

**North Coast Instream Flow Policy  
Substitute Environmental Document**  
*Final Scoping Report*  
*State Clearinghouse # 2006072091*

**October 2006**

**Prepared for:**

State Water Resources Control Board  
P.O. Box 2000, 1001 I Street, 14th Floor  
Sacramento, CA 95812-2000

**Prepared by:**

North State Resources, Inc.  
1321 20th Street  
Sacramento, CA 95814  
(916) 446-2566  
(916) 446-2792 fax

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# **NORTH COAST INSTREAM FLOW POLICY SUBSTITUTE ENVIRONMENTAL DOCUMENT**

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## **FINAL SCOPING REPORT**

### **1. INTRODUCTION**

This Scoping Report was prepared by North State Resources, Inc. (NSR), to assist the State Water Resources Control Board's Division of Water Rights (Division) in developing the proposed North Coast Instream Flow Policy (proposed policy) and in determining the scope of the Substitute Environmental Document (SED) needed to support the adoption of the policy. The State Water Resources Control Board (State Water Board) is responsible for developing and adopting the proposed policy and will prepare the SED pursuant to the California Environmental Quality Act (CEQA).

"Scope" means policy alternatives, environmental issues, and impacts that will be analyzed in the SED as well as the level of detail required. The scoping process is open to Tribal governments; federal, state, and local agencies; public and private organizations; special-interest groups; and interested individuals. The objectives of scoping are to:

- identify the resource concerns of the public, agencies, and special interest groups;
- define the alternatives and significant issues that will be examined in detail in the SED; and
- assist in the production of a comprehensive environmental document that thoroughly analyzes all pertinent resource issues.

This report summarizes the comments that have been provided as part of the scoping process and documents initial public involvement in the CEQA process. A key part of scoping, public participation provides a means of identifying the resource concerns of federal, state, and local agencies, and interested stakeholders in an open and objective environment. The purpose of this scoping report is to summarize the comments received during the scoping process for the convenience of the Division and other participants in the process of developing the policy and SED. The purpose of this report is not to evaluate the merits of any comments received. The fact that a comment has been summarized should not be construed as the Division's agreement or disagreement with the comment.

## 2. INITIAL SCOPE OF THE ANALYSIS

The Division submitted a Notice of Preparation (NOP) of an SED and Notice of Public Scoping Meeting for the North Coast Instream Flow Policy to the State Clearinghouse, Governor's Office of Planning and Research, on July 19, 2006 (Appendix E). The purpose of the NOP was (1) to advise trustee agencies and interested persons that the State Water Board intends to prepare an SED for the North Coast Instream Flow Policy, and (2) to seek input on significant environmental issues, reasonable alternatives, and mitigation measures that should be addressed in the SED.

The preamble to the Environmental Checklist discussed that the policy itself will not approve any particular water diversion projects, but in general will operate to protect the environment by ensuring that water rights are administered in a manner designed to maintain instream flows. The Environmental Checklist also discussed the potential subsequent actions that may be taken by affected parties in response to adoption of the policy, and identified areas for which the indirect impacts of the proposed policy would be potentially significant under CEQA, areas for which the indirect impacts would be less than significant, and areas for which there would be no impact.

## 3. SUMMARY OF MEETINGS AND OPPORTUNITIES FOR PUBLIC INVOLVEMENT

The following is a summary of the public involvement and scoping activities that have been completed to date as part of the CEQA/SED process:

- July 19, 2006      The NOP and Environmental Checklist were sent to the State Clearinghouse to solicit comments from state, regional, and local agencies. The NOP included notice of a Scoping Meeting to be held in two separate but identical sessions in Santa Rosa, California, on August 16, 2006 (Appendix E). The NOP and Environmental Checklist are posted online at: [http://www.waterrights.ca.gov/HTML/instreamflow\\_nccs.html](http://www.waterrights.ca.gov/HTML/instreamflow_nccs.html).
- August 9, 2006      Notices of the Scoping Meeting were published in the following newspapers of general circulation: Humboldt Times Standard, Marin Independent Journal, Ukiah Daily Journal, Napa County Valley Register, Solano Times-Herald, and Sonoma Press-Democrat. Copies of the notices are included in Appendix D.
- August 16, 2006      The Division held both sessions of the Scoping Meeting on the proposed policy and SED at the North Coast Regional Water Quality Control Board office at 5550 Skylane Blvd., Suite A, in Santa Rosa. The attendance lists for each Scoping session are included as Appendix B. The purpose of the scoping meeting

was to explain the policy, provide other information to trustee agencies and the interested public, and provide agency personnel and concerned public citizens the chance to submit written comments concerning the range of actions, policy alternatives, mitigation measures, and significant effects that should be analyzed in the SED.

The meeting was facilitated by Mike Harty of Harty Conflict Consulting & Mediation (HCCM). Questions were answered by representatives of the Division and their consultant team (HCCM, Stetson Engineers, R2 Resource Consultants, and NSR). Informational materials available at the meeting were provided by the Division (Appendix C).

August 25, 2006 The end of the public period to submit written comments, as identified in the NOP.

#### **4. SCOPING COMMENTS**

Thirty-two written comments were received during the scoping period. Comments were received from 10 state or local agencies and elected representatives; 14 non-governmental organizations (NGOs)/special interest groups; and 8 private citizens; no comments were received from federal officials or agencies (Appendix A). Comments were submitted to the State Water Board via the U.S. Postal Service, email, and comment forms provided at the scoping meeting.

Comments pertaining to the CEQA process are presented in a synopsis format, with a list of commenters provided at the end of each discussion. Policy-related comments, being more complex in nature than the CEQA-related comments, are provided as verbatim excerpts to avoid the potential to misrepresent the exact context of the comment. These comment excerpts are shown in italicized text. To allow for ease of cross referencing to the actual comment letters provided in Appendix A, the specific commenter for each excerpted comment is identified.

The following section discusses the process of reviewing, organizing, and incorporating the comments into the CEQA process.

##### **4.1 Review and Organization of Scoping Comments**

NSR conducted a content analysis of the comment letters to assist in identifying potential policy alternatives; identifying new and/or significant resource topics/issue areas and potential mitigation measures to be included in the SED; and identifying sources of information that could be useful in developing the proposed policy and completing the SED. The content analysis process consisted of first sorting the comments into one of three groups: (1) written comments from government

agencies (e.g., federal, state, local agencies; elected officials) (2) written comments from special interest groups/ NGO's, and (3) written comments from members of the general public. The second step of the content analysis process was to determine if the comment was directed at the proposed policy, policy development process, or policy implementation, or if the comment was directed at the approach to the CEQA analysis, including the scope and breadth of analysis that should be provided in the SED. The next step in the process was to categorize specific comments made in each individual comment letter relative to the elements that may be considered during policy development (e.g., types of projects covered, implementation, compliance, monitoring, enforcement) or environmental issue areas to be evaluated in the SED (e.g., Aesthetics, Cultural Resources, Fisheries, Water Quality). Finally, a list of representative comments was compiled by policy element or environmental issue area.

## **4.2 Summary and Analysis of CEQA-Related Comments**

This section summarizes the comments made on the NOP and Environmental Checklist that were CEQA-related. This information may be used by the Division to identify the range of CEQA alternatives, potential impacts of the proposed Policy that will be analyzed in the SED, and associated mitigation measures. Some of the comments listed below are paraphrased, either to isolate specific resource issues or because two or more commenters used different wording to make the same point. Comments that are direct quotes are shown with quotation marks.

### **4.2.1. Aesthetics**

Several comments were received concerning aesthetics. One commenter stated that if adoption of the policy forces a landowner or public agency to drain a pond or reservoir, it will degrade the visual character of the site and that the aesthetic impact of lost reservoirs cannot be mitigated. Another commenter stated that the California State Park System units are likely to experience long-term visual impacts from infrastructure development, such as off-stream reservoirs and installation of groundwater pumps. That commenter also indicated that there could be landscape-level impacts on important viewsheds.

- California Department of Parks and Recreation
- Rudolph Light

### **4.2.2. Air Quality**

One comment was received concerning air quality. The commenter stated that impacts of policy implementation could include dust clouds (fugitive dust).

- California Department of Parks and Recreation

### 4.2.3. Cultural Resources

One commenter made several comments concerning cultural resources. This commenter stated that implementation of the proposed policy could result in indirect and cumulative damage to the cultural resources of the State Park System. The commenter also stated that activities related to future water development and transfer have the potential to disturb, degrade, or damage archaeological sites, buried archaeological remains, historic structures or features, cultural landscapes, and sacred sites of significance to California State Parks and to the history of the State of California. The commenter expressed concern that infrastructure and other unnatural elements will detract from the sense of place of nearby State Park System units, including earlier eras preserved at cultural sites and historic units. The commenter requested that the State Water Board address potential impacts to landscape-level features, including cultural landscapes and sacred sites.

- California Department of Parks and Recreation

### 4.2.4. Fisheries

Numerous comments were received concerning fisheries. Several commenters acknowledged that low flows during the summer caused by diversions and onstream reservoirs result in adverse impacts to spawning and other aquatic habitat, diminished water quality, and barriers to fish passage. One of these commenters asserted that summer dams affect the beneficial uses of the Russian River identified in the Basin Plan. This commenter also stated that the effects of onstream reservoirs include changes in the hydrograph resulting in adverse changes to the fluvial system, including dewatering or reduction of downstream flows during critical periods for spawning and other habitat needs. Another commenter focused on Murphy Creek in Napa County, stating that steelhead continue to die during the summer due to low flows caused by upstream diversions and water right users overtaxing the system. This commenter went on to state that *“any future water right grants on riparian water uses along Murphy Creek will only further impact and threaten this vital biological resource.”* Another commenter expressed support for the State’s proposal to require fish screens and fish passage facilities.

One commenter expressed concern that minimizing flushing flows in sediment- and nutrient-impaired streams could have a significant effect on biological resources. Another commenter stated that removal of diversions and reservoirs to improve habitat for some sensitive species, namely fish, could be harmful to other species, such as the red-legged frog, that are dependent on the habitat provided by the diversions and reservoirs. This commenter stated that *“your analysis should fully disclose these inevitable tradeoffs of one species’ survival for that of another and justify the policy actions and mitigations suggested.”* Although expressing the belief that implementation of the proposed policy will generally result in a benefit to natural resources, including those of the State Park System, one commenter also stated

that implementation of the policy could result in indirect and cumulative damage to the natural [biological] resources of the system.

- California Regional Water Quality Control Board, North Coast Region
- California Department of Parks and Recreation
- County of Napa, Office of Conservation, Development and Planning
- City of Fort Bragg
- Kronick, Moskovitz, Tiedemann, and Girard (City of Napa)
- Stoel Rives LLP
- Sanctuary Forest
- John Dickson
- Colleen Fernald

#### **4.2.5. Geology, Soils, and Minerals**

One commenter made comments concerning geology and paleontological resources. This commenter requests that the State Water Board address potential impacts to landscape-level features, including significant geological features and paleontological resources associated with the State Parks System. This commenter also stated that implementation of the proposed policy could result in impacts to unique and aesthetically beautiful geological formations as well as those of scientific interest and impacts related to hazardous geological areas and unstable soils.

- California Department of Parks and Recreation

#### **4.2.6. Hazards/Hazardous Material**

Four comments were received concerning hazards and hazardous materials. One commenter stated that the removal of onstream barriers could cause the release of toxic material such as mercury and copper. Another commenter stated that construction associated with policy implementation could result in the release of hazardous materials.

The other two comments concerned possible hazards. The first of these disagreed with the conclusion in the Environmental Checklist that the policy will not “*physically interfere with an adopted emergency response plan...*” This commenter stated that implementation of the policy could interfere with emergency flood control releases from Lake Mendocino or Lake Sonoma because the policy might dictate lower flows to ensure that salmonids are able to swim upstream. The second of the comments concerning hazards stated that fire risk along highways will likely increase if cropland along roadways is reduced or eliminated. This commenter also stated that if landowners lose [onstream] ponds that currently provide water for fire protection, there is no guarantee that they will build offstream storage that could substitute for this loss of water used for fire protection.

- California Department of Parks and Recreation
- Living Rivers Council/Earth Defense for Environment Now (EDEN)
- Rudolph Light

#### **4.2.7. Land Use and Agriculture**

Several comments were received concerning the potential effects of policy adoption on agriculture. One commenter stated that these effects could include the retirement or fallowing of agricultural land. Another expressed concern that policy implementation could result in increased reliance on groundwater, which supports a \$9 billion agricultural industry in Napa County. Another comment asserted that the conclusion in the Environmental Checklist that “[a]doption of the policy will not result in a conflict with ... Williamson Act contract” is incorrect. The commenter stated that policy adoption could lead to a landowner’s removing land from agricultural production, resulting in a county terminating a Williamson Act contract. Another commenter suggested that current seasonal dewatering or low-flow conditions affect agricultural productivity.

Three comments concerned land use. One stated that conversion from wildlands to offstream storage could cause significant environmental impacts. Another requested that the State Park System Unit Classifications, General Plans, and Policies be considered during policy development and that the SED explain any conflicts and proposed resolutions to impacts related to California State Parks’ planning documents, property, and permits. The third land use comment stated that applying the policy to existing water rights could directly impact existing land uses and conflict with land use plans, policies, regulations, and water management plans that water purveyors rely on to project supply and demand.

- California Department of Parks and Recreation
- California Farm Bureau Federation
- County of Napa, Office of Conservation, Development and Planning
- City of Fort Bragg
- Stoel Rives LLP
- Living Rivers Council/Earth Defense for Environment Now (EDEN)
- Sanctuary Forest
- Rudolph Light
- Dewayne Starnes

#### **4.2.8. Noise**

One commenter indicated that impacts of implementing the policy could include short-term noise from construction and noise from pumps [that would affect users of the State Park System].

- California Department of Parks and Recreation

#### **4.2.9. Public Services**

One comment was received concerning potential impacts on public services. The comment states that California Department of Forestry and Fire Protection helicopters currently fill water bags from onstream reservoirs to fight rangeland fires and that offstream reservoirs constructed to replace onstream reservoirs would be more difficult to use because they are likely to be shallower. This commenter also states that onstream reservoirs that are not replaced by offstream reservoirs would deprive firefighters of a water source. The commenter states that this impact would be significant and could on occasion be catastrophic.

- Rudolph Light

#### **4.2.10. Recreation**

One commenter stated that seasonal dewatering and low-flow conditions affect current recreational opportunities. One commenter made several comments concerning potential effects on recreational resources in the State Park System, including indirect and cumulative effects. The commenter expressed concern that construction activities, changes in land use, and visual impacts could affect landscape-level features, including important recreation areas and regional recreation trail corridors. The commenter also indicated that there could be effects on water resources within, or that flow through, State Park System lands, including rivers, wetlands, and perennial and intermittent streams. The commenter states that recreational activities that could be affected by changes to water resources include boating, rafting, swimming, wading, photography, wildlife viewing, bird watching, and hiking. Another potential impact cited by this commenter is the possible need to construct broader and higher footbridges at stream crossings that are currently at grade due to changes in flow. The commenter indicated that the SED should contain a comprehensive recreation section that evaluates potential indirect impacts that alter existing recreation conditions within State Park System units.

- California Department of Parks and Recreation
- Sanctuary Forest

#### **4.2.11. Transportation and Traffic Circulation**

No comments were received concerning transportation and traffic circulation issues.

#### **4.2.12. Population and Housing**

Several comments were received concerning potential impacts on population and housing. One commenter stated that conversion of wildland to agricultural uses and then to housing would put a higher demand on existing water rights. This commenter suggests that the State Water Board require a full CEQA review for conversion to housing. Another commenter stated that if water becomes unavailable

for storage or if construction of offstream storage becomes too expensive, landowners could convert agricultural lands to housing.

Two comments concern the potential impact of loss of a city's water rights on the ability to provide affordable housing. The commenter stated that *"if [a] city's planning documents are undermined by a loss of water rights,"* its ability to provide affordable housing would be profoundly compromised. The commenter also states that low-income individuals would be significantly affected were a city to raise water rates because of the need to find an alternative water supply.

- Kronick, Moskovitz, Tiedemann, and Girard (City of Napa)
- Living Rivers Council/Earth Defense for Environment Now (EDEN)
- Rudolph Light

#### **4.2.13. Utilities/Energy**

Two comments were received concerning Utilities/Energy. Both commenters stated that adoption of the proposed policy could result in the need for new or expanded water supply entitlements to meet continuing increases in demand for water.

- City of Fort Bragg
- Stoel Rives LLP

#### **4.2.14. Vegetation, Wildlife, and Wetlands**

No comments were received concerning vegetation, except riparian vegetation, which is discussed in the next section.

One commenter expressed support for *"doing what it takes to ensure that there is enough clean water available for current...and future generations of endangered species to flourish."* One commenter stated that minimizing flushing flows in sediment- or nutrient-impaired streams could have a significant effect on biological resources.

Several comments concerned potential impacts to wildlife other than fish. One commenter stated that species other than fish, such as the red-legged frog, could be harmed as a result of policy actions and that the analysis should fully disclose these trade-offs and justify the policy actions and mitigation suggested. Another commenter expressed concern that removal of ponds would result in loss of habitat for resident and migratory birds and other wildlife that use the ponds, including deer, raccoons, otters, and muskrat. This commenter stated that the removal of many ponds in an area could cause whole populations of aquatic invertebrates as well as frogs and salamanders to become extinct. Another commenter expressed concern that implementation of the proposed policy could result in indirect and cumulative impacts to the natural [biological] resources of the State Park System. This commenter stated that new off-stream reservoirs and associated infrastructure have

the potential to cause a cumulative landscape-level effect and may interfere with wildlife corridors in both riparian and upland areas. The commenter went on to say that *“it is critical for the SED to include recommendations that avoid indirect and cumulative impacts to State Park System units and other publicly and privately protected conservation lands in order to avoid habitat fragmentation and degradation.”* Another commenter indicated that construction of new storage reservoirs may encourage population increases on non-native species such as bull frogs, which could affect native amphibian species.

- California Department of Fish and Game, Central Coast Region
- California Department of Parks and Recreation
- California Regional Water Quality Control Board, North Coast Region
- County of Napa, Office of Conservation, Development and Planning
- City of Fort Bragg
- Rudolph Light
- Colleen Fernald

#### **4.2.15. Riparian**

One commenter expressed concern about the role of riparian vegetation corridors in protecting flow regimes and asked *“What are the flow benefits from various possible setback ‘buffer’ zones”* and *“How would healthy riparian [vegetation] protect both temperature and flows?”* Another commenter stated that the effects of onstream reservoirs include changes in the hydrograph, resulting in adverse changes to downstream riparian vegetation due to changes in downstream flow, and loss of riparian vegetation due to dewatering or reduced flow. This same commenter also stated that decreased water table elevations in response to groundwater pumping could eliminate riparian vegetation. A third commenter stated that there could be disturbance to riparian areas and related impacts to fish and wildlife, including, but not limited to, sensitive and special-status species. This commenter also indicated that the SED should include recommendations to avoid habitat fragmentation and degradation on State Park System units.

- California Regional Water Quality Control Board, North Coast Region
- California Department of Parks and Recreation
- Brenda Adelman

#### **4.2.16. Water Quality**

Comments received on water quality were divided into those concerning water quality in general and those concerning sedimentation, toxic materials, Total Maximum Daily Loads (TMDLs), and temperature.

## **General Comments on Water Quality**

One commenter stated that poor water quality in onstream reservoirs can affect water quality downstream, including concentrations of nutrients, algal blooms (including toxic algae), reduced dissolved oxygen, and increased temperatures. This commenter recommended that the State Water Board consider developing flow objectives for water bodies that are impaired as a result of over-allocation. Another commenter stated that adoption of the policy will cause direct impacts to water quality. Another commenter asked the State Water Board to collect and consider data collected by watershed councils and indicated that they had available data for the Salmon Creek watershed.

- California Regional Water Quality Control Board, North Coast Region
- City of Fort Bragg
- Stoel Rives LLP
- Colleen Fernald
- Beth Trachtenberg

## **Sedimentation**

Three comments were received concerning sedimentation. One commenter asked, *“What is the interrelation of flows and erosion and sediment pollution and water quality?”* Another commenter stated that the SED should evaluate impacts on surface water systems, including effects on sediment transport and riverbank erosion. The third commenter addressed the adverse effects of sediment due to onstream reservoirs on beneficial uses of water, as well effects on downstream water quality due to release of stored sediment, increased erosion, and reduced stream flushing flows.

- California Regional Water Quality Control Board, North Coast Region
- California Farm Bureau Federation
- Brenda Adelman

## **Toxic Materials**

One comment was received concerning toxic materials. The commenter stated that onstream barrier removal may cause release of toxic materials, for example, mercury and copper, to the stream.

- Living Rivers Council/Earth Defense for Environment Now (EDEN)

## **Total Maximum Daily Loads**

One commenter identified water bodies on the Clean Water Act Section 303(d) Impaired Waters List within the geographic scope of the proposed policy and the reasons they are listed as impaired. Another commenter stated that the long-term restoration of water bodies listed as impaired for sediment and/or nutrients and their

watersheds can be achieved only by limiting the input of sediments and/or nutrients and by allowing peak flows to flush out these constituents. The commenter expressed concern that diverting water during peak flow conditions will reduce the amount of energy available to flush the impaired stream.

- California Regional Water Quality Control Board, North Coast Region
- City of Fort Bragg
- Stoel Rives LLP

### **Temperature**

Two comments were received concerning water temperature. One commenter asked, *“What flows are needed to maintain temperatures that are beneficial to threatened and endangered species?”* Another commenter stated that *“the influx of groundwater to surface water bodies is critical for support of coldwater fisheries and compliance with the water quality objective for temperature.”*

- California Regional Water Quality Control Board, North Coast Region
- Brenda Adelman

### **4.2.17. Water Resources**

Comments received on water resources were divided into those concerning groundwater/wells, surface water, water supply/availability, water demand, instream flows, diversions and storage, seasonality, flooding, dewatering, illegal diversions, water substitution, and dam removal. In cases where comments address more than one of these topics, the comments are repeated in the appropriate subsections.

#### **Groundwater/Wells**

Several comments were received concerning the potential effects of implementing the proposed policy on groundwater, namely the substitution of groundwater pumping to meet water demands. Two commenters requested that the SED evaluate the effects on groundwater resources, including pumping and the availability of groundwater resources, particularly in areas already identified as *“groundwater limited/deficient.”* Two comments stated that the State Water Board will need to develop and evaluate mitigation for adverse impacts from substituting other water sources, including groundwater. One commenter stated that the State Water Board *“should not rely on the mitigation requirements that other permitting agencies might impose on water users”* and that *“the SED should clarify the State Water Board’s jurisdiction under Water Code section 13142...to provide...assurance that impacts to instream flows are not shifted from one water source to another to avoid compliance with the Policy.”* Two comments were received concerning domestic water supply wells. One of these comments stated that current seasonal dewatering or low-flow conditions on North Coast streams affect domestic water supply. Another stated that the State Park System’s infrastructure for acquiring

water includes groundwater pumping and that its water sources must be available year around, particularly during summer months when visitor use of the system is at its highest.

- California Regional Water Quality Control Board, North Coast Region
- California Department of Fish and Game, Central Coast Region
- California Department of Parks and Recreation
- California Farm Bureau Federation
- County of Napa, Office of Conservation, Development and Planning

### **Surface Water**

Several comments were received concerning surface water. One commenter stated that adoption of the policy will cause direct impacts to hydrology. Another stated that effects from onstream reservoirs include changes in the hydrograph.

One commenter requested that the SED analysis consider how actions resulting from adopting the proposed policy will affect stream and river flood and restoration projects, including those that have been hydraulically designed based on current flow conditions. Another commenter requested that the SED identify the monitoring needs for, among other resources, stream flow to develop additional data for future revisions to the policy as well as the agencies responsible for monitoring and reporting. Another commenter requested that the SED evaluate the impacts of implementing the proposed policy on sediment transport, riverbank erosion, and flood control capacities.

Another commenter expressed concern about potential impacts to water resources that flow through State Park System units. Two commenters expressed concern that adoption of the policy would result in diverting water during peak flow conditions needed to flush sediment and nutrients from presently impaired coastal streams.

- California Department of Parks and Recreation
- California Regional Water Quality Control Board, North Coast Region
- County of Napa, Office of Conservation, Development and Planning
- City of Fort Bragg
- Stoel Rives LLP
- MBK Engineers

### **Water Supply/Availability**

Several comments were received concerning water supply/availability. One commenter stated that if the proposed policy is applied to existing water rights, it could conflict with land use plans, policies, regulations, and water management plans that water purveyors rely on to project supply and demand 20 to 25 years into the future. Another commenter stated that current seasonal dewatering or low-flow

conditions on North Coast streams affect domestic water supply. Another commenter expressed the opinion that *“we have met, maybe surpassed our ability to meet demand for water in this region.”* Another commenter stated that changes to water acquisition or water use that may be required by the proposed policy are likely to affect State Park System unit operations and have a fiscal impact on the Department of Parks and Recreation. Another commenter addressed water availability in Murphy Creek, stating that the creek *“may have been over adjudicated as to water right appropriations”* and that *“any future water right grants or riparian water uses along Murphy Creek will only further impact and threaten this vital biological resource.”* Another commenter stated that *“Unless the SWRCB determines water availability, they will not meet the intent of AB 2121. This law requires that minimum flows be established. Therefore, each watershed should be determined as to what water is available. The SWRCB shall determine what water has been taken illegally in order to establish current availability for future use.”*

- California Department of Parks and Recreation
- City of Fort Bragg
- Stoel Rives LLP
- Living Rivers Council/Earth Defense for Environment Now (EDEN)
- Sanctuary Forest
- John Dickson
- Colleen Fernald

### **Water Demand**

One comment was received concerning water demand. The commenter stated that Salmon Creek *“has been struggling for years”* and that *“much of the problem is due to violators who use the water mostly during the dry season when there isn’t much.”*

- Beth Trachtenberg

### **Instream Flows**

Several comments were received concerning instream flows. One commenter stated that many streams lack adequate flows, which is detrimental to anadromous fish and water quality. Another commenter questioned why *“anadromous fish need 95 percent of the water during the collection period.”* This commenter stated that further study is needed to justify why 95 percent of the water is necessary for salmonids during December 15 through March 31. The commenter refers to an August 1997 report prepared by the Division of Water Rights staff that *“concluded that far more water is available for storage...and far less is needed for anadromous fish to thrive.”* The commenter suggests that needs for fish be based on an absolute minimum value rather than 95 percent of a variable quantity.

Three of the comments concerning instream flows addressed minimum bypass flows. One commenter stated that such flows are desirable from a biologic viewpoint. Another commenter requested that the SED address the basis and method to determine the timing and quantity of bypass flows. The third commenter expressed support for minimum bypass flows, provided they are not arbitrary flows that are applied retroactively to all water rights holders.

- Kronick, Moskovitz, Tiedemann, and Girard (City of Napa)
- Living Rivers Council/Earth Defense for Environment Now (EDEN)
- MBK Engineers
- Rudolph Light

### **Diversions**

Four comments were received concerning diversions. One commenter stated that an indirect impact of adopting the policy that was not addressed in the Environmental Checklist is related to the substitution of contracted water deliveries from a local water purveyor to avoid Policy requirements. According to this commenter, *“depending on the local purveyor’s method of diversion, the indirect impacts could be the same as those associated with the use of alternative water sources that are also adversely affecting instream flows.”* The commenter also states that there could be a permanent increase in diversion under the purveyor’s water right because most water purveyors are still perfecting their water rights under permit.

Another commenter stated that the SED should evaluate the impacts of the proposed policy on the use of *“surface water diversions, including seasonal adjustments to diversions and the storage impacts of reduced on-stream storage in favor of increased off-stream storage.”* Another commenter expressed support for minimum bypass flows and diversion rates, provided they are not arbitrary flows that are applied retroactively to all water rights holders. Another comment concerned the cumulative impacts of diversions; this comment was a request that the SED address the basis and method to determine the thresholds that would require additional hydrologic and biologic studies.

- California Department of Fish and Game, Central Coast Region
- California Farm Bureau Federation
- Kronick, Moskovitz, Tiedemann, and Girard (City of Napa)
- MBK Engineers

### **Seasonality**

Three comments were received concerning seasonality. One commenter requested that the SED address the basis and method to determine the timing and quantity of bypass flows. Another questioned why existing legal onstream water storage and

water storage structures would be an issue if there is an agreement to restrict the collection dates from December 15 through March 31. The third commenter questioned *“whether the State Board should, and whether the State Board could legally, require that all diversions be limited to three winter months.”* The commenter stated that *“some north coast streams and rivers may have sufficient flows to support additional beneficial uses during other parts of the year, and that without a scientifically supported finding that there is no water available for appropriation in any of the other 8 1/2 months in any of the north coast streams, the State Board would likely be violating the state constitutional requirement that all water be put to its highest and best use.”*

- Kronick, Moskovitz, Tiedemann, and Girard (City of Napa)
- MBK Engineers
- Rudolph Light

### **Flooding**

Two comments were received concerning flooding. One commenter stated that the SED should evaluate the proposed policy impacts on surface water systems, including resultant effects on flood control capacities. In response to the identification of potentially significant impacts to channel flood capacity and water quality, the second commenter stated that *“detailed recommendations should be put in place and enforced because of the likelihood of health issues related to water quality degradation from contaminated storm runoff and the potential for loss of life, property, and public services from flooding. Flooding that may be caused by removal of on-stream reservoirs upstream, or in the surrounding area, of [State Park System] park units is of utmost concern to us. Units along rivers and streams may see an increased frequency in flooding and subsequent damage to park infrastructure, which has the potential to cause road, campground, visitor center, concession, or trail closures. Any closures, whether short-or long-term, will impact park operations, budget, visitorship and visitor safety, and revenue. We urge the SWRCB to develop recommendations that, for example, require any entity that removes or alters an on-stream reservoir to consult with [the Department of Parks and Recreation] during early project planning.”*

- California Department of Parks and Recreation
- Rudolph Light

### **Dewatering**

One comment was received concerning dewatering. The commenter stated that water diversions or groundwater pumping could result in the dewatering of natural freshwater seeps and wetlands.

