



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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup>

## **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.<sup>6</sup> 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.<sup>7</sup>

## **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.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup>

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).<sup>14</sup>

#### 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.<sup>15</sup> 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.<sup>16\*</sup> 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.<sup>17</sup> 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.

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\* 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.<sup>18</sup>

### 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.<sup>19</sup>

### 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

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\* 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.<sup>20</sup>

#### **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.<sup>21</sup>

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.<sup>22</sup>

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.<sup>23</sup> They thought that the Wild and Scenic designation might have amplified such problems.<sup>24</sup>

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.<sup>25</sup> A timber company on the Gualala River raised similar concerns about trespassing and environmental degradation.<sup>26</sup>

#### **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.<sup>27</sup> 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.<sup>28</sup>

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.<sup>29</sup>

## **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.<sup>\*</sup> 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.<sup>30</sup> 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."<sup>31</sup>

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.

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<sup>\*</sup> The Klamath, Trinity, Eel, Smith and Lower American Rivers.

## References

- <sup>1</sup> Sue McClurg, "The South Yuba: One River, Two Visions," *Western Water*, July/August 1999, 11.
- <sup>2</sup> Interviews with Curt Aikens, General Manager, Yuba County Water Agency, February 3, 2005; and Janet Cohen, South Yuba River Citizens League, December 30, 2004.
- <sup>3</sup> Interview with Curt Aikens, General Manager, Yuba County Water Agency, February 3, 2005.
- <sup>4</sup> "Wild Rivers Legislation Advances to State Senate," Assemblymember Byron Sher news release about AB 1200, May 11, 1989.
- <sup>5</sup> Nevada Division of Water Planning, "Carson River Chronology," <http://water.nv.gov/Water%20planning/carson/carson3.htm>.
- <sup>6</sup> Interview with Ken Spooner, General Manager, Walker Irrigation District, February 18, 2005.
- <sup>7</sup> Interview with Frank Lynch, Pacific Gas and Electric Company, scheduler for Spaulding Reservoir, interview with author, February 17, 2005.
- <sup>8</sup> Interviews with Steven Herrera, Division of Water Rights, State Water Resources Control Board, January 24, 2005 and March 1, 2005.
- <sup>9</sup> Interviews with Steven Herrera, Division of Water Rights, State Water Resources Control Board, January 24, 2005 and March 1, 2005.
- <sup>10</sup> Title 23 California Code of Regulations, Sections 734(c).
- <sup>11</sup> 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.
- <sup>12</sup> Interview with Melissa Miller-Henson, former Resources Agency Wild and Scenic Rivers Coordinator, December 23, 2004.
- <sup>13</sup> 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.
- <sup>14</sup> Interview with Steven Herrera, Environmental Unit, Division of Water Rights, State Water Resources Control Board, March 1, 2005.
- <sup>15</sup> Interview with Stephen Puccini, Staff Counsel, California Department of Fish and Game, February 22, 2005.
- <sup>16</sup> Interview with Melissa Miller-Henson, former Resources Agency Wild and Scenic Rivers Coordinator, December 23, 2004.
- <sup>17</sup> Interview with Melissa Miller-Henson, former Resources Agency Wild and Scenic Rivers Coordinator, December 23, 2004.
- <sup>18</sup> Stats 1993 Chapter 896 Section 3.
- <sup>19</sup> 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).
- <sup>20</sup> 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.
- <sup>21</sup> Interview with Patty Brissenden, Sorensen's Resort, January 31, 2005.
- <sup>22</sup> Interview with Dan Brown, Gualala River Redwoods Park, February 10, 2005.
- <sup>23</sup> 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.
- <sup>24</sup> 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.
- <sup>25</sup> Interview with Rorie Gotham, Yuba River landowner and member of the South Yuba River Citizens League, March 16, 2005.
- <sup>26</sup> Interview with Henry Alden, Gualala Redwoods Company, January 24, 2005.
- <sup>27</sup> Interview with Janet Cohen, Executive Director, South Yuba River Citizens' League, December 30, 2004.
- <sup>28</sup> Interview with Daniel Buckley, Tributary Whitewater Tours, March 8, 2005.

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

<sup>30</sup> 16 U.S.C. Section 1273(a)(ii).

<sup>31</sup> *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, CDFA  
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 Nevares, 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 Act<sup>1</sup> (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.”<sup>2</sup>

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.”<sup>3</sup>

### 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:<sup>4</sup>

*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.<sup>5</sup>

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<sup>1</sup> California Public Resources Code Sections 5093.52-5093.70.

<sup>2</sup> California Public Resources Code Section 5093.50.

<sup>3</sup> California Public Resources Code Section 5093.546.

<sup>4</sup> California Public Resources Code Section 5093.53.

<sup>5</sup> 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.<sup>6</sup>

### 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.

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<sup>6</sup> 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.<sup>78</sup>

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.<sup>9</sup>

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.<sup>10</sup>

## 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.<sup>11</sup> 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.<sup>12</sup>

## 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...”<sup>13</sup> 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,

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<sup>7</sup> California Code of Regulations, Title 14, Section 895.1.

<sup>8</sup> 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).

<sup>9</sup> California Public Resources Code Section 5093.68.

<sup>10</sup> 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.

<sup>11</sup> California Public Resources Code Section 5093.60.

<sup>12</sup> California Public Resources Code Section 5093.61.

<sup>13</sup> California Public Resources Code Section 5093.54(h).

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

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.”<sup>17</sup>

## 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.”<sup>18</sup>

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.<sup>19</sup>

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

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<sup>14</sup> California Public Resources Code Section 5093.58.

<sup>15</sup> California Public Resources Code Section 5093.63.

<sup>16</sup> 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).

<sup>17</sup> California Public Resources Code Section 5093.52(c).

<sup>18</sup> Annotated Stats 1993 Ch. 896.

<sup>19</sup> 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 ...”<sup>20</sup>

*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.<sup>21</sup> 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.<sup>22</sup>

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).<sup>23</sup>

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<sup>20</sup> California Public Resources Code Section 5093.54.

<sup>21</sup> California Public Resources Code Section 5093.55, 5093.57.

<sup>22</sup> Stats 1993 Chapter 896 Section 3.

<sup>23</sup> California Public Resources Code Section 5093.67.

**Appendix C:  
State and Federal Wild and Scenic Rivers**

<b>River</b>	<b>Cal WSR</b>	<b>Fed WSR</b>
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.