

## Wild and Scenic Rivers Chapter, CA Public Resources Code

### § 5093.542. McCloud River; legislative findings and declarations

The Legislature finds and declares that the *McCloud River possesses extraordinary resources* in that it supports one of the finest wild trout fisheries in the state. Portions of the river have been appropriately designated by the Fish and Game Commission, pursuant to Chapter 7.2 (commencing with Section 1725) of Division 2 of the Fish and Game Code, as wild trout waters, with restrictions on the taking, or method of taking, of fish. The Legislature has determined, based upon a review of comprehensive technical data evaluating resources and potential beneficial uses, that potential beneficial uses must be balanced, in order to achieve protection of the unique fishery resources of the McCloud River, as follows:

- (a) The continued management of river resources in their existing natural condition represents the best way to protect the unique fishery of the McCloud River. *The Legislature further finds and declares that maintaining the McCloud River in its free-flowing condition to protect its fishery is the highest and most beneficial use of the waters* of the McCloud River within the segments designated in subdivision (b), and is a reasonable use of water within the meaning of Section 2 of Article X of the California Constitution.
- (b) *No dam, reservoir, diversion, or other water impoundment facility shall be constructed on the McCloud River* from Algoma to the confluence with Huckleberry Creek, and 0.25 mile downstream from the McCloud Dam to the McCloud Bridge; nor shall any such facility be constructed on Squaw Valley Creek from the confluence with Cabin Creek to the Confluence with the McCloud River.
- (c) Except for participation by the Department of Water Resources in studies involving the technical and economic feasibility [only] of enlargement of Shasta Dam, *no department or agency of the state shall assist or cooperate* with, whether by loan, grant, license, or otherwise, any agency of the federal, state, or local government in the planning or construction of any dam, reservoir, diversion or other water impoundment facility *that could have an adverse effect on the free-flowing condition of the McCloud River, or on its wild trout fishery.*
- (d) All state agencies exercising powers under any other provision of law with respect to the protection and restoration of fishery resources shall continue to exercise those powers in a manner to *protect and enhance the fishery* of those segments designated in subdivision (b). In carrying out this subdivision, any exercise of powers shall be consistent with § 5093.58.
- (e) Nothing in this section shall prejudice, alter, affect in any way, or interfere with the construction, maintenance, repair, or operation by the Pacific Gas and Electric Company of the existing McCloud-Pit development (FERC 2106) under its license, or prevent Pacific Gas and Electric from constructing a hydroelectric generating facility by retrofitting the existing McCloud Dam if the operation of the facility does *not alter the existing flow regime* below the dam.

(Added by Stats. 1989, c. 215, § 2.) (emphasis added)

