”, but raised concerns regarding “indirect impacts”. Concerns included loss of prime agricultural soils for recharge basin sites, temporary depletion of instream flows with significant impacts to riparian vegetation and species along Cache Creek, erosion issues related to the inflatable dam, potential impacts on groundwater resources, flooding risks related to the rubber dam, potential mosquito problems, and the need for complete environmental documentation. The County, as did others, recommended preparation of a full environmental impact report, to include biological, geomorphological, soils, groundwater, and flood analyses.

3. Demonstrate to the Service that the project, as proposed or modified, would not adversely impact existing riparian and aquatic resources along the Cache Creek corridor, including riparian habitat near the proposed dam at Diversion Point B [inflatable rubber dam].

(USFWS Protest at page 2)

5. City of Woodland Protest

Woodland raised issues related to potential interception and diversion of flows which recharge the City's groundwater basin, and which could, therefore, affect the City water supply. Concern was also raised that recharge methods could adversely impact groundwater quality.

6. Oliver Farms Protest

Oliver Farms protested on the basis of injury to their riparian rights. It also protested on the basis of public trust violations. Specific environmental concerns included contamination, loss of agricultural land, and general water quality concerns.

7. Harlan Smith Protest

Mr. Smith protested on the basis of public trust issues. Mr. Smith's protest raised concerns related to loss of recharge water in the creek, adverse water quality effects of diversion to offstream recharge pits, and further stressing Cache Creek by reducing in-channel flows, which "places at risk the fish by depriving the fish of necessary water to sustain life and multiply." Mr. Smith also reserved a right to amend his protest after the District's environmental document was made available.

8. A. Teichert & Sons Protest

The Teichert protest expressed concern that the proposed diversion, storage, and recovery of recharged groundwater under the District's application ". . . could adversely impact, via either high (recharged) or low (pumped) groundwater levels, the viability of restored wetlands and/or riparian habitat [on its property]." The Teichert protest requested that the District ". . . analyze and report the projected effects of the proposed diversions, and subsequent storage in the aquifer, on local groundwater levels so that they not adversely affect the effectiveness of reclaiming mined land to agricultural production."

9. Cache Creek Basin Resource Coalition Protest

A copy of this protest is not in the SWRCB files. According to the answer subsequently prepared by the District, the protest raised concerns that the project could:

. . . cause significant direct and cumulative impacts on the riparian habitat, wildlife and fishery resources, and endangered and threatened species in Cache Creek, wetland areas of the Cache Creek Sink and Yolo Bypass, Sacramento River, Sacramento-San Joaquin Delta, and Bay-Delta Estuary.

The protest also reportedly raised concerns that the project diversions ". . . will irreparably impair both the shallow and deep aquifers in Yolo County." Finally, conveyance of water through the District's unlined channels would result in seepage which would constitute "a waste of water in violation of the public interest."

10. California Sportfishing Protection Alliance (CSPA) Protest

CSPA filed a protest based on public trust issues. CSPA asserted:

Diverting surface flows from Cache Creek will reduce surface flows and have potential adverse impacts to fish species and their habitat, aquatic species and their habitat, riparian habitat, wildlife habitat, and certain threatened and endangered species during the diversion season in normal, below normal, dry and critically dry water year conditions.

(Page 5, number 6) Among other points, CSPA raised such issues as: whether the SWRCB should require the District to line Winters Canal (page 6, number 14A); information on "the daily amounts of water released from Capay Dam into Cache Creek to protect the public trust fishery resources at all times and keep the fish in good condition" (number 14E5); whether the West Adams Canal should be required to be lined (number 15A); whether Moores Canal should be required to be lined (number 18A); whether Alder Canal should also be lined to prevent the waste of water through seepage (number 19A); whether there are adequate water rights for all the diversion to these various canals. CSPA requested a full environmental impact report with full cumulative impacts analysis.

C. Answers to Protests

The District filed answers to the ten protests on June 30, 1995. The District indicated that it would prepare an environmental impact report and evaluate in detail its project's potential environmental effects. It committed to developing appropriate criteria regarding its project's diversion and to discuss them with CDFG biologists and the Corps of Engineers. The District did not agree to the DWR modified Term 91. In general, the District's answers indicated that the District would "mitigate adverse impacts to the extent required by CEQA and applicable water rights laws."

D. 2001 SWRCB Request for Status Report

On June 6, 2001, the SWRCB noted that there were "several unresolved issues" related to A. 30409.⁴ The SWRCB Division of Water Rights requested a status report on three issues:

- (1) The most current protest resolution efforts by the applicant, (2) the status of the applicant's efforts to complete water availability/quality studies and (3) an assessment of the applicant's efforts to complete the environmental document.

⁴ The SWRCB's letter also requested additional information on A. 30358. Application A. 30358 was filed by the District on April 19, 1994, and the SWRCB issued a notice on October 14, 1994. A. 30358 seeks to divert up to 45,000 acre-feet per year (at a rate of up to 250 cfs) from the Sacramento River. Fifteen protests were accepted. On November 6, 2001, the District's Board of Directors adopted a resolution assigning A. 30358 to the City of Davis, City of Woodland, and U.C. Davis.

The SWRCB letter warned that if the District did not provide the information requested (under Water Code Section 1275), A. 30409 would be cancelled without further notice within 30 days.

The District responded on July 9, 2001. The District reported on "several ongoing activities for implementing the Project". They included: development of a groundwater model; coordination with Yolo County on the Cache Creek Resources Management Plan (CCRMP); adoption of the District's Water Management Plan in October 2000;⁵ coordination with the Water Resources Association of Yolo County and execution of an MOU between that association and DWR on March 8, 2001. The District noted that:

Under the WRA-DWR MOU, DWR will assist WRA to facilitate an extensive process for public involvement and stakeholder participation to evaluate water resource development opportunities within Yolo County. As a member of the WRA, the District intends that the work under the WRA-DWR MOU will identify the Project as one of the water resources management activities within Yolo County that warrants development and implementation by the District and DWR under ISI Program. This activity is expected to be initiated in concert with the WRA in the Fall 2001.

(*Id.* at 5) In closing, the District states that it is "actively involved in several activities aimed at implementing its Project" under A. 30409. Further: "The District proposes to report back to you within 12 months on the status of these activities." There are no further reports from the District in the SWRCB files.

E. 2002 Friends of the River (FOR) Protest

On October 30, 2002, FOR filed a protest together with Cache Creek Wild, Yolo Audubon, Sierra Club Lake County, Sierra Club Yolano Group, and the California Native Plant Society - Sacramento Valley Chapter. FOR requested that the SWRCB accept its late protest pursuant to Water Code provisions and SWRCB regulations which allow the SWRCB to accept late protests upon a showing of "good cause". (Water Code § 1330 and Cal. Code Regs., tit. 23, § 747)

As a basis for good cause, the protest states that there have been new developments on Cache Creek, and new environmental information and public policy decisions which have resulted in changed legal circumstances related to Cache Creek issues. Further, A. 30409

⁵ The District's letter noted that: "The District [Water Management] Plan includes the District's Project and in-lieu or conjunctive use projects that the City [of Woodland] and Yolo-Zamora Water District, as action items that are of high priority for the District. These three action items are embodied in the scope of the District's application no. 30409." (July 9, 2001 letter at 4)

remains in "early stages of review", and allowing the protest would not result in any unfair prejudice to the District.

The protest contains a list of issues which are not addressed in the record and which arose after the expiration of the original noticed protest. These developments include: listing of the California red-legged frog as a threatened species under the ESA (and Cache Creek is designated as a "core area for recovery" of that species); Central Valley Steelhead are now listed under the ESA as threatened; spring-run chinook salmon are now listed under the ESA as threatened, and Cache Creek historically supported spring-run chinook; it has been discovered that Cache Creek historically supported fall-run chinook, and evidence of fall-run presence below the Capay Diversion Dam was discovered in November 2000; bald eagles, an ESA threatened species, have been identified; finally, protestants are concerned that reduced flows could compromise newly implemented public restoration efforts, including adversely affecting potential federal designation of Cache Creek as part of the National Wild and Scenic Rivers System.⁶

F. SWRCB Decision to Re-Notice Application

In response to the FOR protest, the SWRCB decided to "re-notice" Application A. 30409. Under Cal. Code Regs., tit. 23, § 684(b), the SWRCB may issue a new notice on an application if a hearing on an application has been delayed for more than one year after the close of the protest period. The SWRCB indicated that it would hold FOR's protest until the application is re-noticed, at which time the protest would be accepted. The SWRCB clarified that copies of the new notice would be mailed to all person who had filed protests in response to the original notice and that parties may either submit a new protest or "stand on their existing protest". (January 13, 2003 letter from SWRCB Chief Deputy Director to FOR.)