- California Department of Parks and Recreation

## Illegal Diversions and Storage

One comment was received concerning illegal diversions and storage. The commenter states that such diversions need to be specifically addressed in the SED. The commenter goes on to note that *“under current SWRCB policy, such projects may not be subject to project level review under CEQA”* and states that a programmatic approach that relies on later project level review under CEQA is therefore not appropriate. The commenter expresses the opinion that the SED must include specific mitigation requirements that address the direct and indirect impacts of illegal diversions and storage.

- California Department of Fish and Game, Central Coast Region

## Water Substitution

One comment was received concerning water substitution. The commenter stated that the State Water Board *“will need to develop and evaluate in the SED requirements to mitigate for adverse impacts from activities that substitute other water sources, including groundwater, riparian water, or contract water; it should not rely on the mitigation requirements that other permitting agencies might impose on water users. The SED should clarify SWRCB’s jurisdiction under Water Code section 13142 in an effort to provide the highest level of assurance that impacts to instream flows are not shifted from one water source to another to avoid compliance with the Policy.”*

- California Department of Fish and Game, Central Coast Region

## Dam Removal

Several comments were received concerning dam removal. One commenter stated that *“illegal dams should not be permitted and [should be] required to be removed. If the SWRCB dismisses illegal use by asking people to simply apply for the water, and then accept the application, it sets an agency wide precedent that grabbing water illegally will be ultimately forgiven.”* Another commenter stated that the policy would affect ponds built many decades ago, which may result in taking away water rights by taking away the ability to store water. Another commenter stated that onstream dam removal could cause the release of toxic materials, such as mercury and copper. Another commenter stated *“The other major category of adverse indirect impacts is expected to result from the abandonment, modification, or removal of existing onstream reservoirs...The SED should address the issue of canceling water rights before the actual decommissioning of onstream storage facilities that would continue to adversely impact flows and water quality.”*

- California Department of Fish and Game, Central Coast Region
- Living Rivers Council/Earth Defense for Environment Now (EDEN)
- Rudolph Light

#### 4.2.18. Impact Assessment Methodology

Several comments were received concerning impact assessment methodology. Two of these comments concerned water rights. One was a request that the SED identify and address the potential effects of the proposed policy to water right holders. The other stated that the SED should address the issue of canceling water rights before the actual decommissioning of onstream storage facilities that would continue to adversely impact flows and water quality.

Three comments addressed diversions. One commenter requested that in relation to the cumulative impacts of diversions, the SED address the basis and method to determine the thresholds that would require additional hydrologic and biological studies. Another commenter stated that the State Water Board should consider what diversions are causing impairment in the summer, particularly in water bodies that are listed as impaired under the Clean Water Act. This commenter also stated that the SED should analyze and develop policy on the effect of diversions on water temperature, salinity, estuary function, wintertime channel-forming flows, and fluvial geomorphology. Another commenter stated that the State Water Board needs to consider reasonable means of not allowing water diverters to avoid the policy by using alternative sources of water that would also adversely impact instream flow.

A commenter requested that the SED address the basis and method to determine the timing and quantity of bypass flows. In addition, the commenter requested that the SED address the appropriate method to identify Points of Interest (POI) and consider the potential impacts relative to selections of POIs based on location both upstream and downstream of confluences.

Another commenter suggested that it may be possible to make modifications that avoid impacts to wetlands, erosion, and the release of stored sediment by functionally moving the reservoir offstream. This commenter also stated that the State Water Board should develop protocols to be used to evaluate the impacts related to the removal and retrofitting of onstream reservoirs in consultation with DFG and other agencies.

Two comments concerned deferring analysis to a later date. One commenter stated that *“It is critical that your CEQA analysis consider both the effectiveness and feasibility of any suggested implementation measures associated with the proposed policy, and that your analysis not defer detailed analysis to a later date. The State Board’s suggestion that it may defer specifics to ‘project level’ analyses undertaken at a future date suggests a piece-meal approach that will overly burden the County, cities, special districts and private landowners charged with implementing State policy. Your environmental document should contain specific information about reasonably foreseeable implementation actions anticipated as a result of the State’s proposed policy, and thoroughly assess the localized impacts associated with each.”* Another commenter stated that *“landscape-level analysis is necessary because*

*analysis deferred until project-level work will artificially fragment intact functional ecosystems for small-scale study.”*

- California Regional Water Quality Control Board, North Coast Region
- California Department of Fish and Game, Central Coast Region
- California Department of Parks and Recreation
- County of Napa, Office of Conservation, Development and Planning
- MBK Engineers

#### **4.2.19. Economics/Costs**

Several comments were received concerning economics/costs as they relate to environmental consequences. One commenter stated that the recreation section should contain information related to socioeconomic impacts associated with decreased usage of State Park System facilities. Another commenter expressed concern that planning documents would be undermined by loss of water rights, which would affect the ability to provide economic development and affordable housing. This commenter also stated that the need to develop new sources of drinking water would result in large increases in water rates, which would most affect the poor water customers. Another commenter suggested that economic costs associated with policy implementation could include landowners who lose current water diversion and storage and therefore must let land lie fallow, which could result in the termination of Williamson Act contracts and subsequent increases in property taxes and/or elimination of tax breaks, leading the landowner to subdivide and sell the land for development. This commenter also stated that removal of onstream ponds could require some landowners' to close down their vineyards and ranches.

- California Department of Parks and Recreation
- Kronick, Moskovitz, Tiedemann, and Girard (City of Napa)
- Rudolph Light

#### **4.2.20. Alternatives**

One comment was received concerning alternatives. The commenter stated that the SED should include a range of reasonable policy alternatives other than a policy based solely on the NMFS-DFG Draft Guidelines.

- California Farm Bureau Federation

#### **4.2.21. Mitigation Measures**

Numerous comments were received concerning mitigation for the impacts of policy implementation. One commenter stated that the aesthetic impact of lost reservoirs cannot be mitigated by constructing pit ponds because they are generally strictly utilitarian and generally unattractive. Another commenter suggested that the phrase

“may include” in Section 8 of the SED be changed to “will include” for mitigation measures and recommendations.

Another commenter requested that SED recommendations to avoid or minimize resource impacts should consider the State Park System and other natural and open space lands in the vicinity of park units. This commenter also recommended that the SED include the following requirements for cultural resources: *“Protections, such as avoidance and minimization measures, identification, and interpretation should be addressed in the Instream Flow Policy. Along with the need for research and surveys prior to site-specific studies, new facilities should be designed and constructed to avoid archaeological remains to the greatest extent practicable. If unavoidable, an appropriate recovery plan should be considered and if remains are found during construction, work should be stopped for recordation, determinations, and development of a protection plan. In addition, all historical resources should be mapped, recorded, and evaluated to determine eligibility for placement on the National Register of Historic Places. Projects should be designed to avoid significant impacts to potentially eligible historic resources.”*

One commenter suggested the following mitigation measures for potential water quality impacts resulting from dam removal:

*“First, it may be possible to avoid adverse impacts by modifying the structure so that water flows freely without removal. If avoidance is not feasible, it is critical that the entire dam fill and any related structures are removed, all the way down to the ‘original grade’ of the streambed. Some sites may require excavation below ‘original grade’ and placement of large rock to stabilize the streambed. In addition, all stored sediment should be removed and all previously inundated land should be stabilized with vegetation or rock to limit soil movement. Also, release of stored waters should be done to limit pulse flows. This may be accomplished by slow release not to exceed 1/4 of the natural flow at the time of release. Finally, temperature increases of the receiving waters should be limited by either releasing when temperatures are the same or by slowly releasing water so as to not raise water by more than 2 degrees F over the natural water temperature. Additional work in this area is needed. The Regional Water Board staff proposes to work collaboratively with the State Water Board, DFG, Region 2 and other interested parties to ensure that the substitute environmental document adequately addresses the cumulative impacts of numerous dam removals, and identifies appropriate mitigation measures, including the consideration of a program that phases removal projects geographically and temporally in order to minimize sediment impacts. The Regional Water Board may consider developing a general waste discharge requirement for dam removals that meets certain parameters. It would be efficient and useful if the SED adequately covered the CEQA requirements for this purpose.”*

Several mitigation-related comments concerned procedures for implementing projects on State Parks System land. The commenter indicated that requests for

biological, geological, or soil investigation and collection permits, as well as paleontological investigation permits, should be directed to the lead natural resources specialist for the appropriate district. This commenter stated that SED recommendations and guidelines for future projects should include the statement that *“any hydrologic and/or groundwater studies on land owned or leased by the State of California is required to be completed by or under the direction of a state-licensed geologist, hydrologist, or geophysicist.”* The commenter also stated that *“Many statutory classifications within the State Park System such as State Wilderness and Natural Preserves are by design restrictive to uses that have potential to adversely impact the resources for which they were established. An applicant, prior to requesting access for non-park related projects, should make careful consideration of these limitations. If permanent or temporary leases, easements or rights-of-way are desired for a project, the applicant is encouraged to first contact the State Park District environmental coordinator of the park unit for further information. Subsequently and depending on the nature of the project, contact with the California State Parks Deputy Director of Park Operations may also be necessary. Contact with this Department should be done early in the planning process. Such open discussion will facilitate early resolution of potential issues.”*

Several comments related to mitigation concerned deferral of project-level analysis. One commenter stated that *“This implies that rather than developing appropriate mitigation to be incorporated into the policy, at least some of the required mitigations will be left to other agencies to develop at a later date. Such a delegation would be inappropriate in terms of SWRCB’s responsibilities under CEQA.”* This commenter also stated, *“Existing but unauthorized projects in the Policy area might not have any nexus to allow additional mitigation to be developed at a project level under CEQA. The SED should evaluate and include recommendations and mitigations for addressing the potential impacts related to activities of these projects that may be carried out in response to the Policy. The SWRCB should develop such mitigation in consultation with DFG and other agencies and include them in the SED.”*

- California Department of Parks and Recreation
- California Department of Fish and Game, Central Coast Region
- Rudolph Light

#### **4.2.22. Growth-Inducing Impacts**

Two comments were received concerning growth-inducing impacts. One commenter stated that the potential restriction on development in the North Coast area is likely to result in greater development in other parts of the state. Another commenter stated that if landowners convert farmland to development and housing, the development is likely to occur near cities as well as in rural areas.

- City of Fort Bragg
- Stoel Rives LLP

- Rudolph Light

#### **4.2.23. Cumulative Impacts**

Several comments were received concerning cumulative impacts. One commenter stated that wildland conversion to agriculture and then to housing will put a higher demand on existing water rights. Another commenter requested that the basis and method to determine the thresholds that would require additional hydrologic and biological studies be addressed relative to cumulative impacts. Another commenter requested that cumulative impacts on recreation be considered.

*One commenter stated, “The State Board must consider the cumulative impacts of other activities that are having the same type of impacts as the proposed Flow Policy, like reducing available water supplies and impacting groundwater basins. Projects that should be considered in an analysis of cumulative impacts include TMDLs (particularly those with flow components), state and federal regulatory requirements resulting from listed species, water development projects, water transfers/conjunctive use projects, changes in water quality standards, and construction projects.”*

- California Department of Parks and Recreation
- Kronick, Moskovitz, Tiedemann, and Girard (City of Napa)
- Living Rivers Council/Earth Defense for Environment Now (EDEN)
- MBK Engineers

#### **4.2.24. Need for Further Investigations, Studies, or Data**

One comment was received concerning the need for further investigations, studies, or data. The commenter stated that a detailed level of environmental information is not readily available for many Napa County watersheds. The commenter stated that the environmental analyses should consider the necessary infrastructure, including flow gages, monitoring sites, and enforcement, needed to understand, measure, and comply with any proposed actions and/or regulations suggested and identify who would be responsible for funding, installing, and maintaining such infrastructure.

- County of Napa, Office of Conservation, Development and Planning

#### **4.2.25. Need for Consulting with Other Agencies**

Several comments were received concerning the need to consult with other agencies. One commenter stated that the SED should include consultation with other permitting agencies to ensure that the biologically defensible policy is compatible with other agencies’ permitting processes to avoid “agency shopping” to avoid compliance with the policy. This commenter also recommended that the SED include the results of consultation with the appropriate agencies to develop a coordinated procedure to address issues such as erosion control and sediment control during the removal of dams for inclusion in the policy. In addition, this

commenter stated *“The SWRCB correctly recognizes in the that there might be situations where additional protections are needed to support other sensitive native species, especially amphibians, which might require changes in the timing of withdrawals in some locations. The SWRCB should identify appropriate mitigation in the SED to address any potential impacts associated with such changes in consultation with appropriate government agencies.”*

Another commenter stated that the California Department of Water Resources’ Watershed Investigation Program (WIP) should be coordinated with the North Coast Regional Water Quality Control Board’s action plans to address temperature TMDL impairment in North Coast rivers. The commenter stated that *“current temperature TMDLs for the Scott and Shasta Rivers have established the relationship of high instream temperatures to low flow from diversions, but [that] these TMDLs do not have the definitive data that the WIP program would provide. Essentially all of the rivers in the geographic scope of AB 2121 are listed as temperature impaired and will be addressed by RWQCB in the future. Aside from the WIP program, DWR and RWQCB have a common interest in unpermitted diversions that should be examined. They also now have a common interest in restoring adequate instream flows to coastal rivers.”*<sup>1</sup>

Another commenter suggested that the State Water Board take into consideration the need for DWR and the counties in the geographic scope to establish regular communication channels on the construction of new dams. According to the commenter, DWR currently sends the counties information and requests that they pass it on to dam builders to inform them of their obligation to apply for a water rights permit. The commenter believes that the current process is not adequate and suggests that DWR should require that the counties provide to DWR summary reports of new dam construction. The commenter continued, *“Counties have this information and can routinely supply it to DWR. Mendocino County reported 66 new dams in a 2000-2001 report following the 1998 WIP study. This information is far more timely, accurate and less expensive to obtain.”*

Another commenter stated that if permanent or temporary leases, easements, or rights-of-way are desired from the State Parks System, the applicant is encouraged to first contact the State Park District environmental coordinator of the particular park unit for further information. The commenter indicates that contact with the California State Parks Deputy Director of Park Operations may also be necessary.

- California Department of Fish and Game, Central Coast Region
- California Department of Parks and Recreation
- Sierra Club

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<sup>1</sup> The Watershed Investigation Program (WIP) is not implemented by the California Department of Water Resources, as suggested by the commenter. The WIP is actually administered by the State Water Board.

#### 4.2.26. Consistency and Compatibility with Other Policies, Programs, and Plans

Numerous comments were made concerning consistency of the proposed policy with other established policies, programs, and plans. One commenter stated that the proposed policy will conflict with court-imposed requirements that led to the designation of a watershed as sediment impaired. The commenter states that the conflict between policies must be resolved and the method of conflict resolution explained before the instream flow policy is adopted.

Another commenter stated that there is a need not to merely stop diminishing instream flows but to *“actually regain flow in some cases.”* The commenter stated that the Endangered Species Act, the Clean Water Act, and the TMDL process, among others, are trying to address the same problem. Another commenter stated that adoption of the policy as proposed would force the City of Napa to spend millions of dollars to prepare new planning documents, including a new General Plan and associated water supply plans developed through the year 2020.

Another commenter stated that the analysis should consider the effectiveness of Napa County’s current regulations and ongoing watershed resource conservation programs and stewardship efforts by numerous groups and organizations. This commenter also requested that any compliance standards or attainment measures resulting from the proposed policy be aligned with policies and regulations approved or under development by Regional Water Quality Control Boards. The commenter states that *“inconsistency among compliance, permitting, monitoring, and reporting requirements will result in confusion, failure to attain policy goals, and public/community discontent.”*

Another commenter expressed concern that the proposed policy could interfere with U.S. Army Corps of Engineers emergency flood releases from Lake Mendocino and Lake Sonoma.

Another commenter expressed concern that the policy could inadvertently undermine grassroots initiatives such as the Mattole Flow Program if *“by the blanket imposition of guidelines developed to address problems or issues in other watersheds and coastal streams.”*

Another commenter requested that the SED explain any conflicts and proposed resolutions related to California State Parks’ planning documents, park property, and permits.

- California Department of Fish and Game, Central Coast Region
- California Department of Parks and Recreation
- County of Napa, Office of Conservation, Development and Planning
- City of Fort Bragg

- Stoel Rives LLP
- Kronick, Moskovitz, Tiedemann, and Girard (City of Napa)
- Friends of Navarro Watershed
- Sanctuary Forest
- Rudolph Light
- Dewayne Starnes

#### **4.2.27. Additional Background Information**

One commenter provided information concerning the Division’s Watershed Investigation Program. The information focused on unpermitted dams in the Navarro River watershed and Maacama Creek, a tributary to the Russian River. The commenter indicated that similar information is currently being collected for some Sonoma County streams.

- Sierra Club

#### **4.2.28. Other**

One commenter stated that a Regional Water Board may consider developing a general waste discharge requirement for dam removals that meets certain parameters. It would be efficient and useful if the SED adequately covered the CEQA requirements for this purpose. Another commenter indicated that, *“Based on the map attached to the NOP, we have determined that 36 State Park System units totaling 84,432 acres appear to occur within the proposed project area and five totaling 55,366 acres appear adjacent to or within the vicinity of the area. These 41 total properties have the potential to be affected by the proposed Instream Flow Policy.”*

- California Department of Parks and Recreation
- California Regional Water Quality Control Board, North Coast Region

#### **4.2.29. Summary of New Issues – CEQA-related Comments**

This section provides a summary of new issues, related to the SED, that were not included in the NOP and EC.

#### **Fisheries**

*[M]inimizing flushing flows in sediment-impaired and nutrient-impaired coastal streams, which will be the result of implementation of the policy, could have a significant effect on biological resources.*

- City of Fort Bragg

## Recreation

*Based on the map attached to the NOP, we have determined that 36 State Park System units totaling 84,432 acres appear to occur within the proposed project area and five totaling 55,366 acres appear adjacent to or within the vicinity of the area. These 41 total properties have the potential to be affected by the proposed Instream Flow Policy.*

- California Department of Parks and Recreation

## Land Use and Agriculture

*Your narrative states that, "Adoption of the policy will not result in a conflict with zoning for agricultural use or a Williamson Act contract." I think that this conclusion is wrong, and that there could be significant potential impacts. Under the Williamson Act, landowners promise to keep land in production agriculture (Type 1) or for grazing (Type 11) In return for retaining agricultural uses for the property, the real estate taxes are substantially lower than on land not under a Williamson Act contract. The Williamson Act is clear that land must be retained in agricultural use and from time to time a county may require the landowner to document the agricultural use using receipts and inventories for crops or livestock. If the land is not kept in agricultural production, a county may initiate termination of the contract because of the production provision not being met. Therefore, the landowner will no longer be eligible for tax breaks.*

- Rudolph Light

## Consistency with Local Plans

*The State Water Board is considering applying the policy to existing water rights...which could directly impact existing land uses and conflict with the applicable land use plans, policies, regulations, and water managements plans that water purveyors rely upon to project supply and demand 20 to 25 years into the future.*

- City of Fort Bragg

## Population and Housing

*The Environmental Checklist on page 12 states that Population and Housing will have no impact. There are housing subdivisions on the North coast currently seeking water rights in wildlands. Wildland conversion to subdivisions that seek a new use for prior water rights must apply for a new water withdrawal permit form the SWRCB. Housing and population depend on the availability of water. CEQA requires the SWRCB to determine any significant impacts within the ECL. Wildland conversion to agriculture and then conversion to houses will put a higher demand on existing water rights. The SWRCB should set strong policy and enforcement that change of use to housing shall require a full CEQA review.*

*If the City's planning documents are undermined by a loss of water rights, the entire community would be negatively impacted. The City's ability to provide economic development and affordable housing would also be profoundly compromised.*

*The City...disagrees with the State Board's position that the proposed Flow Policy would not impact housing, either directly or indirectly. If the City is unable to provide the required level of water service, there has to be a resulting reduction in available housing. The Flow Policy has the potential to impact affordable housing, as the City would have to find an alternative water supply, which would raise rates, thereby significantly impacting low income individuals.*

*I believe the impact to population and housing is potentially highly significant if certain provisions of the policy are implemented. If water becomes unavailable for storage or if construction of offstream storage is too expensive, there is a high probability that some landowners will let their land lie fallow and pull it out of production. See your bullet on page 7 which acknowledges this possibility, and your comment on page 10 for 2c) which suggests some landowners might convert farmland to non-agricultural use. A likely land use change would be to development and houses, especially in areas peripheral to cities, and to rural residential areas away from cities. Implementation of the policy will result in potentially significant impacts to housing and population. This topic needs further study.*

- EDEN
- Kronick, Moskovitz, Tiedemann, & Girard (City of Napa)
- Rudolph Light:

## **Utilities/Energy**

### Water Supply

*Adoption of the policy...will directly impact water supply, especially if applied to existing water rights. Such direct impact could result in the need for new or expanded water supply entitlements in order to meet the continued increased demand for water in California.*

- City of Fort Bragg

## **Vegetation, Wildlife, Wetlands**

*[M]inimizing flushing flows in sediment-impaired and nutrient-impaired coastal streams, which will be the result of implementation of the policy, could have a significant effect on biological resources.*

*Another indirect impact of the Policy that was not addressed in the EC is related to the substitution of contracted water deliveries from a local water purveyor to avoid Policy requirements. Depending on the local purveyor's method of diversion, the*

*indirect impacts could be the same as those associated with the utilization of alternative water sources that are also adversely affecting instream flows.*

- City of Fort Bragg:
- California Department of Fish and Game, Central Coast Region

## **Water Quality**

*Adoption of the policy...will cause direct impacts to...water quality.*

- City of Fort Bragg

## TMDLs

*Within the policy area... there are 12 watersheds with TMDL listings as “impaired by sediment” and 3 watersheds with TMDL listings as “impaired by (excessive) nutrients....The long-term restoration of these impaired rivers and their watersheds can only be achieved by limiting the input of the constituents causing impairment (sediment and/or nutrients) and by allowing peak flows to flush out the entrained sediments or nutrients....Diverting water during peak flow conditions will reduce both the mass and the velocity of the remaining water and therefore the amount of energy available to flush the impaired stream.*

- City of Fort Bragg:

## **Water Resources**

### Surface Water

*Your environmental review should consider how actions resulting from the proposed policy will affect funded stream and river flood and restoration projects. Many of projects in Napa County have been hydraulically designed based upon current flow conditions. Modifications to the timing and volume of present stream flows may influence the effectiveness and performance of these projects and could reduce value of public and private dollars invested in these projects.*

- County of Napa, Office of Conservation, Development & Planning:

### Hydrology

*Adoption of the policy...will cause direct impacts to...hydrology.*

- City of Fort Bragg:

### Minimum Bypass Flows

*“Minimum bypass flows” are desirable from a biologic viewpoint, but even more critical is the need to recognize and protect flushing flows in sediment-impaired and nutrient-impaired coastal streams.*

- City of Fort Bragg

#### Water Supply/Availability

*The State Water Board is considering applying the policy to existing water rights...which could directly impact existing land uses and conflict with the applicable land use plans, policies, regulations, and water managements plans that water purveyors rely upon to project supply and demand 20 to 25 years into the future.*

- City of Fort Bragg

#### Diversions

*Another indirect impact of the Policy that was not addressed in the EC is related to the substitution of contracted water deliveries from a local water purveyor to avoid Policy requirements. Depending on the local purveyor's method of diversion, the indirect impacts could be the same as those associated with the utilization of alternative water sources that are also adversely affecting instream flows. Within the Policy area, this "substitution" could also result in significant impacts associated with the development of new facilities for the storage of delivered water and, because most water purveyors are still perfecting their water rights under permit, a potentially permanent increase in diversion under the purveyor's water right.*

- California Department of Fish and Game, Central Coast Region

#### **Economics/Costs (as they relate to environmental consequences)**

*...If the City's planning documents are undermined by a loss of water rights, the entire community would be negatively impacted. The City's ability to provide economic development and affordable housing would also be profoundly compromised. As the City would have to develop new sources of drinking water, it would have to raise water rates dramatically, which would have the greatest impact on its poorest customers.*

*Under the proposed instream flow policy, it is very possible that some landowners will lose current water diversion and storage, and may have to let land lie fallow. Your narrative on page 7 includes a bullet point addressing this. If that land is covered under a Williamson Act contract, the landowner may no longer be able to conform with the terms of the contract due to loss of water essential to successful farming. In consequence, a county has the authority to terminate that Williamson Act contract based on noncompliance, and might do so. The landowner in turn, no longer being under the obligations of the Williamson Act and faced with the burden of much higher property taxes, may well subdivide and sell the land for development, which will lead to many significant impacts.*

*If this policy is adopted and results in removal of onstream ponds, it will cause many landowners severe hardship and may result in some closing down their vineyards*

*and their ranches. Even though the current focus must be on environmental impacts of the policy, there is a "tipping point" at which economic reality must also come into play. I can't easily think of a more cruel regulation to be imposed on landowners than to be forced into removing their legally licensed ponds which they operate in a legal manner. Already, under the draft guidelines the fish are to get 96% of the annual water flow, and now it is proposed to potentially deny landowners the remaining 4% by denying storage.*

*A comprehensive recreation section in the SED should contain information such as...socio-economic impacts.*

- California Department of Parks and Recreation
- Kronick, Moskovitz, Tiedemann, & Girard (City of Napa)
- Rudolph Light

### **Mitigation Measures**

*The EC proposes that the impacts on hydrology and water quality be evaluated at the programmatic level in the SED. It also proposes that projects carried out in response to adoption of the Policy would also be subject to separate project level CEQA analysis by the appropriate lead agency. This implies that rather than developing appropriate mitigation to be incorporated into the Policy, at least some of the required mitigations will be left to other agencies to develop at a later date. Such a delegation would be inappropriate in terms of SWRCB's responsibilities under CEQA.*

*Existing but unauthorized projects in the Policy area might not have any nexus to allow additional mitigation to be developed at a project level under CEQA. The SED should evaluate and include recommendations and mitigations for addressing the potential impacts related to activities of these projects that may be carried out in response to the Policy. The SWRCB should develop such mitigation in consultation with DFG and other agencies and include them in the SED.*

*The narrative says there would be no impact because the implementation of the policy will not "physically interfere with an adopted emergency response plan or emergency evacuation plan " This may not be the case. The instream policy could interfere with the Army Corps of Engineers (COE) emergency flood control releases from Lake Mendocino or Lake Sonoma. In a flood or potential flood emergency the COE may want to release more water and the instream flow policy might dictate lower flows to ensure salmonids are able to swim upstream at the same time there is a flood emergency because with very high releases and concurrent flooding, ascending salmonids might leave main channels for temporary backwaters, become stranded and die. This is a significant potential impact, but probably one that can be mitigated.*

- California Department of Fish and Game, Central Coast Region
- Rudolph Light

### **Growth-Inducing Impacts**

*The potential restriction on development within the North Coast area...is likely to result in greater development in other parts of the state. Restricting the available water supply as contemplated by the policy will directly hamper the ability of water purveyors to supply water to potential new development.*

*I believe the impact to population and housing is potentially highly significant if certain provisions of the policy are implemented. If water becomes unavailable for storage or if construction of offstream storage is too expensive, there is a high probability that some landowners will let their land lie fallow and pull it out of production. See your bullet on page 7 which acknowledges this possibility, and your comment on page 10 for 2c) which suggests some landowners might convert farmland to non-agricultural use. A likely land use change would be to development and houses, especially in areas peripheral to cities, and to rural residential areas away from cities. Implementation of the policy will result in potentially significant impacts to housing and population.*

- City of Fort Bragg:
- Rudolph Light:

### **Cumulative Impacts/Considerations**

*The Environmental Checklist on page 12 states that Population and Housing will have no impact. There are housing subdivisions on the North coast currently seeking water rights in wildlands. Wildland conversion to subdivisions that seek a new use for prior water rights must apply for a new water withdrawal permit from the SWRCB. Housing and population depend on the availability of water. CEQA requires the SWRCB to determine any significant impacts within the ECL. Wildland conversion to agriculture and then conversion to houses will put a higher demand on existing water rights. The SWRCB should set a strong policy and enforcement that change of use to housing shall require a full CEQA review.*

*The State Board must consider the cumulative impacts of other activities that are having the same type of impacts as the proposed Flow Policy, like reducing available water supplies and impacting groundwater basins. Projects that should be considered in an analysis of cumulative impacts include: TMDLs (particularly those with flow components), state and federal regulatory requirements resulting from listed species, water development projects, water transfers/conjunctive use projects, changes in water quality standards, and construction projects.*

- Earth Defense for the Environment Now (EDEN)
- Kronick, Moskovitz, Tiedemann, & Girard for City of Napa

## 4.3 Summary and Analysis of Policy-Related Comments

The State Water Board received the following comments on the development, adoption, and implementation of the proposed North Coast Instream Flow Policy. Excerpts from the comment letters are reproduced below to illustrate the range of comments received regarding the proposed Policy.<sup>2</sup> In categorizing the excerpted comments, we have been inclusive rather than exclusive; that is, where a comment could feasibly be placed under multiple categories, we have done so. Complete copies of all of the comment letters received during the public scoping period are attached as Appendix A of this report.

### 4.3.1. State Water Board's Regulatory Responsibilities and Objectives

The following persons, agencies, and organizations submitted comments concerning the State Water Board's regulatory responsibilities and objectives. Excerpts from these comments are included below.

- Earth Defense for the Environment Now (EDEN)
- Natural Heritage Institute
- OZ Farm
- Sonoma County, Permit and Resource Management Division

#### Earth Defense for the Environment Now (EDEN)

*SWRCB must include policy, guidelines for drought years and maintaining minimum flows.*

*The jurisdiction of the SWRCB concerning ground water is unclear. Riparian ground water is essential for maintaining minimum instream flows. If users start pumping riparian ground water in lieu of using their on stream reservoirs, flows may be jeopardized. Off stream pumping of riparian ground water must be clearly defined with published guidelines.*

#### Natural Heritage Institute

*We filed the Petition to seek reform of the water rights system – beginning with review of applications for water right permits and ending with compliance – as necessary to protect steelhead and coho salmon fisheries, riparian habitat, and birds and wildlife dependent on such habitat, in good condition. We expressed serious concern that the coho and steelhead fisheries within the North Coast are threatened with extinction, due in large part to water diversions. We also expressed concern that, despite the significant impact to fisheries, the State Water Board does not have written guidelines (namely, policies which guide substantive review of water right*

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<sup>2</sup> Except for correcting some spelling errors and formatting inconsistencies, the comment excerpts are reproduced verbatim along with the name of the person, agency, or organization that submitted the comment.

permit applications) for the purpose of deciding how much water is divertible for water supply, and how much must remain to protect the coldwater fisheries in good condition. We claimed that this is inconsistent with state law which provides that the State Water Board may approve a permit application for unappropriated water, only on conditions that protect fish and wildlife as a beneficial use of water (see Water Code § 1243) and prevent impairment of water quality standards (see *id.*, §§ 1243.5, 1258). See Petition at ¶¶ 156-161.