<b>Points</b>	<b>Argument</b>
Violates State Legislation - No reservoirs & No participation/cooperation by State.	§5093.542 of the CA Public Resources Code protects the wild & scenic values of the McCloud: Prohibits reservoirs and impoundments. Prohibits state participation or cooperation in any water project (beyond technical & economic study of enlargement of Shasta reservoir).
Breaches CRMP Contract - Eminent Domain, & Preservation of Natural Character.	Specifically forbidden is the exercise of eminent domain over any private property (MOU p.9).  Violates "Plan Area Objectives and Allowable Practices" (CRMP Part 5) "Preservation of the natural character of the streamside environment."
Violates CALFED Guiding Principles – Redirective Impacts, & Broad Public Acceptance.	<b>"Have No Significant Redirected Impacts.</b> Solutions will not solve problems ... by redirecting significant negative impacts ... to other regions of California." Proposal would result in a significant negative impact being redirected to the McCloud River region in an effort to improve the degraded condition of the Delta, and would be a clear violation of CALFED's own guiding principle.  <b>"Be Implementable.</b> Solutions will have broad public acceptance and legal feasibility." The law passed to protect the McCloud by the <u>CA Legislature</u> is a valid measure of public sentiment, as well as evidence of legal feasibility. <u>Breach of CRMP</u> would be a second example of legal unfeasibility. A second measure of the lack of public acceptance would be the opposition of the Shasta County <u>Board of Supervisors</u> .
Obliterates archeological sites eligible for protection.	Wintu burial ground 5 feet above present reservoir level. EIS/EIR states: "an impact on undeveloped land would be greater than an impact on land that had been farmed or developed."  <u>Jones &amp; Stokes Cultural &amp; Historic Resources Evaluation:</u> "The archaeological record of northcentral California is only beginning to be understood, and the McCloud River area is likely to contain significant information pertaining to the last 7,000 years of human history in California. Unlike other areas in California, modern economic development along the McCloud River has been minimal, and <b>public access to the area has always been limited, with the result that archaeological sites along the McCloud River tend to be well preserved, retaining their research potential.</b> "
Inundates historic structures at Bollibokka	Log Cabin dining room - 1860's. Rock House - 1920's & unusual construction. Clubhouse - 1920's.
Indirect fishery impact	Increase in reservoir level would allow lake fish to bypass existing natural barriers (Tuna Falls) and populate entire fishery. Larger reservoir will allow houseboats into the secluded canyon, introducing heavy bait-type fishing pressure on stretches now very lightly fished, and critical to the fishery being able to sustain itself without being stocked.
Storage capacity too large for watershed.	PG&E let us know that there is a relationship between the annual runoff in a watershed and the proper storage capacity. Other storage sites further down the watershed (like the Sites-Colusa pumped storage reservoir option) are much better suited for capturing annual rain runoff. Shasta already stores about 2 years worth of rainfall.

## McCLOUD RIVER CRMP

Aside from the notable exceptions of (1) the construction of Shasta Reservoir which obliterated 15 miles of the McCloud River in 1945, and (2) the construction of the McCloud Diversion Dam (5 mile long reservoir) authorized in 1961, the McCloud River and its adjoining forests have survived almost all of the effects of California's growth.

In 1988, an effort began to accomplish watershed-wide planning and legislative protection for the McCloud River. A lengthy series of discussions commenced among all the diverse organizations having an interest in the McCloud watershed. The purpose of the discussions was to develop a customized protection plan, tailored to the specific circumstances of the McCloud, in order to best preserve and manage the natural resources of the McCloud. These discussions culminated in the signing, on July 23, 1991, of the McCloud River Coordinated Resource Management Plan ("CRMP").

Unlike most CRMP's, the McCloud River CRMP goes beyond the traditional structure of the voluntary pursuit an objective, and is structured as a federal – state – private contract, with specific terms and provisions that the parties are bound to observe. Signatories to the CRMP are:

ENVIRONMENTAL GROUPS  
AUDUBON SOCIETY  
CALIFORNIA-TROUT, INC.  
FRIENDS OF THE RIVER  
THE NATURE CONSERVANCY  
SIERRA CLUB

INDUSTRY  
CRANE MILLS  
PACIFIC GAS & ELECTRIC  
SIERRA PACIFIC INDUSTRIES

PRIVATE LANDOWNERS  
BOLLIBOKKA CLUB  
THE HEARST CORPORATION  
MCCLOUD FLY FISHING CLUB

GOVERNMENT  
STATE OF CALIFORNIA (DEPT. OF FISH & GAME)  
SHASTA COUNTY, BOARD OF SUPERVISORS  
U.S. DEPT. OF AGRICULTURE (FOREST SERVICE)

On May 14, 1998, the CRMP membership voted unanimously to authorize that a letter be submitted to CALFED expressing the CRMP's opposition to the proposal to expand Shasta Reservoir over important portions of the McCloud River. Enclosed is a list of points developed in opposition to the proposal. In addition, attached is Public Resources Code § 5093.542 passed in 1989 and intended to prohibit any more water projects on the McCloud River.

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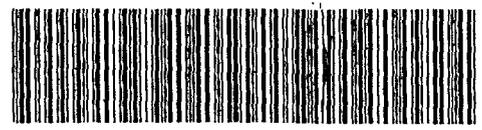
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