# SWEETWATER SPRINGS WATER DISTRICT

**TO:** Board of Directors **AGENDA NO. V-A**

**FROM:** Steve Mack, General Manager

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**Meeting Date : January 5, 2017**

**SUBJECT: REVIEW OF AND COMMENTS ON THE SONOMA COUNTY WATER AGENCY FISH FLOW PROJECT**

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**RECOMMENDED ACTION:** Receive a presentation from General Manager Steve Mack regarding his review of the Sonoma County draft Environmental Impact Report on its proposal to change Water Rights Decision 1610 with changes proposed by the Fish Flow Project, review and comment on a proposed comment letter on the DEIR, and provide direction to staff.

**FISCAL IMPACT:** none

**DISCUSSION:**

In mid August 2016, the Sonoma County Water Agency (SCWA) released the long-awaited draft Environmental Impact Report (DEIR) on the Fish Habitat Flows and Water Rights Project, also called the Fish Flow Project. This DEIR is the environmental document for their proposed changes to Water Rights Decision 1610 which governs how releases from the dams that regulate the Russian River are made and sets a range of required minimum flows at various points in the River. It appears that SCWA wants to achieve two major actions from the proposed changes to Decision 1610:

- Make permanent the flow changes ordered by the Biological Opinion for endangered salmonid species in the Russian River (BO), and

- Change the Decision 1610 hydrologic index so that 1) it is based on Lake Mendocino instead of Lake Pillsbury, has more ( from 3 currently to 5) conditions on which to base releases, 3) takes account of the reduced inflows from the Eel River, and 4) has more flexibility seasonally, going from seasonal decisions to monthly decisions.

Based on the schedule released when the EIR was made publicly available, comments on the draft EIR had to be in by October 17, 2016. On September 13, 2016, SCWA made a public presentation of the draft EIR at the Board of Supervisors meeting. I and many others commented that we needed more time to review the document. The Supervisors heard that plea and the comment period was extended to February 14 with a public hearing in Guerneville at the Vet's Hall on November 17.

Concerns we have discussed and expressed regarding the Fish Flow Project and its DEIR include:

- Water Rights: The Fish Flow Project petition makes the statement that it harms no existing water rights. SCWA staff has told us that in their opinion SSWD has no right to divert water when the River is in critical drought stage (not clear where we would stand in their opinion with their new HI). The Fish Flow Project adds a diversion point in Monte Rio for the Occidental Community Services District and the Urban Water Management Plan states that additional water would be diverted to Marin County so SSWD is being harmed by this project. This is an impact of the Fish Flow Project that should be discussed in the DEIR and it is easily fixed.

- 75,000 AFY Diversion: the requested 75,000 AFY diversion is an illusory number - SCWA hasn't come near that amount to date (D1610 gave them until 1999 to perfect that amount) and that without a massive population increase State requirements on water conservation will not allow the contractors to SCWA come close to that number. The DEIR should honestly discuss this issue and provide alternatives to a 75,000 AFY diversion amount.

- Hydrologic Index: It's a good idea but the HI is given as a fait accompli and the EIR should discuss alternatives.

Attached to this report is a draft comment letter that includes the District's issues with the DEIR. Please review this letter and provide comments and direction regarding submittal prior to the comment deadline on February 14.

As I have stated many times, I believe these issues should be resolved in county, not before the State Board. Directors Marquez de la Plata and Holmer, and I met with Supervisor-elect Hopkins on December 19 to discuss this issue. She agreed with the above concept and encouraged me to meet with Supervisor Gore on this issue. I am working on setting up that meeting.

January 12, 2017

Sonoma County Water Agency
Attn: Jessica Martini-Lamb, Principal Environmental Specialist
404 Aviation Boulevard
Santa Rosa, CA 95403

Ms Martini-Lamb:

Thank you for the opportunity to comment on the draft Environmental Impact Report (DEIR) for the proposed Fish Habitat Flows and Water Rights Project (Fish Flow Project). This is an important proposal that, if approved as outlined in the DEIR, and will have lasting effects on the many users of the Russian River. For that reason, this DEIR must be complete and fully describe the reasonably anticipated impacts that the Fish Flow Project will have on the residents of the Russian River watershed.

