



Date: January 11, 2018

To: Joseph Wall, California Natural Resources Agency

From: Ben Tang, California Research Bureau

Re: Regulatory Impact of Wild & Scenic Rivers Designation (Update to 2005 Wolk Memo)

You asked the California Research Bureau for a review of the regulatory impact on rivers designated as part of the California Wild & Scenic River system. Your request was essentially for an update to our April 2005 memo to the California Assembly Water, Parks and Wildlife Committee on the various impacts of Wild and Scenic River designation.¹ The 2005 memo found no or minor changes to watershed management and to regulatory or permitting processes for projects in or around designated rivers – with the important exception that the Wild & Scenic Rivers Act specifically prohibits future dams, reservoirs and water impoundments from being built on designated segments (the operation of existing dams and reservoirs, however, were unimpeded).

Given data provided by the California Natural Resources Agency, data publicly available from the State Water Resources Control Board and information from interviews with regulators, the Research Bureau concludes that Wild & Scenic River designation continues to have a negligible impact on regulation of designated rivers. One theme recurring in all interviews is that the impact of the Wild & Scenic River Act is limited by its regulatory overlap with several other existing state and federal environmental laws, notably the California Environmental Quality Act and both U.S. and California Endangered Species Acts.²

The Wild & Scenic River designation protects the free-flowing nature of streams, and prohibits only the construction of any “dam, reservoir, diversion, or other water impoundment facility” on designated segments.³ As well, “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 such facilities.⁴ Note that no state agency or department is empowered with additional regulatory capabilities by the Wild & Scenic Rivers Act, but “shall exercise their powers granted under any other provision of law in a manner that protects the free-flowing state” of designated segments of rivers.⁵

¹ Pollak, Daniel. (2015, April 11). “Memo to Lois Wolk, Chair, Assembly Water, Parks and Wildlife Committee, RE: California Wild and Scenic Rivers Act.” California Research Bureau. <https://www.rivers.gov/documents/impacts-california-wild-scenic-rivers-act.pdf>

² Other laws that potentially affect use of Wild & Scenic Rivers include the Clean Water Act Section 404, 401 Certification, National Pollutant Discharge Elimination System, and Fish and Game Code Section 1602 Streambed Alteration Agreement.

³ California Wild and Scenic Rivers Act. Public Resources Code §5093.55. http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5093.55.&lawCode=PRC

⁴ PRC §5093.56. http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5093.56.&lawCode=PRC

⁵ PRC §5093.61. http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5093.61.&lawCode=PRC

The 2005 Research Bureau memo inquired only into rivers designated wild and scenic under the California system, but not in the federal system, to better focus on the impact of the state law.⁶ The updated list of such rivers for the purposes of this memorandum is provided in Table 1. The rights and operations of pre-existing major facilities are generally exempted from activities prohibited in the Wild & Scenic Rivers Act. One regulator with the Department of Fish & Wildlife noted that the some river segments designated Wild & Scenic are actually rather short, and coupled with the fact that a lot of applications are for tributaries rather than the mainstems, the Wild & Scenic River Act protection comes into effect less frequently than might be expected.

Table 1: California Wild & Scenic Rivers and protected rivers not in federal system

River	Year Added	Portion of River Designated ⁷	Comments
Albion	2003	From ¼-mile upstream of confluence with Deadman Gulch downstream to Pacific Ocean	—
Cache Creek	2005	From ¼-mile below Cache Creek Dam to Camp Haswell; North Fork Cache Creek from Highway 20 bridge to confluence with main stem	<ul style="list-style-type: none"> Not to interfere with Yolo County Flood Control and Water Conservation District water rights within Lake County watershed, provided no dam, reservoir or other water impoundment facility is involved No application into federal Wild and Scenic Rivers system
(East Fork) Carson	1989	East Fork from Hangman's Bridge crossing of State Highway Route 89 to Nevada border	—
Gualala	2003	Main stem from confluence of North and South Forks to Pacific Ocean	—
McCloud ⁸	1989	From Algoma to confluence with Huckleberry Creek, and ¼-mile downstream from McCloud Dam to McCloud River Bridge, and Squaw Valley Creek from confluence with Cabin Creek to confluence with McCloud River	<ul style="list-style-type: none"> Not in Wild & Scenic system, but protected in Act due to unique wild trout fishery Not to interfere with Pacific Gas & Electric Company operation of McCloud-Pit development and McCloud Dam, provided any retrofit does not alter flow below dam
Mill Creek and Deer Creek ⁹	1995	<ul style="list-style-type: none"> Mill Creek from headwaters of East Sulphur Creek (Section 15 T30N R4E) to U.S. Geological Survey gauging station in Section 6 T25N, R1W Deer Creek from headwaters (Section 11 T27N R5E) to U.S. Geological Survey gauging station in Section 23, T25N, R1W 	<ul style="list-style-type: none"> Not in Wild & Scenic system, but protected in Act due to unique wild salmon fishery Not to interfere with fishery projects under Central Valley Project Improvement Act or Upper Sacramento River Fisheries and Riparian Habitat Management Plan
South Yuba	1999 (2001)	From Lang Crossing to confluence with Kentucky Creek below Bridgeport	Not to interfere with Placer County Water Agency water rights, unless changes would have adverse effects
West Walker / Leavitt Creek	1989	Main stem from source to confluence with Rock Creek near town of Walker; Leavitt Creek from Leavitt Falls to confluence with West Walker River main stem	—