## **OZ Farm**

On November 6, 1998, Friends of the Garcia River (FROG) petitioned your agency to determine that the Garcia River is fully appropriated during low flow periods. This petition has never been acted upon.

## **Sonoma County, Permit and Resource Management Division**

*If consideration is given to having local government (cities and counties) implement the proposed policy, please consider who has legal authority to administer water rights. It is our understanding administering water rights is the purview of the State of California. If legal authority is or can be established and local government is considered as an implementing entity, please consider what effect the proposed policy will have on the county permitting processes described above. Particularly the ministerial permitting of water wells, reservoirs, building and other permits adjacent to Sonoma County streams and rivers. Our preference is to keep the process ministerial.*

*Please consider the two analogies where State retains authority. One is the California Fish and Game streambed alteration permits. In the ministerial process, the county has no authority to require a project proponent obtain a Fish and Game permit, however, PRMD informs a permittee if we believe the project may require a Fish and Game permit. The second analogy is the State Water Resources Control Board's General Permit for Storm Water Discharges Associated With Construction Activity. The county has no authority to require a project proponent obtain coverage under this general permit. However, we do inform applicant's of the need for this permit if the project exceeds the one acre land disturbance criteria. We also work closely with the North Coast Regional Water Quality Control Board's regarding this program. In both scenarios, our permit process is ministerial and the state retains its authority.*

### **4.3.2. Permit Review Process**

The following persons, agencies, and organizations submitted comments concerning the permit review process as it pertains to development of the proposed North Coast Instream Flow Policy. Excerpts from these comments are included below.

- Rudolph H. Light
- Natural Heritage Institute

- North Coast Water Rights Working Group
- North Marin Water District
- OZ Farm
- Regional Water Quality Control Board, North Coast Region
- Sonoma County, Permit and Resource Management Division

### **Rudolph H. Light**

*There is a suggestion to construct new off-stream storage to substitute for onstream storage. To build a new pond requires permits from DFG, the Army Corps of Engineers, Division of Water Rights, and in some places the county. In all probability, no one will ever get a new permit from DFG or from the Division of Water Rights. The Division cannot finish the permitting process for ponds from applications which go back 12 years, so why would anyone believe a landowner will obtain a permit for any pond in the future? Although this may look on the surface like a procedural matter rather than an environmental one, the fact of the matter is, that based on the requirements for environmental reviews, environmental impact reports and protests on environmental grounds, the likelihood of a permit for a new offstream storage pond is essentially nil.*

### **Natural Heritage Institute**

*One of the remedies we requested was that the State Water Board adopt guidelines for the substantive review of permit applications. We agreed that the Draft "Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Streams" (2002) (NMFS-DFG Draft Guidelines) should be the starting point for the Board's adoption of substantive guidelines, but requested that the Board consider the following amendments and any others agreed to by, what is now called, the North Coast Water Rights Working Group.*

### **North Coast Water Rights Working Group**

*The recommendations we are considering include suggestions for improving the water rights noticing process, with a goal of involving all interested parties at an earlier date; earlier coordination of permit proceedings involving the State Board and other interested permitting and trustee agencies; and improvements to the environmental review and protest resolution process. We are also discussing new approaches to substantive water rights standards, and compliance and enforcement.*

### **North Marin Water District**

*NMWD acknowledges and concurs with the need for improvements to the SWRCB's administrative processing of water right applications, and the need to balance competing water demands for consumptive use and for environmental purposes, including protection of anadromous fisheries.*

## **Regional Water Quality Control Board, North Coast Region**

*Regional Water Board staff see a need for improvement in the Water Right permit review process. Water Rights permit reviews need to include analysis of all potentially significant impacts to beneficial uses. Habitat and water quality conditions for all threatened and/or endangered species, and/or potentially significant impacts to jurisdictional waters (e.g., Stream and wetland fills per Sections 401 of the federal Clean Water Act, and/or report of waste discharge or waiver per Porter-Cologne Act) require special care.*

*Regional Water Boards follow the Section 404(B) (1) Guidelines developed by USEPA, which emphasize that it is generally preferable to avoid wetland disturbance. When this is not possible, disturbance should be minimized. Mitigation for lost wetland acreage and values through restoration or creation should only be considered after disturbance has been minimized.*

*Regional Water Board staff note that initial studies for appropriate water right applications that call for proposed on-channel dams typically do not document resource conditions in affected wetlands and waters, and/or describe analyses conducted to demonstrate due diligence in attempting to avoid and minimize impacts of proposed on-channel reservoirs to wetlands including waters of the state. Regional Water Board staff respectfully request that these issues be permit review issues addressed under one or more of the project alternatives to be explored under the proposed policy.*

## **OZ Farm**

*On November 15, 2001, the undersigned protested an application (permit # 30892) on the part of Point Arena Water Works to increase its rights to extract water from the Garcia River and requested a determination that the Garcia River is fully appropriated... I would appreciate your acknowledgement of this letter and your assurances that it will be filed in the Point Arena Water Works file, the file requesting determination that the Garcia river is fully appropriated and the file on this new matter (N. Coast Instream Flow Policy).*

## **Sonoma County, Permit and Resource Management Division**

*If a well permit is submitted and the location was checked against a subterranean stream map, we would then be in a better position to inform the applicant of the need for a water right and whether to send the applicant to the Division of Water Rights or not. The delineation of subterranean streams would also prevent costly and timely project by project evaluations or studies by individual applicants which would also slow the county permitting process*

### 4.3.3. Policy Questions

The following persons, agencies, and organizations submitted questions concerning the proposed North Coast Instream Flow Policy. Excerpts from these comments are included below.

- City of Fort Bragg
- Thomas Kamm
- Rudolph H. Light
- Dewayne Starnes

#### **City of Fort Bragg**

*This policy sets out very specific guidelines for the operation of a diversion. It does not take much imagination to see those guidelines converted to terms for the operation of a diversion. But how is either a diverter or a regulator to know if restrictions on the operation of a diversion have been observed? Who provides that information? In 1879, the US Congress assigned (USGS) the task of providing reliable, third-party streamflow information. A principal reason for the creation of the agency was to allow water rights disputes to be judged on their merits and not on problems with the measurement of water volumes and rates of flow. Since 1879, the USGS has continued to do the job to the best of their abilities. But the annual budget cuts have taken their toll. We have had access to a steadily decreasing amount of quantitative hydrologic data for the last 25 years. Disputes based on this policy will almost certainly find their way to the State Water Board. How will those disputes be settled?*

#### **Thomas Kamm**

*I am the holder of License #9373, Permit 15221, Application 22432 for the reservoir located at my ranch at 11000 Chalk Hill Road, Healdsburg, CA 95448. This reservoir permit was transferred to me 32 years ago at the time of my purchase of this 86 acre farm, and is the sole factor in providing year-round water to the farm. The farm is listed as in a "scarce water area," and I tried to drill wells twice but found no water available. ... There is no alternative site on the property for an off-stream reservoir as the SED suggests. As stated there is no chance for finding water by drilling. ... I would submit that reasonable use of existing licenses should continue to be honored by the State Board, without impinging on the property rights of the user.*

#### **Rudolph H. Light**

*Why would existing legal onstream water storage and water storage structures be an issue if there is an agreement to restrict the collection dates from December 15 through March 31?*

## **Dwayne Starnes**

*Policy Implemented by State or Local Agency? Enforceability of Policy? Potential overload of code enforcement (local) - teeth? Effect on local permit/regulatory agency if local responsibility? Ease of implementation by local agency – ministerial or discretionary approval? Policy extend to private water wells? Policy to cover existing wells and water diversions/dams retroactive? Policy to cover blue line streams? Tributaries? Ephemeral? Perennial? Where will line be drawn? Basin plan may need to define ephemeral/perennial better. Can policy provide concise clarity without ambiguity? How do you provide intelligent comments to an as yet undefined policy? If local responsibility, policy should not lengthen local permit process. Policy makers should anticipate unintended consequences. Effect on local general plans? Consistency? Conflicting? Policy funded mandate?*

### **4.3.4. Policy Coverage**

The following persons submitted comments concerning the coverage of the proposed North Coast Instream Flow Policy. Excerpts from these comments are included below.

- California Department of Fish and Game, Central Coast Region
- California Department of Parks and Recreation
- City of Fort Bragg
- City of Napa
- Earth Defense for the Environment Now (EDEN)
- Colleen Fernald
- Friends of the Navarro Watershed
- Thomas Kamm
- Senator Sheila Kuehl
- Rudolph H. Light
- Natural Heritage Institute
- North Coast Water Rights Working Group
- North Marin Water District
- OZ Farm
- Regional Water Quality Control Board, North Coast Region
- Sanctuary Forest
- Sierra Club, Redwood Chapter
- Sonoma County, Permit and Resource Management Division
- Stoel Rives LLP and City of Fort Bragg
- Dwayne Starnes
- Beth Trachtenberg

The following comments have been organized into the following subsections: Water Rights Standards; Watershed Approach; Water Acquisition/Use; Seasonality; On-Stream Reservoirs and Small Dams/Wells; Special Permit Terms; Effectiveness Monitoring; Incentives and Disincentives/Penalties; Defining Which Streams Are Subject to the Policy and How; Large Diversions; and Subterranean Resources (and the need to delineate).

## **Water Rights Administration**

### **City of Napa**

*The State Board should not ignore the importance of site-specific biological and hydrological assessments, which are largely the basis for existing water rights. The water rights in the north coast have been the subject of numerous State Board and judicial proceedings, particularly with respect to the Napa River, therefore the existing balance between consumptive and instream uses should not be dismantled without careful consideration of the particular needs of each tributary and the Napa River itself.*

### **Rudolph H. Light**

*I noticed that the actual water right is not being challenged, but the method of storage is, and this policy will affect ponds built many decades ago. It may be beyond the scope of the Environmental Checklist but at some time in the near future there should be a full and open discussion about what appears to be an "end run" to take away water rights by taking away the ability to store water, especially on older permitted ponds.*

### **North Coast Water Rights Working Group**

*The recommendations we are considering include suggestions for improving the water rights noticing process, with a goal of involving all interested parties at an earlier date; earlier coordination of permit proceedings involving the State Board and other interested permitting and trustee agencies; and improvements to the environmental review and protest resolution process. We are also discussing new approaches to substantive water rights standards, and compliance and enforcement.*

### **OZ Farm**

*On November 15, 2001, the undersigned protested an application (permit # 30892) on the part of Point Arena Water Works to increase its rights to extract water from the Garcia River and requested a determination that the Garcia River is fully appropriated... I would appreciate your acknowledgement of this letter and your assurances that it will be filed in the Point Arena Water Works file, the file requesting determination that the Garcia river is fully appropriated and the file on this new matter (N. Coast Instream Flow Policy)*

## **Sonoma County, Permit and Resource Management Division**

*Establishing criteria and guidance regarding reservoirs would be beneficial. Specifically, identifying the types of reservoirs, as well as filling methods, need to have water rights. A couple examples would be an off-stream reservoir diverting stream flows (fairly obvious but should be included), an off-stream reservoir capturing sheet flow runoff from a hillside (not so obvious but recent discussion with state board staff indicate water rights are necessary), an off-stream reservoir capturing rainfall only. These are a few examples but guidance on when to notify the applicant and the Division of Water Rights would greatly assist a locally implemented ministerial process.*

## **Stoel Rives LLP and City of Fort Bragg**

*The State Water Board is also considering applying the policy to existing water rights. The methodology and application of this policy to existing rights is not described, analyzed or considered in the Environmental Checklist. Before the State Water Board can apply this policy to existing water rights, it must first develop the methodology under which it would apply to existing water rights, evaluate those potential environmental impacts, and consider whether such application of the policy could result in a takings of private property.*

## **Watershed Approach**

### **California Department of Fish and Game, Central Coast Region**

*It is critical that the Policy include procedures and tracking methods to determine water availability in the watersheds the Policy covers. Specifically, the Policy needs to identify a means to quantify the amount of water that is available for diversion in each watershed, to track the amount of water being extracted by all diversions that impact surface and sub- surface flow, and to determine the amount of water available for use after taking into account the requirements for instream flow protection. SWRCB should consider means by which potential applicants can determine the amount of water available for diversion from a given stream in the Policy area, such as identifying those streams that are fully appropriated. Water use accounting within a watershed should include all water uses that affect surface flows. Related to that objective, SWRCB should develop and evaluate an approach to more accurately determine the extent of diversions under riparian right within a watershed.*

### **California Department of Parks and Recreation**

*California State Parks requests that the SWRCB address potential foreseeable impacts to landscape-level features, as well as to specific sensitive and special-status resources. Adequate analyses will enable development of an Instream Flow Policy and mitigation measures that avoid or minimize impacts associated with resource values as they relate to the State Park System. Features that typify the landscape-level scale may include important recreation areas and viewsheds,*

*regional recreation trail corridors, key watersheds, wildlife habitats and corridors, cultural landscapes and sacred sites, and significant geological features and paleontological resources.*

*Landscape-level analysis is necessary because analysis deferred until project-level work will artificially fragment intact functional ecosystems for small-scale study.*

### **City of Napa**

*The City does not believe it is reasonable to have a cap on the total amount of water that can be diverted in a watershed. First, water is not removed from the watershed as soon as it is diverted, as it may return to the stream as drainage or seep into the groundwater. Second, a watershed-wide cap does not prevent over-pumping on any particular stream or river. The State Board would still have to determine how much water is available for diversion when a new permit is issued. In making that determination, the State Board regularly considers necessary and appropriate bypass flows. Therefore, by adopting the proposed Flow Policy, the State Board would not gain any procedural advantage that would streamline the process and help resolve the backlog of applications. In fact, the adoption of the proposed Flow Policy would further burden already hopelessly overwhelmed State Board staff. The only way the State Board could limit existing rights is by undertaking a massive water rights proceeding that includes all appropriators and riparians. Such a proceeding would be extremely expensive, be very contentious, and probably be larger than even the Bay-Delta proceedings because of the large number of individual interests that would have to be individually represented. Of course, after the decision is finally made, there will be years of court proceedings, including numerous appeals. This process would take decades.*

### **Earth Defense for the Environment Now (EDEN)**

*Unless the SWRCB determines water availability, they will not meet the intent of AB 2121. This law requires that minimum flows be established. Therefore, each watershed should be determined as to what water is available. The SWRCB shall determine what water has been taken illegally in order to establish current availability for the future.*

*SWRCB should determine when a watershed is over allocated and cease issuing new water withdrawal permits. In other words, the watershed is 'SHUT'.*

### **North Coast Water Rights Working Group**

*We have also been discussing and developing proposals for approaches/alternatives based on a collaborative effort that could meet water users' needs, conserve fish and wildlife habitat, and provide key data necessary for managing resources. The goal of this collaborative effort would be to take advantages of opportunities within a watershed, such as cost sharing, that may not be available in the traditional arena. Under this "watershed approach," diverters*

*could join together to develop local physical solutions to their watershed specific problems. For example, they could share costs associated with developing data and monitoring conditions and could work together on projects that improved habitat at the most significant locations in the watershed, rather than only on their individual properties. Although this idea is still in its formative stages, it would require instream flow protection provisions for the watershed and a “critical mass” of landowners to be implemented.*

### **Water Acquisition/Use**

#### **Earth Defense for the Environment Now (EDEN)**

*Verification of amount of water use by the user must be made by the SWRCB. ... In practice some illegal users waste water, don't need it but store it anyway or top off their reservoirs by pumping from the stream. Reservoir capacity should be limited to the amount of permitted use.*

*SWRCB should determine when a watershed is over allocated and cease issuing new water withdrawal permits. In other words, the watershed is 'SHUT'.*

*SWRCB should publicly provide complete GIS mapping updates on water availability in watersheds. This could notify potential users how much water could be used for what purposes.*

#### **Stoel Rives LLP and City of Fort Bragg**

*The State Water Resources Control Board, as part of its evaluation of the North Coast In-Stream Flow Policy, should consider and balance an increase in water demand over the next 20 to 25 years. As projected by the Department of Water Resources, by the year 2025, the state will have a significant increase in water demand, yet there is no current planning to meet this demand. As indicated in the Project Description, the State Water Board is responsible for administering surface water rights, and the Board's mission is to ensure their proper allocation and efficient use for the benefit of present and future generations. The reasonable and beneficial use of the surface supplies should be balanced against the protection of public trust uses, including fish and wildlife habitat. The Public Trust Doctrine requires the protection of public trust uses whenever feasible. Consequently, the State Water Board is placed in a unique position of balancing the protection of public trust uses against the increased need to efficiently use an increased amount of surface water in the future. As currently described, the North Coast In-Stream Flow Policy does not attempt to balance these conflicting obligations.*

### **Seasonality**

#### **California Department of Fish and Game, Central Coast Region**

*The NOAA and DFG Guidelines also addressed diversion to storage from December 15 to March 31 based on the limited amount of water available for use in the low flow*

months of the spring, summer, and fall. DFG recommends that SWRCB include in the Policy clear principles and guidelines for maintaining instream flows on a year-round basis, given that SWRCB regularly receives applications for direct diversions outside the season covered in the NOAA/DFG Guidelines from individuals who do not have the ability to store water. The SWRCB would be within its authority under Water Code section 1259.4 to adopt such a year-round approach.

### **City of Fort Bragg**

*“From April 1 to December 14 instantaneous inflow to the point of diversion must equal the instantaneous outflow to downstream reaches past the point of diversion.” The theoretical concept of “quantifiable instantaneous flow” is just that, a theoretical concept. The term is much used by DFG staff, but in reality, it does not exist. All measurements of natural streamflow are averages of a series of velocities for a series of cells made over time. If done to accepted (US Geological Survey) standards, the process is laborious and is anything but “instantaneous”. The best we can come up with is a reasonably accurate estimate.*

### **City of Napa**

*The City questions whether the State Board should, and whether the State Board could legally, require that all diversions be limited to three winter months. Some north coast streams and rivers may have sufficient flows to support additional beneficial uses during other parts of the year. Without a scientifically supported finding that there is no water available for appropriation in any of the other 8 ½ months in any of the north coast streams, the State Board would likely be violating the state constitutional requirement that all water be put to its highest and best use.*

### **Rudolph H. Light**

*The draft guidelines specify that all water from the beginning of the rainy season on October 1 until the 15<sup>th</sup> of December be passed through for benefit of fish. This amounts to 14,634 acre-feet. The guidelines then say that the unimpaired flow during the collection season of December 15 through March 31 should result in no more than 5% cumulative impairment at any point on the river or any of its tributaries. In other words, 95% of the water during the 3 ½ month collection season should go downstream for the benefit of fish. On average, during the collection season from December 15 through March 31, there is 100,418 acre-feet flowing past the gauge. The fish are to get 95% of this, or 95,397 acre-feet, and no more than 5,021 acre-feet will be available for storage. (I should mention that there is a provision that there may be impairment of up to 10%, but only after special studies are done, and it is clear that DFG and NMFS do not want that provision exercised. The draft guidelines are preparing agencies and the public to accept a policy in which 95% of the winter flow is reserved for anadromous fish and that the 5% available water be collected only in that 3½ month season).*

*After March 31, the collection season is over and all water from April 1 through September 30 prior to the beginning of the subsequent rainy season is to go downstream. On the average, this is 13,128 acre-feet for the West Fork. Looked at the other way, anadromous fish are to get more than 96% of the annual average water flow in the entire West Fork of the Russian River. Here is an issue which warrants critical and unbiased study, to demonstrate why anadromous fish need 95% of the water during the collection period. I have yet to see the scientific data that supports such a percentage during that time of maximum water availability, often to the point of flooding.*

*As written, the draft guidelines do not stand up to such a conclusion. Before you adopt these guidelines, there must be a better justification than that presented or the guidelines themselves need to be changed. In other words, the issue for this scoping process is a thorough study in order to justify why 95% of the water is necessary for salmonoids during December 15 – March 31. It may well prove to be the case that a significantly lower percentage is sufficient.*

### **Beth Trachtenberg**

*Allow storage of Riparian water from winter flow to be used in the dry months in struggling waterways. If people had other water to use in the dry months usually August October, the creeks might not dry up.*

### **On-Stream Reservoirs and Small Dams/Wells**

#### **Earth Defense for the Environment Now (EDEN)**

*On stream dams or reservoirs, everywhere in the watershed, in the future must be prohibited. Stream habitat below dams is altered hydrologically and changes the geomorphology of the stream. These impacts are environmentally significant. On stream dams and reservoirs that are illegal should be removed at the property owner's expense and placed off stream. Verification of amount of water use by the user must be made by the SWRCB. The actual place of use should remain a condition of any diversion permit. In practice some illegal users waste water, don't need it but store it anyway or top off their reservoirs by pumping from the stream. Reservoir capacity should be limited to the amount of permitted use.*

*SWRCB may decide to set guidelines that streams above reservoirs may not fall within AB2121. On the Napa sediment TMDL the SWQCB final EIR excluded streams above dams from TMDL guidelines because the SWQCB contends that the fish above the dam are not protected species. We would disagree with this guideline or policy. AB2121 does not specify that streams above a dam shall not fall under this law. Fish trapped above barriers could become anadromous if given the chance. Salmon and steelhead trapped by dams carry the same DNA as ocean going fish. Therefore, they can be protected species. Minimum flows must apply to all streams above barriers such as dams. The US Supreme Court ruled on May 15<sup>th</sup> that under the Clean Water Act, a hydroelectric dam in the state of Maine must*

*release sufficient flows for fish into US navigable waterways and provide for fish passage. (SD Warren Co v. Maine Board of Environmental Protection, et al, Case 04-1527) This ruling applies to all dams in all jurisdictional waters.*

*On stream barrier removal may cause release of toxic materials to the stream. Examples of this could be mercury and copper laden in soils and released to the stream as construction begins and the stream regains its course.*

### **Friends of the Navarro Watershed**

*Surely there will be difficult cases where onstream reservoirs, illegally installed, will have to be removed if they cannot be adequately bypassed. Even legally installed reservoirs being decommissioned can be considered if the owner can be convinced and if their seniority is unaffected. In either case, the physical removal needn't be a huge sediment load to the watershed downstream, given the technology and technique available such as temporary dams and planting of riparian vegetation to capture the soil deposited in the reservoir.*

### **Senator Sheila Kuehl**

*At a minimum, the North Coast Instream Flow Policy must include scientifically based safeguards to protect instream flows, maintain a natural hydrograph, regulate destructive in-channel reservoirs, provide fish passage and screens where helpful, and guard against cumulative impacts resulting from multiple diversions.*

### **Sierra Club, Redwood Chapter**

*The first, most essential step is to reassert control over the watershed and stop the continued construction of new onstream dams and illegal diversions. To that end we support the adoption of the 2002 Draft Guidelines (Section 3, page 6) that states:*

*3) No Additional Permitting of Small On-Stream Reservoirs Water diversion projects requiring new permits should avoid construction or maintenance of on-stream dams and reservoirs, including unpermitted storage ponds....*

*Justification: On-stream reservoirs should be prohibited...*

*The term "avoid" instead of "prohibit" was probably used because Section 7 sets out reasonable exceptions in the section titled Special Circumstances Allowing Onstream Reservoirs. However, we suggest limiting administrative discretion to those stated exceptions and suggest the following language:*

*Construction or maintenance of on-stream dams and reservoirs, including unpermitted storage ponds is prohibited unless covered by the exceptions listed in Special Circumstances Allowing Onstream Reservoirs.*

*Dam removal is not normally a desired outcome but must be considered in appropriate cases. There will be many difficult decisions where there isn't any easy*

*answer. We ask that criteria be developed by DWR that would justify an order to remove a dam. The burden to fix such problems should be on the applicant with a time limit from date of application. Criteria should identify issues that must be brought into conformance such as fish passage, season of diversion, diversion rate and volume of diversion as well as CDF&G Stream Bank Alteration Permits, CEQA review.*

### **Dwayne Starnes**

*Policy extend to private water wells? Policy to cover existing wells and water diversions/dams retroactive? Policy to cover blue line streams? Tributaries? Ephemeral? Perennial? Where will line be drawn? Basin plan may need to define ephemeral/perennial better.*

### **Beth Trachtenberg**

*Remove any known un-permitted dams and systems. Violators cause a lot of the flow problems in the dry season. Fine them a lot if they re-build the dams or continue to use their systems.*

### **Special Permit Terms**

#### **City of Napa**

*The City supports the State Board's proposal to require fish screens and fish passage facilities, where appropriate. The City would also support minimum bypass flows and diversion rates, provided the bypass flows and diversion rates are not arbitrary flows that are retroactively applied to all water right holders. The City believes that it is appropriate for the State Board to establish bypass flows and diversion rates on all new diverters when necessary based on the specific facts of each application.*

#### **Earth Defense for the Environment Now (EDEN)**

*The actual place of use should remain a condition of any diversion permit.*

#### **Thomas Kamm**

*I am the holder of License #9373, Permit 15221, Application 22432 for the reservoir located at my ranch at 11000 Chalk Hill Road, Healdsburg, CA 95448. This reservoir permit was transferred to me 32 years ago at the time of my purchase of this 86 acre farm, and is the sole factor in providing year-round water to the farm. The farm is listed as in a "scarce water area," and I tried to drill wells twice but found no water available. ... There is no alternative site on the property for an off-stream reservoir as the SED suggests. As stated there is no chance for finding water by drilling. ... I would submit that reasonable use of existing licenses should continue to be honored by the State Board, without impinging on the property rights of the user.*

## **Senator Sheila Kuehl**

*At a minimum, the North Coast Instream Flow Policy must include scientifically based safeguards to protect instream flows, maintain a natural hydrograph, regulate destructive in-channel reservoirs, provide fish passage and screens where helpful, and guard against cumulative impacts resulting from multiple diversions.*

## **Natural Heritage Institute**

*Each permit will specify management objectives for fish and associated riparian habitats in the reach affected by a diversion. The objectives will be measurable either directly or through an indicator, or by indicators of riparian health such as canopy, standards for which have been developed for timber harvest practices or as determined through stream surveys and GIS analysis. The management objective for a given reach will be sufficient to maintain or restore a functional range of naturally occurring spawning and rearing habitat where salmonids can exist. Similarly, management will also be for protection or restoration of functional riparian systems and associated wildlife.*

*The guidelines will apply to modified as well as new permit applications.*

*The design of each storage or diversion facility will, without active intervention (such as an operator's control), limit diversion to the allowed maximum and allow the required bypass flow. A licensed engineer will certify the adequacy of such design.*

## **North Marin Water District**

*NMWD recommends that the policy and Guidelines apply only to new water right permits.*

## **Effectiveness Monitoring**

### **California Department of Fish and Game, Central Coast Region**

*In addition to including a component for compliance monitoring, SWRCB should include a component to monitor the effectiveness of permit conditions and Policy requirements to protect instream flows. Such a component should authorize SWRCB to require or allow water users to modify their operations if SWRCB determines that instream flow protection measures are inadequate, or conversely, overly restrictive. SWRCB should also develop a procedure to ensure that any needed modifications will be made as quickly as possible to protect resources.*

## **Incentives and Disincentives/Penalties**

### **Colleen Fernald**

*I believe watershed stewardship is a benefit to climate protection; those who rise to, and surpass best management practices, deserve a sliding scale eco-credit.*

## **Regional Water Quality Control Board, North Coast Region**

*Incentives for conservation or restoration actions should be developed within the water rights permitting process. For example, Regional Water Board staff are aware of several landowners in Napa River watershed who are willing to modify existing water uses and rights in ways that would substantially enhance conditions for fish and wildlife. The costs, timeframe, and unpredictability at present of water rights permit review and approval processes however, typically prelude such actions from being followed through on. Incentives for enhancement or restoration should be evaluated under one or more alternative for the proposed policy.*

## **Sanctuary Forest**

*Depressed flow conditions in many North Coast streams have prompted a growing movement among state and federal agencies, local governments, land trusts, watershed groups, and agricultural and domestic water users to proactively address flow issues through a host of creative, innovative, voluntary and incentive-based measures and programs.*

*One such example is the Mattole Flow Program taking place in the Mattole River watershed. This water management program assists existing riparian diverters to reduce or eliminate surface water diversions during key periods of the year, through the use of off-stream water storage tanks. This program involves the use of voluntary forbearance agreements between local entities and water users, and has the potential to dramatically increase dry season flows in the Mattole River headwaters. The Mattole Flow Program is based on decades of flow and salmonid population data. Some of the diversions involved in this program may require permits, registrations and other approvals from the SWRCB.*

*One potential concern that we have with the development of the North Coast Instream Flow Policy is that valuable grass roots initiatives such as the Mattole Flow Program not be inadvertently undermined by the blanket imposition of the guidelines developed to address problems or issues in other watersheds and coastal streams. It is critically important that the instream flow policies developed through this process not foreclose or hinder the projects under development in the Mattole River watershed, and that such policies not discourage or undermine voluntary participation by landowners and water users participating in these innovative programs. Specifically, the development of enforcement element to the Instream Flow Policy should encourage the development of locally based programs, and should provide incentives for those water users who may be out of compliance to come into compliance with the policies.*

## **Sierra Club, Redwood Chapter**

*Many dams are built with professional advice prior to application that are incapable of compliance with the water rights law. Applications are submitted to the Water Board by consultants that intentionally contain false or misleading information that*

*results in the permitting of illegal dams. Diverting water without a permit is breaking the law and anyone who directly participates in that should be held responsible. The regulatory system currently imposes civil liability only upon the applicants and not their representatives. We recommend that in the case of willful misconduct of design professionals, the new policy include financial and/or professional sanctions such as denial of the right to represent clients before the board or in the permitting process. Design professionals who produce designs in conformance with the law should not be at a financial disadvantage to those who do not.*