Sweetwater Springs Water District strongly urges the Board of Directors of the Sonoma County Water Agency (SCWA) to not approve the Fish Flow Project and not certify this DEIR. The Fish Flow Project harms the water rights of Sweetwater Springs Water District (which is not discussed in the DEIR), and has other impacts that should be discussed in the DEIR and provide mitigation, or the Project should be modified. The SCWA Board of Directors should direct the staff of SCWA to conduct the claimed extended outreach to develop a project that serves all residents of Sonoma County. The Sonoma County Water Agency should be the preeminent water agency in the County and as such should be looking out for the best interests of all residents of the County and the Russian River Watershed. The Fish Flow Project is an opportunity to fix the many issues of the Russian River and through appropriate public outreach, a project can be developed that does this much better than the proposed project.

Comments that Sweetwater Springs Water District wishes to have put into the public record and to be considered by the Board of Directors of the Sonoma County Water Agency (SCWA) in its consideration of this DEIR include:

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1. **Sweetwater Springs Water District (SSWD) is harmed by this project through this Project's attempt, whether foreseen or unforeseen, to make SSWD's water use junior to projected water uses by users of this project.** SCWA staff have informed Sweetwater Springs staff that they believe SSWD has no right to divert water during dry periods in the Russian River. SSWD does not agree with that position. Regardless, this action before the State Board is an excellent opportunity to resolve this issue. However, this DEIR has no mention of this major water rights issue for an urban water supplier with over 3600 customers and the major source of water for residential water use in the lower River area. The Project adds the Occidental Community Services District and the City of Windsor to the Sonoma County Water Agency's (SCWA) permits putting those water users senior to SSWD's water rights (according to the SCWA staff theory of SSWD's water rights). This is an additional harm to SSWD.

   The DEIR also casually mentions other water rights that may have bypass flow issues - those bypass flows were likely set by the State Board in response to the current higher minimum flows and need to be adjusted in response to the petition to reduce the minimum flows. There are likely other water rights-related issue that need to be addressed in conjunction with the SCWA petitions and these need to be fully examined in the DEIR. A comprehensive analysis of Russian River flow requirements and possibilities is necessary for this DEIR to adequately address these serious issues.

   The impact to Sweetwater Water Springs Water District is avoidable and the DEIR needs to include the mitigation measure(s) to avoid this impact. One possible mitigation would be a recognition by SCWA that diversions by SCWA for its contractors in excess of the amount diverted in 1999, the original completion date for these permits, are junior to Sweetwater Springs diversions and that flow in the River during all schedules of the Hydrologic Index has adequate unimpaired flows to fulfill SSWD's water rights, and have this recognized by the State Board in the final determination on these petitions for change of D1610 .

2. **The petitions for change claim there will be no harm to existing legal water users in the River; from the above comments, this is clearly not the case**. The DEIR must fully examine all Russian River water rights so that any impacts on any

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water rights are examined and the Project, through this EIR process, should provide mitigation or fixes for those impacts.

3. **The DEIR must have a better examination and analysis of water rights.** The DEIR states that the Water Agency does not make decisions on water rights but the State Board does and the State Board will use this DEIR to make decisions regarding the water rights associated with Decision 1610 (D1610). Some of the water rights mentioned in the DEIR have minimum bypass flows but those bypass flows were likely established with the minimum flows established by D1610. The DEIR should examine this issue in more detail and also examine whether other water rights associated with the Russian River will be impacted by anything associated with this Project.

4. **The DEIR does not adequately discuss all current issues with D1610, instead just addressing the narrow focus that SCWA desires the State Board to rule on - the minimum flows negotiated between SCWA and NMFS for the BO.** D1610 is broken in part because diversions from the Eel River have been reduced and diversions from the Russian River have increased. Change in D1610 does not happen often and, if done, must be done correctly and the time used to evaluate changes used efficiently. SCWA may only want to change a few elements of D1610, but those elements affect everything else and all the impacts must be fully examined in this DEIR.