II. Effect of AB 1328 Wild and Scenic Rivers Designation on Application 30409

A. Application A. 30409 Will Not Be Cancelled as a Result of Wild and Scenic River Designation

The points of diversion for A. 30409 are well downstream of the reaches of Cache Creek which would be designated part of the California Wild and Scenic Rivers System under AB 1328. The California Wild and Scenic Rivers Act provides that:

No department or agency of the state may assist or cooperate, whether by loan, grant, license, or otherwise, with any department or agency of the federal, state, or local government, in the planning or construction of a dam, reservoir, diversion, or other water impoundment facility that could have an *adverse effect* on the free-

⁶ At the time the protest was filed in 2002, designation of portions of Cache Creek under the California Wild and Scenic Rivers System was not under consideration.

flowing condition and natural character of the river and segments thereof designated in Section 5093.54 as included in the system.

(Pub. Res. Code § 5093.56, emphasis added)

The question which has been raised is whether the designation of segments of Cache Creek as part of the California Wild and Scenic Rivers Act could result in the cancellation of A. 30409 and preclude filing of a new application to divert waters that had flowed through the upstream designated reaches.

There is an important distinction between a dam or diversion on a designated reach of a river, and a dam or diversion well below a designated river reach. The "adverse effect" test established by the California Wild and Scenic Rivers Act applies to the effect on *designated reaches* of the river included in the system. Clearly, the construction of a dam or reservoir on the designated reach would have an adverse effect on the "free-flowing condition and natural character" of the river as defined in the statute. SWRCB regulations do preclude filing for new dams and impoundments on designated components of the California Wild and Scenic Rivers System:

- (a) No application which proposes an appropriation of water in connection with construction of a dam, reservoir, or other water impoundment facility on any river designated in Public Resources Code Section 5093.54 will be accepted for filing.⁷

However, applications for water appropriations that "could affect" (including those not located on) designated components of the California Wild and Scenic Rivers System are permitted to be filed:

⁷ Two exemptions to the dam prohibition are provided in the California Wild and Scenic Rivers Act. The exemptions include temporary flood storage facilities on the Eel River (Pub. Res. Code § 5093.57), and temporary recreational impoundments on river segments with a history of such impoundments, if authorized by the Resources Secretary (Pub. Res. Code § 5093.67). Further, the regulations allow certain applications for domestic water supply to be filed with the SWRCB:

- (c) An application which proposes an appropriation of water in connection with construction of a water diversion facility on any river designated in Public Resources Code Section 5093.54, other than a dam, reservoir, or other water impoundment facility, will be accepted for filing; provided, no permit shall be issued on any such application unless the Secretary of the Resources Agency first determines (1) that such facility is needed to supply domestic water to the residents of the county or counties through which the river flows, and (2) that such facility will not adversely affect its free-flowing condition or natural character. Such determination shall be in addition to other findings which the board is required by law to make.

(b) An application which proposes an appropriation of water which *could affect* any river designated in Public Resources Code Section 5093.54 will be accepted for filing. . .

(Cal. Code Regs., tit. 23, § 734, emphasis added)⁸

The SWRCB's interpretation of this regulation, which the SWRCB follows in practice, is that Section 734(a) applies only to specific designated reaches of a river which are part of the California Wild and Scenic Rivers System; Section 734(a) does not apply to an entire river unless the entire river is part of the California Wild and Scenic Rivers System. An upstream or downstream application is not precluded from being filed or processed by Section 734(a) if, for example, it is well below the designated reaches and does not back water up into a designated reach.⁹

The SWRCB has addressed inclusion of California Wild and Scenic Rivers System rivers in its compilation of "fully appropriated stream systems".¹⁰ According to SWRCB Order WR 98-08:

State and federal Wild and Scenic River stream systems shall be included in the Declaration of Fully Appropriated Stream Systems in recognition of the restrictions on appropriation of water under applicable provisions of state and federal law. These restrictions shall be implemented by the SWRCB as they have in the past.

(Order WR 98-08 (November 19, 1998) at 26.)¹¹

⁸ Section 734(b) is discussed further, below.

⁹ Personal communication, Andrew Sawyer, Assistant Chief Counsel, SWRCB (March 3, 2005).

¹⁰ The SWRCB has a compilation of streams and segments of streams which it has found to be "fully appropriated". (Water Code §§ 1205 *et seq.*, Cal. Code Regs., tit. 23, §§ 70 *et seq.*) Generally, if a stream has been declared to be fully appropriated, new applications will not be accepted for diversions from those streams or stream segments. New applications are assigned an "X" number until the SWRCB holds a hearing to determine whether the applicant can establish that there is water available to the applicant even though the stream or stream segment has been declared fully appropriated. All existing applications are reviewed to determine if they are consistent with a subsequent declaration that a stream is fully appropriated. The Water Code and Regulations set forth the bases for making a showing that water is available notwithstanding a fully appropriated designation. If an applicant can establish that there is water available notwithstanding the fully appropriated stream designation, the SWRCB will then formally accept the application, and the application will be processed.

¹¹ Order WR 98-08 refers to Order WR 91-07, which explained the rationale behind adding components of the Wild and Scenic Rivers Systems to the Fully Appropriated Stream system: "The purpose in adding these stream systems was to recognize the restrictions on appropriation of water contained in the respective state and federal acts." (Order WR 91-07, Sec. 4.2 (August 22, 1991), at 24-25.)

A review of the rivers and river segments included as fully appropriated under SWRCB water right orders makes it clear that only the portions of rivers designated as components of the state (or federal) Wild and Scenic Rivers Systems have been declared fully appropriated. (See, e.g., Order WR 98-08, Ex. A.) Based both on SWRCB legal counsel's interpretation of its regulations, and actual practice of the SWRCB in including California Wild and Scenic Rivers in its Declaration of Fully Appropriated Streams, the SWRCB has included only those segments of rivers which are part of the Wild and Scenic Rivers System.¹² The SWRCB would include an entire river only if the entire river is declared wild and scenic.

B. Wild and Scenic River Designation Will Be Taken into Consideration in Determining Whether to Issue a Water Right Permit

When reviewing an application for construction of facilities to appropriate water *not* on a designated component of the California Wild and Scenic Rivers System, the SWRCB must find that the appropriation of water will not have an adverse effect on the designated components of the California Wild and Scenic Rivers System.¹³ The SWRCB's regulations reflect their statutory duty not to take actions to impair wild and scenic river values of the designated components of the California Wild and Scenic Rivers System:

No permit shall be issued if the board finds that the appropriation would impair the extraordinary scenic, recreational, fishery, or wildlife values of any such designated river.

(Cal. Code Regs., tit. 23, § 734)

¹² Personal communication, Andrew Sawyer, Assistant Chief Counsel, SWRCB (March 3, 2005).

¹³ The SWRCB is subject to Pub. Res. Code Section 5093.61. That section provides that all state agencies and departments:

. . . shall exercise their powers granted under any other provision of law in a manner that protects the free-flowing state of *each component* of the system and the extraordinary values for which *each component* was included in the system.

(Emphasis added.) The SWRCB may not issue a permit which "could affect" designated components of the Wild and Scenic Rivers System:

No department or agency of the state may assist or cooperate, whether by loan, grant, license, or otherwise, with any department or agency of the federal, state, or local government, in the planning or construction of a dam, reservoir, diversion, or other water impoundment facility that could have an adverse effect on the free-flowing condition and natural character of the river and segments thereof designated in Section 5093.54 as included in the system.

(Pub. Res. Code § 5093.56) ("All local government agencies . . . shall exercise their powers granted under any other provision of law in a manner consistent with the policy and provisions of this chapter." (Pub. Res. Code § 5093.61))

TO: Assembly Member Lois Wolk
FROM Ellison, Schneider & Harris L.L.P
March 7, 2005
Page 11 of 12

Re: AB 1328 – Cache Creek Wild and Scenic Rivers Act Designation –
Effect on Yolo County Flood Control and Water Conservation District Water Rights Application No. 30409

An application to construct water resources projects upstream or downstream of a component of the California Wild and Scenic Rivers System does involve additional review (avoidance of adverse impacts to the wild and scenic river values and characteristics within the designated reach).¹⁴ However, the issues which will be raised in a water rights proceeding for a project that “could affect” a designated reach of a river in the California Wild and Scenic Rivers System are essentially the same issues that will be raised for every water right application.

For every water right application, whether segments of the California Wild and Scenic Rivers System are involved or not, the SWRCB can only issue a permit which “. . . in its judgment will best develop, conserve, and utilize in the public interest the water sought to be appropriated.” (Water Code § 1253) In addition to determining the public interest, the SWRCB must consider the “relative benefit” of an application to appropriate, including the relative benefit to be derived from:

all beneficial uses of the water concerned including, but not limited to, use for domestic, irrigation, municipal, industrial, preservation and enhancement of fish and wildlife, recreational, mining and power purposes, and any uses specified to be protected in any relevant water quality control plan. . .

