

# **D R A F T**

## **ATTACHMENT 3**

### **STATEMENT OF OVERRIDING CONSIDERATIONS**

Prepared for the

### **POLICY FOR MAINTAINING INSTREAM FLOWS IN NORTHERN CALIFORNIA COASTAL STREAMS**

#### **DIVISION OF WATER RIGHTS STATE WATER RESOURCES CONTROL BOARD**

#### **California Environmental Protection Agency**

#### **Discussion**

The California Environmental Quality Act (CEQA) requires a public agency to balance the benefits of a proposed project against its significant unavoidable adverse impacts in determining whether to approve the project. The project under consideration is adoption of the Policy for Maintaining Instream Flows in Northern California Coastal Streams (Policy), as required by Water Code section 1259.4. Adoption of the Policy would not result in any direct environmental impacts. As described in the Substitute Environmental Document (SED), the Policy requires limitations on diversions which could lead some affected parties to take actions that could in turn result in indirect environmental impacts. An indirect physical change in the environment is a physical change which is not immediately related to adoption of the Policy, but which may occur as a result of the Policy being adopted. Policy adoption could have potentially significant indirect environmental impacts as a result of the following activities that affected persons might take in response to the Policy: (1) increased groundwater pumping, (2) increased diversions under riparian rights, (3) increased reliance on alternative water sources, (4) modification or removal of onstream dams, and (5) construction of offstream storage facilities.

Notwithstanding the determination that activities 1-3 above could cause significant environmental impacts, the SED describes the uncertainty concerning the extent to which those activities would actually occur due to the Policy, and to what extent associated impacts would be significant. It is entirely speculative whether the Policy will in fact cause any future increase in groundwater pumping, riparian diversions, or reliance on alternative water sources to occur, or if any increase will occur irrespective of the Policy. Estimates of the extent of the potential impacts contained in Sections 6.2.2, 6.3.2, 6.4.2, and Appendix D of the SED were based on the assumption that the Policy would, in effect, prohibit all future surface water appropriations, and diverters would rely on an alternative source of water supply or on an alternative basis of right. This was a very conservative assumption, however, because (1) the Policy will not preclude all future surface water appropriations, (2) it may not be possible in some cases for diverters to switch to an alternative supply or to divert under a different basis of right, and (3)

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some diverters may rely on an alternative supply or divert under a different basis of right for other reasons, even if they can appropriate surface water in accordance with the Policy. Moreover, as discussed in the Supplement to Appendix D, even if the Policy does cause a shift from surface water diversions to groundwater pumping, the shift is unlikely to cause a significant reduction in surface water flows. The State Water Board is aware of only one diverter that has switched to groundwater in lieu of a surface water appropriation, which illustrates that there does not appear to be a wholesale movement of surface water appropriators switching to groundwater sources as a result of Policy adoption.

Many of the projects that might be undertaken by affected persons as a result of the Policy would be subject to a project-level CEQA review conducted by the State Water Board or by another lead agency, which would entail identification and mitigation of any significant environmental effects. In addition, other regulatory mechanisms can be expected to provide opportunities for minimizing and avoiding significant environmental effects. Regulatory requirements and mitigation measures are described in section 7 of the SED and the associated CEQA Findings. These regulatory requirements and mitigation measures are likely to reduce many, but not all, of the potential indirect impacts of the Policy to less than significant levels. In some cases it may not be possible to mitigate the indirect impacts of the Policy to a less-than-significant level. In addition, some actions may not require discretionary approvals or an agency with regulatory authority may not take action. Finally, some impacts may not be identified or mitigated because it is impossible to predict who will take action in response to the Policy, or what action they will take. These unavoidable adverse environmental impacts are summarized in the CEQA Findings and constitute those impacts for which this statement of overriding considerations is made.

## Findings

The State Water Board has duly considered the SED and the CEQA Findings, which find that the Policy could result in potentially significant indirect environmental impacts. The State Water Board has adopted all feasible mitigation measures with respect to the significant unavoidable environmental impacts listed in the SED and CEQA Findings. The State Water Board and other public agencies that carry out or exercise discretionary approval authority over projects that might be undertaken as a result of the Policy can and should incorporate feasible mitigation measures into any projects that they undertake or approve. To the extent that implementation of regulatory requirements and mitigation measures do not fully mitigate indirect impacts, or are not deemed feasible or are not imposed by the agencies implementing or approving individual projects, the economic, social, and environmental benefits of the Policy outweigh any unavoidable adverse environmental effects. The State Water Board finds that the Policy would have the following economic, legal, social and environmental benefits:

1. Adopting the Policy will satisfy the legal requirement established in Water Code section 1259.4 that the State Water Board adopt principles and guidelines for maintaining instream flows in coastal streams, for purposes of water right administration.
2. The Policy would protect stream flows needed for fish passage, spawning, and rearing;
3. The Policy would protect natural stream flow variability and the various biological functions that are dependent on that variability;
4. The Policy would reduce man-made barriers to fish passage;
5. The Policy would protect adequate stream temperatures for habitat;
6. The Policy would protect stream and riparian habitat complexity;

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7. The Policy would enhance recreational, aesthetic, and cultural experiences that are associated with healthy fisheries;
8. The Policy would contribute to the overall enhancement of stream and riparian habitats and their functions;
9. The Policy would conserve salmonid populations within the watershed for the benefit of current and future generations, including recreational and commercial fishermen;
10. The Policy would add regulatory certainty and predictability to the water right process; and
11. The Policy would increase efficiency and the consistency of the water right process, resulting in cost savings for the State Water Board and the water user community.