5. **This DEIR is much less than what is needed to properly evaluate the impacts of the Fish Flow Project on the Russian River watershed.** The DEIR is too narrowly focused and only describes a limited set of changes to D1610. D1610 is a comprehensive set of rules for operating the Russian River. One can't just change a few conditions without considering the whole. This DEIR doesn't do that and needs to be revised and expanded to look at all aspects of D1610. The Sonoma County Water Agency (SCWA) is the pre-eminent water agency in Sonoma County, and as such, should be broadly looking at fixing the issues with D1610. Even if it wasn't the pre-eminent water agency, the changes it's requesting need a full examination of D1610.

6. **The California State Water Resources Board (State Board) should be the lead agency and responsible for the preparation of this DEIR.** The designated lead agency, Sonoma County Water Agency SCWA has made its decision in regards to the Fish Flow Project – it negotiated certain flows with the National

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Marine Fisheries Service (NMFS) in agreeing to a Biological Opinion (BO) of No Jeopardy for the endangered and threatened salmonid species covered by the BO. The State Board has to make a decision on the petition to change D1610 and other requests by SCWA. In the past the State Board has aggressively defended its responsibility to be lead agency for its decisions and it should do so again in this case. The State Board is clearly the agency making decisions in this situation, and should be lead agency and responsible for DEIR preparation to ensure that the DEIR includes all the information needed to make the necessary revisions to D1610. In addition, it is not appropriate for a project proponent to also be the lead agency in the preparation of the DEIR document.

7. **The DEIR claims there was extended public outreach in the preparation of this DEIR.** We are not aware of what we would call extended public outreach in this process. The process should have included multiple regional meetings so that there was opportunity for all those affected by the changes in Russian River flows would have had an opportunity to understand the impacts and effects of the flow regimes evaluated during this DEIR process and to make certain the Fish Flow Project and this DEIR includes information on all the changes that could or need to happen with D1610. This did not happen. The DEIR must correct its assertions that there was extended public outreach. Better yet would be a hold on this EIR process so that the extended public outreach can occur and help make this a better project and DEIR.

8. **Piecemealing - this DEIR's focus on only the Fish Flow Project does not allow needed examination of the interrelated impacts of this project with the Estuary Project and the Dry Creek Project.** These three projects should have been first considered as one project but was split into smaller constituents for easier review and perhaps approval. There should have been a more broadly scoped DEIR process for the much larger project that has come out of the Biological Opinion process. This draft DEIR addresses only a part of this larger project that is bringing and has brought many changes to the Russian River. The overall project is a water supply project for the water contractors of SCWA that is constrained by a Biological Opinion (BO) which requires lower minimum flows at a number of locations along the mainstem of the River, sand barrier maintenance at the mouth of the River to provide for better maintenance of estuary conditions in the River near the mouth (which is one of the reasons for the lower minimum flows in the lower River), and certain actions in

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Dry Creek to make that better habitat for coho salmon, and perhaps other things. Properly scoped, this larger project is an opportunity to examine changes to Decision 1610 hydrologic index to better reflect current and future conditions.

9. **As examples of piecemealing, the DEIR does not adequately examine the impacts of this project on salinity in the lower River nor does it explain or analyze the necessity for lower flows downstream of the Hacienda Bridge.** If the sand barrier project works, salinity may move up the River to where it impacts potable water supply, including, but not limited to the water supply for Sweetwater Springs Water District. We don't see any discussion of this in this DEIR or the Sand Barrier Project DEIR - it should be fully examined in this DEIR.

   It appears the only reason related to the BO for the lower flows downstream of the Hacienda Bridge is to keep the sand barrier closed during the summer. This doesn't appear to be happening but more importantly this is not adequately discussed in either EIR. We don't get another shot at the Estuary Project EIR; it should be fully discussed in this DEIR or the EIR process should be opened up to include analysis of both projects together.

10. **This DEIR should cover a broader range of alternatives and information so that the State Board can make decisions necessary to completely and properly redo Decision 1610.** Once certified by SCWA Board of Directors this DEIR will be needed by the California State Water Resources Board (State Board) to make their decisions on the petitions for change requested by SCWA. As such, the State Board should have been the lead agency and should have been providing the direction for this DEIR. That didn't happen and it shows in the narrow focus of the DEIR which will not give the State Board adequate information and analysis for its decisions on the change petitions.