*Progressive financial consequences must attach for the failure to comply with the new policy prohibiting building onstream dams. We would suggest non-discretionary automatic fines based on the acre-foot capacity of the diversion. Additional discretionary fines could be imposed for willful misconduct.*

*Applicants who comply with the system and present applications with all the necessary studies showing water availability and environmental compliance with the water law should be authorized for construction expeditiously. Priority should be given to proposed legal diversions over those that are not. Where water availability reports are complete and all other environmental concerns addressed, a temporary permit system authorizing the start of construction should be considered.*

### **Beth Trachtenberg**

*Enforce stiffer penalties for violators. If people know they would have to pay and/or give up water rights for violating water usage, there would probably be less violations.*

### **Applicability of the Policy to Specific Streams**

#### **California Department of Fish and Game, Central Coast Region**

*Hence, SWRCB needs to consider reasonable means to avoid those impacts in the SED. Additionally, while the NOAA/DFG Guidelines were developed to address instream flow protection for minor diversion projects, the principles and guidelines developed in the SED and adopted as part of the Policy can and should apply to a wider range of water projects to provide adequate North Coast instream flow protection.*

*For the Policy to be effective in protecting North Coast instream flows, the SWRCB will need to apply the Policy to all projects in the Policy area that affect surface and sub-surface flows. As the SWRCB pointed out in the EC, a narrow application of the Policy would allow water diverters to avoid the Policy by utilizing alternative sources of water that would still adversely impact instream flow. The SWRCB concluded that the ability of diverters to use alternative sources of water could lead to significant indirect impacts. Hence, SWRCB needs to consider reasonable means to avoid those impacts in the SED. Additionally, while the NOAA/DFG Guidelines were developed to address instream flow protection for minor diversion projects, the*

*principles and guidelines developed in the SED and adopted as part of the Policy can and should apply to a wider range of water projects to provide adequate North Coast instream flow protection.*

### **Earth Defense for the Environment Now (EDEN)**

*SWRCB may decide to set guidelines that streams above reservoirs may not fall within AB2121. On the Napa sediment TMDL the SWQCB final EIR excluded streams above dams from TMDL guidelines because the SWQCB contends that the fish above the dam are not protected species. We would disagree with this guideline or policy. AB2121 does not specify that streams above a dam shall not fall under this law. Fish trapped above barriers could become anadromous if given the chance. Salmon and steelhead trapped by dams carry the same DNA as ocean going fish. Therefore, they can be protected species. Minimum flows must apply to all streams above barriers such as dams. The US Supreme Court ruled on May 15<sup>th</sup> that under the Clean Water Act, a hydroelectric dam in the state of Maine must release sufficient flows for fish into US navigable waterways and provide for fish passage. (SD Warren Co v. Maine Board of Environmental Protection, et al, Case 04-1527) This ruling applies to all dams in all jurisdictional waters.*

### **Rudolph H. Light**

*Your narrative discusses these potential impacts and they will be studied. But what is missing is a discussion of the draft guidelines, and how they would be applied to each of the rivers and streams of the Policy Area.*

### **Sierra Club, Redwood Chapter**

*We would encourage the State Board to implement their resolution 2006-0046 that would expand the geographic scope of these measures to include the Klamath River and its tributaries. The Eel River and its tributaries must also be included as soon as feasible. We look forward to addressing the final Draft SED.*

### **Sonoma County, Permit and Resource Management Division**

*Project applicants need know if their projects are subject to the policy. An example of definitive criteria would be clearly defining, via maps and/or data, the subterranean streams for each waterway that will be affected by the proposed policy would greatly assist project applicants as well as keeping the process ministerial at the county level.*

### **Beth Trachtenberg**

*Do not issue any more permits on waterways that do not have enough water. There already is not enough water for the current fish and habitants in many of the North Coast waterways.*

## **Large Diversions**

### **Rudolph H. Light**

*No mention is made to exempt large reservoirs... Given the benefits to the fish if these dams were removed, perhaps there should be a study to examine the effects of these dams on spawning.*

## **Subterranean Resources (and Need to Delineate)**

### **Regional Water Quality Control Board, North Coast Region**

*The Policy should recognize that groundwater use may deplete or contribute to the depletion of stream flows to the degree that beneficial uses are not supported and water quality objectives are not met. The Policy should establish a process through which the Division of Water Rights can evaluate the impacts on stream flows from new wells that are proposed in areas where the extent of the subterranean stream has not been defined. To control these impacts, the State Water Board should investigate, and if warranted, delineate the subterranean streams of the project area to inform parties whether a permit is required. It would be useful to also determine water availability of the subterranean resource, as this information will be necessary for water right permit approvals.*

### **Sonoma County, Permit and Resource Management Division**

*Project applicants need know if their projects are subject to the policy. An example of definitive criteria would be clearly defining, via maps and/or data, the subterranean streams for each waterway that will be affected by the proposed policy would greatly assist project applicants as well as keeping the process ministerial at the county level. If a well permit is submitted and the location was checked against a subterranean stream map, we would then be in a better position to inform the applicant of the need for a water right and whether to send the applicant to the Division of Water Rights or not. The delineation of subterranean streams would also prevent costly and timely project by project evaluations or studies by individual applicants which would also slow the county permitting process.*

*State Water Board staff Dana Heinrich indicated there is funding currently available to map the subterranean waterways. We strongly encourage the state to provide this mapping in order to facilitate the implementation of this proposed policy. We are also concerned that without defining the subject areas, project by project studies would be required. This has the potential to create a costly and lengthy discretionary review and permitting process which would be unacceptable to the public and the county.*

### **4.3.5. Enforcement/Compliance**

The following persons, agencies, and organizations submitted comments concerning enforcement of and compliance with the proposed North Coast Instream Flow Policy. Excerpts from these comments are included below.

- California Department of Fish and Game, Central Coast Region
- California Department of Parks and Recreation
- Earth Defense for the Environment Now (EDEN)
- Senator Sheila Kuehl
- Natural Heritage Institute
- North Marin Water District
- Porgans and Associates
- Regional Water Quality Control Board, North Coast Region
- Sierra Club, Redwood Chapter
- Sonoma County, Permit and Resource Management Division
- Dwayne Starnes
- Beth Trachtenberg

### **California Department of Fish and Game, Central Coast Region**

*Although the Water Code currently requires that statements of riparian use be filed with SWRCB, there is no penalty for non-compliance, and even when statements are filed, they do not always quantify the amount of water being diverted. For the Policy to be effective, it must require an accurate accounting of riparian water use and include that as part of the Policy's enforcement element discussed below.*

*SWRCB states in the EC that it proposes to include an enforcement element as part of the Policy. DFG supports that decision, but recommends the SWRCB includes as part of the enforcement element, a monitoring component that enables SWRCB to determine whether water users are in compliance with their permit conditions or Policy requirements. In that regard, SWRCB should evaluate tracking methods, such as updated compliance monitoring systems that are capable of continuous monitoring, passive diversion systems, and/or automated diversion systems. SWRCB should identify funding sources to purchase and install necessary gages in tributaries in the Policy area.*

*In developing the enforcement element in the Policy, SWRCB should also consider modifying and strengthening its current enforcement procedures to remedy violations in a more timely manner to better protect public trust resources. For example, SWRCB should evaluate means to: 1) Adequately fund compliance activities; 2) reduce the need to enforce on a project-by-project basis, especially in watersheds where multiple diverters are operating illegally; 3) promote compliance through "carrot and stick" measures; and 4) develop enforcement alternatives that require less staff time to correct violations. Including improved monitoring methods would be a positive first step to achieve a greater level of compliance. However, SWRCB should also consider measures to prevent violations from occurring in the first place, such as improved outreach to local agencies and consultants and other professionals involved with water development and diversion projects. Such*

*outreach should clarify the intent and requirements of the Policy and the consequences of not meeting those requirements.*

### **California Department of Parks and Recreation**

*California State Parks believes that the main goals of the proposed North Coast Instream Flow Policy will, for the most part, benefit natural resources, including those in the State Park System. These goals are the standardization of minimum bypass flows and cumulative maximum rates of diversion, conservation of natural hydrographs, promoting the installation and use of fish screens and fish passage facilities, and associated enforcement guidelines.*

### **Earth Defense for the Environment Now (EDEN)**

*EDEN has been submitting protests to the SWRCB for four years on the Napa River. This River is literally dying from lack of water. Recent kayaking down the river by EDEN members has brought forth alarming conditions. Many streams do not have adequate flows. Lack of flow is killing off whole watersheds to anadromous fish and exacerbating already poor water quality. Illegal dams should not be permitted and required to be removed. If the SWRCB dismisses illegal use by asking people to simply apply for the water, and then accept the application, it sets an agency wide precedent that grabbing water illegally will be ultimately forgiven. We can not afford this kind of policy that harms the public benefit in a civil society.*

### **Senator Sheila Kuehl**

*The policy must also include measures that ensure proper monitoring and compliance. I am pleased that the Notice of Preparation declares that the policy will include an enforcement element.*

### **Natural Heritage Institute**

*State Water Board or RWQCB staff, alone or with DFG or NOAA Fisheries staff, will have reserved authority to inspect a point of diversion without prior notice. Peace officer status will not be necessary.*

### **North Marin Water District**

*NMWD is supportive of adopting a SWRCB timeline to act on water right applications. NMWD also concurs generally regarding the need for improved water rights enforcement, including use of some form or forms of penalties for illegal diverters.*

### **Porgans and Associates**

*The issue of enforcement of the yet-to-be drafted policy would have been of paramount concern to the public, and it would have been refreshing and helpful if your staff informed those present that one of the so-called reasons for the wait and hurry up and get it over with meeting, was the result of the Legislature's failure to*

*provide your Board with the funding to carry out the policy mandate required in AB 2121. More importantly, it would have been extremely beneficial if those members of the public attending the meeting had been apprised of your Board's repetitive failures to protect the waters of the State, in cases involving either other state or federal agencies, who had routinely violated water right permits requirements and/or water quality standards, until Porgans & Associates pushed the issue. The SWRCB's actions and/or failure to act, were the predominant force behind bringing the Sacramento-San Joaquin Delta and the San Francisco Bay Estuary to a near ecological collapse, resulting from massive illegal exports of water from the system which was exported by both state and federal water projects. The SWRCB in conjunction with other federal and state agencies were the primary reason that the Bay/Delta was pushed to a near ecological collapse, during the state's last major drought (1987-1992) which it has yet to recover from and placed a number of species as either threatened and/or endangered on the Endangered Species Act. During the August 16 meeting, P&A expressed that and other enforcement concerns with Ms. Whitney, relative to the Board's deplorable enforcement track record, and asked her just how the Board would enforce such a policy, especially in light of the fact that the Legislature has a pattern not to fund the enforcement component of such policies? Ms. Whitney conceded that it would be extremely difficult. To Ms. Whitney's credit she always seemed to conduct herself in a manner conducive to a responsible public servant; notwithstanding, she is neither a Board member or a policy maker. The deplorable conditions of many of the watersheds throughout the State of California, including those in the North Coast, are the result of the governments' collective actions and/or failure to fulfill their respective public trust mandates. There are a plethora of laws, rules and/or regulations to provide protections for both public trust resources, the waters of the state and private property; however, for there are also a myriad of reasons and/or excuses why the full weight of such laws, rules and/or regulations are either not being enforced or selectively enforced. Your Board has ample existing authority to protect the waters of the state and/or the trust resources therein. Notwithstanding, the record will also attest to the fact that in many of the projects Porgans & Associates have been involved with, wherein your Board had legal jurisdiction, it simply failed to perform its regulatory and/or trust responsibilities. This so-called North Coast Instream Flow Policy will be yet another perfunctory facade that will only be used as a pacification and/or delay tactic that ultimately will do more harm than good. Whether it is the result of no or limited legislative funding for enforcement personnel or due to the political forces and pressures that exert their influence over the Board members, all of whom are pre-screened by the you know whose who. P&A would be extremely pleased if the SWRCB just fulfilled its existing regulatory mandates. However, when P&A participated in the SWRCB's 15-plus years of so-called public hearings to strengthen the minimal water quality standards to protect the Sacramento-San Joaquin Delta and the San Francisco Bay, P&A and your staff documented hundreds of violations of the existing standards, which your Board failed to enforce. For detailed information please refer to the SWRCB's hearing records, wherein P&A*

*pushed for and participated in the separate “public” hearings related to the state and federal governments’ failure to comply with their respective water right permits.*

### **Regional Water Quality Control Board, North Coast Region**

*Staff also understands from the scoping meeting that there are numerous illegal diversions and reservoirs in the Project area that must comply with the Guideline provisions to receive authorization or otherwise be removed. Subject to careful mitigation to control sediment and other water quality impacts (discussed below), the Regional Water Board staff supports aggressive enforcement against illegal storage and diversions that are unable to reach compliance. In general, the Regional Water Board staff considers the removal of illegal and obsolete reservoirs and water diversion facilities to be restoration projects and therefore may tolerate short-term sediment increases and make other allowances on a case-by-case determination if these impacts are outweighed by the long-term benefits to the beneficial uses.*

*After implementation, it will be necessary to reassess water quality conditions in order to determine whether existing permits and licenses, and riparian diversions require modification.*

### **Sierra Club, Redwood Chapter**

*We have addressed most of our suggestions to the Project Goals and Objectives at Page 6 of the Checklist that states “...the Division (DWR) proposes to include an enforcement element as part of the policy that will govern water rights enforcement actions...” We would like to see policy provisions to return the rule of law to the process. We strongly believe there should be an enforcement policy that has consequences for failure to comply, not simply for punishment, but to restore fairness to the process. To that end we would offer several specific recommendations for consideration.*

### **Sonoma County, Permit and Resource Management Division**

*Please consider enforcement of this policy. Our Code Enforcement Division currently has an impressive work load and backlog. Workload is prioritized by the hazard to building and life safety, and public health. Any additional enforcement requirements would be prioritized accordingly. With 4300 enforcement cases currently pending, resolution of instream flow policy violations would be significantly delayed.*

### **Dwayne Starnes**

*Enforceability of policy? Potential overload of code enforcement (local) – teeth?*

### **Beth Trachtenberg**

*Allow complaints to remain anonymous to the person that is in violation. Allow someone to issue a complaint and identify themselves to the SWRCB, but not the*

*person in violation. Often it is a person complaining about their neighbor. This can create tension between them, so many times a person will choose not to issue a complaint because of this.*

#### **4.3.6. Monitoring**

The following persons, agencies, and organizations submitted comments concerning monitoring as it pertains to development of the proposed North Coast Instream Flow Policy. Excerpts from these comments are included below.

- MBK Engineers
- Napa County, Office of Conservation, Development, and Planning

#### **MBK Engineers**

*Identify the monitoring needs for environmental conditions including, but not limited to fishery resources and habitat, water quality, and stream flow in order to develop additional data for future revisions to the Policy; and identify the responsible government agencies for the monitoring and reporting.*

#### **Napa County, Office of Conservation, Development, and Planning**

*The DRAFT NMFS-DFG Guidelines referenced in the proposed policy rely upon considerable knowledge and understanding of local watershed behavior and hydraulics, as well as what habitat and species exist (or could exist) within each of them. This detailed level of environmental information is not readily available for many of the watersheds in Napa County. Your environmental analyses, as well as final policy draft, should consider the necessary infrastructure (flow gages, monitoring sites, enforcement) needed to understand, measure and comply with any proposed actions/regulations suggested, and additionally identify who is responsible for funding, installing and maintaining such infrastructure.*

#### **4.3.7. Exemptions/Special Exclusions**

The following persons, agencies, and organizations submitted comments concerning exemptions/special exclusions from the proposed North Coast Instream Flow Policy. Excerpts from these comments are included below.

- Alder Springs Ranch and Vineyard
- Fort Bragg Trout Farm
- Thomas Kamm
- North Marin Water District
- Pauline Sanderson

## **Alder Springs Ranch and Vineyard**

*I wanted to write to you regarding the instream flow policy document that you are preparing. I have large properties in Mendocino County on the north fork of the Eel, on the main branch of the Eel and on the Garcia River. I hold a number of permits for ponds, etc., and have many small year round streams that run on my ranches.*

*Keeping instream flows during summer and early fall is a big challenge. Every one needs water and streams are the easiest place to get it. Also, riparian rights are simple and straightforward. There is just enough water in most small coastal streams in late summer to just keep the fish alive without every human being putting a pump or a dam in the creek.*

*Storage into stock ponds or storage ponds has a number of advantages: Ponds can be filled during the winter months when stream flows are high (often very high), they are very good for wildlife, and a great deal of water can be stored so that water doesn't need to be taken from the streams in the summer. These ponds, in my view, have very few disadvantages and many things to recommend them, yet they are very hard to get permits for. (Years of applications and red tape.)*

*In your solution please try not to just add more paperwork and red tape. Take some away in an area that is beneficial such as ponds. It's the fees, red tape, and hassle that keeps people from doing things, or they just do them without permits.*

## **Fort Bragg Trout Farm**

*There seems to be no provision to exclude or exempt safe diversions that do not consume water but merely temporarily divert it before its clean, unpolluted return. Or to protect vast wetlands and riparian habitat that grandfathered (well established) diversions create. Animals and plants do not abide by NMFS-DFG draft guidelines. Some situations are unique and should have an avenue for exemptions and variances that make sense.*

## **Thomas Kamm**

*I am the holder of License #9373, Permit 15221, Application 22432 for the reservoir located at my ranch at 11000 Chalk Hill Road, Healdsburg, CA 95448. This reservoir permit was transferred to me 32 years ago at the time of my purchase of this 86 acre farm, and is the sole factor in providing year-round water to the farm. The farm is listed as in a "scarce water area," and I tried to drill wells twice but found no water available.*

*There is no alternative site on the property for an off-stream reservoir as the SED suggests. As stated there is no chance for finding water by drilling. The reservoir is stocked with Bass and Sunfish, and is used for recreation, as well as fire protection. Relying on the license, I have built 2 homes on the property, which are totally reliant on the reservoir for year-round supply as well as stock watering for our Angus cattle*

herd. As noted in my Report of Licensee for 2003, 2004, 2005, we have continued to implement water conservation efforts, including aquatic vegetation removal and erosion control (by monitoring many culverts and drains on this hilly property).

### **North Marin Water District**

NMWD does, however, urge caution in application of the draft California Department of Fish and Game (DFG) and National Marine Fisheries Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water diversions in Mid-California Coastal Streams (Guidelines), because we do not believe that a “postage stamp” or “one size fits all” approach is appropriate. NMWD has specific comments for the SWRCB’s consideration, and an example to substantiate our precaution regarding use of postage stamp guidelines.

NMWD recommends that minor petitions for change to existing permits or licensed water rights not be subject to the proposed Guidelines. Minor petitions are often needed to refine or “fine tune” water rights and operations there under, without re-opening the balancing which occurred when the right was issued.

NMWD recommends that permit applications for diversions from streams, which are tributary to existing on-stream surface water storage reservoirs, be excluded from the proposed Guidelines.

*Precautionary example where “postage stamp” Guidelines are inappropriate: NMWD’s existing diversion from wells located adjacent to Lagunitas Creek under permitted and licensed rights is in the tidal reach of the stream, which is tributary to Tomales Bay. In 1992 a hearing was held before the SWRCB to address issues regarding diversion of water from Lagunitas Creek by Marin Municipal Water District, NMWD and Waldo Giacomini. The resulting Order (WR 95-17) amended the parties’ water rights and required changes in water diversion practices to protect fishery resources and to prevent unauthorized diversion and use of water from Lagunitas Creek. The Order determined that, due to the low natural flow of Lagunitas Creek and the existence of senior water rights, there ordinarily would be no water available for diversion by NMWD (due to its junior priority) during July through October of dry years. NMWD was ordered to notify the SWRCB of an alternative source of water to be used by its 1700 West Marin customers during those periods.*

*In 1995 NMWD worked out a cooperative physical solution with Giacomini to acquire a portion of his senior water right, in exchange for NMWD delivery of irrigation water to the Giacomini Ranch. Since that time, in an attempt to perfect a change in place/purpose of use for the more senior water right acquired from Giacomini (which was originally permitted and licensed for irrigation on the Giacomini Ranch) NMWD has:*

- *Reduced the portion of the senior water right acquired from Giacomini by 40%, well below the portion originally proposed to the SWRCB.*

- *Agreed to operate without a summer dam on Lagunitas Creek, thus subjecting NMWD's water supply for 1700 people to potential salinity intrusion from the tidal influence of Tomales Bay.*
- *Agreed to dedicate an existing junior water right to instream use purposes, thus insuring that this water would not be available for NMWD's use or for other appropriators in normal years.*
- *Enhanced the NMWD water conservation programs in the Point Reyes Station area to regularly inform NMWD customers of the District's water supply status and of necessary conservation measures (including water shortage contingency measures tied to community wide water demand); and finally*
- *Agreed to a volumetric limit on the total amount of NMWD diversions during summer months of dry years.*

*Notwithstanding these measures to balance fishery and community water supply needs, NMWD has been stymied from obtaining SWRCB approval of its minor change petition to ensure a safe and reliable source of water supply for the 1700 people in the Point Reyes Station area. The California Department of Fish and Game (DFG) protested our petition for change to limit the annual volume diverted (and NMWD has agreed to this limit), and has most recently requested a limit on NMWD's instantaneous diversions. NMWD has clearly demonstrated that this simply cannot work absent protection of municipal supplies from salinity intrusion (e.g., installing a summer dam on Lagunitas Creek). The Guidelines and DFG's request for an instantaneous diversion limit are both immaterial in the geographic location of NMWD's diversion since the area is tidally influenced and all parties agree that in the summer months of all years, no anadromous fish reside, spawn or migrate in the vicinity of the NMWD diversion.*

### **Pauline Sanderson**

*I'm 70 years old and I'm raising 6 grandchildren. I also have 2 other grandchildren and their family living in small cabins on my land. I've lived here for 35 years. I live 8 miles from town. So we have no city water. We use the water from Long Valley Creek. We have land on both sides of the creek. We pump water from the creek to a tank. We pump for 1½ am and 1½ pm. We have a small spring which runs for a couple of months in winter. We tried to get it fixed but it can't be because there is no water but for the couple of months in the winter. In the past we had 4 wells dug but couldn't get water. So we use the creek water for all our families' needs, water a small veg and flower garden to raise a calf or pig and a few chickens. We also need the water for fire protection as we live 12 miles from the fire station. We don't waste water but we do need the water from the creek to live on our land.*

#### **4.3.8. Feasibility/Effectiveness (Funding, Staffing)**

The following persons, agencies, and organizations submitted comments concerning the feasibility and effectiveness of the proposed North Coast Instream Flow Policy. Excerpts from these comments are included below.

- California Department of Fish and Game, Central Coast Region
- City of Napa
- Rudolph H. Light
- Napa County, Office of Conservation, Development, and Planning
- Regional Water Quality Control Board, San Francisco Region
- Sierra Club Redwood Chapter
- Dwayne Starnes
- Stoel Rives LLP

#### **California Department of Fish and Game, Central Coast Region**

*Obviously, effective implementation of the Policy will require additional SWRCB staff time. SWRCB should evaluate possible funding sources to support adequate staffing levels to expedite the processing of permits and adequately monitor and enforce permit conditions and Policy requirements.*

#### **City of Napa**

*The General Plan, and the associated water supply plans, for the City have been developed through the year 2020, and beyond, based on the current diversion and bypass requirements. If the Flow Policy is adopted as proposed, the City will be required to spend millions to complete new planning documents. The proposed Flow Policy will profoundly alter the future of the City of Napa.*

*Moreover, if the City's planning documents are undermined by a loss of water rights, the entire community would be negatively impacted. The City's ability to provide economic development and affordable housing would also be profoundly compromised. As the City would have to develop new sources of drinking water, it would have to raise water rates dramatically, which would have the greatest impact on its poorest customers.*

#### **Rudolph H. Light**

*As a practical matter, the cost of construction of a pit pond is much greater than for an onstream pond because more dirt has to be moved. Also, many locations don't have flat ground to put a pond in, so it is environmentally impossible to construct an offstream storage facility. Once more this is an issue for detailed further study, the goal of which would be to answer the following questions. (1) Will it be possible to get a permit for a new pond? (2) How realistic is it for all landowners to actually build offstream storage?*

## **Napa County, Office of Conservation, Development, and Planning**

*The County is generally supportive of the proposed policy goals, however we are concerned about the potentially broad scope of the policy, the lack of specificity pertaining to implementation and responsibility, and potential local impacts resulting from diverters taking actions as a result of the policy.*

## **Regional Water Quality Control Board, San Francisco Region**

*To pay for such a program, the State Board should consider development of a fee assessment program for existing and proposed water users within the project area, where assessed fees might be commensurate with size or significance of the water right. Such a program would effectively address many current problems, including greatly enhancing the quality of information used to make water right decisions, more equitably distributing burdens between existing and proposed users, and ultimately leading to a much faster and more predictable process for permit review and approval.*

## **Sierra Club, Redwood Chapter**

*The long delays in the current processing of applications pointed out in AB 2121 needs to be addressed since the provisions of AB 2121 will increase that load. Six staff members for the enforcement group is not adequate. We understand the reluctance of the senior staff and the Board to request additional personnel, however in this case it is the legislature and governor that is asking this staff to take on additional administrative work. This is work that will benefit the economy of the state by more efficient and equitable distribution of water. It is important to have the necessary resources to succeed. It would be very unfortunate to adopt these guidelines and have them fail for the lack of sufficient personnel. To succeed this entire program must have the necessary funding and staff support.*

## **Dwayne Starnes**

*If local responsibility, policy should not lengthen local permit process.*

## **Stoel Rives LLP**

*The proposed policy requires quantitative data, yet there is no information as to how that data will be collected. Requiring individual diverters to collect the data is impractical.*

### **4.3.9. Economics/Costs**

The following persons, agencies, and organizations submitted comments concerning the economics and costs of the proposed North Coast Instream Flow Policy. Excerpts from these comments are included below.

- Alder Springs Ranch and Vineyard
- City of Fort Bragg

- City of Napa
- Fort Bragg Trout Farm
- Rudolph H. Light
- Napa County, Office of Conservation, Development, and Planning

### **Alder Springs Ranch and Vineyard**

*In our area, a great number of parcel owners put a pump in the creek for domestic use and yard irrigation. This is not much of a problem most of the year but can dry up a stream in late summer when water demand is the highest and supply the lowest. Many of these parcel owners don't want to invest the money (about \$10,000.00) to dig a 200-250 foot deep well. Wells would take a great strain off the coastal streams but only when there is an incentive to dig wells will this happen. For example 50% grant for digging a well, \$500.00 annual riparian fee for every landowner who pumps directly from a stream.*

### **City of Fort Bragg**

*To provide acceptable data, rainfall-measuring and stream-gauging stations must be constructed and operated to rigorous standards. The USGS Techniques Manual sets those standards. The cost of constructing a stream-gauging station is estimated to be between \$50,000 and \$100,000. And the cost of operating a standard USGS stream-gauging station is presently \$22,000 per year.*

### **City of Napa**

*The General Plan, and the associated water supply plans, for the City have been developed through the year 2020, and beyond, based on the current diversion and bypass requirements. If the Flow Policy is adopted as proposed, the City will be required to spend millions to complete new planning documents. The proposed Flow Policy will profoundly alter the future of the City of Napa.*

*Moreover, if the City's planning documents are undermined by a loss of water rights, the entire community would be negatively impacted. The City's ability to provide economic development and affordable housing would also be profoundly compromised. As the City would have to develop new sources of drinking water, it would have to raise water rates dramatically, which would have the greatest impact on its poorest customers.*

### **Fort Bragg Trout Farm**

*Also stipulate that if your guidelines damage or end a family livelihood, financial restitution must be forthcoming.*

### **Rudolph H. Light**

*The Williamson Act is clear that land must be retained in agricultural use and from time to time a county may require the landowner to document the agricultural use*

*using receipts and inventories for crops or livestock. If the land is not kept in agricultural production, a county may initiate termination of the contract because of the production provision not being met....The landowner in turn, no longer being under the obligations of the Williamson Act and faced with the burden of much higher property taxes, may well subdivide and sell the land for development, which will lead to many significant impacts.*

*If this policy is adopted and results in removal of onstream ponds, it will cause many landowners severe hardship and may result in some closing down their vineyards and their ranches.*

*Well drilling and well development are expensive, and there are significant annual pumping costs. Furthermore, in many areas, there is no underground water to use, no matter how deep the well is drilled.*

### **Napa County, Office of Conservation, Development, and Planning**

*Your environmental review should consider how actions resulting from the proposed policy will affect funded stream and river flood and restoration projects. Many of projects in Napa County have been hydraulically designed based upon current flow conditions. Modifications to the timing and volume of present stream flows may influence the effectiveness and performance of these projects and could reduce value of public and private dollars invested in these projects.*

#### **4.3.10. Implementation**

The following persons, agencies, and organizations submitted comments concerning implementation of the proposed North Coast Instream Flow Policy. Excerpts from these comments are included below.