(Water Code § 1257) Further, the SWRCB “shall consider streamflow requirements proposed for fish and wildlife purposes”, and “. . . may establish such streamflow requirements as it deems necessary to protect fish and wildlife as conditions in permits. . .” (Water Code § 1257.5) In determining the amount of water available for appropriation: “. . . The board shall take into account, whenever it is in the public interest, the amounts of water required for recreation and the preservation and enhancement of fish and wildlife resources.” (Water Code § 1243) The SWRCB must also take into account: “. . . whenever it is in the public interest, the amounts of water needed to remain in the source for protection of beneficial uses, including any uses specified to be protected in any relative water quality control plan. . .” (Water Code § 1243.5)

¹⁴ The provisions for review of water resources projects upstream or downstream of a designated component of a river in the National Wild and Scenic Rivers System are set forth in federal guidelines that make it clear that the adverse impact standard is to be measured by the impact of an action on the designated reach of the wild and scenic river. “[F]ederal guidelines” refers to a technical report entitled “Wild and Scenic Rivers Act, Section 7” prepared for the Interagency Wild and Scenic Rivers Coordinating Council by the U.S. Forest Service (October 2004). Appendix D provides an evaluation procedure for evaluating water resources projects downstream or upstream of a designated river. The federal standard is whether a project above or below a designated reach of a river in the National Wild and Scenic Rivers System “. . . will not invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area as of the date of the designation.” (National Wild and Scenic Rivers Act, Section 7(a)) (The Council consists of representatives from the Department of Interior and Agriculture, as well as a representative from the States. See www.nps.gov/rivers/publications.html.) Section 7 reviews can result in regulatory approvals of a proposed water resources project. For example, the Bureau of Land Management, the federal river manager for the Merced River, approved an instream diversion project on a component of the Merced River designated under the National Wild and Scenic Rivers Act, shortly after the river was designated in 1992.

Assembly Member Lois Wolk
March 7, 2005
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Based on the information available in the SWRCB files for District Application 30409, it is not clear whether or how construction of new District facilities well downstream of the proposed designated reaches of Cache Creek "could affect" the designated reaches. California Wild and Scenic Rivers System designation involves a specific inquiry that the SWRCB must make in determining whether to issue a permit; however, as the cited Water Code provisions indicate, designation of upstream reaches as part of the California Wild and Scenic Rivers System does not broaden the SWRCB's existing scope of review in determining the public interest, and does not add any issues which are not already required to be considered by the SWRCB.

III. Conclusion

The concerns which have been raised as to the effect of the AB 1328 California Wild and Scenic Rivers System designation of parts of Cache Creek above Camp Haswell on the District's pending Application 30409 are not warranted. As the Assistant Chief Counsel to the SWRCB has confirmed, an application for a water right to divert well below a designated wild and scenic reach would not be affected by that designation. The SWRCB's determination of whether issuance of a permit to the District is in the public interest will involve the full range of fish and wildlife, recreational, and public trust issues, and the issue of whether the District's proposed project "could affect" upstream designated reaches would be included in that inquiry.

Yours very truly,

Anne J. Schneider

AJS:rko

cc: Dirk Brazil
Dan O'Hanlon
Paul Bartkiewicz

EXHIBIT E



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TO: Lois Wolk, Chair, Assembly Water, Parks and Wildlife Committee
FROM: Daniel Pollak, California Research Bureau
RE: California Wild and Scenic Rivers Act
DATE: April 11, 2005

This memorandum is in response to your request for research on impacts that have occurred as a result of rivers being designated part of the California Wild and Scenic Rivers system under the California Wild and Scenic Rivers Act (CWSRA).

This research involved numerous interviews with state and federal officials and diverse local and statewide stakeholders. Local stakeholder interviews focused mainly on individuals who work or live in watersheds whose rivers have exclusively a state (not a federal) Wild and Scenic designation. These are the Albion, East Carson, Gualala, South Yuba, and West Walker Rivers.

The goal of the research was to search for specific examples in which the status quo had been impacted as a result of a river being designated part of the California Wild and Scenic Rivers system. This memorandum does not deal with legal questions about the meaning of the CWSRA, nor does it address hypothetical questions as to potential future impacts.

It should be noted that while the CWSRA has existed for three decades, this research focused mostly on the last several years of experience. The interviews with local stakeholders were limited to a subset of the state-designated rivers. The methodology should be considered a reconnaissance rather than a scientific survey.

There are three appendices. Appendix A lists the parties interviewed. Appendix B provides an overview of the main provisions of the CWSRA. Appendix C lists the rivers having state and federal Wild and Scenic designations.

I. Overview of Conclusions

Many of those contacted for this research could not specify any particular impacts that had occurred as a result of a CWSRA designation. However, some did cite ways in which the CWSRA made a difference, as summarized below.

Dams, Reservoirs, Diversions and Impoundments. Perhaps the most obvious effect of the CWSRA is that it sometimes blocks from further consideration specific proposals to create or expand dams, diversions, reservoirs or water impoundments. This is usually

viewed by some as beneficial, by others as counterproductive. This research also looked for impacts on the operations of existing dams and reservoirs that were already in place when a river was designated. In the examples reviewed, the CWSRA did not affect the operations of such dams and reservoirs.

Conferring Special Recognition of the River's Value. Supporters of the CWSRA sometimes see a designation as enhancing the public's awareness and respect for the river. This is seen as encouraging tourism, which in turn can have some local economic benefits for tourism-related businesses. On the other hand, some stakeholders believe that increased visitorship can have a downside, such as environmental impacts and trespassing.

Effects on Regulation of Projects and Activities In and Around Rivers. This research looked into the question of whether regulatory and permitting processes had been impacted by the CWSRA (for example, leading to projects facing more regulatory barriers or restrictions). Only a few relatively minor examples were identified. According to regulators, such effects of the CWSRA are limited in part because activities impacting rivers are already constrained by a variety of other laws and regulations.

State and Federal Role in the Watershed. A state designation does not seem to noticeably change how state or federal agencies conduct management or planning in the watershed. State designations have in the past facilitated the inclusion of California rivers in the federal Wild and Scenic River system. Whether this could happen again raises legal issues that are beyond the scope of this memorandum.

II. Discussion and Examples of the Effects of the CWSRA

The remainder of this memorandum provides illustration and discussion of the impacts of CWSRA designations.

A. New Dams, Diversions, Impoundments, Reservoirs

The CWSRA can block from further consideration specific proposals to create or expand dams, diversions, reservoirs or water impoundments.

The most recent dam-related example involves the Yuba River. After major floods in 1997, the Yuba County Water Agency began studying options to increase flood protection, including a new dam and reservoir at two possible sites.¹ Supporters of Wild and Scenic status sought a CWSRA designation on the South Fork that would block these dams. Opponents of the designation argued that better flood control was vital.

In a compromise, Governor Davis signed legislation adding the South Yuba to the Wild and Scenic system, and also helped to obtain \$90 million for local flood control projects as part of Proposition 13, passed by voters the following year. This funding did a great deal to smooth over the bitter contention. Today, the Yuba County Water Agency works

amicably with its erstwhile opponents, the South Yuba River Citizen's League, to plan alternative flood control measures using the Proposition 13 funds.²

Nevertheless, Yuba County officials still believe their long-term options are constrained by the CWSRA. The Yuba County Water Agency says that the bond funding will not achieve the County's long range goal of a 500-year level of flood protection.³

It should be noted that the CWSRA will rarely be the only barrier to the construction of a major dam. The Yuba River provides one example – the feasibility of the proposed dams was hotly debated. Another example is the East Fork of the Carson River. One of the main arguments in favor of the East Carson's 1989 CWSRA designation was to block the proposed Watasheamu Dam and Reservoir. The Watasheamu project would have provided Nevadans with a 160,000 acre-foot reservoir for flood control, irrigation, and electricity. It also would have backed up the river for several miles across the state line into California.⁴

Although the CWSRA effectively put the Watasheamu proposal to rest, the idea had already been languishing since the early 1960's, and had been called infeasible due to funding constraints and opposition from California.⁵

B. Existing Dams and Reservoir Operations

In examples reviewed in this research, the CWSRA had no effect on the existing operations of dams upstream of designated river segments. For example, the designation of the West Walker River has not affected the operation of two reservoirs in California operated by the West Walker Irrigation District.⁶ Similarly, the CWSRA has so far not affected the operations of the Spaulding Reservoir on the South Yuba, which provides hydropower for PG&E and water for the Placer County Water Agency and the Nevada Irrigation District.⁷

C. Effects on Regulation of Other Projects and Activities In and Around Rivers

This research also looked at whether CWSRA designations have led to more regulatory hurdles in areas such as water diversions and water use, timber harvesting, farming, environmental restoration, and gravel/aggregate mining.

A recurring theme in interviews with regulators was that the language of the CWSRA does not make a great deal of difference because projects and activities affecting rivers are already constrained by many other laws and regulations. These include CEQA, endangered species laws, streambed alteration agreements administered by the Department of Fish and Game, and Clean Water Act Section 404 permitting administered by the U.S. Army Corps of Engineers.

Water Rights Permitting

The exercise of appropriative water rights requires a permit or license from the State Water Resources Control Board (SWRCB). SWRCB is required to review such applications for consistency with the CWSRA.