⁶ In 2005, these were the Albion River, East Carson River, Gualala River, South Yuba River and West Walker River/Leavitt Creek. After the 2005 memo, Cache Creek was added to the state system by AB 1328 (Wolk, Stats. 2005, Ch. 576). http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=200520060AB1328

⁷ PRC §5093.54. http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5093.54.&lawCode=PRC

⁸ PRC §5093.542. http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5093.542.&lawCode=PRC

⁹ PRC §5093.70. http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PRC§ionNum=5093.70

The Wild & Scenic Rivers Act also prohibits any water diversion facility from being constructed unless the Secretary of Natural Resources has determined that the facility “is needed to supply domestic water to the residents” of the area and that the facility “does not adversely affect the free-flowing condition and natural character of the river.”¹⁰ In a review of determinations drafted by the Office of the Secretary in the past 12 years, almost all diversions were approved by the Secretary (see Table 2). Regarding one potentially inconsistent finding (May 2008, A031661/662 on the Eel), the Secretary later determined the river segment was not actually wild and scenic (Oct 2009). Based on these determinations, the Wild & Scenic Rivers Act does not seem to have adversely affected diversion applications on wild and scenic river segments.

Table 2: Water Rights Applications Received by Natural Resources Agency and Provided to California Research Bureau

River	Date	Registration No.	Finding
Trinity River (federal)	Jun 5, 2006	D31578R	Approved
Trinity River (federal)	Jun 5, 2006	D31471R	Approved
Trinity River (federal)	Jun 5, 2006	D31570R	Approved
Trinity County	Dec 13, 2006	D31631R	Approved
Trinity County	Dec 13, 2006	D31638R	Approved
Trinity County	Feb 16, 2007	D31645R	Approved
Trinity County	Mar 24, 2008	D031688R	Approved
Eel River (federal)	May 2008	A031661/A031662	Incomplete, potentially inconsistent
Smith River (federal), Van Duzen River (federal)	Jun 6, 2008	OGAC Overlay, storm damage repair	No determination necessary
Humboldt County	Jun 12, 2008	Bourassa Project	Approved
Trinity County	Oct 14, 2008	D0316986R	Approved
Smith River (federal)	Jun 5, 2009	Crescent City appropriation permit 011475	CEQA analysis pending, require change of use from municipal to domestic purposes
Trinity River (federal)	Jun 5, 2009	D031729R	Approved (conditional on compliance with changes related to fish)
Trinity River (federal)	Jun 5, 2009	D031754R	Approved (conditional on additional permit for streambed alteration)
Eel River (federal), Mill Creek (state)	Oct 27, 2009	A031661/A031662	No determination (out of jurisdiction), but warning regarding Mill Creek tributary
Trinity River (federal)	Sep 9, 2010	318549	Approved
Smith River (federal)	Jan 7, 2011	Lopez Parcel Elder Housing	Secretarial concurrence
Eel River (federal)	Jan 7, 2011	APN 223-061-11	Secretarial concurrence (conditional on compliance with streambed alteration)
Trinity River (federal)	Jul 15, 2011	D031874R	Approved
Trinity River (federal)	Aug 2, 2013	D031948	Secretarial concurrence
Klamath River (federal)	Jan 3, 2014	D031950	Secretarial concurrence
Eel River (federal)	Jan 3, 2014	D032014	Secretarial concurrence, conditional
Trinity River (federal)	Jan 3, 2014	Lewiston pumping station relocation	Secretarial concurrence, conditional

¹⁰ PRC §5093.55. http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5093.55.&lawCode=PRC

A quick check of water rights permits with the State Water Resources Control Board’s online database shows only one application since 2005 for appropriative, temporary and small domestic use registration within watersheds with designated Wild and Scenic Rivers that was rejected (see Tables 3 to 7).¹¹

Table 3: Appropriative, Temporary and Registration Water Rights for Albion River since 2003¹²