- City of Fort Bragg
- City of Napa
- MBK Engineers
- Napa County, Office of Conservation, Development, and Planning
- North Coast Water Rights Working Group
- North Marin Water District
- Regional Water Quality Control Board, North Coast Region
- Regional Water Quality Control Board, San Francisco Region
- Sierra Club, Redwood Chapter
- Sonoma County, Permit and Resource Management Division
- Dwayne Starnes
- Beth Trachtenberg

## **City of Fort Bragg**

*The State Water Board is also considering applying the policy to existing water rights. The methodology and application of applying this policy to existing rights is not described, analyzed or considered in the Environmental Checklist. Before the State Water Board can apply this policy to existing water rights, it must first develop the methodology under which it would apply to existing water rights, evaluate those potential environmental impacts, and consider whether such application of the policy could result in a takings of private property.*

*In the 2002 Guidelines, Page 2, paragraph 1, the concept of “maximum cumulative volume of water that can be diverted from a watershed” is introduced. This is a useful tool for regulating water diversions, but a “maximum cumulative volume” is a quantitative amount. How can this concept be employed with a diminishing amount of quantitative information?*

*This policy sets out very specific guidelines for the operation of a diversion. It does not take much imagination to see those guidelines converted to terms for the operation of a diversion. But how is either a diverter or a regulator to know if restrictions on the operation of a diversion have been observed? Who provides that information? In 1879, the US Congress assigned (USGS) the task of providing reliable, third-party streamflow information. A principal reason for the creation of the agency was to allow water rights disputes to be judged on their merits and not on problems with the measurement of water volumes and rates of flow. Since 1879, the USGS has continued to do the job to the best of their abilities. But the annual budget cuts have taken their toll. We have had access to a steadily decreasing amount of quantitative hydrologic data for the last 25 years. Disputes based on this policy will almost certainly find their way to the State Water Board. How will those disputes be settled?*

*During the first Scoping meeting, a Water Rights staff person was asked “who will provide the\_data?” The answer was “it will be the applicant’s responsibility. Presumably, that means ‘consultants’”. The Water Rights staff person then asked “What standards should be used?” Our staff hydrologist answered “The USGS Techniques Manual”. The Water Rights staff person thought this was excessive and imposed too much cost on the applicant. Implementing this policy will bring us full circle, right back to the 1879 issue. Either USGS should be made the data provider, or the State Water Board should develop and describe a feasible alternative.*

## **City of Napa**

*The State Board should formally adopt the broad concepts of appropriate bypass flows and specific diversion rates, a preference for off-stream storage and wet season diversions, and fish screens and fish passage facilities, when appropriate, to be applied on a case-by-case basis when new permits are issued and when no site specific biologic and hydrologic assessments are available. Assembly Bill 2121,*

*which launched the State Board's current instream flow process, did not limit the State Board's broad discretion and only requires that the State Board adopt broad principles and guidelines. The State Board should therefore use the broad discretion permitted in AB2121 to adopt a policy that can be implemented within the state's, and the State Board's, available resources, and that is flexible enough to accommodate the specific needs of each north coast stream.*

### **MBK Engineers**

*Identify the responsible government agencies for the monitoring and reporting.*

### **Napa County, Office of Conservation, Development, and Planning**

*The State Board's suggestion that it may defer specifics to "project level" analyses undertaken at a future date suggests a piece-meal approach that will overly burden the County, cities, special districts and private landowners charged with implementing State policy. Your environmental document should contain specific information about reasonably foreseeable implementation actions anticipated as a result of the State's proposed policy, and thoroughly assess the localized impacts associated with each.*

### **North Coast Water Rights Working Group**

*The recommendations we are considering include suggestions for improving the water rights noticing process, with a goal of involving all interested parties at an earlier date; earlier coordination of permit proceedings involving the State Board and other interested permitting and trustee agencies; and improvements to the environmental review and protest resolution process. We are also discussing new approaches to substantive water rights standards, and compliance and enforcement.*

### **North Marin Water District**

*The policy must include flexibility to enable appropriative water use in situations where the Guidelines are not applicable.*

### **Regional Water Quality Control Board, North Coast Region**

*The State Water Board may also formulate and adopt state policy for water quality control in accordance with these provisions. (Wat. Code, 13140 & 13170.) The state plan will supersede any conflicting provisions of the regional water quality control plans.*

*The Regional Water Board staff strongly support:*

- *the seasonal limits on additional diversions;*
- *the prohibition on additional permitting of on-stream reservoirs;*
- *the minimum bypass flow provisions;*
- *protections of the natural hydrograph;*

- *and the requirement that all new permits require adequate fish passage and protection measures.*

*The Regional Water Board may consider developing a general waste discharge requirement for dam removals that meets certain parameters.*

### **Regional Water Quality Control Board, San Francisco Region**

*To pay for such a program, the State Board should consider development of a fee assessment program for existing and proposed water users within the project area, where assessed fees might be commensurate with size or significance of the water right. Such a program would effectively address many current problems, including greatly enhancing the quality of information used to make water right decisions, more equitably distributing burdens between existing and proposed users, and ultimately leading to a much faster and more predictable process for permit review and approval.*

### **Sierra Club, Redwood Chapter**

*A short grace period should be established prior to a date certain when the no-new-dams-onstream policy goes into effect. This could encourage unidentified illegal diverters to come out of the shadows and apply for permits under the current policy. The grace period could make adoption of the new policy more palatable to diverters giving them an option of the current policy where they would voluntarily come into the system, submit an application and bring their diversion into compliance, or failing to do so, stay in the shadows until discovered and face removal under the new policy. It would also make the point that violation of water rights law will, in the future, no longer go unpunished.*

### **Sonoma County, Permit and Resource Management Division**

*We are concerned that counties will be required to implement to policy once it is adopted. Please give consideration to whom and how the proposed policy will be implemented. Our preference is to have the policy implemented at the state level as this is a state policy. Further, State Water Board staff have discussed the inter-relationship between water rights and water quality.*

*Due to this inter-relationship, we suggest the nine Regional Water Quality Control Boards implement this state policy as they are the state's agency for protecting water quality.*

*If consideration is given to having local government (cities and counties) implement the proposed policy, please consider who has legal authority to administer water rights. It is our understanding administering water rights is the purview of the State of California. If legal authority is or can be established and local government is considered as an implementing entity, please consider what effect the proposed policy will have on the county permitting processes described above. Particularly*

*the ministerial permitting of water wells, reservoirs, building and other permits adjacent to Sonoma County streams and rivers. Our preference is to keep the process ministerial.*

*Please consider the two analogies where State retains authority. One is the California Fish and Game streambed alteration permits. In the ministerial process, the county has no authority to require a project proponent obtain a Fish and Game permit, however, PRMD informs a permittee if we believe the project may require a Fish and Game permit. The second analogy is the State Water Resources Control Board's General Permit for Storm Water Discharges Associated With Construction Activity. The county has no authority to require a project proponent obtain coverage under this general permit. However, we do inform applicant's of the need for this permit if the project exceeds the one acre land disturbance criteria. We also work closely with the North Coast Regional Water Quality Control Board's regarding this program. In both scenarios, our permit process is ministerial and the state retains its authority.*

*Typically with new regulations or policies there is an implementation date or a starting point and projects completed prior to the implementation date are not subject to the new regulations. Please consider how the proposed policy will be implemented relative to existing projects.*

### **Dwayne Starnes**

*Policy implemented by State or local agency?*

### **Beth Trachtenberg**

*Provide education for surface water uses. Mail out information to people that can use or have riparian &/or appropriative water rights regarding their rights and responsibilities in easy to understand wording. Possibly hold seminars in convenient locations.*

*Provide alternatives for surface water users. Mail out information to people that can use or have riparian &/or appropriative water rights regarding alternatives to using surface water, such as rainwater water catchment. Possibly provide financial &/or design assistance. Possibly hold seminars in convenient locations.*

### **4.3.11. Policy Alternatives**

The following persons, agencies, and organizations submitted comments concerning alternatives to the proposed North Coast Instream Flow Policy. Excerpts from these comments are included below.

- Earth Defense for the Environment Now (EDEN)
- North Coast Water Rights Working Group
- Regional Water Quality Control Board, San Francisco Region

- Sierra Club, Redwood Chapter
- Stoel Rives LLP and City of Fort Bragg

### **Earth Defense for the Environment Now (EDEN)**

*Alternative One: All illegal water users must cease all water withdrawals and apply for legal use, and then remedy their water grab with either switching to dry farming, construction of off stream reservoirs, or adopting alternate crops. As a policy of the SWRCB, the public use of water must be primary. The SWRCB will not grandfather in illegal users as this sends a message to future applicants it pays to grab water illegally and makes a mockery of the SWRCB.*

*Alternative Two: Watershed Stewardship Programs: Waivers from compliance to the SWRCB regulations shall not be granted. However, illegal users could be in an Enforcement Diversion Program that requires the property owner to comply with a set of requirements time sensitive such as*

*1) Establish a Watershed Stewardship where most land owners are encouraged to participate. 2) Bioassessment of the watershed to establish baseline water quality information with yearly on-going monitoring with adaptive management. 2) Peer Review annually. 3) Active remedies of problems and reports to the stewardship. 4) A stewardship leader is hired by the watershed to manage the program, hold meetings, and report to the water board all recommendation, remedies and improvement. 5.) Water gauges installed for year around monitoring. 6.) All construction is subject to CEQA. NGOs become important as they can energize the success of this Enforcement Diversion Program and act as a non biased party. If the Watershed Stewardship fails the Enforcement Diversion Program (time sensitive), then strict enforcement takes place, such as large fines, jail, removal and restoration.*

### **North Coast Water Rights Working Group**

*This fall we expect to provide recommendations for consideration as part of the Board's proposed North Coast Instream Flow Policy. The recommendations we are considering include suggestions for improving the water rights noticing process, with a goal of involving all interested parties at an earlier date; earlier coordination of permit proceedings involving the State Board and other interested permitting and trustee agencies; and improvements to the environmental review and protest resolution process. We are also discussing new approaches to substantive water rights standards, and compliance and enforcement. For example, we are reviewing mechanisms for encouraging development of offstream storage projects to replace existing onstream projects; the fishery benefits of such a program could be significant.*

*We have also been discussing and developing proposals for approaches/alternatives based on a collaborative effort that could meet water users'*

*needs, conserve fish and wildlife habitat, and provide key data necessary for managing resources. The goal of this collaborative effort would be to take advantages of opportunities within a watershed, such as cost sharing, that may not be available in the traditional arena. Under this “watershed approach,” diverters could join together to develop local physical solutions to their watershed specific problems. For example, they could share costs associated with developing data and monitoring conditions and could work together on projects that improved habitat at the most significant locations in the watershed, rather than only on their individual properties. Although this idea is still in its formative stages, it would require instream flow protection provisions for the watershed and a “critical mass” of landowners to be implemented.*

### **Regional Water Quality Control Board, San Francisco Region**

*We also support detailed evaluation of a project alternative that emphasizes comprehensive analysis of fishery resource conditions and water rights throughout each major watershed within the project area of the policy and/or for each independent population of salmonids, as defined by McElhany et al. (2000) to include “any collection of one or more local breeding units whose population dynamics or extinction risk over a 100-year time period is not substantially altered by exchanges of individuals with other populations.” Such an approach has the potential to reduce critical data gaps regarding resource conditions, and contribute to a more flexible, holistic, and effective approach for the protection and restoration of salmonid runs and other native fish and wildlife species. Salmonid limiting factors analyses and environmental sensors for water-level and temperature can be applied for reasonable costs within the project area.*

### **Sierra Club, Redwood Chapter**

*We are aware of alternatives that propose to by-pass the current water policy with a watershed approach to administration. These efforts may have limited benefit but do not address the basic compliance and enforcement issues. We also question the viability of such programs in counties where the necessary resources for support do not exist. We are concerned that this should not be a foil to evade fixing the basic regulatory water rights system.*

### **Stoel Rives LLP and City of Fort Bragg**

*It is also suggested that other alternatives to the policy could be recommended or considered by the State Water Board. Again, until such alternatives are fully described and analyzed in the Substitute Environmental Document, including an opportunity for public input, the State Water Board cannot adopt such alternatives. The State Water Board must flesh out all feasible alternatives, describe such alternatives to the public, solicit public input to such alternatives, and then engage the CEQA process.*

#### **4.3.12. Need for Further Investigations/Studies/Data**

The following persons, agencies, and organizations submitted comments concerning the need for further investigations, studies, and data. Excerpts from these comments are included below.

- Alder Springs Ranch and Vineyard
- California Department of Fish and Game, Central Coast Region
- City of Fort Bragg
- City of Napa
- Earth Defense for the Environment Now (EDEN)
- MBK Engineers
- Rudolph H. Light
- Regional Water Quality Control Board, North Coast Region
- Beth Trachtenberg

#### **Alder Springs Ranch and Vineyard**

*I encourage you and your staff to walk a few of these streams before you write your reports and recommendations. It is easy to see in many cases why our fish are having such a tough time.*

#### **California Department of Fish and Game, Central Coast Region**

*Under current SWRCB policy, such projects may not be subject to project level review under the California Environmental Quality Act (CEQA). As a result, a programmatic approach that relies on later project level review under CEQA for appropriate mitigation is not appropriate. The SED must include specific mitigation requirements that address the direct and indirect impacts of this subset of projects. DFG recommends that the SED specifically consider the procedures for dealing with CEQA baseline issues associated with this group of projects as SWRCB develops the principles and guidelines for the Policy.*

*The protocols for additional site-specific studies necessary to support the standards in the alternatives, the purpose of those studies, and the funding responsibilities to allow the studies to be done must be developed and evaluated as part of the SED, and be included in the Policy. Until the studies have been completed and instream flow protection is in place, issuance of water rights based on the alternative should be held in abeyance, and enforcement action taken on all water diversions without a valid basis of right.*

#### **City of Fort Bragg**

*Before adopting this policy, the Board should review the long-term operation of the Trinity River Diversion of the Central Valley Project. The operating principle is to divert snow melt runoff and high flows while allowing base flows and “safety of*

*dams” releases to flow down the original channel. Minimum bypass flows have not been an issue. While robust “safety of dams” releases have occurred almost every year, the releases have not been sufficient to maintain salmonid habitat in the Trinity River below the dams. The Trinity River Restoration Program (TRRP) was begun in the mid-1970s by a consortium of cooperating Federal, State, local and tribal agencies. After approximately 28 years of study, the TRRP finally obtained a major release of flood water and natural channel restoration began.*

*In the 2002 Guidelines, the concept of “winter 20 % exceedence flow” is presented. This assumes that we know something quantitative about streamflow in coastal California streams. But since 1980, both the state and federal governments have systematically stopped gathering streamflow information. Recent US Geological Survey (USGS), California Department of Water Resources and State Water Board budgets have all failed to provide adequate funding for the continued operation of stream-gauging stations.*

*“From April 1 to December 14 instantaneous inflow to the point of diversion must equal the instantaneous outflow to downstream reaches past the point of diversion.” The theoretical concept of “quantifiable instantaneous flow” is just that, a theoretical concept. The term is much used by DFG staff, but in reality, it does not exist. All measurements of natural streamflow are averages of a series of velocities for a series of cells made over time. If done to accepted (US Geological Survey) standards, the process is laborious and is anything but “instantaneous”. The best we can come up with is a reasonably accurate estimate.*

### **City of Napa**

*The State Board should not act based on the simplistic assumption that more water will always benefit fish. Sometime more water has little or no benefit because there is insufficient habitat to support a larger population. The extent the fishery that uses the Napa River could benefit from higher stream flows in tributary streams during certain life stages depends on the quantity and quality of the habitat in those streams. If habitat is a limiting factor, any additional flow will be a waste of water and therefore prohibited by law.*

### **Earth Defense for the Environment Now (EDEN)**

*Unless the SWRCB determines water availability, they will not meet the intent of AB2121. This law requires that minimum flows be established. Therefore, each watershed should be determined as to what water is available. The SWRCB shall determine what water has been taken illegally in order to establish current availability for the future.*

### **Rudolph H. Light**

*The instream policy could interfere with the Army Corps of Engineers (COE) emergency flood control releases from Lake Mendocino or Lake Sonoma. In a flood*

*or potential flood emergency the COE may want to release more water and the instream flow policy might dictate lower flows to ensure salmonids are able to swim upstream at the same time there is a flood emergency because with very high releases and concurrent flooding, ascending salmonids might leave main channels for temporary backwaters, become stranded and die. This is a significant potential impact, but probably one that can be mitigated. In any case, this issue should be carefully studied.*

*Before you adopt these guidelines, there must be a better justification than that presented or the guidelines themselves need to be changed. In other words, the issue for this scoping process is a thorough study in order to justify why 95% of the water is necessary for salmonids during December 15-March 31. Please refer to the report August 1997 which was prepared by the Division of Water Rights staff. This report concluded that far more water is available for storage (as much as 35,000 acre-feet in a dry year and 70,000 acre-feet in a normal year) and far less is needed for anadromous fish to thrive. Further study should be made to determine why these professional estimates are in such vast disagreement.*

### **MBK Engineers**

*Relative to the cumulative impacts of diversions, address the basis and method to determine the thresholds that would require additional hydrologic and biological studies.*

### **Regional Water Quality Control Board, North Coast Region**

*The Policy should recognize that groundwater use may deplete or contribute to the depletion of stream flows to the degree that beneficial uses are not supported and water quality objectives are not met. The Policy should establish a process through which the Division of Water Rights can evaluate the impacts on stream flows from new wells that are proposed in areas where the extent of the subterranean stream has not been defined. To control these impacts, the State Water Board should investigate, and if warranted, delineate the subterranean streams of the project area to inform parties whether a permit is required. It would be useful to also determine water availability of the subterranean resource, as this information will be necessary for water right permit approvals.*

*Another area that warrants some investigation is the impact to fish populations caused by summer dams, their installation and removal. The Russian River and its tributaries have hundreds of summer dams installed annually according to a paper prepared by the National Marine Fisheries Service in July 2001, titled *The Effects of Summer Dams on Salmon and Steelhead in California Coastal Watersheds and Recommendations for Mitigating Their Impacts* (NMFS paper) (available online at <http://swr.nmfs.noaa.gov/hcd/policies.htm>).*

*Although the topic of summer dams is not addressed in the NMFS-DFG Guidelines, summer dams are appropriate for consideration under the Policy because they are subject to Division of Water Rights authority even if constructed under a claim of riparian right, and they significantly affect instream flows. The Division of Water Rights should exercise its authority to regulate these impoundments and take action under the prohibition against waste and unreasonable use, when appropriate.*

### **Beth Trachtenberg**

*Look at the data collected from the waterways from federal, state and local organizations. The USGS has some flow data from meters, but it is not regular and complete. In Sonoma County The Community Clean Water Institute has over 5 years of accurate data on waterways in Sonoma County. The Salmon Creek Watershed Council has data from testing Salmon Creek and an Estuary Study. I am sure other watershed councils have accurate data they have collected as well. Please collect and look at this data!*

#### **4.3.13. Need for Coordination with Local Groups; Collaborative-Interactive Process/Policy; Provide Public Outreach-Information-Training**

The following persons, agencies, and organizations submitted comments concerning the need for coordination with local groups, a collaborative-interactive process, and/or providing public outreach, information, and training. Excerpts from these comments are included below.

- California Department of Parks and Recreation
- Colleen Fernald
- Napa County, Office of Conservation, Development, and Planning
- North Coast Water Rights Working Group
- Porgans and Associates
- Regional Water Quality Control Board, North Coast Region
- Regional Water Quality Control Board, San Francisco Region
- Sanctuary Forest
- Sierra Club, Redwood Chapter
- Stoel Rives LLP
- Beth Trachtenberg

### **California Department of Parks and Recreation**

*In the event that a specific project is proposed as a result of Instream Flow Policy implementation, and is requested to occur on or across State Park System land, PRC §5012 authorizes California State Parks, at its discretion, to grant permits and easements for water lines and structures incidental thereto, to perform a public service under limited circumstances for essential public purposes. By their very nature such permits, leases, and easements have a negative impact on park*

*resources and public use in perpetuity. Many statutory classifications within the State Park System such as State Wilderness and Natural Preserves are by design restrictive to uses that have potential to adversely impact the resources for which they were established. An applicant, prior to requesting access for non-park related projects, should make careful considerations of these limitations. If permanent or temporary leases, easements or rights-of-way are desired for a project, the applicant is encouraged to first contact the State Park District environmental coordinator of the park unit for further information. Subsequently and depending on the nature of the project, contact with the California State Parks Deputy Director of Park Operations may also be necessary. Contact with this Department should be done early in the planning process. Such open discussion will facilitate early resolution of potential issues.*

*We have policies on several other permitting procedures. A scientific collection permit is required for most scientific activities pertaining to natural and cultural resources that involve fieldwork, specimen collection, and/or have the potential to disturb resources or visitors. Any person or entity who would like to request biological, geological, or soil investigation/collection permits, as well as permits for paleontological investigations, should contact the District lead natural resources specialist. Subsequently and depending on the nature of the project, contact with the California State Parks Natural Resources Division in Sacramento may also be necessary. A permit for investigating archaeological resources must be obtained from the California State Parks Archaeology, History, and Museums Division in Sacramento.*

*Any hydrologic and/or groundwater studies done on land owned or leased by the State of California, including land managed by California State Parks, is required to be completed by or under the direction of a State licensed geologist, hydrologist, or geophysicist.*

### **Colleen Fernald**

*The Russian River Watershed Council is looking at ways of working with the Sonoma County Water Agency to help facilitate the results of the Water Rights process with landowners. Perhaps this can be a model for other regions.*

### **Napa County, Office of Conservation, Development, and Planning**

*Your analysis should also consider the proven effectiveness of the County's current regulations (i.e., stream setbacks, vegetation retention requirements in water supply watersheds, countywide NPDES permit requirements and other related water and watershed protective measures) and ongoing watershed resource conservation programs and stewardship efforts by numerous groups and organizations, such as the Rutherford Dust Society's work on the mainstem of the Napa River, the "Fish Friendly Farming" certification program, as well as other related efforts and*

*programs supported and underway by the Watershed Information Center and Conservancy Board of Napa County.*

*We additionally request that any standards of compliance or measures of attainment resulting from this proposed policy be aligned with other policies/regulations that are currently approved or under development by the Regional Water Quality Control Boards in our area (i.e., Region 1, 2 and 5), such as TMDL Implementation Plans, Basin Plan/Water Quality Control Plan Amendments and Waste Discharge Requirements and/or Waivers. Inconsistency among compliance, permitting, monitoring and reporting requirements will result in confusion, failure to attain policy goals and public/community discontent.*

### **North Coast Water Rights Working Group**

*The recommendations we are considering include suggestions for improving the water rights noticing process, with a goal of involving all interested parties at an earlier date; earlier coordination of permit proceedings involving the State Board and other interested permitting and trustee agencies; and improvements to the environmental review and protest resolution process. We are also discussing new approaches to substantive water rights standards, and compliance and enforcement.*

### **Porgans and Associates**

*At the request of its clients, On August 16, 2006, Porgans & Associates (P&A) attended the State Water Resources Control Board-Division of Water Rights' "Public Scoping Meeting" in Santa Rosa, California, regarding the Board's Notice of Preparation and Substitute Environmental Document for the **North Coast Instream Flow Policy**. The purpose of this letter is threefold:*

- ❶ To provide the Board with how P&A and others perceived the so-called "Public Scoping Meeting."*
- ❷ To express both P&A's and its clients' concerns relative to the expeditious and haphazard manner in which the entire meeting/matter was presented to the public and the time constraints imposed by your Board on the public to provide "input" into the so-called "policy."*
- ❸ Lastly, and most important, to review a portion of the conversation that P&A had with the Board retained facilitator, and with Board personnel, and to provide "input" to the SWRCB's yet-to-be drafted **North Coast Instream Flow Policy**.*

*The comments stated herein should not be misconstrued as anything more or less than what they represent -the TRUTH.*

*❶ Based upon P&A's 33-plus years of attending government sponsored "public" meetings, this one set a "new" all-time substandard for perfunctuality, disingenuousness and meaninglessness. The meeting started off with the Board*

hired “facilitator” providing an extremely vague synopsis of what the so-called public scoping meeting was suppose to be about. After his brief soliloquy, he introduced Victoria Whitney, Division of Water Rights’ Chief and/or former chief, stating that when she completed her comments there would be a Q and A. In addition, the facilitator said that there would be a “power-point presentation” and that several stations had been “set up” around the room, at which Board staff and its retained consultants would be available for discussion. The fact of the matter is that NO one from the public was given the opportunity to question Ms. Whitney or any other person representing the Board from the floor, during or subsequent to her presentation. There was no “power-point presentation, and most of the people answering the questions, at each of the set-up stations, were not Board personnel. Upon completion of Ms. Whitney’s soliloquy, the public was instructed to go to the station(s) of their choice. P&A immediate went to the facilitator to discuss the manner in which the “meeting” was orchestrated, and asked WHO was responsible for its “format.” He said it was the Board’s doing. He asked for P&A’s input, which he received, and it is as follows:

● According to the SWRCB’s statement: “Effective January 1, 2005, Assembly Bill 2121 (Stats. 2004, ch. 943§ 3) added section 1259.4 to the Water Code, which requires the State Water Resources Control Board (State Water Board) to adopt principles and guidelines for maintaining instream flows in coastal waters streams from the Mattole River to San Francisco and in coastal streams entering northern San Pablo Bay, for purposes of water right administration (North Coast Instream Flow Policy).” Although approximately 20 months have passed since the bill became effective, the “public notice” regarding the “public scoping meeting” was not published until the August 9, 2006, and again on August 13, wherein it stated that the meetings were to be scheduled for August 16, and “Written comments must be received by 25 August.” Therefore, from the date of the notice to the scheduled date of the scoping meeting provided less than seven (7) days for a member of the public to have read and/or prepared for such a meeting! This time frame, in and by itself, is extremely disconcerting and would be a major challenge for a member of the public to first even been aware of its scheduling, make arrangement to be there, and lastly to have been prepared to participate in a meaningful way; notwithstanding this is the summer season when many people are on vacation.

The meeting was a one-way street. It preempted meaningful input and public dialogue, either between the public and Board staff and/or between the various NGO’s. It placed the public at a very distinctive disadvantage relative to getting clarification from either Ms. Whitney or other staff members pertinent to the myriad of ambiguities inherent in the so-called yet-to-be drafted policy. The format, for all intent and purposes, was a facade. Although, to his credit, the facilitator appeared genuinely perplexed when apprised of the dog-and-pony show, he took the initiative to ask if P&A could provide him with a few examples of our take on the meeting. Sensing the sincerity of the facilitator’s inquiry, P&A provided him with a few examples referenced above. Ironically, the most pronounced was revealed to him,

*about one-half hour later, when P&A showed him a copy of the written comments that had been made by two other public participants, which were quite informative, that had been left on the table. Unfortunately, the majority of the other participants present at the “public meeting” did not have the advantage of either reading and/or hearing about those comments. Those comments were in-line with many of the issues and concerns P&A had briefed the facilitator about just minutes earlier. (See attached comments.) The scope and depth of those comments would have been of interest to any member of the public. They would have provided them with a sense of perspective and provoked and/or inspired meaningful interaction among ALL participants. Notwithstanding, the meeting format did not allow for such interaction and/or related dialogue. The issue of not having adequate time to provide meaningful input would have also been an issue that members of the public would have had a mutual interest. Neither the facilitator nor the Board’s staff apprised the public as to whys and wherefores behind the extended delay in “setting up” the scoping meeting, and/or the wait and hurry up and get it over with component of the so-called “public” meeting.*

### **Regional Water Quality Control Board, North Coast Region**

*Recognizing the relatively short time period in which the State Water Board must develop the Policy, and the Regional Water Board’s significant interest and authority over water quality within portions of the project area, the Regional Water Board submits the following comments with the hope of continuing the dialogue and aiding the Division of Water Rights in the development of certain aspects of the Policy.*

*The Regional Water Board staff proposes to work collaboratively with the State Water Board, DFG, Region 2 and other interested parties to ensure that the substitute environmental document adequately addresses the cumulative impacts of numerous dam removals, and identifies appropriate mitigation measures, including the consideration of a program that phases removal projects geographically and temporally in order to minimize sediment impacts.*

### **Regional Water Quality Control Board, San Francisco Region**

*To insure a high level of acceptance by stakeholders and trustee agencies, it would be useful if such a program were conducted by a non-regulatory state or non-profit with necessary scientific expertise in salmonid ecology and limiting factors analysis, hydrologic analysis, river engineering, and fluvial geomorphic analysis. Such a group would probably also need to work closely with local watershed groups and/or resource conservation districts to facilitate landowner involvement and assistance.*

*To pay for such a program, the State Board should consider development of a fee assessment program for existing and proposed water users within the project area, where assessed fees might be commensurate with size or significance of the water right. Such a program would effectively address many current problems, including greatly enhancing the quality of information used to make water right decisions,*

*more equitably distributing burdens between existing and proposed users, and ultimately leading to a much faster and more predictable process for permit review and approval.*

### **Sanctuary Forest**

*One potential concern that we have with the development of the North Coast Instream Flow Policy is that valuable grass roots initiatives such as the Mattole Flow Program not be inadvertently undermined by the blanket imposition of the guidelines developed to address problems or issues in other watersheds and coastal streams. It is critically important that the instream flow policies developed through this process not foreclose or hinder the projects under development in the Mattole River watershed, and that such policies not discourage or undermine voluntary participation by landowners and water users participating in these innovative programs. Specifically, the development of enforcement element to the Instream Flow Policy should encourage the development of locally based programs, and should provide incentives for those water users who may be out of compliance to come into compliance with the policies.*

*We urge you to work with groups such as ours to develop the specific framework whereby the unique hydrologic and biological conditions of a given stream, and the voluntary programs and efforts already underway, would be the primary considerations influencing the State Board's water right policies. These processes and policies must be fair, cost effective, efficient and functional in order to encourage similar programs to develop in other watersheds.*

*We respectfully request that the State Board consider and include these locally driven efforts and programs by conducting field hearings in communities within the project area as it refines the scope of the North Coast Instream Flow Policy.*

### **Sierra Club, Redwood Chapter**

*This [Watershed Investigation Program (WIP)] is an excellent program that has disclosed the extent of illegal dams on a watershed basis and should be continued. We suggest that a summary report be prepared on the findings of each study and be made available to the public, internal staff and other regulatory agencies. That is not the case now. The studies should be done in cooperation with the county's planning or resource agency and shared with the county's assessor and the RWQCB.*

### **Stoel Rives LLP**

*Imposing a policy that cannot practically be implemented misses the mark. If there are proposals as to how to collect the data, such proposals should be explained to the public and fleshed out through the public review process.*

## **Beth Trachtenberg**

*Work with the local county permitting departments to create and maintain a policy for well permits within a prescribed buffer zone of the waterways. Sonoma County is currently working on their new plan, so this would be a great time to get involved with them on creating new guidelines for wells and septic systems that could possibly affect the waterways.*

*Provide mediation between common water users when all parties are willing. This could also be done in cooperation with the local county (& city) planning departments.*

*Survey the people that live along the waterways and use the surface water, as well as the people that steward them. They are the ones that know what is going on with their particular stream or river and are one of the best sources of this information. I think you might be surprised by the overwhelming response you might get.*

### **4.3.14. Other**

The following organization submitted comments that do not fit into the other established categories. Excerpts from this comment are included below.

- Natural Heritage Institute.