What practical effect has the CWSRA had on water rights applications? SWRCB is required to refuse to accept such an application for filing if it proposes an appropriation of water in connection with construction of a dam, reservoir, or other water impoundment facility on a CWSRA-designated river.

However, the head of the SWRCB water rights division could not recall any occasions in which an application was refused for filing due to the CWSRA.⁸ However, until a year ago, SWRCB procedures would not have kept a record of such occurrences. SWRCB would also not know if a potential applicant were deterred by the CWSRA from even trying to file an application in the first place.

With respect to those applications that were filed, it appears that SWRCB's disposition of them has rarely, if ever, been directly affected by the CWSRA. The SWRCB's head of water rights permitting could not recall any examples. To investigate this further, the SWRCB water rights office reviewed its files on the Albion, Gualala, South Yuba, West Walker, and East Carson Rivers and did not find any instances in which permits had been modified or refused because of CWSRA issues.⁹

The Resources Secretary must make certain findings before a water rights permit on a CWSRA-designated river segment may be approved: (1) that the facility is needed to supply domestic water to the residents of the county or counties through which the river flows, and (2) that such facility will not adversely affect the river's free-flowing condition or natural character.¹⁰ The Agency recently reviewed its files to search for examples of such determinations. These files date from the beginning of the Davis Administration (1998). This review turned up only one example.

In this instance, the Secretary found a proposed water diversion to be in accord with the CWSRA. The application was for a permit to pump water from the Trinity River for a 200' x 100' pond for fire control and domestic use.¹¹ One Resources Agency official later recollected that the permit application needed to be modified before approval, because it initially only cited fire suppression as the water use. The CWSRA only allows such impoundments if they are needed for domestic use.¹²

An ambiguous example involves the City of Rio Dell, which applied to SWRCB for a permit to upgrade its water supply. The city wanted to put new pumps and an infiltration gallery below the riverbed. It appears that at request of the Department of Fish and Game (DFG), conditions were placed on the permit requiring reduced pumping rates at certain times when reduced flows might have an adverse effect on fish.¹³

The Resources Agency official and city representatives who described this example thought the CWSRA played a role in setting these conditions. However, an SWRCB official involved in the case didn't think this was the case. He believed the fish protection measures were standard and would have been imposed regardless of Wild and Scenic status (other authorities exist to protect instream flows, such as CEQA and the public trust doctrine).¹⁴

Department of Fish and Game Streambed Alteration Agreements

Another area reviewed was the issuance of streambed alteration agreements by the Department of Fish and Game under Fish and Game Code 1600-1616.

This research could not find any clear-cut examples where the CWSRA provisions had led to a streambed alteration agreement being significantly modified or refused. The Department of Fish and Game is supposed to notify the Resources Secretary of applications for streambed alteration agreements that might be affected by the CWSRA, and request that the Secretary make a determination whether the proposed project is consistent with the Act. The Department and the Resources Agency were asked to provide any examples they could find of such determinations. Their records on this (which extend only to the start of the Davis Administration) did not produce any examples.

A DFG lawyer said that there had been a few instances in the last several years in which the Secretary was informed of a possible CWSRA issue with a proposed streambed alteration agreement. In some cases, the Secretary took no action. In other instances, the Secretary made a determination that the proposal was consistent with the Act. In his six years of experience, this DFG attorney said he was not aware of any instance in which a Streambed Alteration Agreement was denied or substantially modified because of CWSRA concerns.¹⁵ The Resources Agency's Wild and Scenic Rivers Coordinator during the Davis Administration had a somewhat different recollection. She recalled two instances in which the Secretary invoked the CWSRA to impose changes on Streambed Alteration Agreements.

In one case, a rancher wanted to rebuild a section of riverbank that had been washed away in a flood. To protect water quality, the Resources Secretary invoked the CWSRA to require a more erosion-resistant reconstruction than was originally proposed.^{16*} Another instance involved a motorcycle festival on the Eel River. The Secretary invoked the CWSRA to limit activities that might impact the river – such as using the river's gravel beds as parking areas for motorcycles.¹⁷ In these last two cases, it seems likely that the streambed alteration agreement process could have been used to produce the same end result with or without the CWSRA.

* Despite inquiries to the relevant state agencies, no documentation of this episode was found, nor was the river in question identified.

Water for Farming

In the course of this research, several farm bureaus, resource conservation districts, and individual landowners were contacted in different counties. This produced no specific example where the plans of a farmer or rancher for water use or management of their lands were significantly impacted by a CWSRA designation.*

Construction, Environmental Restoration, and Other Projects

In the course of this research, no specific examples were found of an environmental restoration or remediation project actually being hindered by the CWSRA. It should also be noted that a bill passed in 1993 exempts fishery restoration projects from the Act's prohibition on dams, diversions, reservoirs, and impoundments.¹⁸

Forestry and Timber Harvesting

Timber owners and timber industry representatives contacted for this research could not identify any specific ways in which timber harvest and related activities had become more constrained as a result of a CWSRA designation. Some timber companies are concerned because the CWSRA and timber harvest rules add an overlay of "special treatment areas" encompassing 200 feet on either side of a designated river. However, the statute and related rules do not specify any particular restrictions on timber operations in special treatment areas.

Some timber owners also believe that special treatment areas create heightened expectations among the general public about their resource protection obligations. There is some basis for this belief. For example, environmentalists opposed to Sierra Pacific clearcutting near the South Yuba a few years ago called attention to the fact that the river had been designated part of the Wild and Scenic system. Public comments on timber harvest plans sometimes reference the presence of special treatment areas in arguing for more restrictions on logging.¹⁹

Instream gravel/aggregate mining

Some gravel mines still extract from streams and riverbeds. Such operations can cause significant changes to river's channel and flow. Under California's Surface Mining and Reclamation Act of 1975 (SMARA), companies must submit reclamation plans and financial assurances, and subsequent to mining activities, must return mined lands to a productive use.

Spokespersons for the State Mining and Geology Board and the mining industry were unable to cite any specific examples where a CWSRA designation had affected this permitting process or the associated CEQA process. The spokesman for the mining

* For a list of those contacted, see Appendix A.

industry thought that a designation probably discouraged mining companies from seeking to initiate operations near designated rivers.²⁰

D. Attracting Visitors to the River – Benefits and Costs

Supporters of Wild and Scenic designations often include fishing and recreation-oriented businesses and organizations, who believe that the designation will enhance recreation, tourism, and the local economy. Some business owners think that the designation enhances the attractiveness of the river to recreational tourism.

For example, the co-owner of a resort in Hope Valley in the East Carson River watershed said that a new dam proposed on the Nevada side of the border would have reduced the river's attractiveness for recreation such as fishing, boating. She believes that blocking the dam has helped the growth of tourism-based business in the area.²¹

The designation of the Gualala River was prompted by a company's water diversion proposal, and supporters of the designation included local tourism-based businesses (represented by the Redwood Coast Chamber of Commerce). The owner of a local campground near the mouth of the river noted that the water level gets low in the summertime already, and that keeping more water in the river improves the fishing and the aesthetics of the river during the season he gets most of his visitors.²²

Enhancing the public's interest in using rivers for recreation can be beneficial, but it can have a downside as well. For example, some stakeholders on the East Carson River worry that recreational use is having adverse effects, such as boaters trampling streamside vegetation – “loving the river to death,” as one watershed planner put it.²³ They thought that the Wild and Scenic designation might have amplified such problems.²⁴

One landowner on the South Yuba, active in watershed stewardship, told me she regrets her former support of Wild and Scenic status. She felt it had increased the popularity of the river for visitors, without bringing about needed improvements in recreation management such as patrols and trash collection. The result, she felt, was a worsening of problems such as littering, trespassing, and unsafe campfires.²⁵ A timber company on the Gualala River raised similar concerns about trespassing and environmental degradation.²⁶

E. Conferring Special Recognition of the River's Value

Supporters of Wild and Scenic designations value the intangible added status the river gains. The Director of the South Yuba Citizens' League (SYRCL) said the designation of that river has raised public awareness and aided the group's efforts to recruit volunteers for projects such as water quality monitoring.²⁷ A rafting company owner said that designated gain a “special recognition” that “helps protect it regardless of rules, regulations, and laws” – by raising the level of public expectations and interest.²⁸

Some watershed groups said they thought a CWSRA designation helped strengthen applications for grants. This research did not identify any grant program which formally recognize Wild and Scenic status as a criterion for evaluating proposals.²⁹

F. State and Federal Role in the Watershed

The CWSRA used to have provisions requiring the development of state management plans for designated rivers, but that requirement was eliminated in 1982. As a result, a CWSRA does not have any noticeable impact on state government's management or planning for natural resources in the designated watersheds.

State designation also does not change the role of federal land management and regulatory agencies in the watershed. In 1981, Section 2(a)(ii) of the federal Wild and Scenic Rivers Act was invoked to add five California rivers to the federal Wild and Scenic Rivers system.* The move was highly controversial and generated years of litigation.