    The Proposed Project includes components (from the draft DEIR) which are all ultimately decided upon by the State Board, yet the DEIR does not adequately discuss and evaluate those components. Specifically,

    a. The new Russian River Hydrologic Index has no alternatives evaluated in the DEIR;

    b. extending the deadlines for completing full beneficial use in these permits to December 31, 2040 with no explanation why 41 additional years are needed to complete the requested diversion.

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The DEIR has no explanation why the permit completion date is so far into the future, indeed there should be alternatives to this date as part of the discussion;

c. The petitions for change stated that these requests would not harm existing water rights holders and this is not the case. As noted above, adding the Occidental Community Services District and Town of Windsor points of diversion and re-diversion to the authorized points of diversion in these permits to the detriment of Sweetwater Springs Water District and likely other licensed and permitted water rights holders in the Russian River watershed. Sweetwater Springs Water District has a license for 1137 AF, this water use has been fully perfected and this project adds water diversions with a requested priority date ahead of Sweetwater Springs Water District. The DEIR needs to fully discuss this issue, but it is mentioned nowhere in the draft DEIR.

11. **The DEIR does not adequately address the project objective of 75,000 AFY of diversions which is much more than the Baseline diversion amount and more than current SCWA diversions.** The amount of 75,000 AFY diversion needs full discussion and alternatives analyzed. California water agencies are under directions to reduce water use, not increase it. The DEIR needs to fully discuss the trends of urban water use and how that may affect the projected water use of the SCWA contractors and other water users to whom SCWA sells water. The amount of diversion should be part of the alternatives analysis. There are at least two issues with Contractor diversions as presented in the DEIR: total amount of 75,000 AFY and taking the total amount in all years in the modeling of alternatives.

12. **The DEIR needs to contain an explanation of actual SCWA diversions and projected diversions including information stated in the SCWA Urban Water Management Plans compared to the requested 75,000 AFY diversion.** For example, the SCWA 2010 UWMP has an actual 2010 diversion of 50,796 AF (the 2015 diversion is lower at 43,145 but that was a drought year with calls for reducing water use). The population served in 2015 was 614,196. The 2040 UWMP has a projected 2040 population of 742,040 which is an increase of 21% over 2015 and a diversion projection of 73,895 which is a 45% increase over the 2010 actual diversion amount. The DEIR needs to explain why water use is increasing at a higher rate than population when all trends and State agency directions are for water use to decrease on a per capita basis.

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13. **The hydrology analyses in the DEIR should be changed to better reflect actual diversion practices during droughts.** The modeling apparently does not accurately handle contractor diversions during a drought and the DEIR does not discuss drought conditions and how drought is defined relative to the various schedules of the proposed Hydrologic Index. Is a drought schedule 3, 4 or 5 or some combination of the above? The modeling apparently has annual diversions of 75,000 AFY for all alternatives in all years except when Lake Sonoma goes below 100,000 AF of storage. In actual practice, whenever there's a drought as defined by low rainfall or low Lake Mendocino storage, regional urban water agencies urge our customers to conserve water. Contractor diversions should be tied to the Hydro Index -when it goes to schedule 3 or lower, contractor diversions should be lowered and that should be included in the modeling. The DEIR should fully discuss this and redo the analyses.

14. **The request for 75,000 AFY should have alternatives to better reflect actual future diversions.** The continued request for a 75,000 AFY diversion amount goes contrary to current State practices whereby all urban water agencies had to go through a process to reduce their water use by 20% by 2020 compared to a baseline from the early 2000's. SCWA's 2015 diversion of 44,000 AF and the DEIR Baseline of 55,000 - can and should diversions increase that much? SCWA may desire to preserve its 75,000 AFY diversion amount but it may not be a realistic number and whatever that number might be, it should be fully examined and discussed in the DEIR in an alternatives analysis.

15. **The DEIR does not explain what happens to River flows when diversions are not at 75,000 AFY.** All the analyses of the preferred project are based on an annual diversion of 75,000 AFY through the modeling of the simulated historical record of Russian River flows. However, that level of diversion is only reached, even by SCWA estimations in 2040, 24 years from now. The DEIR baseline has annual diversions of 55,000 AFY, in 2015 SCWA diverted 43,000 AFY and the SCWA 2015 Urban Water Management Plan shows a projected diversion of 73,895 in 2040 but only 64,439 in 2020 (which seems high compared to the 2015 diversion).