#### **Natural Heritage Institute**

*Each point of diversion will include continuous monitoring and reporting of diversion, or (if infeasible) an alternative that provides the functional benefit.*

*Each point of diversion will include real-time monitoring and reporting of physical conditions necessary to achieve a quantifiable management objective for the affected reach, such as inflow, outflow, water quality conditions, depth or width of wetted channel, or some combination.*

*State Water Board will have reserved authority to remedy cumulative impacts on fisheries, riparian habitat, and associated wildlife under applicable law (including ESA), in addition to general reservation to protect public interest. The term will specify the procedures for exercise of this authority, including a duty to periodically assess the cumulative impacts.*

*APPENDIX A*

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*COMMENT LETTERS*

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Appendix A

**Memorandum**

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To: Ms. Karen Niiya  
State Water Resources Control Board  
Division of Water Rights  
Post Office Box 2000  
Sacramento, CA 95812-2000  
Fax: (916) 341-5400

Date: August 25, 2006

DIV OF WATER RIGHTS  
SACRAMENTO

From: **Robert W. Floerke, Regional Manager**   
Department of Fish and Game - Central Coast Region, Post Office Box 47, Yountville, California 94599

Subject: Response to Notice of Preparation of a Draft Substitute Environmental Document for the North Coast Instream Flow Policy for Napa, Mendocino, Humboldt, Marin, and Sonoma Counties

**DFG Response to the SWRCB North Coast Flow Policy NOP**

The Department of Fish and Game (DFG) has reviewed the Notice of Preparation (NOP) and Environmental Checklist (EC) prepared by the State Water Resources Control Board (SWRCB) for the Substitute Environmental Document (SED) for the North Coast Instream Flow Policy (Policy). In developing the Policy, the SWRCB is authorized to consider the draft "Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Coastal Streams" [National Marine Fisheries Service (NOAA)/DFG Guidelines]. The Policy area covers coastal streams from the Mattole River to San Francisco Bay and coastal streams entering northern San Pablo Bay.

The SWRCB will use the SED to evaluate the Policy's potential environmental impacts and any alternatives or mitigation measures necessary to avoid any significant environmental impacts that are identified. DFG has limited its comments to those parts of the NOP/EC that address potential impacts to the State's fish and wildlife resources and those portions of Policy likely to require consultation with DFG to assure that mitigations are appropriate and the Policy and those of DFG are compatible.

**General Comments**

In the NOP, SWRCB states that it anticipates the Policy will cover the same issues as the NOAA/DFG Guidelines, but specific details or criteria may differ. DFG supports the use of the NOAA/DFG Guidelines as the basis for the Policy, and recognizes that SWRCB's authority allows for a more comprehensive approach than the one used to develop the NOAA/DFG Guidelines.

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However, it is unclear from the NOP and EC which types of water projects the Policy will cover. The NOAA/DFG Guidelines were developed to address the impacts of minor storage projects as defined in the Water Code. Section 4.0, Project Goals and Objects, in the EC states that the Policy is likely to address the SWRCB administration of water rights and proceeds to list a range of applications, registrations, licenses, permits, transfers, extensions and petitions for inclusion. For the Policy to be effective in protecting North Coast instream flows, the SWRCB will need to apply the Policy to all projects in the Policy area that affect surface and sub-surface flows. As the SWRCB pointed out in the EC, a narrow application of the Policy would allow water diverters to avoid the Policy by utilizing alternative sources of water that would still adversely impact instream flow. The SWRCB concluded that the ability of diverters to use alternative sources of water could lead to significant indirect impacts. Hence, SWRCB needs to consider reasonable means to avoid those impacts in the SED. Additionally, while the NOAA/DFG Guidelines were developed to address instream flow protection for minor diversion projects, the principles and guidelines developed in the SED and adopted as part of the Policy can and should apply to a wider range of water projects to provide adequate North Coast instream flow protection.

There are also projects within the Policy area that are currently diverting and/or storing water illegally, (i.e., without a valid basis of right). Those projects, many of which include onstream reservoirs that have no ability to bypass water to protect resources downstream, need to be specifically address in the SED. Under current SWRCB policy, such projects may not be subject to project level review under the California Environmental Quality Act (CEQA). As a result, a programmatic approach that relies on later project level review under CEQA for appropriate mitigation is not appropriate. The SED must include specific mitigation requirements that address the direct and indirect impacts of this subset of projects. DFG recommends that the SED specifically consider the procedures for dealing with CEQA baseline issues associated with this group of projects as SWRCB develops the principles and guidelines for the Policy.

The primary goal of the NOAA/DFG Guidelines is to provide adequate instream flows to support anadromous fish and, in doing so, protect instream flow and stream habitat for other aquatic resources. The SWRCB correctly recognizes in the EC that there might be situations where additional protections are needed to support other sensitive native species, especially amphibians, which might require changes in the timing of withdrawals in some locations. The SWRCB should identify appropriate mitigation in the SED to address any potential impacts associated with such changes in consultation with appropriate government agencies.

The NOAA/DFG Guidelines also addressed diversion to storage from December 15 to March 31 based on the limited amount of water available for use in the low flow months of the spring, summer, and fall. DFG recommends that SWRCB include in the Policy clear principles and guidelines for maintaining instream flows on a year-round basis, given that SWRCB regularly receives applications for direct diversions outside the season covered in the NOAA/DFG Guidelines from individuals who do not have the ability to store water. The SWRCB would be within its authority under Water Code section 1259.4 to adopt such a year-round approach.

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It is critical that the Policy include procedures and tracking methods to determine water availability in the watersheds the Policy covers. Specifically, the Policy needs to identify a means to quantify the amount of water that is available for diversion in each watershed, to track the amount of water being extracted by all diversions that impact surface and sub-surface flow, and to determine the amount of water available for use after taking into account the requirements for instream flow protection. SWRCB should consider means by which potential applicants can determine the amount of water available for diversion from a given stream in the Policy area, such as identifying those streams that are fully appropriated. Water use accounting within a watershed should include all water uses that affect surface flows. Related to that objective, SWRCB should develop and evaluate an approach to more accurately determine the extent of diversions under riparian right within a watershed. Although the Water Code currently requires that statements of riparian use be filed with SWRCB, there is no penalty for non-compliance, and even when statements are filed, they do not always quantify the amount of water being diverted. For the Policy to be effective, it must require an accurate accounting of riparian water use and include that as part of the Policy's enforcement element discussed below.

SWRCB states in the EC that it proposes to include an enforcement element as part of the Policy. DFG supports that decision, but recommends the SWRCB includes as part of the enforcement element, a monitoring component that enables SWRCB to determine whether water users are in compliance with their permit conditions or Policy requirements. In that regard, SWRCB should evaluate tracking methods, such as updated compliance monitoring systems that are capable of continuous monitoring, passive diversion systems, and/or automated diversion systems. SWRCB should identify funding sources to purchase and install necessary gages in tributaries in the Policy area.

In addition to including a component for compliance monitoring, SWRCB should include a component to monitor the effectiveness of permit conditions and Policy requirements to protect instream flows. Such a component should authorize SWRCB to require or allow water users to modify their operations if SWRCB determines that instream flow protection measures are inadequate, or conversely, overly restrictive. SWRCB should also develop a procedure to ensure that any needed modifications will be made as quickly as possible to protect resources.

In developing the enforcement element in the Policy, SWRCB should also consider modifying and strengthening its current enforcement procedures to remedy violations in a more timely manner to better protect public trust resources. For example, SWRCB should evaluate means to: 1) Adequately fund compliance activities; 2) reduce the need to enforce on a project-by-project basis, especially in watersheds where multiple diverters are operating illegally; 3) promote compliance through "carrot and stick" measures; and 4) develop enforcement alternatives that require less staff time to correct violations. Including improved monitoring methods would be a positive first step to achieve a greater level of compliance. However, SWRCB should also consider measures to prevent violations from occurring in the first place, such as improved outreach to local agencies and consultants and other professionals involved with water development and diversion projects. Such outreach should clarify the intent and requirements of the Policy and the

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consequences of not meeting those requirements. SWRCB should also consider evaluating the feasibility of a certification program for consultants and professionals to ensure they have the necessary training to design and construct projects that avoid or minimize impacts to instream flows.

All the alternatives developed for inclusion in the SED must include scientifically supportable standards and measures to protect instream flows and an effectiveness monitoring component that includes adaptive management to ensure that instream flows are protected. The protocols for additional site-specific studies necessary to support the standards in the alternatives, the purpose of those studies, and the funding responsibilities to allow the studies to be done must be developed and evaluated as part of the SED, and be included in the Policy. Until the studies have been completed and instream flow protection is in place, issuance of water rights based on the alternative should be held in abeyance, and enforcement action taken on all water diversions without a valid basis of right.

Obviously, effective implementation of the Policy will require additional SWRCB staff time. SWRCB should evaluate possible funding sources to support adequate staffing levels to expedite the processing of permits and adequately monitor and enforce permit conditions and Policy requirements.

#### Comments related to the Biological Section of the Environmental Checklist

Section 4 in the EC listed potentially significant impacts to sensitive species, riparian and other sensitive natural communities, wetlands, and the movement of fish and wildlife. It also listed additional significant impacts to resources, unless appropriate mitigations were incorporated into the Policy. All of those impacts were identified as indirect impacts resulting from actions taken by affected parties in response to the Policy. Those actions include: 1) Substitution of other water sources, including groundwater, for surface water to avoid any limitations applicable to new water right permits issued after the Policy is in place; 2) direct diversion under claims of riparian right during the low flow season with higher potential for adverse instream flow impacts than diverting to storage during the winter months when flows are higher; 3) removal or modification of onstream storage facilities; and 4) construction of offstream facilities. Another indirect impact of the Policy that was not addressed in the EC is related to the substitution of contracted water deliveries from a local water purveyor to avoid Policy requirements. Depending on the local purveyor's method of diversion, the indirect impacts could be the same as those associated with the utilization of alternative water sources that are also adversely affecting instream flows. Within the Policy area, this "substitution" could also result in significant impacts associated with the development of new facilities for the storage of delivered water and, because most water purveyors are still perfecting their water rights under permit, a potentially permanent increase in diversion under the purveyor's water right.

SWRCB will need to develop and evaluate in the SED requirements to mitigate adverse impacts from activities that substitute other water sources, including the substitution of groundwater, riparian water, or contract water; it should not rely on the mitigation

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requirements other permitting agencies might impose on water users. The SED should clarify SWRCB's jurisdiction under Water Code section 13142 in an effort to provide the highest level of assurance that impacts to instream flows are not shifted from one water source to another to avoid compliance with the Policy. The SED should include consultation with other permitting agencies to ensure that the biologically defensible Policy is compatible with other agencies' permitting processes to avoid "agency shopping" to avoid compliance with the Policy.

The other major category of adverse indirect impacts is expected to result from the abandonment, modification, or removal of existing onstream reservoirs. SWRCB in the SED should assess the levels of these impacts and work with RWQCB, DFG, and other agencies with authority to regulate those activities to ensure that appropriate mitigation is included in the Policy. The SED should also address the issue of canceling water rights before the actual decommissioning of onstream storage facilities that would continue to adversely impact flows and water quality. DFG has previously expressed its concern to SWRCB about the potential release of sediment, loss of habitat, and impacts to stream morphology from poorly planned dam removal projects. In some cases, the adverse impacts of breaching an onstream reservoir may be significant. However, it may be possible to make modifications that avoid impacts to wetlands, erosion, and the release of stored sediment by functionally moving the reservoir offstream. SWRCB should develop protocols to be used to evaluate the impacts related to removal and retrofitting onstream reservoirs, in consultation with DFG and other agencies.

#### Comments Related to the Hydrology and Water Quality Component of the Environmental Checklist

Section 8 in the EC identifies significant impacts to hydrology and water quality including the depletion of groundwater and/or the lowering of the groundwater table which have the potential to adversely impact instream flows and the resources those flows support. In addition, other impacts related to erosion, siltation, and violation of water quality standards were identified as significant impacts resulting from modification or removal of onstream reservoirs unless appropriate mitigations are incorporated into the Policy. DFG recommends that the SED include the results of consultation with the appropriate agencies to develop a coordinated procedure to address issues such as erosion control and sediment control during the removal of dams for inclusion in the Policy.

The EC proposes that the impacts on hydrology and water quality be evaluated at the programmatic level in the SED. It also proposes that projects carried out in response to adoption of the Policy would also be subject to separate project level CEQA analysis by the appropriate lead agency. This implies that rather than developing appropriate mitigation to be incorporate into the Policy, at least some of the required mitigations will be left to other agencies to develop at a later date. Such a delegation would be inappropriate in terms of SWRCB's responsibilities under CEQA. Also, existing but unauthorized projects in the Policy area might not have any nexus to allow additional mitigation be developed at a

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project level under CEQA. The SED should evaluate and include recommendations and mitigations for addressing the potential impacts related to activities of these projects that may be carried out in response to the Policy. The SWRCB should develop such mitigation in consultation with DFG and other agencies and include them in the SED.

In reviewing the narrative responses in Section 8, DFG recommends that the use of the phrase "may include" be changed to "will include," as it relates to the development of appropriate recommendations and mitigations for potential impacts resulting from the adoption of the Policy. For example, the SED "will include:" 1) Identification of pertinent water quality standards within the Policy area and a comparative analysis between these plans and the Policy to determine if there are any potential conflicts; 2) recommendations for addressing the potential impacts attributable to increased groundwater pumping through the SWRCB's exercise of its authority to protect public trust uses, and to prevent the waste and unreasonable use of water; and 3) specific recommendations for addressing the potential impacts of specific construction projects that may be carried out in response to the adopted Policy.

DFG appreciates the opportunity to comment on the NOP and EC and looks forward to consulting with SWRCB in preparing the SED. Should you have any questions regarding our comments, please contact Ms. Linda Hanson, Staff Environmental Scientist, at (707) 944-5562; or Mr. Carl Wilcox, Habitat Conservation Manager, at (707) 944-5525.

STATE WATER RESOURCES CONTROL BOARD

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DM OF WATER RIGHTS SACRAMENTO



State of California • The Resources Agency

Appendix A  
Arnold Schwarzenegger, Governor

DEPARTMENT OF PARKS AND RECREATION • P.O. Box 942896 • Sacramento, CA 94296-0001

Ruth Coleman, Director

August 24, 2005

Karen Niiya  
State Water Resources Control Board  
P.O. Box 2000  
1001 I Street, 14<sup>th</sup> Floor  
Sacramento, California 95812-2000

Re: Notice of Preparation for the North Coast Instream Flow Policy Substitute  
Environmental Document

Dear Ms. Niiya:

The California Department of Parks and Recreation (California State Parks) welcomes the opportunity to provide comment on the State Water Resources Control Board (SWRCB) Notice of Preparation (NOP) for the proposed North Coast Instream Flow Policy Substitute Environmental Document (SED).

California State Parks is a State Agency as defined by the California Environmental Quality Act (CEQA) under Public Resources Code (PRC) § 21082.1, a Responsible Agency (PRC § 21069), and a Trustee Agency (PRC § 21070). As used by CEQA, its Guidelines, and as defined by the California Code of Regulations § 15386, we oversee and are responsible for managing resources that may be affected within units of the State Park System by adoption and implementation of the North Coast Instream Flow Policy. Our mission is to provide for the health, inspiration, and education of the people of California by helping preserve the state's extraordinary biodiversity, protecting its most valued natural and cultural resources, and creating opportunities for high quality outdoor recreation. The 1.4 million-acre California State Park System, for which we are responsible, is currently made up of 258 classified units and 20 major unclassified properties.

California State Parks believes that the main goals of the proposed North Coast Instream Flow Policy will, for the most part, benefit natural resources, including those in the State Park System. These goals are the standardization of minimum bypass flows and cumulative maximum rates of diversion, conservation of natural hydrographs, promoting the installation and use of fish screens and fish passage facilities, and associated enforcement guidelines. However, we are concerned that the proposed Instream Flow Policy may result in indirect and cumulative damage to natural, cultural, recreational, and aesthetic resources of the State Park System. SED recommendations to avoid or minimize resource

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impacts should consider the State Park System and other natural and open space lands in the vicinity of park units.

The "Project Location / Policy Area" identified on the map in the NOP spans a region of relatively concentrated park lands and open space managed by a variety of government, non-profit, and private entities. We request an electronic version of the GIS "Project Location / Policy Area" to thoroughly assess which park units are within the Policy Area. Based on the map attached to the NOP, we have determined that 36 State Park System units totaling 84,432 acres appear to occur within the proposed project area and five totaling 55,366 acres appear adjacent to or within the vicinity of the area. These 41 total properties have the potential to be affected by the proposed Instream Flow Policy.

Following are the 36 units that appear to occur within the study area:

- State Parks – Annadel, Bothe-Napa Valley, China Camp, MacKerricher, Manchester, Mendocino Headlands, Mendocino Woodlands, Mount Tamalpais, Navarro River Redwoods, Robert Louis Stevenson, Russian Gulch, Salt Point, Samuel P. Taylor, Sinkyone Wilderness, Sugarloaf Ridge, Tomales Bay, Van Damme;
- State Beaches – Greenwood, Schooner Gulch, Sonoma Coast, Westport-Union Landing;
- State Reserves – Caspar Headlands, Hendy Woods, Jug Handle, Kruse Rhododendron, Mailliard Redwoods, Montgomery Woods;
- State Historic Parks – Bale Grist Mill, Fort Ross, Jack London, Marconi Conference Center, Olompali, Petaluma Adobe, Sonoma;
- State Recreation Areas – Austin Creek;
- Other Park Properties – Point Cabrillo Light Station.

The five units that appear to occur adjacent to or in the vicinity of the study area include:

- State Parks – Humboldt Redwoods;
- State Reserves – Smithe Redwoods;
- State Recreation Areas – Admiral William Standley, Standish-Hickey;
- Other Park Properties – Reynolds Wayside Campground.

California State Parks requests that the SWRCB address potential foreseeable impacts to landscape-level features, as well as to specific sensitive and special-status resources. Adequate analyses will enable development of an Instream Flow Policy and mitigation measures that avoid or minimize impacts associated with resource values as they relate to the State Park System.

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Features that typify the landscape-level scale may include important recreation areas and viewsheds, regional recreation trail corridors, key watersheds, wildlife habitats and corridors, cultural landscapes and sacred sites, and significant geological features and paleontological resources. Potential impacts of particular concern include, but are not limited to, the following policies, planning processes and resource values. Please consider these issues during policy development.

State Park System Unit Classifications, General Plans, and Policies

Impacts to long-range planning, management, and development of our units should be considered as they relate to resources of the State Park System and to *Land Use and Planning* in the Environmental Checklist. We request that the SED also explain any conflicts and proposed resolutions to impacts related to California State Parks' planning documents, park property, and permits. Additional information on these topics is provided below.

SPS units are operated according to their classification (PCR § 5019.50 through 5019.74) and individual general planning documents (PCR § 5002.2). The classification statutes set forth the primary purpose of each classified unit, identify in general what types of facilities and uses may be permitted, and provide direction on how unit resources shall be managed. A general plan is a formal land-use planning document that provides broad policy and programmatic guidance regarding the development and management of an individual classified unit of the State Park System, including its natural, archaeological, historic, scenic, aesthetic, and recreation values. The guidance from each general plan is essential to California State Parks' managers and staff, and is of value to those organizations and individuals who have a substantial interest in the State Park System and its individual units. Two current and ongoing efforts are the general plans for Sonoma Coast State Beach and Sinkyone Wilderness State Park. More information on these two general plans is available at [http://www.parks.ca.gov/?page\\_id=21312](http://www.parks.ca.gov/?page_id=21312). Completed general plans that are currently in use for most other State Park System units are at [http://www.parks.ca.gov/default.asp?page\\_id=21299](http://www.parks.ca.gov/default.asp?page_id=21299).

In the event that a specific project is proposed as a result of Instream Flow Policy implementation, and is requested to occur on or across State Park System land, PRC § 5012 authorizes California State Parks, at its discretion, to grant permits and easements for water lines and structures incidental thereto, to perform a public service under limited circumstances for essential public purposes. By their very nature such permits, leases, and easements have a

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negative impact on park resources and public use in perpetuity. Many statutory classifications within the State Park System such as State Wilderness and Natural Preserves are by design restrictive to uses that have potential to adversely impact the resources for which they were established. An applicant, prior to requesting access for non-park related projects, should make careful consideration of these limitations. If permanent or temporary leases, easements or rights-of-way are desired for a project, the applicant is encouraged to first contact the State Park District environmental coordinator of the park unit for further information. Subsequently and depending on the nature of the project, contact with the California State Parks Deputy Director of Park Operations may also be necessary. Contact with this Department should be done early in the planning process. Such open discussion will facilitate early resolution of potential issues.

We have policies on several other permitting procedures. A scientific collection permit is required for most scientific activities pertaining to natural and cultural resources that involve fieldwork, specimen collection, and/or have the potential to disturb resources or visitors. Any person or entity who would like to request biological, geological, or soil investigation/collection permits, as well as permits for paleontological investigations, should contact the District lead natural resources specialist. Subsequently and depending on the nature of the project, contact with the California State Parks Natural Resources Division in Sacramento may also be necessary. A permit for investigating archaeological resources must be obtained from the California State Parks Archaeology, History, and Museums Division in Sacramento.

#### **State Park System Infrastructure, Water Use, and Water Rights**

California State Parks oversees infrastructure contained within units of the State Park System, including but not limited to roads, parking lots, signage, hiking trails, visitor centers and kiosks, campgrounds, restrooms, historic structures, and electrical, water, and sewage systems necessary for visitor comfort and safety.

We are concerned about direct effects of the Instream Flow Policy on water availability for our State Park System units. As described earlier in this letter, up to 41 park units are within or in the vicinity of the "Project Location / Policy Area". Each unit currently has infrastructure to acquire water for use, which may include one or a combination of (1) piping in water from local municipalities, (2) drawing water from nearby rivers, and (3) groundwater pumping. In order to maintain

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park function and visitor/park staff comfort and safety, park units must maintain the use of water sources year around, particularly during summer months when visitorship is usually at its highest. Changes to water acquisition or water use that may be required by the Instream Flow Policy are likely to have an impact on park unit operations, and thus an overall fiscal impact on this Department. The SED should include recommendations to avoid and minimize direct impacts that California State Parks may incur from the Instream Flow Policy implementation.

The section, *Hydrology and Water Quality* (Narrative Responses, Items d-e), in the Environmental Checklist states that potentially significant impacts could occur to channel flood capacity and water quality; detailed recommendations should be put in place and enforced because of the likelihood of health issues related to water quality degradation from contaminated storm runoff and the potential for loss of life, property, and public services from flooding. Flooding that may be caused by removal of on-stream reservoirs upstream, or in the surrounding area, of park units is of utmost concern to us. Units along rivers and streams may see an increased frequency in flooding and subsequent damage to park infrastructure, which has the potential to cause road, campground, visitor center, concession, or trail closures. Any closures, whether short-or long-term, will impact park operations, budget, visitorship and visitor safety, and revenue. We urge the SWRCB to develop recommendations that, for example, require any entity that removes or alters an on-stream reservoir to consult with this Department early during project planning.

Any hydrologic and/or groundwater studies done on land owned or leased by the State of California, including land managed by California State Parks, is required to be completed by or under the direction of a State licensed geologist, hydrologist, or geophysicist. This information should be included in the SED recommendations and guidelines for future projects. Information about permits required by California State Parks for specific studies and collections is discussed in the section of this letter.

#### Recreation

Recreation use and enjoyment throughout the State Park System overlap many other park resource values and thus are often inseparable from them. For example, natural resources, cultural features, noise level, and visual stimuli consistent with the park setting enhance, and are valued as part of, the recreation experience. A comprehensive recreation section in the SED should contain information such as potential indirect impacts that alter existing

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recreation conditions at the units, socio-economic impacts, and cumulative impacts in relation to other projects. We refer the SWRCB to the California Outdoor Recreation Plan 2002 for further information.

We are concerned about potential impacts to water resources used for recreation purposes and that are within, or that flow through, State Park System units. Impacted recreation resources are not necessarily limited to on-stream reservoirs as described in the section on *Recreation (c)* in the Environmental Checklist. The SED should address potential recreation impacts in, on, and along rivers, wetlands, and both perennial and intermittent streams. Examples include, but are not limited to, boating, rafting, swimming, wading, photography, wildlife viewing, bird watching, and hiking. Recommendations for avoidance and mitigation of impacts from construction, piping, pumping, or on-stream reservoir removal should be included.

Future actions that result from Instream Flow Policy implementation may parallel or transect recreational trail corridors, like the Bay Area Ridge, San Francisco Bay, and California Coastal Trail corridors, which link public lands and open space under multiple jurisdictions. In such cases, possible construction activities, changes in land use, and visual impacts to the natural landscape are of chief concern. For example, higher or seasonally more consistent instream flows may require that at-grade stream crossings for hiking trails be upgraded by constructing broader and higher foot bridges. For additional information on regional trails, we refer the SWRCB to another of our planning resources, the California Recreational Trails Plan (Phase I).

#### Visual and Aesthetic Resources

Based on the description of potential short- and long-term effects that may occur as a result of Instream Flow Policy implementation, State Park System units are likely to experience visual impacts from infrastructure development such as off-stream reservoir and ground pump installation. However, California State Parks and other open space stewards were not listed as having or providing highly scenic views, sites, and other qualities like the other coastal areas, "wine country", and several California Scenic Highways listed under *Aesthetics* in the Environmental Checklist. Impacts may include, but are not limited to, short-term construction activity, noise, and dust clouds, as well as long-term visual impacts, operations and maintenance of off-stream reservoirs, and pump noise. Infrastructure and other unnatural elements will detract from the sense of place of nearby units, whether it be the outstanding natural and cultural environment, the

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tranquility and isolation of the State Wilderness experience, or earlier eras preserved at cultural sites and historic units. As a result, the visitor recreation experience may be diminished.

Please include California State Parks units, other government owned lands, and designated open space in future analyses of indirect and cumulative impacts. California State Parks may be able to provide additional information about vantage points and viewing areas from locations within parks for analysis of potential visual impacts and recommendations for mitigation measures to reduce impacts.

#### Natural Resources

California State Parks manages each State Park System unit to protect the natural and sustainable function of ecosystems, as well as special-status resources. Construction, operation, and ongoing management activities that occur as a result of implementation of the Instream Flow Policy are likely to impact natural resources such as biological, geological and soil, paleontological, hydrologic, and water and air quality values. In addition to flow issues, thermal barriers, and destruction of riparian vegetation listed under *Biological Resources* in the Environmental Checklist, new off-stream reservoirs and associated infrastructure (e.g., pipes, fences, and access roads) have the potential to cause a cumulative landscape-level effect and may interfere with wildlife corridors in both riparian and upland areas. Therefore, it is critical for the SED to include recommendations that avoid indirect and cumulative impacts to SPS units and other publicly and privately protected conservation lands in order to avoid habitat fragmentation and degradation. Following are additional impacts and concerns that may arise.

- Loss of habitat at construction sites, staging areas, associated permanent maintenance and operation facilities, and other new infrastructure;
- The general impact of construction as it relates to disruption of vegetative cover, introduction of exotic and invasive plant species, compacted soils, erosion, sedimentation of waterways, hazardous materials, and the long-term effects of such disturbance;
- Disturbance of riparian areas, wetlands, and riverine systems and related impacts to fish and wildlife, including but not limited to sensitive and special-status species;
- Dewatering of natural freshwater seeps and wetlands from water diversion or groundwater pumping;

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- The impact of noise and vibration of construction activities on small mammals, ground nesting birds (i.e., flushing and predation) and other wildlife activity;
- Increased air and dust pollution from construction and long-term activities;
- Impacts to unique and aesthetically beautiful geological formations, as well as those of scientific interest, and related to hazardous geological areas and unstable soils;
- Impacts to paleontological resources which are as a rule rare even in areas of high local density since new unique discoveries are still being made.

Landscape-level analysis is necessary because analysis deferred until project-level work will artificially fragment intact functional ecosystems for small-scale study.

Cultural Resources

Activities related to future water development and transfer that are likely to occur as a result of Instream Flow Policy implementation have the potential to disturb, degrade, or damage archaeological sites, buried archaeological remains, historic structures or features, cultural landscapes, and sacred sites of significance to California State Parks and to the history of the State of California. We urge protection of archaeological and historical resources within, adjacent to, and in the vicinity of State Park System units that may be pertinent to interpretation of cultural resource values. In addition to the example recommendations listed in the Environmental Checklist under *Cultural Resources* (Narrative Responses, Items a-b), we advise the SWRCB to include the following requirements. Protections, such as avoidance and minimization measures, identification, and interpretation should be addressed in the Instream Flow Policy. Along with the need for research and surveys prior to site-specific studies, new facilities should be designed and constructed to avoid archaeological remains to the greatest extent practicable. If unavoidable, an appropriate recovery plan should be considered and if remains are found during construction, work should be stopped for recordation, determinations, and development of a protection plan. In addition, all historical resources should be mapped, recorded, and evaluated to determine eligibility for placement on the National Register of Historic Places. Projects should be designed to avoid significant impacts to potentially eligible historic resources.

Appendix A

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In summary, California State Parks encourages the SWRCB to avoid indirect and cumulative impacts to units of the State Park System with careful planning during the SED process and its implementation of the Instream Flow Policy. It is important that the SWRCB make particular efforts to consult with this Department throughout the environmental review and planning process.

As the SED proceeds through the environmental review process, we anticipate that we will be able to define issues in more detail and possibly bring others to your attention. If any of our current comments need clarification or further explanation please do not hesitate to contact me at (916) 653-6725 or [rrayb@parks.ca.gov](mailto:rrayb@parks.ca.gov).

Sincerely,



Richard Rayburn,  
Chief  
Natural Resources Division

cc: Resources Agency  
State Clearinghouse  
Warren Westrup, Acquisition and Real Property Services Division  
Steve Horvitz, North Coast Redwoods District  
Don Monahan, Diablo Vista District  
David Gould, Marin District  
Todd Thames, Russian River District  
Kirk Marshall, Mendocino District

Sheila Pitts

---

**From:** Bryan McFadin [BMcFadin@waterboards.ca.gov]  
**Sent:** Friday, August 25, 2006 4:13 PM  
**To:** Karen Niiya  
**Cc:** David Leland; Ranjit Gill  
**Subject:** Region 1 comments on NCIFP



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licyComments....

