

Agenda Item 6

PUBLIC HEARING FOR THE RECEIPT OF
ORAL COMMENTS ON THE ADEQUACY OF THE
SUBSTANTIVE REVISIONS TO THE 2008
SUBSTITUTE ENVIRONMENTAL
DOCUMENT PREPARED FOR THE
NORTH COAST INSTREAM FLOW
POLICY



APRIL 23, 2013



EDMUND G. BROWN JR.
GOVERNOR

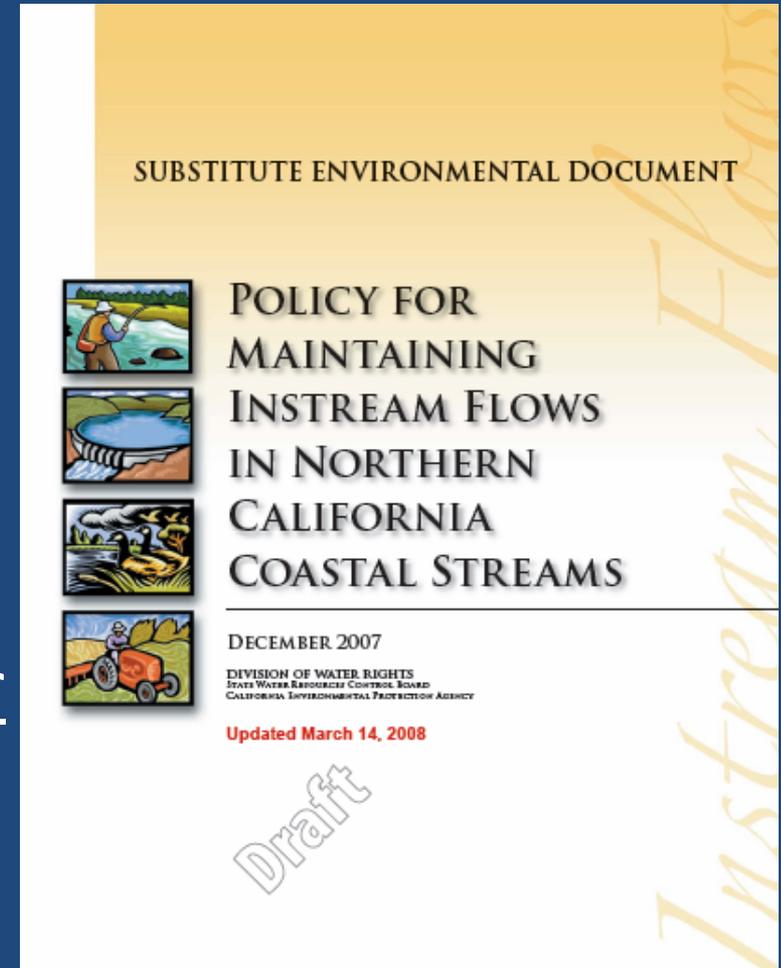
MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Policy Adoption

- Adopted May 4, 2010 by Resolution 2010-0021
- Established principles and guidelines for maintaining instream flows for the protection of fishery resources
- Prescribed protective measures regarding the season of diversion, minimum bypass flows, and maximum cumulative diversion and contained guidelines for cumulative diversion analyses
- Applied to applications to appropriate water, registrations, and petitions

CEQA Requirements

- Substitute Environmental Document (SED) was prepared to comply with CEQA.
- Evaluated potential impacts of activities that diverters might take to comply with or avoid the Policy
- Including switch to pumping groundwater instead of diverting surface water.



Litigation

2012: Living Rivers Council v. State Water Resources Control Board (Sup. Ct. Alameda County, 2012, No. RG10-543923):

- Case challenged the 2010 adoption of the Policy pursuant to CEQA.
- Ultimately, the superior court identified two inadequacies with respect to the analysis in the SED.

State Water Board Actions as required by *Living Rivers v. State Water Board*

1. Vacate the Policy and the certification that the SED had been prepared in compliance with CEQA;
2. Evaluate certain subterranean stream delineations as a potentially feasible mitigation measure for the anticipated increased use of percolating groundwater attributable to the Policy; and
3. Present sufficient information to enable decision makers and the public to understand and consider meaningfully the limited legal options facing the State Water Board to mitigate the expected increase in use of percolating ground water and the implication for the effectiveness of the Policy.

State Water Board Actions as of April 23, 2013

- The Policy and the associated SED were vacated by Resolution No. 2010-0021 on October 16, 2012.
- State Water Board staff revised the 2008 SED to include:
 1. an evaluation of the feasibility of adopting the subterranean stream delineation maps;
 2. Clarifications concerning the State Water Board's authority over ground water pursuant to the provisions of the Constitution and Water Code that prohibit waste and unreasonable use;
 3. Clarifications concerning local agency regulation of ground water within the five counties covered by the Policy;
 4. a revised impact analysis to clarify that the potential switch to groundwater pumping is unlikely to have a significant impact on surface water; and
 5. a revised mitigation chapter to incorporate measures discussed in the Final SED that were not discussed in the Draft SED.

CEQA Process Timeline

- February 22, 2013: Revised SED documentation was posted on Division website and notices were sent to interested parties and consulting agencies.
- April 8, 2013: End of 45- day comment period to submit written comments regarding the substantive revisions.
- April 23, 2013 (today): The State Water Board will conduct a public hearing for receipt of oral comments on the adequacy of the substantive revisions to the SED documentation.

The State Water Board will not consider approval of the CEQA documentation or adoption of the Policy during today's hearing.

Open Floor for Comments