Appl ID	Water Right Type	Status	Date	Face Amt	County	On Wild & Scenic mainstem?
A032814	Appropriative	Pending	05/23/2017	4 acre-ft/yr	Mendocino	No
D032257	Registration Domestic	Registered	05/22/2017	7.6 acre-ft/yr	Mendocino	No
D032175	Registration Domestic	Registered	03/24/2017	0 acre-ft/yr	Mendocino	No
D032132	Registration Domestic	Registered	11/30/2016	11.62 acre-ft/yr	Mendocino	No
A023207	Appropriative	Revoked	09/30/2016	0.8 acre-ft/yr		No
D032310	Registration Domestic	Pending	10/21/2014	0 acre-ft/yr	Mendocino	No
D032007	Registration Domestic	Registered	03/06/2013	3 acre-ft/yr	Mendocino	No
A017680	Appropriative	Revoked	10/10/2012	3.6 acre-ft/yr		No
A023175B	Appropriative	Revoked	03/09/2012	0.4 acre-ft/yr		No
A029795	Appropriative	Revoked	10/06/2009	1.6 acre-ft/yr		No
A029608	Appropriative	Revoked	02/15/2008	0.8 acre-ft/yr		No
A009027	Appropriative	Revoked	08/15/2006	0 acre-ft/yr		No
D031608	Registration Domestic	Registered	05/04/2006	2.2 acre-ft/yr	Mendocino	No
L031480	Registration Livestock	Registered	12/22/2005	2.6 acre-ft/yr	Mendocino	No
A023818	Appropriative	Revoked	08/03/2005	0 acre-ft/yr		No

Table 4: Appropriative, Temporary and Registration Water Rights for Cache Creek watershed since 2005¹³

Appl ID	Water Right Type	Status	Date	Face Amt	County	On Wild & Scenic mainstem?
D032821	Registration Domestic	Pending	06/08/2017	0.28 acre-ft/yr		No
A030639	Appropriative	Revoked	04/21/2016	34 acre-ft/yr	Lake	No
D030810	Registration Domestic	Revoked	11/12/2009	10 acre-ft/yr		No
A031659	Appropriative	Cancelled	10/19/2009	26 acre-ft/yr		No
A030580	Appropriative	Revoked	05/07/2009	28 acre-ft/yr		No
A007108	Appropriative	Revoked	11/26/2008	7.2 acre-ft/yr		No
A027797	Appropriative	Revoked	08/20/2008	0.7 acre-ft/yr		No
A031707	Appropriative	Pending	05/07/2008	5900 acre-ft/yr	Lake	Lake County Watershed Protection District
A031070	Appropriative	Cancelled	03/17/2008	136 acre-ft/yr		No

¹¹ Application ID D032277 on the South Yuba River seems related to the controversial Van Norden Lake, but the Research Bureau has no information on individual applications.

¹² Electronic Water Rights Information Management System - Water Rights Records Search, California Integrated Water Quality System, California State Water Resources Control Board, https://www.waterboards.ca.gov/waterrights/water_issues/programs/ewrims/. The eWRIMS system does not specify the Albion River by name, so its U.S. Geological Survey Hydrological Unit Code was used: 180101080801.

¹³ *Ibid.*

A028601	Appropriative	Licensed	08/28/2006	26.4 acre-ft/yr	Lake	No
D029880	Registration Domestic	Registered	06/30/2006	0.4 acre-ft/yr	Lake	No
A021769	Appropriative	Revoked	03/06/2006	9 acre-ft/yr		No

Table 5: Appropriative, Temporary and Registration Water Rights for Gualala River since 2003¹⁴

Appl ID	Water Right Type	Status	Date	Face Amt	County	On Wild & Scenic mainstem?
A032563	Appropriative	Cancelled	06/10/2016	249 acre-ft/yr		No
A032563A	Appropriative	Pending	06/10/2016	76 acre-ft/yr	Sonoma	No
A032563B	Appropriative	Pending	06/10/2016	173 acre-ft/yr	Sonoma	No
A032139	Appropriative	Permitted	10/27/2014	14 acre-ft/yr	Sonoma	No
A022446	Appropriative	Revoked	02/03/2014	14 acre-ft/yr		No
A023073	Appropriative	Revoked	02/03/2014	1.2 acre-ft/yr		No
A031373	Appropriative	Permitted	11/17/2011	13 acre-ft/yr	Sonoma	No
T031428	Temporary Permit	Revoked	04/26/2011	300 acre-ft/yr		No
A022377	Appropriative	Licensed	03/24/2011	310 acre-ft/yr	Sonoma	No
A031834	Appropriative	Pending	06/29/2010	603 acre-ft/yr	Sonoma	No
A031792	Appropriative	Pending	07/21/2009	185 acre-ft/yr	Mendocino	No
A026263	Appropriative	Revoked	03/16/2007	14 acre-ft/yr		No
A031248	Appropriative	Cancelled	12/20/2006	6 acre-ft/yr		No
A025131	Appropriative	Revoked	09/14/2005	0 acre-ft/yr		No