Normally, rivers can be designated part of the federal Wild and Scenic system only by an act of Congress. However, under Section 2(a)(ii) of the federal law, the Secretary of the Interior is authorized to include a river in the federal system that is already protected by a state river protection program. The federal 2(a)(ii) designation must be requested by the state's Governor.

To qualify for a 2(a)(ii) designation, the state rivers must be "permanently administered as wild, scenic or recreational rivers by an agency or political subdivision" of the state.³⁰ Litigants challenging the 1981 federal 2(a)(ii) designation of the California rivers argued, among other things, that this "permanent administration" requirement had not been met because there were no approved state management plans for these rivers. A federal appellate court upheld the Secretary of the Interior's 1981 inclusion of the California rivers in the federal system, deferring to the Department of the Interior's finding that "other state law protections existed to satisfy the permanent administration requirement under the federal [Wild and Scenic Rivers] act."³¹

The California Legislature amended the CWSRA in 1982, stripping out its requirements that the state Resources Agency administer and develop management plans for designated rivers. How this would affect the federal response to a new state request for a 2(a)(ii) designation, or how the courts would view such a designation, has not yet been tested.

* The Klamath, Trinity, Eel, Smith and Lower American Rivers.

References

- ¹ Sue McClurg, "The South Yuba: One River, Two Visions," *Western Water*, July/August 1999, 11.
- ² Interviews with Curt Aikens, General Manager, Yuba County Water Agency, February 3, 2005; and Janet Cohen, South Yuba River Citizens League, December 30, 2004.
- ³ Interview with Curt Aikens, General Manager, Yuba County Water Agency, February 3, 2005.
- ⁴ "Wild Rivers Legislation Advances to State Senate," Assemblymember Byron Sher news release about AB 1200, May 11, 1989.
- ⁵ Nevada Division of Water Planning, "Carson River Chronology," <http://water.nv.gov/Water%20planning/carson/carson3.htm>.
- ⁶ Interview with Ken Spooner, General Manager, Walker Irrigation District, February 18, 2005.
- ⁷ Interview with Frank Lynch, Pacific Gas and Electric Company, scheduler for Spaulding Reservoir, interview with author, February 17, 2005.
- ⁸ Interviews with Steven Herrera, Division of Water Rights, State Water Resources Control Board, January 24, 2005 and March 1, 2005.
- ⁹ Interviews with Steven Herrera, Division of Water Rights, State Water Resources Control Board, January 24, 2005 and March 1, 2005.
- ¹⁰ Title 23 California Code of Regulations, Sections 734(c).
- ¹¹ Letter from Margaret J. Kim, General Counsel, California Resources Agency, to Harry M. Schueller, Chief, Division of Water Rights, State Water Resources Control Board, December 28, 2001.
- ¹² Interview with Melissa Miller-Henson, former Resources Agency Wild and Scenic Rivers Coordinator, December 23, 2004.
- ¹³ Interviews with Eli Naffa, City Manager, City of Rio Dell, January 21, 2005; Steve McHaney, engineer, Winzler & Kelly Consulting Engineers, February 5, 2005; and Melissa Miller-Henson, former Resources Agency Wild and Scenic Rivers Coordinator, December 23, 2004.
- ¹⁴ Interview with Steven Herrera, Environmental Unit, Division of Water Rights, State Water Resources Control Board, March 1, 2005.
- ¹⁵ Interview with Stephen Puccini, Staff Counsel, California Department of Fish and Game, February 22, 2005.
- ¹⁶ Interview with Melissa Miller-Henson, former Resources Agency Wild and Scenic Rivers Coordinator, December 23, 2004.
- ¹⁷ Interview with Melissa Miller-Henson, former Resources Agency Wild and Scenic Rivers Coordinator, December 23, 2004.
- ¹⁸ Stats 1993 Chapter 896 Section 3.
- ¹⁹ THP 1-04-123H, South Scotia Flats (Eel River); THP 1-04-026H, Taproot (Van Duzen River); THP 1-04-099H, Scattered Root (Van Duzen River).
- ²⁰ Interviews with John Parrish, Executive Officer, State Mining and Geology Board, March 3 and March 15, 2005; and with Adam Harper, Manager, California Mining Association, March 30, 2005.
- ²¹ Interview with Patty Brissenden, Sorensen's Resort, January 31, 2005.
- ²² Interview with Dan Brown, Gualala River Redwoods Park, February 10, 2005.
- ²³ Interviews with Paul Pugsley, Mono County Resource Conservation District, February 6, 2005; Ed James, Director, Carson Water Subconservancy District, February 11, 2005; and Clint Celio, landowner and member of the Alpine Watershed Group, February 10, 2005.
- ²⁴ Interviews with Paul Pugsley, Mono County Resource Conservation District, February 6, 2005; Ed James, Director, Carson Water Subconservancy District, February 11, 2005; Clint Celio, landowner and member of the Alpine Watershed Group, February 10, 2005; and Rorie Gotham, landowner, Yuba River, February 10, 2005.
- ²⁵ Interview with Rorie Gotham, Yuba River landowner and member of the South Yuba River Citizens League, March 16, 2005.
- ²⁶ Interview with Henry Alden, Gualala Redwoods Company, January 24, 2005.
- ²⁷ Interview with Janet Cohen, Executive Director, South Yuba River Citizens' League, December 30, 2004.
- ²⁸ Interview with Daniel Buckley, Tributary Whitewater Tours, March 8, 2005.

²⁹ Interview with Michael Bowen, Fisheries Program Manager, California Coastal Conservancy, February 6, 2005.

³⁰ 16 U.S.C. Section 1273(a)(ii).

³¹ *County of Del Norte, et al., v. United States of America, et al.*, United States Court of Appeals for the Ninth Circuit, 732 F.2d 1462, May 11, 1984.

Appendix A: Individuals and Organizations Interviewed

Statewide Issues and Contacts

Adam Harper, California Mining Association
Jim Canaday, SWRCB, Hydropower Water Quality Certification Unit
Andy Sawyer, Assistant Chief Counsel, SWRCB
Barbara Leidigh, Senior Staff Counsel, SWRCB
Samantha Olson, Staff Counsel, SWRCB
Steve Herrera, Chief, Water Rights Permitting, SWRCB
Sandra Ikuta, Deputy Secretary and General Counsel, California Resources Agency
Waiman Yip, California Department of Water Resources
Adam Harper, Association Manager, California Mining Association
Bill Morrison, Legislative Liason, State Lands Commission
Chris Zimney, Board of Forestry Regulatory Coordinator
David Guy, Executive Director, Northern California Water Association
Dennis Hall, Division Chief, Forest Practices, CDFG
Ed Imai, Caltrans HQ Environmental Program
Gary Flosi, Senior Fish Habitat Supervisor, CDFG
Helen Birss, Fisheries Restoration Grant Program, CDFG
Jeff Shallito
Jim Eicher, U.S. Bureau of Land Management, Associate Field Manager, Folsom, CA
Mark Pawlicki, Chief Legislative Consultant, California Forestry Association
Martha Lennihan, Lennihan Law, Sacramento
Megan Cambridge, Brownfields Coordinator, California DTSC
Melanie Bankson, Environmental Manager, U.S. Marine Corps Mountain Warfare Training Facility, Bridgeport, CA
Melinda Terry, Deputy Secretary, Legislation, California Resources Agency
Melissa Miller-Henson, former Wild and Scenic Rivers Act Coordinator, California Resources Agency
Michael Bowen, Project Manager, California Coastal Conservancy
Noelle Cremers, Government Affairs, California Farm Bureau Federation
Ronald Stork and Steve Evans, Friends of the River, Sacramento
Steve Johnson, The Nature Conservancy
Susan LeGrande, Government Relations, California Cattlemen's Association
John Parrish, Executive Officer, State Mining and Geology Board

Local/Regional Issues

Ron Nelson, General Manager, Nevada Irrigation District
Sue Sindt, Operations Supervisor, Nevada Irrigation District
Tim Feller, Sierra Pacific Industries
Ursula Jones, Friends of the Gualala River
Steve Navares, Senior Project Manager, Power Generation, Pacific Gas & Electric
Alan Lilly, attorney for North Gualala Water Company