Ms. Niiya,

Please find the North Coast Regional Water Quality Control Board staff's comments on the forthcoming North Coast Instream Flow Policy. A paper copy will follow. If you have questions regarding these comments, please call me at the number below.

Sincerely,

Bryan McFadin

=====  
Bryan McFadin, P.E.  
Water Resource Control Engineer  
North Coast Regional Water Quality Control Board  
(707) 576-2751  
(707) 523-0135 (fax)  
  
5550 Skylane Blvd., Suite. A  
Santa Rosa CA 95403



Linda S. Adams  
Agency Secretary

# California Regional Water Quality Control Board Appendix

## North Coast Region

William R. Massey, Chairman



Arnold  
Schwarzenegger  
Governor

<http://www.waterboards.ca.gov/northcoast>

5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403

Phone: 1 (877) 721-9203 (toll free) • Office: (707) 576-2220 • FAX: (707) 523-0135

August 25, 2006

Ms. Karen Niiya  
Mr. Eric Oppenheimer  
State Water Resources Control Board  
P.O. Box 2000  
1001 I street, 14<sup>th</sup> Floor  
Sacramento, CA 95812-2000

Subject: North Coast Regional Water Quality Control Board Comments on North Coast Instream Flow Policy

File: North Coast Instream Flow Policy

On August 16, 2006, the State Water Resources Control Board (State Water Board), conducted two public scoping meetings on the principles and guidelines for maintaining instream flows in coastal streams from the Mattole River to San Francisco and in coastal streams entering northern San Pablo Bay, for purposes of water right administration (*North Coast Instream Flow Policy*). The North Coast Regional Water Quality Control Board (Regional Water Board) appreciates the opportunity to comment on the range of actions, policy alternatives, mitigation measures, and significant effects that should be analyzed in the Substitute Environmental Document (SED). Recognizing the relatively short time period in which the State Water Board must develop the Policy, and the Regional Water Board's significant interest and authority over water quality within portions of the Project area, the Regional Water Board submits the following comments with the hope of continuing the dialogue and aiding the Division of Water Rights in the development of certain aspects of the Policy.

The Regional Boards have the primary responsibility for formulating and adopting water quality control plans (Wat. Code, § 13240), subject to State Water Board review and approval. (Wat. Code, § 13245.) The Regional Water Board adopted, and periodically updates, the *Water Quality Control Plan for the North Coast Region (Basin Plan)*. A Basin Plan consists of designation for waters in a given area, including: 1) beneficial uses to be protected; 2) water quality objectives; and 3) a program of implementation needed to achieve the objectives. (Wat. Code, § 13050, subd.(j).) In formulating a water quality control plan, the board is vested with wide authority to "attain the highest water quality which is reasonable, considering all the demands being made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." (Wat. Code, § 13000.)

***California Environmental Protection Agency***

The State Water Board may also formulate and adopt state policy for water quality control in accordance with these provisions. (Wat. Code, § 13140 & 13170.) The state plan will supercede any conflicting provisions of the regional water quality control plans. Even though AB2121 specifies that the Policy be for the purpose of water rights administration, the State Water Board should utilize water quality planning principles when drafting its policy. Consistent with Water Code sections 174 and 1258, the Regional Water Board hopes that the *North Coast Instream Flow Policy* is developed in harmony with the Basin Plan (see TMDL discussion below).

In the *Notice of Preparation*, the Project is described as a policy that provides, through the State Water Board's administration of water rights, for the maintenance of instream flows in coastal streams that will likely address water right applications; small domestic use and livestock stockpond registrations; existing permits and licenses; and change petitions, including transfers, time extensions, and wastewater change petitions. Staff at the Regional Water Board have conducted a brief review of the *Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Coastal Streams* (NMFS-DFG Draft Guidelines) and offers the following comments:

The Regional Water Board staff strongly support:

- the seasonal limits on additional diversions;
- the prohibition on additional permitting of on-stream reservoirs;
- the minimum bypass flow provisions;
- protections of the natural hydrograph;
- and the requirement that all new permits require adequate fish passage and protection measures.

These provisions should be extended to apply to all new water right applications, not just small diversions. These requirements are a good first step in limiting further degradation of coastal streams from new water diversions.

### **Unpermitted Diversions**

Staff also understands from the scoping meeting that there are numerous illegal diversions and reservoirs in the Project area that must comply with the Guideline provisions to receive authorization or otherwise be removed. Subject to careful mitigation to control sediment and other water quality impacts (discussed below), the Regional Water Board staff supports aggressive enforcement against illegal storage and diversions that are unable to reach compliance. In general, the Regional Water Board staff considers the removal of illegal and obsolete reservoirs and water diversion facilities to be restoration projects and therefore may tolerate short-term sediment increases and make other allowances on a case-by-case determination if these impacts are outweighed by the long-term benefits to the beneficial uses.

### **Onstream Reservoirs**

Onstream reservoirs can adversely affect the beneficial uses of water, primarily from sediment impacts. Beneficial gravels and cobbles trapped in reservoirs result in loss of downstream habitat. Loss of habitat includes diminished supply of spawning gravel and

interstitial areas that provide habitat for fish and other aquatic organisms. In addition, loss of sediment transport downstream of reservoirs results in down cutting and increased stream bank erosion. Reservoirs can increase the potential for erosion from improperly designed spillways, and failure of dam or adjacent hill slope areas. Old, obsolete, or improperly maintained reservoirs sometimes lead to catastrophic dam failure resulting in large sediment discharges, debris torrents and stream bank erosion downstream, and may also release large quantities of stored sediment. Finally, fine sediment downstream of reservoirs may be increased due to increased erosion and reduced stream flushing flow.

In addition to sediment impacts, other effects from onstream reservoirs include changes in the hydrograph resulting in adverse changes to fluvial system, dewatering or reduction of downstream flows during critical periods for spawning and other aquatic habitat needs, adverse changes in downstream riparian vegetation due to changes in downstream flow, and loss of riparian vegetation due to dewatering or reduced flow. Increase in vegetation caused by loss of high flows can result in increased channel confinement. Also, reservoirs may encourage population increases of non-native species such as bull frogs that impact native species of frogs and other amphibians. Poor water quality in onstream reservoirs can impact water quality downstream (concentrations of nutrients, algal blooms (including toxic algae), reduced DO, and increased temperatures). Removal of onstream reservoirs helps protect beneficial uses by removing these impacts on a permanent basis.

### **Small Dam Removal**

Some work has been done on proper mitigations for small dam removal. First, it may be possible to avoid adverse impacts by modifying the structure so that water flows freely without removal. If avoidance is not feasible, it is critical that the entire dam fill and any related structures are removed, all the way down to the "original grade" of the stream bed. Some sites may require the excavation below "original grade" and placement of large rock to stabilize the streambed. In addition, all stored sediment should be removed and all previously inundated land should be stabilized with vegetation or rock to limit soil movement. Also, release of stored waters should be done to limit pulse flows. This may be accomplished by slow release not to exceed  $\frac{1}{4}$  of the natural flow at the time of release. Finally, temperature increases of the receiving waters should be limited by either releasing when temperatures are the same or by slowly releasing water so as to not raise water by more than 2 degrees F over the natural water temperature.

Additional work in this area is needed. The Regional Water Board staff proposes to work collaboratively with the State Water Board, DFG, Region 2 and other interested parties to ensure that the substitute environmental document adequately addresses the cumulative impacts of numerous dam removals, and identifies appropriate mitigation measures, including the consideration of a program that phases removal projects geographically and temporally in order to minimize sediment impacts. The Regional Water Board may consider developing a general waste discharge requirement for dam removals that meets certain parameters. It would be efficient and useful if the SED adequately covered the CEQA requirements for this purpose.

### **Compliance and Enforcement**

The Policy must contain an enforcement element that should include provisions similar to those already outlined in the NMFS-DFG Guidelines. Effective monitoring and reporting is essential to determine compliance with the Policy's requirements and whether additional measures will be necessary. As previously stated, the Guidelines appear to focus on new water right permits only. After implementation, it will be necessary to reassess water quality conditions in order to determine whether existing permits and licenses, and riparian diversions require modification.

During development and implementation of the Policy, the Division of Water Rights should seek to quantify, to the extent possible, the location and extent of all water diversions occurring in the Project area, including diversions under the claim of a riparian right. A model that tracks existing diversions would be very useful to accurately gauge the Policy's success. Regional Water Board staff strongly supports the NMFS-DFG Guidelines recommendation that SWRCB establish flow gaging stations and use the flow information to evaluate compliance and inform later revisions of the Policy. Also, we strongly advocate a policy that includes routine random compliance inspections to ensure permit compliance. Regional Water Board staff recommend that the State Water Board include strong data gathering and water diversion quantification elements as part of its Policy.

### **Diversions Impacts**

The NMFS-DFG Guidelines are useful in bringing illegal diversions into compliance, identifying projects that require removal, and ensuring that approval of new water right permits will not impact beneficial uses individually or cumulatively. There are additional areas of concern that the State Water Board should consider addressing. The State Water Board should consider what diversions are causing impairments in the summer, particularly in water bodies that are listed as impaired under the Clean Water Act. The SED should analyze and develop policy on the effect of diversions on water temperature, salinity, estuary function, wintertime channel forming flows, and fluvial geomorphology.

The Policy should identify the next steps that may be taken if information generated indicates that existing, authorized diversions are contributing to water quality impairments. Regional Water Board staff recommend that the State Water Board consider developing a flow objective for water bodies that are impaired due to over allocation. A flow objective will help facilitate additional water right actions if necessary. In the alternative, the State Water Board could direct the Regional Water Board to develop a flow objective for impaired water bodies in its total maximum daily load (TMDL) process.

### **Total Maximum Daily Loads**

The Regional Water Board and the U.S. Environmental Protection Agency (EPA) are responsible for establishing the TMDL for impaired water bodies "at a level necessary to implement water quality standards" taking into account seasonal variation and margin of safety. (33 U.S.C. §303(d)(1)(C).) The TMDL process provides a quantitative assessment of water quality problems, contributing sources of pollution, and the

pollutant load reductions or control actions needed to restore and protect the beneficial uses of an individual waterbody impaired from loading of a particular pollutant. The following waterbodies are on the Clean Water Act section 303(d) Impaired Waters List and are within the geographic scope of the proposed Policy: Albion, Americano Creek, Big, Garcia, Gualala, Laguna de Santa Rosa, Mattole, Navarro, Noyo, Russian, Santa Rosa Creek, Stemple Creek, and Ten Mile River. Impairments are due to temperature, sediment, nutrients, pathogens, and low dissolved oxygen. The primary adverse impacts associated with high temperature and sediment are to the anadromous salmonid species, which have experienced severe population declines.

Some TMDLs have been adopted already for waterbodies within the Project area, several by the EPA in order to meet strict deadlines required pursuant to a consent decree (*Pacific Coast Federation of Fishermen's Associations, et al. v. Marcus*, No. 95-4474 MHP, 11 March 1997). TMDLs established by the EPA do not contain implementation plans required under the Porter Cologne Water Quality Control Act. (Wat. Code, §13000 et seq.) The TMDLs for the Albion and Navarro Rivers both identify flow and water diversions as a source contributing to impairment. The Regional Water Board is particularly concerned about the Russian River and its tributaries because it is listed as impaired for temperature and sediment. Regional Water Board staff has begun the initial phases of the Russian River TMDL process and is looking to the State Water Board's Policy to assist in this effort for impairment sources attributable to water diversions. The Regional Board typically adopts a TMDL through a Basin Plan amendment, subject to CEQA provisions for a certified regulatory program under the California Code of Regulations, title 23, section 3775-82. It would be efficient and useful if the SED adequately covered the CEQA requirements for this purpose.

### **Hydrologic Connections**

The State Water Board must take appropriate action to mitigate impacts from water diverters switching to alternative sources. In addition to monitoring and gathering information on diversions under a claim of riparian right, the *Notice of Preparation* recognizes that a switch to groundwater pumping could impact groundwater levels, thus reducing summer instream flows. This impact could be significant along the Russian River and its tributaries. There is evidence to suggest that groundwater adjacent to the Russian River has a direct hydrological connection to surface water. (See e.g. *Northern California River Watch v. City of Healdsburg* (N.D.Cal., Jan 23, 2004, No. C01-04686WHA) \_\_ F.Supp. \_\_ [2004 WL 201502, 10] affd. (9<sup>th</sup> Cir., Aug. 10, 2006, No. 04-15442) \_\_ F.3d \_\_ [2006 WL 2291155] ["there is, in fact, an intimate and persistent hydrological connection, albeit underground.\*\*\* There is also an immediate underground hydraulic connection between the two bodies, such that the water level in each immediately affects the water level in the other"].)

The influx of groundwater to surface water bodies is critical for support of cold water fisheries and compliance with the water quality objective for temperature. Groundwater temperatures are almost always in the range that is supportive of salmonids. The influx of groundwater often provides both thermal refugia for these species at the habitat unit scale, as well as temperature buffering that moderates temperatures on the reach

scale. Additionally, decreased water table elevations in response to groundwater pumping can eliminate riparian vegetation, further degrading aquatic habitat, as mentioned in the *Notice of Preparation*. The Regional Water Board has encountered these issues first hand in the Scott River watershed, where groundwater pumping has contributed to the impairment of the Scott River.

The Policy should recognize that groundwater use may deplete or contribute to the depletion of stream flows to the degree that beneficial uses are not supported and water quality objectives are not met. The Policy should establish a process through which the Division of Water Rights can evaluate the impacts on stream flows from new wells that are proposed in areas where the extent of the subterranean stream has not been defined. To control these impacts, the State Water Board should investigate, and if warranted, delineate the subterranean streams of the project area to inform parties whether a permit is required. It would be useful to also determine water availability of the subterranean resource, as this information will be necessary for water right permit approvals.

### **Summer Dams**

Another area that warrants some investigation is the impact to fish populations caused by summer dams, their installation and removal. The Russian River and its tributaries have hundreds of summer dams installed annually according to a paper prepared by the National Marine Fisheries Service in July 2001, titled *The Effects of Summer Dams on Salmon and Steelhead in California Coastal Watersheds and Recommendations for Mitigating Their Impacts (NMFS paper)* (available online at <http://swr.nmfs.noaa.gov/hcd/policies.htm>).

The NMFS paper states, "During the months of June, July, August and September, summer dams can diminish the quality of summer rearing habitat for juvenile salmon and steelhead by changing the stream flow patterns, reducing habitat diversity, diminishing water quality, and creating barriers to the natural instream movements of juvenile stages. Summer dams can also enhance the quality for species that are predators of juvenile salmon and steelhead." This is of particular concern because of the status of endangered species in our region and the beneficial uses specifically identified in the Basin Plan for the Russian River that summer dams may impact.

The NMFS paper identifies reduction of habitat diversity, increase in stream water temperature, alteration of stream geomorphology, decrease in fish migration, and increase in salmonid predation as the primary effects on salmon and steelhead due to summer dams. The NMFS paper also discussed the cumulative effects of summer dams, "The largest threat of summer dams is their abundance. Each summer dam generates its own turbidity and sediment load; each may close the stream to fish movement; each may degrade juvenile salmon and steelhead rearing habitat; each changes the benthic community and interrupts energy flow, and each may kill some number of embryos, alevins or juveniles." Although the topic of summer dams is not addressed in the NMFS-DFG Guidelines, summer dams are appropriate for consideration under the Policy because they are subject to Division of Water Rights authority even if constructed under a claim of riparian right, and they significantly affect

instream flows. The Division of Water Rights should exercise its authority to regulate these impoundments and take action under the prohibition against waste and unreasonable use, when appropriate.

### **Permit Review Process**

Regional Water Board staff see a need for improvement in the Water Right permit review process. Water Rights permit reviews need to include analysis of all potentially significant impacts to beneficial uses. Habitat and water quality conditions for all threatened and/or endangered species, and/or potentially significant impacts to jurisdictional waters (e.g., Stream and wetland fills per Sections 401 of the federal Clean Water Act, and/or report of waste discharge or waiver per Porter-Cologne Act) require special care.

Regional Water Boards follow the Section 404(B) (1) Guidelines developed by USEPA, which emphasize that it is generally preferable to avoid wetland disturbance. When this is not possible, disturbance should be minimized. Mitigation for lost wetland acreage and values through restoration or creation should only be considered after disturbance has been minimized.

Regional Water Board staff note that initial studies for appropriative water right applications that call for proposed on-channel dams typically do not document resource conditions in affected wetlands and waters, and/or describe analyses conducted to demonstrate due diligence in attempting to avoid and minimize impacts of proposed on-channel reservoirs to wetlands including waters of the state. Regional Water Board staff respectfully request that these issues be permit review issues addressed under one or more of the project alternatives to be explored under the proposed policy.

Finally, Regional Water Board staff believe the SED should analyze and develop policy that reduces permitting obstacles that discourage existing permittees from modifying practices or infrastructure to promote conservation objectives (e.g. dedicated instream flows, fish passage, flushing flows, wetland restoration, etc.).

Thank you for the opportunity to comment on the *North Coast Instream Flow Policy Supplemental Environmental Document*. We appreciate the challenge the Division of Water Rights faces in developing and administering a water rights policy that maintains instream flows and protects the beneficial uses of water. We look forward to working with Division of Water Rights to ensure the preservation of those beneficial uses of water.

Sincerely,



Catherine Kuhlman  
Executive Officer

082506\_BCM\_AB2121\_comments.docf

cc: Bruce Wolfe, Executive Officer, San Francisco Bay Region

**Sheila Pitts**

---

**From:** Michael Napolitano [MNapolitano@waterboards.ca.gov]  
**Sent:** Friday, August 25, 2006 4:14 PM  
**To:** Eric Oppenheimer; FlowPolicy@waterboards.ca.gov; Karen Niiya  
**Cc:** Bryan McFadin; Bruce Wolfe; Dyan Whyte; Samantha Olson  
**Subject:** San Francisco Bay Regional Board Comments on SED for NorthCoast Instream Flow Policy

**Importance:** High



R2commentsScope1  
nstreamFlowPol...

**\*\* High Priority \*\***

Hello Eric and Karen (CC: Bryan McFaddin, Samantha Olson, Dyan Whyte, and Bruce Wolfe),

Attached find our comments. A signed copy will follow by FAX and original by mail. Thanks very much for the opportunity to comment, and for your hard work on this important issue.

Best regards,

Mike Napolitano  
510-622-2397  
mnapolitano@waterboards.ca.gov



# California Regional Water Quality Control Board

## San Francisco Bay Region

Appendix A



Linda S. Adams  
Secretary for  
Environmental Protection

1515 Clay Street, Suite 1400, Oakland, California 94612  
(510) 622-2300 • Fax (510) 622-2460  
<http://www.waterboards.ca.gov/sanfranciscobay>

Arnold Schwarzenegger  
Governor

25 August 2006

Ms. Karen Niiya  
Mr. Eric Oppenheimer  
State Water Resources Control Board  
PO Box 2000  
1001 I Street, 14<sup>th</sup> Floor  
Sacramento, CA 95812-2000

Subject: Comments on Project Scope and Alternatives for North Coast Instream Flow Policy

On August 16, 2006, the State Water Resources Control Board conducted two public meetings to receive comments on project scope and alternatives to be considered for maintaining instream flows in coastal streams from the Mattole River south to San Francisco (North Coast Instream Flow Policy). The project area includes several water bodies within the San Francisco Bay Basin, including all streams in Marin County, and streams in Napa County and Sonoma County that drain into San Pablo Bay.

The San Francisco Bay Water Quality Control Board (Regional Water Board) appreciates the opportunity to comment on the range of actions, policy alternatives, mitigation measures, and significant effects that should be analyzed in the Substitute Environmental Document (SED). The San Francisco Bay Regional Water Quality Control Board submits the following comments:

- A. We concur with comments provided by the North Coast Regional Water Quality Control Board (Catherine Kuhlman, letter to Karen Niiya and Eric Oppenheimer, August 25, 2006).
- B. We also support detailed evaluation of a project alternative that emphasizes comprehensive analysis of fishery resource conditions and water rights throughout each major watershed within the project area of the policy and/or for each independent population of salmonids, as defined by McElhany et al. (2000) to include "any collection of one or more local breeding units whose population dynamics or extinction risk over a 100-year time period is not substantially altered by exchanges of individuals with other populations." Such an approach has the potential to reduce critical data gaps regarding resource conditions, and contribute to a more flexible, holistic, and effective approach for the protection and restoration of salmonid runs and other native fish and wildlife species. Salmonid limiting factors analyses and environmental sensors for water-level and temperature can be applied for reasonable costs within the project area.

- 2 -

To pay for such a program, the State Board should consider development of a fee assessment program for existing and proposed water users within the project area, where assessed fees might be commensurate with size or significance of the water right. Such a program would effectively address many current problems, including greatly enhancing the quality of information used to make water right decisions, more equitably distributing burdens between existing and proposed users, and ultimately leading to a much faster and more predictable process for permit review and approval.

To insure a high level of acceptance by stakeholders and trustee agencies, it would be useful if such a program were conducted by a non-regulatory state or non-profit with necessary scientific expertise in salmonid ecology and limiting factors analysis, hydrologic analysis, river engineering, and fluvial geomorphic analysis. Such a group would probably also need to work closely with local watershed groups and/or resource conservation districts to facilitate landowner involvement and assistance.

- C. Incentives for conservation or restoration actions should be developed within the water rights permitting process. For example, Regional Water Board staff are aware of several landowners in Napa River watershed who are willing to modify existing water uses and rights in ways that would substantially enhance conditions for fish and wildlife. The costs, timeframe, and unpredictability at present of water rights permit review and approval processes however, typically preclude such actions from being followed through on. Incentives for enhancement or restoration should be evaluated under one or more alternative for the proposed policy.

Thank you for the opportunity to comment on the North Coast Instream Flow Policy. We appreciate the challenges you are facing and look forward to working in partnership with you to protect beneficial uses of water in our region. Should you have any questions, please contact Mike Napolitano of my staff at 510-622-2397 or via email at [mnapolitano@waterboards.ca.gov](mailto:mnapolitano@waterboards.ca.gov).

Sincerely,

Bruce Wolfe  
Executive Officer

CC: Catherine Kuhlman, Executive Officer, North Coast Region

EJO / KN

BOB MARCETT  
VICE CHAIR  
SAM AANESTAD  
CHRISTINE KEHOE  
ALAN LOWENTHAL  
MIKE MAGRADO  
CAROLE MIDEN



California Legislature  
**Senate Committee**  
on  
**Natural Resources and Water**

**SHEILA JAMES KUEHL**  
CHAIR

Appendix A  
BILL CRAVEN  
PRINCIPAL CONSULTANT  
DENNIS O'CONNOR

CONSULTANT  
MARIE LIU

COMMITTEE ASSISTANTS  
PATTY HANSON  
CATHY CRUZ

STATE CAPITOL, ROOM 407  
SACRAMENTO, CA 95814  
TEL (916) 651-4116  
FAX (916) 323-2232

August 30, 2006

Attn: Karen Niiya and Eric Oppenheimer  
Division of Water Rights  
State Water Resources Control Board  
1001 I Street, 14<sup>th</sup> Floor  
P.O. Box 2000  
Sacramento, CA 95812  
Fax: 916-341-5400  
Email: [FlowPolicy@waterboards.ca.gov](mailto:FlowPolicy@waterboards.ca.gov)

STATE WATER RESOURCES  
CONTROL BOARD  
2006 AUG 31 AM 9:11  
DIV OF WATER RIGHTS  
SACRAMENTO

**Re: North Coast Instream Flow Policy (A.B. 2121)  
Substitute Environmental Document**

Dear Ms. Niiya and Mr. Oppenheimer:

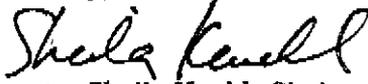
As you may know, I was the author of A.B. 2121, which was signed into law by Governor Schwarzenegger. The law requires the Board to adopt principles and guidelines for maintaining instream flows in coastal areas in northern California. I am pleased to see that the Board has opened the scoping period and formally begun the work of adopting that instream flow policy.

For far too long, ineffective regulation of water diversions has threatened salmon, steelhead, and other important public trust resources. At the same time, the lack of adequate policies for maintaining instream flows has made processing new permit applications in the area very difficult. The Board's adoption of sound principles and guidelines for instream flows will be a strong first step toward the recovery of salmon and steelhead and reaching decisions on the backlog of pending applications.

At a minimum, the North Coast Instream Flow Policy must include scientifically based safeguards to protect instream flows, maintain a natural hydrograph, regulate destructive in-channel reservoirs, provide fish passage and screens where helpful, and guard against cumulative impacts resulting from multiple diversions. The policy must also include measures that ensure proper monitoring and compliance. I am pleased that the Notice of Preparation declares that the policy will include an enforcement element.

Thank you for your consideration. If you have any questions, please contact William Craven of my staff, at 916-651-4116.

Sincerely,



Senator Sheila Kuehl, Chair  
Senate Natural Resources and Wildlife Committee



Appendix A

E10/KM

## CITY OF FORT BRAGG

*Incorporated August 5, 1889*  
416 N. Franklin St.  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802  
ci.fort-bragg.ca.us

DIV OF WATER RIGHTS  
SACRAMENTO

2006 AUG 31 AM 11:30

STATE WATER RESOURCES  
CONTROL BOARD

August 25, 2006

Ms. Victoria A. Whitney, PE  
Chief, Division of Water Rights,  
State Water Resources Control Board  
1001 I Street, 14<sup>th</sup> Floor  
Sacramento, CA 95814

Attn: Karen Niiya or Eric Oppenheimer

**Subject:** Comments from City of Fort Bragg on Notice of Preparation of North Coast Instream Flow Policy Substitute Environmental Document and referenced documents.

Dear Ms. Whitney:

The City of Fort Bragg has the following comments on the North Coast Instream Flow Policy Substitute Environmental Document and on documents referenced in the Notice of Preparation and on the project website:

### **Substitute Environmental Document**

Although the California Environmental Quality Act provides for substitute environmental documents to an Environmental Impact Report or negative declaration, for any certified program, the substitute document shall include at least the following items:

1. Either alternatives to the activity and mitigation measures to avoid or reduce significant or potentially significant effects the project may have on the environment; or
2. A statement that the Agency's review of the project showed that the project would not have any significant or potentially significant effects on the environment, and therefore no alternatives or mitigation are proposed. (CEQA Guidelines, Section 15252.)

Thus, the State Water Resources Control Board Substitute Environmental Document must still determine whether there are any significant or potentially significant effects that the North Coast In-Stream Flow Policy may have on the environment. Such potential significant environmental effects should include not only those provided in the July 19, 2006 Environmental Checklist, but also the following impacts. The potential restriction on development within the North Coast area, which is likely to result in greater development in other parts of the state. Restricting the available water supply as contemplated by the policy

will directly hamper the ability of water purveyors to supply water to potential new development. With the projected increase in population in California, this will result in development that could occur within the North Coast area to be forced to other parts of the state.

At page 14 of the Environmental Checklist, it is concluded that adoption of the policy in itself will not cause direct impacts to biological resources. However, as expressed below, minimizing flushing flows in sediment-impaired and nutrient-impaired coastal streams which will be the result of implementation of the policy, could have a significant effect on biological resources. This potential significant impact should be fully analyzed in the Substitute Environmental Document.

At page 24 of the Environmental Checklist, the narrative response indicates adoption of the policy in itself will not cause direct impacts to hydrology and water quality. As more fully set forth below, this conclusion is incorrect. Adoption of the policy itself will cause direct impacts to both hydrology and water quality.

The Environmental Checklist at Section 9, page 26, indicates that the policy will not cause direct impacts to existing land uses, nor will it conflict with applicable land use plans, policies, regulations, habitat conservation plans, or natural community conservation plans. The policy as currently proposed by the fishery agencies applies to new diversions from the North Coast area. As discussed during the scoping meeting, the State Water Board is considering applying the policy to existing water rights. Applying the policy to existing water rights could directly impact existing land uses and conflict with the applicable land use plans, policies, regulations and water management plans that water purveyors rely upon to project supply and demand 20 to 25 years into the future. Such impact to existing water supplies should be analyzed in the Substitute Environmental Document. This same comment applies to Section 13, page 32 of the Environmental Checklist.

The Environmental Checklist concludes that there will be no direct impact to utilities and service systems and adoption of the policy would not require new or expanded water supply entitlements. (Environmental Checklist at pp. 36-37.) Adoption of the policy as indicated above will directly impact water supply, especially if applied to existing water rights. Such direct impact could result in the need for new or expanded water supply entitlements in order to meet the continued increased demand for water in California. This direct impact to the North Coast area's water supply should be analyzed in the Substitute Environmental Document.

### **Policy Considerations**

The State Water Resources Control Board, as part of its evaluation of the North Coast In-Stream Flow Policy, should consider and balance an increase in water demand over the next 20 to 25 years. As projected by the Department of Water Resources, by the year 2025, the state will have a significant increase in water demand, yet there is no current planning to meet this demand. As indicated in the Project Description, the State Water Board is responsible for administering surface water rights, and the Board's mission is to ensure their proper allocation and efficient use for the benefit of present and future generations. The reasonable and beneficial use of the surface supplies should be balanced against the protection of public trust uses, including fish and wildlife habitat. The Public Trust Doctrine requires the protection of

energy associated with them must be allowed to scour the stream systems in the policy area from the ridge tops to the sea. It took a hundred or more years of continuously increasing watershed abuse to bring these watersheds to their presently impaired condition. With wise watershed stewardship, significant rain, abundant energy and good luck, it could take twice that long to restore these impaired systems. The energy available to a stream is a function of both mass and velocity. Diverting water during peak flow conditions will reduce both the mass and the velocity of the remaining water and will therefore reduce the amount of energy available to flush the impaired stream.

On page 24, the Environmental Checklist states that "Adoption of the policy in itself will not cause direct impacts to hydrology and water quality." That is not the case. The policy under consideration will set in place a series of actions that, at the most critical time of the hydrologic year, year after year and over a series of impacted watersheds, will systematically divert the water (and the energy) needed to flush sediment and nutrient accumulations from presently-impaired channels, will route that water into off-channel storage reservoirs, and will uselessly dissipate that much-needed energy.

The text of the Environmental Checklist then addresses "minimum bypass flows". "Minimum bypass flows" are desirable from a biologic viewpoint, but even more critical is the need to recognize and protect flushing flows in sediment-impaired and nutrient-impaired coastal streams.