Table 6: Appropriative, Temporary and Registration Water Rights for South Yuba River since 1999¹⁵

Appl ID	Water Right Type	Status	Date	Face Amt	County	On Wild & Scenic mainstem?
D032277	Registration Domestic	Rejected	02/09/2017	5 acre-ft/yr	Nevada	Yes
A024183	Appropriative	Revoked	08/28/2013	0.1 acre-ft/yr		No
A023315	Appropriative	Licensed	11/27/2012	9.3 acre-ft/yr	Nevada	Yes
A026605	Appropriative	Licensed	01/05/2011	45 acre-ft/yr	Nevada	No
A027000	Appropriative	Licensed	05/28/2009	20 acre-ft/yr	Nevada	No
A030728	Appropriative	Licensed	05/28/2009	6 acre-ft/yr	Nevada	No
A026924	Appropriative	Revoked	05/28/2009	100 acre-ft/yr		No
A025193	Appropriative	Revoked	04/02/2008	14 acre-ft/yr		Yes
A025135	Appropriative	Revoked	04/02/2008	7.8 acre-ft/yr		Yes
D031152	Registration Domestic	Registered	06/30/2006	0.9 acre-ft/yr	Nevada	Yes
D031609	Registration Domestic	Registered	05/04/2006	1 acre-ft/yr	Nevada	No
A016542	Appropriative	Revoked	08/05/2005	0 acre-ft/yr		No
A026017	Appropriative	Revoked	02/16/2005	1.4 acre-ft/yr		No
A021898	Appropriative	Revoked	10/06/2004	0 acre-ft/yr		No

¹⁴ *Ibid.* Hydrological Unit Code 1801010901.

¹⁵ *Ibid.* Hydrological Unit Codes 1802012507 and 1802012506 (Partial).

A016792C	Appropriative	Revoked	08/24/2004	0 acre-ft/yr		No
A015002	Appropriative	Revoked	08/05/2004	0 acre-ft/yr		No
D031460	Registration Domestic	Registered	06/30/2004	1 acre-ft/yr	Nevada	No
D030631	Registration Domestic	Revoked	01/03/2003	4 acre-ft/yr		No
D031104	Registration Domestic	Revoked	08/06/2002	5 acre-ft/yr		No
D031329	Registration Domestic	Registered	05/30/2002	10 acre-ft/yr	Placer	No
D031013	Registration Domestic	Registered	03/27/2000	10 acre-ft/yr	Nevada	No

Table 7: Appropriative, Temporary and Registration Water Rights for West Walker River/Leavitt Creek since 1989¹⁶

Appl ID	Water Right Type	Status	Date	Face Amt	County	On Wild & Scenic mainstem?
A013290	Appropriative	Revoked	06/20/2005	0 acre-ft/yr	Mono	Yes
A027055	Appropriative	Revoked	10/26/2001	0.1 acre-ft/yr	Mono	No

Small domestic use registrations are an interesting category of water rights permits. The Water Rights Permitting Reform Act (1988) was passed to streamline the processing of small domestic water use projects, most of which were of little risk and did not require much special notice. Until July 2017, such small domestic use registrations needed to go from the State Water Resources Control Board to the Natural Resources Agency for Secretarial approval, consistent with the California Wild & Scenic Rivers Act. Now by agreement, the State Water Resources Control Board no longer notifies Natural Resources and simply posts public notifications of all small domestic use registrations on Wild and Scenic river segments for the past year on a webpage.¹⁷

The pro forma nature of the posting process suggests there are few regulatory barriers to domestic use applications for diversions due to Wild & Scenic River designation. In fact, interviewees from the State Water Resources Control Board, the Department of Fish & Wildlife and the Natural Resources Agency all stated that they were willing to work to modify any “objectionable” applications to make them consistent with the Wild & Scenic River Act, rather than deny them outright. The interviewees did not recollect any permits ever being rejected based on the Wild & Scenic River basis – other environmental regulations such as CEQA have more impact in filtering out certain applications or forcing modifications before the free-flowing nature of the river becomes relevant. What the Wild & Scenic River Act does add, again, is the ban against major construction projects (dams, reservoirs, water impoundments) from being built or adversely affecting designated segments of Wild and Scenic Rivers.

¹⁶ *Ibid.* Hydrological Unit Codes 1605030201 + 1605030202 (Partial).

¹⁷ The “Notice of Registrations to Appropriate Water” can be found at https://www.waterboards.ca.gov/waterrights/water_issues/programs/registrations/notices/