Brad Clayton, Technical Services Engineer, Sea Ranch Water Co.
Brad Davis, owner, Carson River Resort
Carrie Brown, Mendocino County Farm Bureau
Carol Grenier, U.S. Bureau of Reclamation, Carson City, NV
Chris Gansberg, landowner, Alpine County
Clinto Celio, landowner and member of the Alpine Watershed Group
Curt Aikens, General Manager, Yuba County Water Agency
Dan Brown, Owner, Gualala River Redwoods Park
Ed James, Director, Carson Water Subconservancy District
Eli Naffa, City Manager, City of Rio Dell
Frank Lynch, Spaulding Reservoir hydropower scheduler, PG&E
Steve Nevares, FERC Relicensing Group, PG&E
Greg Newbry, Director, Mono County Department of Community Development
Henry Alden, Gualala Redwoods, Inc.
Inyo-Mono County Farm Bureau
Izzy Martin, former Nevada County Supervisor
Jim Thomas, Director, Center for Watersheds and Environmental Sustainability, NV
Kathleen Morgan, Gualala Watershed Council
Ken Spooner, General Manager, Walker Irrigation District
Laura Leuders, County Watershed Coordinator, Alpine County
Lorna Dobrovolny, California Dept. of Parks & Recreation, South Yuba River
Mal Toy, Director of Resource Development, Placer County Water Agency
Matthew Conant, President Sutter-Yuba County Farm Bureau
Mike Jani, Chief Forester, Mendocino Redwood Co.
Patty Brissendon, co-owner, Sorensen's Resort, and member, Friends of Hope Valley
Patty Madigan, Mendocino County Resource Conservation District
Paul Pugsley, Mono County Resource Conservation District
Phil Horning, Wild and Scenic Rivers Coordinator, U.S. Forest Service, Tahoe National Forest
Rick Delmas, Inyo-Mono County Farm Advisor, UC Cooperative Extension
Roland Sanford, General Manager, Mendocino County Water Agency
Steve McHaney, Winzler & Kelly Consulting Engineers, water engineering consultant to City of Rio Dell
Daniel Buckley, Tributary Whitewater Tours
Bart Cranney, Leavitt Meadows Pack Station
Rorie Gotham, Town of Washington, South Yuba River
Leighton Hills, Bollibokka Fishing Club, McCloud River

Appendix B: Overview of the California Wild and Scenic Rivers Act

The California Wild and Scenic Rivers Act¹ (CWSRA) declares it to be the policy of the state that “certain rivers which possess extraordinary scenic, recreational, fishery, or wildlife values shall be preserved in their free-flowing state, together with their immediate environments, for the benefit of the people of the state.” It further declares that “such use of these rivers is the highest and most beneficial use.”²

The main provisions of the CWSRA are as follows:

1) A List of Designated Rivers

The CWSRA specifies various rivers and segments of rivers in the state as being components of the California Wild and Scenic Rivers System. Rivers can only be added, removed, or reclassified by statute. The Resources Secretary may recommend legislation to classify or reclassify rivers or segments, and may also recommend “specific land use restrictions relative to each particular classification in such recommendations.”³

2) Designations of Rivers Segments as “Wild,” “Scenic,” or “Recreational”

Rivers and river segments included in the Wild and Scenic Rivers System are designated as either “Wild,” “Scenic,” or “Recreational.” These terms are defined as follows:⁴

Wild rivers are “free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted.”

Scenic rivers are “free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads.”

Recreational rivers are “readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past.”

For the most part, there is nothing in the CWSRA to indicate whether the terms “Wild,” “Scenic,” or “Recreational” have differing implications for how the rivers should be regulated or managed.⁵

¹ California Public Resources Code Sections 5093.52-5093.70.

² California Public Resources Code Section 5093.50.

³ California Public Resources Code Section 5093.546.

⁴ California Public Resources Code Section 5093.53.

⁵ The exception to this is an exemption for some temporary summer dams erected for recreation on rivers that have a “recreational” designation (see page 6 for more detail).

It should be noted that a designation does not usually mean that the entire river has been declared part of the system. And the same river can have multiple segments that have received differing designations. Appendix A lists all the designated segments.

3) Restrictions on Dams, Reservoirs, Diversions, and Water Impoundment Facilities

Section 5093.55 contains some of the strongest language of the CWSRA.

It reads:

...no dam, reservoir, diversion, or other water impoundment facility may be constructed on any river and segment thereof designated ... nor may a water diversion facility be constructed on the river and segment unless and until the secretary determines that the facility is needed to supply domestic water to the residents of the county or counties through which the river and segment flows, and unless and until the secretary determines that the facility will not adversely affect the free-flowing condition and natural character of the river and segment.

This section has two basic parts. The first part is a prohibition on dams, reservoirs, diversions, or other water impoundment facilities on designated rivers and segments. The second part describes some circumstances under which some water diversion facilities may be allowed. A water diversion facility may be constructed if the Resources Secretary “determines that the facility is needed to supply water to the residents of the county or counties through which the river and segment flows,” and that the facility “will not adversely affect the free-flowing condition and natural character” of the river.⁶

4) Responsibilities of State Agencies and Departments

Section 5093.56 of the CWSRA bars any department or agency of the state from assisting or cooperating with any government agency in the construction of any dam, reservoir, diversion, or other water impoundment facility that “could have an adverse effect on the free-flowing condition and natural character” of designated rivers and segments.

A related section, 5093.61, requires all departments and agencies of the state to “exercise their powers ... in a manner that protects the free-flowing state of each component of the system and the extraordinary values for which each component was included in the system.” Local governments must exercise their powers “in a manner consistent with the policy and provisions” of the Act.

⁶ The term “domestic use” is defined in regulations as “the use of water in homes, resorts, motels, organization camps, camp grounds, etc., including the incidental watering of domestic stock for family sustenance or enjoyment and the irrigation of not to exceed one-half acre in lawn, ornamental shrubbery, or gardens at any single establishments. The use of water at a camp ground or resort for human consumption, cooking or sanitary purposes is a domestic use.” (23 CCR Section 660)

5) Special Treatment Areas and Timber Harvesting

The CWSRA contains some provisions regarding enforcement of timber rules in “special treatment areas.” Special treatment areas are defined by regulation as areas containing “significant resource features which may be at risk during timber operations.” With respect to Wild and Scenic Rivers, special treatment areas are defined as the zone within 200 feet of the “watercourse transition line” of federal or state designated wild and scenic rivers.⁷⁸

Among other things, the CWSRA requires that a forester preparing a timber harvest plan conduct a personal inspection of an affected special treatment area. It provides for special penalties (such as fines and misdemeanor charges) and enforcement mechanisms (such as stop orders) for violations of the timber rules in special treatment areas.⁹

The CWSRA does not contain any specific restrictions or requirements for timber harvesting in the special treatment areas. The timber rules do, however, indicate that in such areas, special attention must be paid to protecting the values for which the special treatment area was designated.¹⁰

6) Coordination of State Agencies

The CWSRA specifies that the Resources Secretary is responsible for coordinating between state, local, and federal agencies whose activities may affect the rivers in the system.¹¹ The CWSRA also requires all state and local agencies to “exercise their powers granted under any other provision of law in a manner consistent with the policy and provisions” of the Act.¹²

7) Provisions Relating to Land Use Regulation

The CWSRA’s intent language says that designated rivers “shall be preserved in their free-flowing state, *together with their immediate environments*, for the benefit of the people of the state” (italics added). The Act defines “immediate environments” as “the land immediately adjacent to the segments of the rivers designated...”¹³ This might imply that the Act regulates land use adjacent to the rivers.

However, the Act also explicitly states that it does not convey “any authority, express or implied,” to “adopt or implement any interim or permanent order, rule, regulation,

⁷ California Code of Regulations, Title 14, Section 895.1.

⁸ In 2004, the CWSRA was amended to clarify that special treatment areas also exist alongside designated “recreational” river segments “that may be at risk during timber operations.” (SB 904, Chesbro).

⁹ California Public Resources Code Section 5093.68.

¹⁰ California Code of Regulations, Title 14, Sections 913.4, 933.4, 953.4, in California Department of Forestry and Fire Protection, *California Forest Practice Rules*, 2005, 45.

¹¹ California Public Resources Code Section 5093.60.

¹² California Public Resources Code Section 5093.61.

¹³ California Public Resources Code Section 5093.54(h).

guideline, or directive concerning land use regulation.”¹⁴ It also explicitly states that nothing in the Act allows the taking of private property without just compensation.¹⁵¹⁶

The Act obviously could restrict some projects that would involve land next to a river (for example, a reservoir). However, the Act’s definition of “river” makes it clear that the term “river” is not meant to encompass entire watersheds. A “river” is defined as “the water, bed, and shoreline ... up to the first line of permanently established riparian vegetation.”¹⁷

8) Exemptions and Exceptions, Including Pre-Existing Water Rights

The CWSRA contains a variety of exemptions, exceptions, and other language limiting the effects of the provisions just outlined.

Primacy of Pre-Existing Water Rights

The legislature has clearly expressed the intent that the CWSRA not be used to take away or limit existing water rights. A 1993 bill, AB 653 (Sher and Hauser) stated that nothing in the CWSRA “shall prejudice, alter, affect in any way, or interfere with the exercise of existing water rights.”¹⁸

In 1995, an amendment added Section 5093.70(g), which again asserts protection for existing water rights and water diversion practices. It reads:

Nothing in this chapter shall prejudice, alter, affect in any way, delay, or interfere with existing water rights; implementation of those rights; historic water use practices; and replacement, maintenance, repair, or operation of diversions and diversion facilities; or changes in the purposes of use, places of use, points of diversion, or ownership of existing water rights, except that no change shall operate to increase the adverse effect, if any, of the preexisting diversion facility or place or purpose of use upon the free flowing and natural character of the stream.¹⁹

The designations of specific rivers often contain additional language acknowledging existing rights. For example, the designation of the South Yuba specifies that it shall not

¹⁴ California Public Resources Code Section 5093.58.