    The DEIR has no discussion of whether these diversion projections are reasonable and no discussion of where the extra water goes in the many years prior to the full 75,000 AFY diversion happening, if it ever does happen. The DEIR needs to explain and examine what happens

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to the extra water in the system when diversions are significantly lower than 75,000 AFY. Does this water result in extra summer flow releases? Will it be pulsed down the river in late summer or fall releases? We believe it will need to be released prior to the winter rainy season to provide flood storage - is that the case? The DEIR needs a full explanation of this.

16. **Hydrologic Index** - The Hydrologic Index (HI) is a major new, changed element of the Fish Flow Project that SSWD supports but there is no alternatives discussion of this in the DEIR and there aren't alternatives that have a range of HI's. The DEIR states that in the technical committee analyses that came up with the new HI, consideration was given to an HI that had upper and lower River components with the lower River component based on Lake Sonoma. There's no discussion in the DEIR of why the preferred HI was chosen and no analysis given in the DEIR on the differences. It makes sense that the lower River could be governed by Lake Sonoma water levels as that's where the summer releases are coming from.

17. **The DEIR does not discuss or analyze why the proposed minimum flows in drier years are lower than what was negotiated with the National Marine Fisheries Service (NMFS) in the Biological Opinion (BO).** The BO has minimum flow for normal years in the lower River (70 cfs) but stipulates nothing different for drier years, yet the alternatives presented and the proposed project have lower minimum flows than required by NMFS (stage 4 is 50 cfs and stage 5 is 35 cfs). The DEIR should include alternatives that directly match the flows negotiated with NMFS and should discuss why the proposed project has lower flows than those required by the BO.

18. **The DEIR should provide more information on the future of Eel River Diversions.** These are likely getting cut off in the future and the DEIR should properly discuss this. It's mentioned in the Cumulative Chapter but not given the prominence it deserves.

19. **The DEIR has a limited and poor choice of alternatives.** The official list of alternatives are a poor selection of what should have been analyzed in the DEIR The Baseline is not the real baseline; it's a situation that existed for maybe two years but it's claimed for much longer. Perhaps there should be a Baseline 1 and 2 like there is a No Project 1 and 2. The Table 7-1 list of alternatives flow scenarios is not clear - what do these alternative names mean? For examples BO, NP1, NP2 can be guessed, but what are F1-18? Are these possible

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alternatives that were discarded for undisclosed reasons? Why are these flow alternatives not part of bigger list of alternatives considered by this DEIR? Also, as noted in other comments there should be alternatives for the HI and the 75,000 AFY diversion amount.

20. **Section 4.0.6 Effects Determined Not to be Significant and Not Discussed Further includes effects that are significant and should be fully discussed in the DEIR** - This project is going to increase diversions to 75,000 AFY yet there are no population and housing, traffic, and land use and planning (and maybe agricultural resources) effects? Who is going to use the extra 20,000 AFY, where are they going to live, and how are they going to get to work? The end project results in a 40% increase in water use according to this DEIR. In a era of better and better water conservation, why would more water be needed unless there weren't at least 40% more people to use that water? The DEIR must explain this anomaly.

21. **Lower River water quality appears to be impacted by the cumulative impacts; this is an issue that needs more examination and analysis in the DEIR.** The DEIR says no mitigation possible but only because it's not considering all alternatives - releases from Lake Sonoma, for example.

22. **Appendix G, Hydrology, needs fixing - no heading, no Table of Contents; there's no way to know what is in this appendix.**

Again, this Project harms Sweetwater Springs Water District by not considering the Project's effects on the District's water rights and the potential loss of water supply to downstream water users. We recommend that the Fish Flow Project as currently proposed should be rejected by the Sonoma County Water Agency Board of Directors, that the claimed public outreach be performed so that this needed Project (and we do agree that it is needed) can be better formulated to meet the needs of all users of the River, and that the EIR process be restarted with an improved Project that does not harm the District.

Thank you for the opportunity to comment.

Sukey Robb-Wilder
President

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Sweetwater Springs Water District
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cc: Lynda Hopkins, Sonoma County Water Agency Board of Directors
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