¹⁵ California Public Resources Code Section 5093.63.

¹⁶ There is an exception to this general statement – the statute contains an exclusion prohibiting mining activity within one-quarter mile of the north fork of the Smith River in Del Norte County, if such activity would “result in a significant adverse effect” on the river’s “extraordinary scenic, recreational, fishery, or wildlife values” (Public Resources Code Section 5093.66).

¹⁷ California Public Resources Code Section 5093.52(c).

¹⁸ Annotated Stats 1993 Ch. 896.

¹⁹ For some reason, this language was inserted into a section of the Act that otherwise only applies to the McCloud River. But the use of the word “chapter” makes it applicable to the entire Act.

“prejudice, alter, delay, interfere with, or affect in any way, the existing rights of the Placer County Water Agency ...”²⁰

Other Limitations in the CWSRA

Section 5093.55 of the Act (the part prohibiting dams, diversions, reservoirs and water impoundments on designated rivers) excludes “temporary flood storage facilities” on the Eel River.²¹ AB 653 of 1993 says that the Act shall not “prejudice, alter, affect in any way, or interfere with, the ability of public agencies or private landowners to maintain existing flood control facilities and projects or undertake emergency flood control activities or repairs ... provided that those activities or projects do not interfere with the passage of migrating anadromous fish.” That law also similarly exempts from the Act fishery restoration or improvement projects.²²

There is also an exception to the prohibition on dams for certain recreational dams. The Resources Secretary may authorize the use of temporary summer recreational dams where they have been constructed in the past, as long as the river is classified as “recreational” (provided there are no adverse effects on fisheries, navigation, scenic qualities, or public access).²³

²⁰ California Public Resources Code Section 5093.54.

²¹ California Public Resources Code Section 5093.55, 5093.57.

²² Stats 1993 Chapter 896 Section 3.

²³ California Public Resources Code Section 5093.67.

Appendix C:
State and Federal Wild and Scenic Rivers

River	Cal WSR	Fed WSR
Albion River	2003	
American (Lower)	1989	1981
American (North Fork)	1972	1978
Big Sur		1992
East Carson River	1989	
Eel	1972	1981
Feather		1968
Gualala River	2003	
Kern		1987
Kings		1987
Klamath	1972	1981
Merced		1987
Salmon	1972	1981
Scott	1972	1981
Sespe Creek		1992
Sisquoc		1992
Smith	1972	1981
South Yuba	1999*	
Trinity	1972	1981
Tuolumne		1984
Van Duzen	1972	1981
West Walker/Leavitt Creek	1989	

* While the legislation putting the South Yuba into the Wild and Scenic River system (SB 496) was passed in 1999, another bill (AB 1593) delayed its implementation until January 1, 2001.

EXHIBIT F

Date of Hearing: June 23, 2014

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Wesley Chesbro, Chair
SB 1199 (Hancock) – As Amended: May 28, 2014

SENATE VOTE: 22-12

SUBJECT: Wild and scenic rivers: Mokelumne River

SUMMARY: Designates a 37 mile portion of the Mokelumne River in Calaveras and Amador Counties in the Sierra Nevada as a "wild and scenic river" in the California Wild and Scenic Rivers System (System), and protects existing and future water rights, as specified.

EXISTING LAW: Pursuant to the California Wild and Scenic Rivers Act (Act):

- 1) Declares that it is the policy of the state that certain rivers that possess extraordinary scenic, recreational, fishery, or wildlife values be preserved in their "free-flowing" state, together with their immediate environments, for the benefit and enjoyment of the people of the state. Declares that such use of these rivers is the highest and most beneficial use and is a reasonable and beneficial use of water.
- 2) Defines "free-flowing" as existing or flowing without artificial impoundment, diversion, or other modification of the river. (The presence of low dams, diversion works, and other minor structures does not automatically bar a river's inclusion within the System.)
- 3) Requires that those rivers or segments of rivers included in the System be classified as one of the following:
 - a) Wild rivers, which are those rivers or segments of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted;
 - b) Scenic rivers, which are those rivers or segments of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads; or
 - c) Recreational rivers, which are those rivers or segments of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past.
- 4) Designates several California rivers and segments thereof as components of the System.
- 5) Requires the Natural Resources Agency (NRA) to be responsible for coordinating the activities of state agencies whose activities affect the rivers in the System with those of other state, local, and federal agencies with jurisdiction over matters that may affect the rivers.
- 6) Requires all departments and agencies of the state to exercise their powers granted under any other provision of law in a manner that protects the free-flowing state of each component of

the System and the extraordinary values for which each component was included in the System. Requires all local government agencies to exercise their powers granted under any other provision of law in a manner consistent with the policy and provisions of the Act.

- 7) Prohibits a dam, reservoir, diversion, or other water impoundment facility from being constructed on any river and segment included in the System. Prohibits a water diversion facility from being constructed on the river and segment included in the System unless and until NRA determines that the facility is needed to supply domestic water to the residents of the county or counties through which the river and segment flows, and unless and until NRA determines that the facility will not adversely affect the free-flowing condition and natural character of the river and segment.
- 8) Prohibits a department or agency of the state from assisting or cooperating, whether by loan, grant, license, or otherwise, with any department or agency of the federal, state, or local government, in the planning or construction of a dam, reservoir, diversion, or other water impoundment facility that could have an adverse effect on the free-flowing condition and natural character of the river and segments thereof included in the System.

THIS BILL:

- 1) Makes the following findings and declarations:
 - a) The Mokelumne River contains extraordinary scenic, recreational, historical, cultural, and water quality values of statewide significance that deserve to be preserved in their free-flowing state for the benefit and enjoyment of the people of the state.
 - b) In designating the Mokelumne River as a component of the System, it is the intent of the Legislature that this bill will accomplish the preservation of those values.
- 2) Designates a nearly 37 mile portion of the Mokelumne River in Calaveras and Amador Counties in the Sierra Nevada as part of the System.
- 3) Does not prejudice, alter, delay, interfere with, or affect in any way, the installation, operation, maintenance, repair, and replacement of river flow and water quality monitoring stations and equipment in and along the designated segments of the Mokelumne River; or the construction, operation, maintenance, repair, and replacement of recreational facilities along the Mokelumne River on East Bay Municipal Utility District lands, including scenic trails and rafting facilities, such as take outs, parking lots, and similar recreational facilities.
- 4) Does not prejudice, alter, delay, interfere with, or affect in any way, the existing rights of the Amador Water Agency, the Jackson Valley Irrigation District, the Calaveras Public Utility District, and the Calaveras County Water District; the implementation of those rights; any historic water use practices; the replacement, maintenance, repair, operation, or future expansion of existing diversions, storage, powerhouses, conveyance facilities, power lines, or other works by those agencies; or changes in the purpose of use, places of use, points of diversion, or ownership of those existing water rights. Prohibits, however, the exercise of rights or practices that increase any adverse effect upon the free-flowing and natural character of the designated river segments.

- 5) Does not prejudice, delay, interfere with, or affect in any way, a water rights application by the Amador Water Agency, the Jackson Valley Irrigation District, the Calaveras Public Utility District, and the Calaveras County Water District and consideration by the State Water Resources Control Board of a water rights application for new water supply projects upstream of designated Mokelumne River segments or on tributaries to the North Fork and main stem Mokelumne River, provided that the application and approval of water rights, and the construction and operation of facilities to access those rights, avoid an adverse effect on the free-flowing condition and natural character of the river segments designated in this section as components of the System.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible costs.

COMMENTS:

- 1) Author's Statement.

SB 1199 would add 37 miles of the Mokelumne River between Salt Springs Dam and Pardee Reservoir into the California Wild and Scenic Rivers System and designate those free-flowing segments as wild, scenic, or recreational. California State Wild and Scenic River designation will protect the Mokelumne River's extraordinary values for future generations and provide balance for the extensive water and hydroelectric development of the river. There is currently no federal legislation for National Wild and Scenic River designation on the Mokelumne, so State designation is being pursued.

- 2) The Act. The Act was passed in 1972 to preserve designated rivers possessing extraordinary scenic, recreation, fishery, or wildlife values. With its initial passage, the System protected segments of the Smith River and tributaries, Klamath River and tributaries, Scott River, Salmon River, Trinity River, Eel River, Van Duzen River, and American River. The System was subsequently expanded by the Legislature to include the East Carson and West Walker rivers in 1989, the South Yuba River in 1999, the Albion River and Gualala Rivers in 2003, and Cache Creek in 2005. In addition, segments of the McCloud River, Deer Creek, and Mill Creek were protected under the Act in 1989 and 1995 respectively, although these segments were not formally designated as components of the System.

The Act provides a number of legal protections for rivers included within the System, beginning with the following legislative declaration:

It is the policy of the State of California that certain rivers which possess extraordinary scenic, recreational, fishery, or wildlife values shall be preserved in their free-flowing state, together with their immediate environments, for the benefit and enjoyment of the people of the state. The Legislature declares that such use of these rivers is the highest and most beneficial use and is a reasonable and beneficial use of water within the meaning of Section 2 of Article X of the California Constitution.

The Act defines "free-flowing" as "existing or flowing without artificial impoundment, diversion, or other modification of the river." The existence of minor structures, or even

major dams located upstream or downstream of a specific segment, does not preclude a river from designation. Several rivers, such as the Klamath, Trinity, Eel, and lower American, are included in the System despite substantial flow modifications by existing upstream dams and impoundments.

The Act defines "river" as "the water, bed, and shoreline of rivers, streams, channels, lakes, bays, estuaries, marshes, wetlands, and lagoons, up to the first line of permanently established riparian vegetation." The latter phrase ("up to the first line of permanently established riparian vegetation") was added in a 1982 amendment and represents a reduction in the area of streambed and shoreline potential originally subject to the Act's protection.

The Act defines "immediate environments" only generally as the land "immediately adjacent" to designated segments. This definition, which was added in the 1982 amendments, represents a reduction in the land area originally subject to the Act's protection.

Rivers or segments included with the system are classified by the Legislature as "wild," "scenic," or "recreational" based on the level of existing development when designated. "Wild" river segments are free of impoundment and generally are inaccessible except by trail, with primitive watersheds or shorelines and unpolluted waters. "Scenic" river segments are free of impoundment, with shorelines or watersheds still largely primitive and shorelines largely undeveloped but accessible in places by roads. "Recreational" river segments are readily accessible by road or railroad, may have some development along their shorelines, and may have been impounded or diverted in the past. The classification terms are a guide to the level of existing development, not a description of any particular values. For example, recreational river segments may not have an particular extraordinary recreational values.

Significant amendments to the Act in 1982 eliminated the mandate for management plans and, as mentioned above, defined the area protected to the first line of permanent riparian vegetation. The 1982 amendments also specified that the Legislature is responsible for classifying or reclassifying rivers by statute, although NRA may recommend classifications. An amendment to the Act in 1986 established a study process modeled after the federal act to determine potential additions to the System.

Based on subsequent studies required by the Legislature, segments of the East Carson and West Walker rivers were added to the System in 1989. New dams, diversions, and reservoirs were prohibited on the McCloud River, although it was not formally included in the System. Similar "non-formal designation" protection against dams was provided Deer Creek and Mill Creek in 1995, in response to studies mandated by the Legislature. The Legislature added the South Yuba River to the System without a study in 1999.

No dam, reservoir, diversion, or other water impoundment facility may be constructed on any river segment included in the System. However, there are exemptions, which include temporary flood storage facilities on the Eel River and temporary recreational impoundments on river segments with a history of such impoundments. NRA cannot authorize these temporary recreational impoundments without first making a number of findings.

One of the most important (and controversial) provisions in the Act is the non-degradation clause, which prohibits new projects and activities from adversely affecting the free-flowing condition and natural character of river segments included in the System.

The Act was patterned after the 1968 National Wild and Scenic Rivers Act. The state and federal acts share similar criteria and definitions in regard to the purpose of protecting rivers, the identification of free flowing rivers and extraordinary or outstanding values suitable for protection, establishing a study process to include rivers in the system, as well as an identical classification system. The primary purpose of both the state and federal acts is to prohibit new water impoundments on designated rivers.

- 3) The Mokelumne River. The Mokelumne River has been studied by both the United States Forest Service and the Bureau of Land Management, which found the river to be free-flowing while possessing remarkable scenic, recreational, historical, cultural, and water-quality values of statewide significance. According to the author, these federally identified values easily translate into the extraordinary values that make the river eligible for protection in the System.

Located in the Central Sierra, the Mokelumne is a hard-working river with dams and diversions providing irrigation water for agriculture in the Central Valley while also generating hydro-electricity for more than 200,000 homes. The water quality found in the North Fork and main stem of the Mokelumne River has been found to be extremely high. The East Bay Municipal Utilities District serves approximately 1.4 million residents of the East Bay with drinking water from this river segment.

The river is home to diverse wildlife populations, rare wildlife, and a healthy trout fishery. It also features deep granite canyons, the massive Devil's Nose and Calaveras Dome, cascading waterfalls, dramatic gorges, and mature riparian forests that afford increasingly rare opportunities to view isolated, primitive mid-Sierra natural beauty. According to the bill's supporters, "[d]esignating the river will enhance the rural economies of Amador and Calaveras counties by providing for family recreation and boosting tourism from visitors throughout the state. Wild and Scenic River designation will ensure that all current uses of the river continue while protecting its free-flowing parts from new dams on the river segments that are already considered to be fully appropriated according to the State Water Board."

- 4) Opposition. The Amador Water Agency (AWA) has raised concerns over the possible implications of this bill. Chief among them is the scope of the anti-degradation provision, which, as stated above, requires future diversion projects to have no adverse effect on the free-flowing condition and natural character of the river and segment. There are no known cases where the anti-degradation provision has been invoked to preclude a diversion project; still, AWA is concerned about the plain meaning of the provision and the uncertainty it creates for future projects.

REGISTERED SUPPORT / OPPOSITION:

Support

Adventure Connection, Inc.
Amador County Democratic Central Committee
Amador Eye Care Associates
Amador Olive Oil

American Rivers
American Whitewater
AquAlliance
Black Bear Inn
Blue Mountain Coalition for Youth and Families
Burger Bar, Sidewinders
Butte Environmental Council
Calaveras County Board of Supervisors
Calaveras Planning Coalition
California Canoe & Kayak
California Coastkeeper Alliance
California League of Conservation Voters
California Rural Legal Assistance Foundation
California Save Our Streams Council
California Sportfishing Protection Alliance
California Striped Bass Association
California Valley Miwok Tribe
California Water Impact Network
California Wildlife Foundation
Center for Biological Diversity
Central Sierra Environmental Resource Center
Citizens Water Watch
Clean Water Action
Coast Action Group
Community Action Project
Community Water Center
Councilmember Keith Sweet, Jackson City Council
Councilmember Marily Lewis, Jackson City Council
Councilmember Tim Murphy, Sutter Creek City Council
Defenders of Wildlife
Delta Fly Fishers
Desal Response Group
Destination Angels Camp
Doke Sushi
Earth Law Center
Environmental Justice Coalition for Water
Environmental Protection Information Center
Environmental Water Caucus
The Feed Barn Country Store
Fish Sniffer
Food and Water Watch
Foothill Conservancy
Friends of the Eel River
Friends of the River
Goin' Postal
Golden Gate Audubon Society
Golden West Women Flyfishers
Institute for Fisheries Resources
Karmere Vineyards and Winery

Karuk Tribe
Kirk's Hydro
Klamath Riverkeeper
Los Padres Forest Watch
Lower Sherman Island Duck Club
Mariposans for the Environment and Responsible Government
MyValleySprings.com
Natural Heritage Institute
Northcoast Environmental Center
Northern California Council Federation of Fly Fishers
O.A.R.S. Companies, Inc.
Pacific Coast Federation of Fisherman's Association
Petroglyphe Gallery
Planning and Conservation League
Protect American River Canyons
Restore Hetch Hetchy
Restore the Delta
Sacramento River Preservation Trust
Safe Alternatives for Our Forest Environment
Santa Clarita for Planning and the Environment
Sierra Business Council
Sierra Club California
Sierra Club, San Francisco Bay Chapter
Sierra Mac River Trips, Inc.
Sierra Nevada Adventure Co. Inc.
Sierra Nevada Alliance
Supervisor Cliff Edson, Calaveras County, District 1
Supervisor Merita Callaway, Calaveras County, District 3
South Yuba River Citizens League
Southern California Watershed Alliance
Sutter Creek City Council
Terre Rouge and Easton Wines
Trout Unlimited
Tuolumne River Trust
Twisted Oak Winery
Ventana Wilderness Alliance
Volcano Press
West Point New & Upcountry News
Winnemem Wintu Tribe
Zephyr Whitewater Expeditions
Four Individuals

Opposition

Amador County Board of Supervisors
Amador County Business Council
Amador County Farm Bureau
Amador Water Agency
Amador Water Agency's Employee Association

Association of California Water Agencies
Calaveras-Amador Mokelumne River Authority
Calaveras County Republican Party
Calaveras County Taxpayers Association, Inc.
Calaveras County Water District
Calaveras Public Utility District
California Farm Bureau Federation
First Mace Meadow Water Association
Jackson Valley Irrigation District
Mountain Counties Water Resources Association
North San Joaquin Water Conservation District
Pine Grove Community Services District
Rabb Park Community Services District
San Joaquin County Board of Supervisors

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