Without modification, the proposed instream flow policy will conflict with the court-imposed requirements that led to the designation of sediment-impaired watersheds. The conflict between these policies must be resolved and the method of conflict resolution should be explained before the Instream Flow Policy is adopted.

Long-term results of implementing this policy:

Before adopting this policy, the Board should review the long-term operation of the Trinity River Diversion of the Central Valley Project. The operating principle is to divert snow melt runoff and high flows while allowing base flows and "safety of dams" releases to flow down the original channel. Minimum bypass flows have not been an issue. While robust "safety of dams" releases have occurred almost every year, the releases have not been sufficient to maintain salmonid habitat in the Trinity River below the dams. The Trinity River Restoration Program (TRRP) was begun in the mid-1970s by a consortium of cooperating Federal, State, local and tribal agencies. After approximately 28 years of study, the TRRP finally obtained a major release of flood water and natural channel restoration began.

The long-term impact of the Trinity River Diversion on the Trinity River downstream from the diversion has been documented in great detail. The following websites are recommended:

<http://www.trrp.net/>

<http://www.nced.umn.edu/TRRP.html>

The parallels between scores of smaller-scale diversions on rivers in the policy area and the Trinity River Diversion should be considered before the final details of the proposed Instream Flow Policy are adopted. The potential for reproducing a series of small-scale reproductions of the Trinity's loss of fish habitat must be considered. This is a potential direct biological

impact of adoption and implementation of the policy. This potential effect of the policy is in direct contravention of the purpose of the policy, which is to increase fish habitat.

**Operational considerations:**

**Data or the lack thereof:**

In the 2002 Guidelines, the concept of "winter 20 % exceedence flow" is presented. This assumes that we know something quantitative about streamflow in coastal California streams. But since 1980, both the state and federal governments have systematically stopped gathering streamflow information. Recent US Geological Survey (USGS), California Department of Water Resources and State Water Board budgets have all failed to provide adequate funding for the continued operation of stream-gauging stations.

The USGS website lists 775 water data sites for Mendocino County. Of those, only 53 contain data (some dating from 1911) that might (or might not) be useful in defining a "winter 20 % exceedence flow" at a given point of diversion. Of those 53 stations, only 12 are currently operating. None of the operating stations are representative of the water yield from small watersheds. When faced with increasing water demands and climate change that may well lead to long term reductions in available water supply, our institutional policy appears to be directed toward making complex quantitative decisions with decreasing amounts of information.

In the 2002 Guidelines, Page 2, paragraph 1, the concept of "maximum cumulative volume of water that can be diverted from a watershed" is introduced. This is a useful tool for regulating water diversions, but a "maximum cumulative volume" is a quantitative amount. How can this concept be employed with a diminishing amount of quantitative information?

**Sources of data:**

This policy sets out very specific guidelines for the operation of a diversion. It does not take much imagination to see those guidelines converted to terms for the operation of a diversion. But how is either a diverter or a regulator to know if restrictions on the operation of a diversion have been observed? Who provides that information? In 1879, the US Congress assigned (USGS) the task of providing reliable, third-party streamflow information. A principal reason for the creation of the agency was to allow water rights disputes to be judged on their merits and not on problems with the measurement of water volumes and rates of flow. Since 1879, the USGS has continued to do the job to the best of their abilities. But the annual budget cuts have taken their toll. We have had access to a steadily decreasing amount of quantitative hydrologic data for the last 25 years. Disputes based on this policy will almost certainly find their way to the State Water Board. How will those disputes be settled?

During the first Scoping meeting, a Water Rights staff person was asked "who will provide the data?" The answer was "it will be the applicant's responsibility. Presumably, that means "consultants". The Water Rights staff person then asked "What standards should be used?" Our staff hydrologist answered "The USGS Techniques Manual". The Water Rights staff person thought this was excessive and imposed too much cost on the applicant. Implementing this policy will bring us full circle, right back to the 1879 issue. Either USGS

should be made the data provider, or the State Water Board should develop and describe a feasible alternative.

To provide acceptable data, rainfall-measuring and stream-gauging stations must be constructed and operated to rigorous standards. The USGS Techniques Manual sets those standards. The cost of constructing a stream-gauging station is estimated to be between \$50,000 and \$100,000. And the cost of operating a standard USGS stream-gauging station is presently \$22,000 per year.

It is not necessary to gauge every stream in the policy area. It is necessary to maintain an adequate number of representative stations for long periods of time (50+ years). Such a task is beyond the capability of almost every applicant. It is reasonable that the applicants, permittees and licensees pay some reasonable fee. It is also reasonable to require that the beneficiaries of the Instream Flow policy pay a portion of the cost.

Agency responsibilities:

In the 2002 Guidelines, Page 5, Item 2, Seasonal limits on Additional Diversions, the second sentence states:

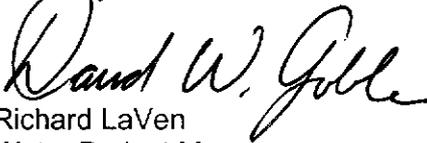
"From April 1 to December 14 instantaneous inflow to the point of diversion must equal the instantaneous outflow to downstream reaches past the point of diversion."

The theoretical concept of "quantifiable instantaneous flow" is just that, a theoretical concept. The term is much used by DFG staff, but in reality, it does not exist. All measurements of natural streamflow are averages of a series of velocities for a series of cells made over time. If done to accepted (US Geological Survey) standards, the process is laborious and is anything but "instantaneous". The best we can come up with is a reasonably accurate estimate.

Another portion of the 2002 Guidelines presents the requirement that "inflow to the point of diversion must equal the outflow to downstream reaches past the point of diversion". This demonstrates a lack of experience with the flow regimes of gravel bed coastal streams. Absent any diversion, streamflow may decrease from upstream to downstream reaches simply because of channel configuration and the nature of the channel substrate.

Thank you for your consideration of these comments.

Sincerely,



Richard LaVen  
Water Project Manager

Cc: City Manager  
Public Works Director

public trust uses whenever feasible. Consequently, the State Water Board is placed in a unique position of balancing the protection of public trust uses against the increased need to efficiently use an increased amount of surface water in the future. As currently described, the North Coast In-Stream Flow Policy does not attempt to balance these conflicting obligations.

The State Water Board is also considering applying the policy to existing water rights. The methodology and application of applying this policy to existing rights is not described, analyzed or considered in the Environmental Checklist. Before the State Water Board can apply this policy to existing water rights, it must first develop the methodology under which it would apply to existing water rights, evaluate those potential environmental impacts, and consider whether such application of the policy could result in a takings of private property. It is also suggested that other alternatives to the policy could be recommended or considered by the State Water Board. Again, until such alternatives are fully described and analyzed in the Substitute Environmental Document, including an opportunity for public input, the State Water Board cannot adopt such alternatives. It is recommended that the State Water Board flesh out all feasible alternatives, describe such alternatives to the public, solicit public input to such alternatives, and then engage the CEQA process.

Potential policy conflicts:

The proposed action will set policy of limiting water diversion to periods of high flow. But within the policy area presented at the first Scoping Meeting, there are 12 watersheds with TMDL listings as "impaired by sediment" and 3 watersheds with TMDL listings as "impaired by (excessive) nutrients.

Sediment TMDLs exist for:

1. Albion River
2. Americano Creek & Estero
3. Big River
4. Estero de San Antonio
5. Garcia River
6. Gualala River
7. Mattole River
8. Navarro River
9. Noyo River
10. Russian River
11. Stample Creek
12. Ten Mile River

(Excessive) Nutrient TMDLs exist for:

1. Americano Creek & Estero
2. Estero de San Antonio
3. Laguna de Santa Rosa

The Substitute Environmental Document should present a map showing the twelve areas.

The long-term restoration of these impaired rivers and their watersheds can only be achieved by limiting the input of the constituents causing impairment (sediment and/or nutrients) and by allowing peak flows to flush out the entrained sediments or nutrients. Peak flows and the

Sheila Pitts

---

**From:** Nathan Quarles [NQUARLES@sonoma-county.org]  
**Sent:** Friday, August 25, 2006 1:47 PM  
**To:** flowpolicy@waterboards.ca.gov  
**Cc:** Pete Parkinson; Randy Leach; DeWayne Starnes  
**Subject:** Comment on North Coast Instream Flow Policy



Water Rights Policy  
Comments.d...

Karen Niiya or Eric Oppenheimer,

Attached are comments from the County of Sonoma, Permit and Resource Management Department regarding the proposed North Coast Instream Flow Policy.

Sincerely,

Nathan Quarles  
Engineering Division Manager  
(707) 565-3507

August 25, 2006

State Water Resources Control Board  
Division of Water Rights  
PO Box 2000  
1001 I Street, 14<sup>th</sup> Floor  
Sacramento, CA 95812-2000

Attn: Karen Niiya or Eric Oppenheimer

Subject: North Coast Instream Flow Policy

To Whom It May Concern,

Several staff from the County of Sonoma, Permit and Resource Management Department attended the August 16, 2006, scoping session at the North Coast Regional Water Quality Control Board's office regarding the in-stream flow policy. The County of Sonoma is forwarding comments and questions for your consideration.

To put our comments and questions into context a little background is helpful. PRMD is a county permitting agency. We review and issue building, planning, and engineering permits for a broad range of projects including but not limited to: subdivisions, commercial developments, single family homes, water wells, septic systems, vineyards, grading and drainage. There are two main processing tracks for the vast variety of projects: ministerial and discretionary.

The ministerial process includes the single family homes, wells, septic systems, etc. If the project meets the ministerial criteria, typically contained in the Sonoma County Code, PRMD is obligated to issue the permit. The criteria or code has gone through a CEQA review and it is presumed that if the project meets the criteria, then no adverse impact will occur.

The discretionary process includes subdivisions, commercial developments, use permits, etc. The discretionary process meets CEQA on a project by project basis by PRMD sending our numerous referrals to federal, state and local agencies and to the public who then provide input into the review process. Upon receiving comments, planning staff set conditions for the project, which is then sent to a hearing and the conditions are discussed, potentially modified, and approved or not for the project. These conditions stay with the project and PRMD ensures the project is constructed in accordance with the approved conditions.

The following comments and questions are submitted for your consideration:

**How the proposed policy will be implemented and who will implement the policy?**

More to the point, we are concerned that counties will be required to implement to policy once it is adopted. Please give consideration to whom and how the proposed policy will be

implemented. Our preference is to have the policy implemented at the state level as this is a state policy. Further, State Water Board staff have discussed the inter-relationship between water rights and water quality. Due to this inter-relationship, we suggest the nine Regional Water Quality Control Boards implement this state policy as they are the state's agency for protecting water quality.

**How will the proposed policy be enforced and by whom?**

Please consider enforcement of this policy. Our Code Enforcement Division currently has an impressive work load and backlog. Workload is prioritized by the hazard to building and life safety, and public health. Any additional enforcement requirements would be prioritized accordingly. With 4300 enforcement cases currently pending, resolution of instream flow policy violations would be significantly delayed.

**Keep the ministerial permit process ministerial within local government.**

If consideration is given to having local government (cities and counties) implement the proposed policy, please consider who has legal authority to administer water rights. It is our understanding administering water rights is the purview of the State of California. If legal authority is or can be established and local government is considered as an implementing entity, please consider what effect the proposed policy will have on the county permitting processes described above. Particularly the ministerial permitting of water wells, reservoirs, building and other permits adjacent to Sonoma County streams and rivers. Our preference is to keep the process ministerial.

Please consider the two analogies where State retains authority. One is the California Fish and Game streambed alteration permits. In the ministerial process, the county has no authority to require a project proponent obtain a Fish and Game permit, however, PRMD informs a permittee if we believe the project may require a Fish and Game permit. The second analogy is the State Water Resources Control Board's General Permit for Storm Water Discharges Associated With Construction Activity. The county has no authority to require a project proponent obtain coverage under this general permit. However, we do inform applicant's of the need for this permit if the project exceeds the one acre land disturbance criteria. We also work closely with the North Coast Regional Water Quality Control Board's regarding this program. In both scenarios, our permit process is ministerial and the state retains its authority.

**The proposed water rights policy should contain definitive criteria.**

Project applicants need know if their projects are subject to the policy. An example of definitive criteria would be clearly defining, via maps and/or data, the subterranean streams for each waterway that will be affected by the proposed policy would greatly assist project applicants as well as keeping the process ministerial at the county level. If a well permit is submitted and the location was checked against a subterranean stream map, we would then be in a better position to inform the applicant of the need for a water right and whether to send the applicant to the Division of Water Rights or not. The delineation of subterranean streams would also prevent

costly and timely project by project evaluations or studies by individual applicants which would also slow the county permitting process.

**Consider listing, mapping, or defining, the streams and areas that will be subject to the proposed policy.**

State Water Board staff Dana Heinrich indicated there is funding currently available to map the subterranean waterways. We strongly encourage the state to provide this mapping in order to facilitate the implementation of this proposed policy. We are also concerned that without defining the subject areas, project by project studies would be required. This has the potential to create a costly and lengthy discretionary review and permitting process which would be unacceptable to the public and the county.

**Establishing criteria and guidance regarding reservoirs would be beneficial.**

Specifically, identifying the types of reservoirs, as well as filling methods, need to have water rights. A couple examples would be an off-stream reservoir diverting stream flows (fairly obvious but should be included), an off-stream reservoir capturing sheet flow runoff from a hillside (not so obvious but recent discussion with state board staff indicate water rights are necessary), an off-stream reservoir capturing rainfall only. These are a few examples but guidance on when to notify the applicant and the Division of Water Rights would greatly assist a locally implemented ministerial process.

**Establish a policy/procedure for “Pipeline Projects”**

Typically with new regulations or policies there is an implementation date or a starting point and projects completed prior to the implementation date are not subject to the new regulations. Please consider how the proposed policy will be implemented relative to existing projects.

**Anticipate unintended consequences.**

Reviewing the proposed policy from every perspective possible will minimize the risk of unintended consequences. We look forward to reviewing and commenting on the actual language of this proposed policy once it has been drafted and prior to any adoption in an effort to provide any assistance or guidance needed, and minimize the unintended consequences.

Sincerely,

Nathan Quarles  
Engineering Division Manager  
Permit and Resource Management  
County of Sonoma



August 25, 2006

JANET K. GOLDSMITH

VIA FACSIMILE AND MAIL – 916-341-5400

State Water Resources Control Board  
Attn: Eric Oppenheimer  
P.O. Box 2000  
Sacramento, CA 95812

Re: Response to Notice of Preparation for North Coast Instream Flow Policy  
Environmental Document

Dear Board Members:

This letter is written on behalf of the City of Napa ("City"). The City appreciates this opportunity to provide comments regarding the appropriate scope of the North Coast Instream Flow Policy ("Flow Policy") and Environmental Document. As a water provider for over 80,000 customers with water rights on Conn Creek and Milliken Creek, the City has serious concerns about the Flow Policy's potentially significant impacts, and about the Flow Policy itself.

The State Board proposed the NMFS-DFG Draft Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Coastal Streams as the only alternative. The proposed Flow Policy is as follows:

- Limiting new water right permits to diversion during the winter period (December 15–March 31) when stream flows are generally high;
- Maintaining minimum bypass flows and cumulative maximum rates of diversion to ensure that streams are adequately protected from new winter diversions;
- Conserving the natural hydrograph and avoiding significant cumulative impacts by limiting the maximum cumulative volume of water that can be diverted in a watershed; and
- Providing fish screens and fish passage facilities where appropriate.

North Coast Instream Flow Policy, Environmental Checklist, State Water Resources Control Board, July 19, 2006, p. 7.

State Water Resources Control Board

August 25, 2006

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While the City supports some of the proposals in the Flow Policy, and the protection of natural resources generally, the City is concerned and urges the State Board to consider new alternatives to the Flow Policy

The City supports the State Board's proposal to require fish screens and fish passage facilities, where appropriate. The City would also support minimum bypass flows and diversion rates, provided the bypass flows and diversion rates are not arbitrary flows that are retroactively applied to all water right holders. The City believes that it is appropriate for the State Board to establish bypass flows and diversion rates on all new diverters when necessary based on the specific facts of each application.

The City questions whether the State Board should, and whether the State Board could legally, require that all diversions be limited to three winter months. Some north coast streams and rivers may have sufficient flows to support additional beneficial uses during other parts of the year. Without a scientifically supported finding that there is no water available for appropriation in any of the other 8 ½ months in any of the north coast streams, the State Board would likely be violating the state constitutional requirement that all water be put to its highest and best use.

The City does not believe it is reasonable to have a cap on the total amount of water that can be diverted in a watershed. First, water is not removed from the watershed as soon as it is diverted, as it may return to the stream as drainage or seep into the groundwater. Second, a watershed-wide cap does not prevent over-pumping on any particular stream or river. The State Board would still have to determine how much water is available for diversion when a new permit is issued. In making that determination, the State Board regularly considers necessary and appropriate bypass flows. Therefore, by adopting the proposed Flow Policy, the State Board would not gain any procedural advantage that would streamline the process and help resolve the backlog of applications. In fact, the adoption of the proposed Flow Policy would further burden already hopelessly overwhelmed State Board staff. The only way the State Board could limit existing rights is by undertaking a massive water rights proceeding that includes all appropriators and riparians. Such a proceeding would be extremely expensive, be very contentious, and probably be larger than even the Bay-Delta proceedings because of the large number of individual interests that would have to be individually represented. Of course, after the decision is finally made, there will be years of court proceedings, including numerous appeals. This process would take decades.

Moreover, if the State Board moves forward with the currently proposed Flow Policy, there will be significant negative impacts on both the local communities and the environment, as follows:

State Water Resources Control Board  
August 25, 2006  
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### **The Flow Policy Will Have Significant Impacts On the Community**

The General Plan, and the associated water supply plans, for the City have been developed through the year 2020, and beyond, based on the current diversion and bypass requirements. If the Flow Policy is adopted as proposed, the City will be required to spend millions to complete new planning documents. The proposed Flow Policy will profoundly alter the future of the City of Napa.

Moreover, if the City's planning documents are undermined by a loss of water rights, the entire community would be negatively impacted. The City's ability to provide economic development and affordable housing would also be profoundly compromised. As the City would have to develop new sources of drinking water, it would have to raise water rates dramatically, which would have the greatest impact on its poorest customers.

### **The Flow Policy May Not Benefit The Fishery**

The State Board should not ignore the importance of site-specific biological and hydrological assessments, which are largely the basis for existing water rights. The water rights in the north coast have been the subject of numerous State Board and judicial proceedings, particularly with respect to the Napa River, therefore the existing balance between consumptive and instream uses should not be dismantled without careful consideration of the particular needs of each tributary and the Napa River itself.

The State Board should not act based on the simplistic assumption that more water will always benefit fish. Sometimes more water has little or no benefit because there is insufficient habitat to support a larger population. The extent the fishery that uses the Napa River could benefit from higher stream flows in tributary streams during certain life stages depends on the quantity and quality of the habitat in those streams. If habitat is a limiting factor, any additional flow will be a waste of water and therefore prohibited by law.

### **The Flow Policy Will Have Significant Environmental Impacts**

The State Board must consider the direct, indirect, and cumulative impacts of its proposed decision. The State Board's Environmental Checklist states that the proposed Flow Policy will not directly impact hydrology and water quality. North Coast Instream Flow Policy, Environmental Checklist, p. 24. This is incorrect. Since the Flow Policy includes existing water rights, the policy will directly impact both hydrology and water quality, not to mention drinking water supplies, land use planning and public services (e.g., fire protection). The City also disagrees with the State Board's position that the proposed Flow Policy would not impact housing, either directly or indirectly. *Id* at p. 24. If the City is unable to provide the required

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August 25, 2006

Page 4

level of water service, there has to be a resulting reduction in available housing. The Flow Policy has the potential to impact affordable housing, as the City would have to find an alternative water supply, which would raise rates, thereby significantly impacting low income individuals. The State Board's environmental document must also consider the impact on the groundwater basin as the city, and other owners of water rights in the region, switch to groundwater.

Besides direct and indirect effects, the State Board must consider the cumulative impacts of other activities that are having the same type of impacts as the proposed Flow Policy, like reducing available water supplies and impacting groundwater basins. Projects that should be considered in an analysis of cumulative impacts include: TMDLs (particularly those with flow components), state and federal regulatory requirements resulting from listed species, water development projects, water transfers/conjunctive use projects, changes in water quality standards, and construction projects.

**The State Board Should Consider Reasonable And Prudent Alternatives To The Proposed Flow Policy**

The State Board should formally adopt the broad concepts of appropriate bypass flows and specific diversion rates, a preference for off-stream storage and wet season diversions, and fish screens and fish passage facilities, when appropriate, to be applied on a case-by-case basis when new permits are issued and when no site specific biologic and hydrologic assessments are available. Assembly Bill 2121, which launched the State Board's current instream flow process, did not limit the State Board's broad discretion and only requires that the State Board adopt broad principles and guidelines. The State Board should therefore use the broad discretion permitted in AB2121 to adopt a policy that can be implemented within the state's, and the State Board's, available resources, and that is flexible enough to accommodate the specific needs of each north coast stream.

Sincerely,

*Janet K. Goldsmith*  
BOS

Janet K. Goldsmith

JKG

838625.1 0000.01

Appendix A

**Sheila Pitts**

---

**From:** Lowe, Rone Patrick [RLowe@co.napa.ca.us]  
**Sent:** Friday, August 25, 2006 11:31 AM  
**To:** FlowPolicy@waterboards.ca.gov  
**Subject:** CEQA Scoping/NOP Comments of Proposed North Coast Instream Flow Policy- Attn: Karen Niiya

Please see the attached letter for our comments, which we are also transmitting by fax and US mail.

R. Patrick Lowe  
Deputy Director, Conservation  
Conservation, Development & Planning Dept.  
Napa County  
(707)259-5937  
rlowe@co.napa.ca.us

Jeff Sharp  
Planner III/Watershed Coordinator  
(707)259-5936  
jsharp@co.napa.ca.us

[www.co.napa.ca.us](http://www.co.napa.ca.us), [www.napawatersheds.org](http://www.napawatersheds.org)



HILLARY GITELMAN  
Director

PATRICK LYNCH, AICP  
Assistant Director

R. PATRICK LOWE  
Deputy Director

BRIAN BORDONA  
Supervisor

MARY DOYLE  
Principal Planner

JEFF SHARP  
Planner

CARLY AUBREY  
Planner

DAN ZADOR  
Planner

LYNSEY WICKMAN  
GIS/ Planner

JEFF TANGEN  
Graphic Specialist

C. RENEE' LEDERER  
Planning Administrative  
Specialist

August 25, 2006

Karen Niiya  
State Water Resources Control Board  
Division of Water Rights  
P.O. Box 2000  
1001 I Street, 14th Floor  
Sacramento, CA 95812-2000

*[Transmitted via email: FlowPolicy@waterboards.ca.gov and Fax: (916) 341-5400]*

**RE: CEQA Scoping of Proposed North Coast Instream Flow Policy**

Dear Mrs. Niiya:

Thank you for conducting your California Environmental Quality Act (CEQA) Scoping Meetings earlier this month. Members of our County staff attended the meetings and we have prepared this letter based on the information presented, review of documents posted to your website (namely, NMFS-DFG DRAFT Instream Flow Guidelines and the North Coast Instream Flow Policy Environmental Checklist) and the County's input to similar regional-scale planning efforts underway by the San Francisco Bay and North Coast Regional Water Quality Control Boards (RWQCBs). The County Board of Supervisors has not had the opportunity to review the scoping materials, but will be directly involved in reviewing and commenting on your draft environmental document and any proposed policies.

The County is generally supportive of the proposed policy goals, however we are concerned about the potentially broad scope of the policy, the lack of specificity pertaining to implementation and responsibility, and potential local impacts resulting from diverters taking actions as a result of the policy.

It is critical that your CEQA analysis consider both the effectiveness and feasibility of any suggested implementation measures associated with the proposed policy, and that your analysis not defer detailed analysis to a later date. The State Board's suggestion that it may defer specifics to "project level" analyses undertaken at a future date suggests a piece-meal approach that will overly burden the County, cities, special districts and private landowners charged with implementing State policy. Your environmental document should contain specific information about reasonably foreseeable implementation actions anticipated as a result of the State's proposed policy, and thoroughly assess the localized impacts associated with each.

As noted in your documentation, diversion and/or dam/reservoir removal will affect aquatic species that have become dependant upon these habitats. Many sensitive species of concern (endangered, threatened and/or locally significant) are known to exist in Napa County. We understand that the policy is intended to improve habitat for some sensitive species (namely fish), however other species (i.e., red legged frog) may be harmed as a result of policy actions. Your analysis should fully disclose these inevitable trade-offs of one species' survival for that of another and justify the policy actions and mitigation suggested.

1195 THIRD STREET  
SUITE 210

NAPA, CALIFORNIA  
94559

TELEPHONE:  
707-253-4417

FAX:  
707-253-4336

WWW.CO.NAPA.CA.US

## Appendix A

We are also concerned that changes in how water is diverted and used will result in increased reliance on groundwater, which currently supports a \$9 billion agricultural industry and rural residential land uses in Napa County. Please assess the potential impact of your policy on the pumping and availability of groundwater resources. Consider the present need and use of surface water, groundwater, and the effect additional groundwater pumping will have, particularly in areas already identified as “groundwater limited/deficient” (i.e. in over draft).

Your environmental review should consider how actions resulting from the proposed policy will affect funded stream and river flood and restoration projects. Many of projects in Napa County have been hydraulically designed based upon current flow conditions. Modifications to the timing and volume of present stream flows may influence the effectiveness and performance of these projects and could reduce value of public and private dollars invested in these projects.

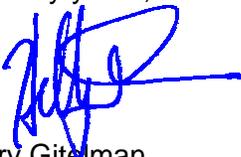
The DRAFT NMFS-DFG Guidelines referenced in the proposed policy rely upon considerable knowledge and understanding of local watershed behavior and hydraulics, as well as what habitat and species exist (or could exist) within each of them. This detailed level of environmental information is not readily available for many of the watersheds in Napa County. Your environmental analyses, as well as final policy draft, should consider the necessary infrastructure (flow gages, monitoring sites, enforcement..) needed to understand, measure and comply with any proposed actions/regulations suggested, and additionally identify who is responsible for funding, installing and maintaining such infrastructure.

Your analysis should also consider the proven effectiveness of the County’s current regulations (i.e., stream setbacks, vegetation retention requirements in water supply watersheds, countywide NPDES permit requirements and other related water and watershed protective measures) and ongoing watershed resource conservation programs and stewardship efforts by numerous groups and organizations, such as the Rutherford Dust Society’s work on the mainstem of the Napa River, the “Fish Friendly Farming” certification program, as well as other related efforts and programs supported and underway by the Watershed Information Center and Conservancy Board of Napa County.

We additionally request that any standards of compliance or measures of attainment resulting from this proposed policy be aligned with other policies/regulations that are currently approved or under development by the Regional Water Quality Control Boards in our area (i.e., Region 1, 2 and 5), such as TMDL Implementation Plans, Basin Plan/Water Quality Control Plan Amendments and Waste Discharge Requirements an/or Waivers. Inconsistency among compliance, permitting, monitoring and reporting requirements will result in confusion, failure to attain policy goals and public/community discontent.

We look forward to working with you and other State Water Board staff throughout this process. Please don’t hesitate to contact Patrick Lowe (707) 259-5937 or Jeff Sharp (707) 259-5936 on our staff if you have any questions regarding these comments.

Very truly yours,



Hillary Gitelman  
Director

cc: Nancy Watt, County Executive Officer  
County Board of Supervisors  
Bob Peterson, Director of Public Works  
Patrick Lowe, Deputy Planning Director  
Jeff Sharp, Planner/Watershed Coordinator  
WICC Board

Appendix A



## NORTH MARIN WATER DISTRICT

999 RUSH CREEK PLACE • POST OFFICE BOX 146 • NOVATO, CALIFORNIA 94948 • (415) 897-4133 • FAX (415) 892-8043  
August 24, 2006

VIA FACSIMILE

Ms. Karen Niiya or Mr. Eric Oppenheimer  
State Water Resources Control Board  
P.O. Box 2000  
1001 I Street, 14<sup>th</sup> Floor  
Sacramento, CA 95812-2000

Subject: North Coast Instream Flow Policy Substitute Environmental Document  
File: 731

Dear Ms. Niiya/Mr. Oppenheimer:

North Marin Water District (NMWD or District) provides domestic water service to a population of approximately 57,000 in the greater Novato area of northern Marin County. The majority of the District's Novato water supply is imported from the Russian River under contract with Sonoma County Water Agency. Additional supplies are delivered from our permitted and licensed local source, Stafford Lake, a surface water storage reservoir on Novato Creek. NMWD also provides water service to approximately 1,700 people in western Marin County in the vicinity of Point Reyes Station. That source of supply is from shallow wells adjacent to Lagunitas Creek near Tomales Bay.

The District has previously reviewed and commented on the October 2004 Petition submitted by Trout Unlimited and the Peregrine Chapter of the National Audubon Society to the State Water Resources Control Board (SWRCB), and is familiar with the proceedings being conducted by the SWRCB concerning this proposed policy.

NMWD acknowledges and concurs with the need for improvements to the SWRCB's administrative processing of water right applications, and the need to balance competing water demands for consumptive use and for environmental purposes, including protection of anadromous fisheries.

NMWD is supportive of adopting a SWRCB timeline to act on water right applications. NMWD also concurs generally regarding the need for improved water rights enforcement, including use of some form or forms of penalties for illegal diverters. NMWD does, however, urge caution in application of the draft California Department of Fish and Game (DFG) and National Marine Fisheries Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Coastal Streams (Guidelines), because we do not believe that a "postage stamp" or "one size fits all" approach is appropriate. NMWD has specific comments for the SWRCB's consideration, and an example to substantiate our precaution regarding use of postage stamp Guidelines.

Comments:

1. The Project Description in the subject Notice of Preparation states: "The policy is likely to address the State Water Board's administration of water right applications; small domestic use and livestock stock pond registrations; existing permits and licenses; change petitions, including transfers, time extensions and wastewater change petitions." However, the Guidelines apply to only new water right permits.



## Appendix A

SWRCB re North Coast Instream Flow Policy Substitute Environmental Document  
August 24, 2006  
Page 2 of 3

NMWD recommends that the policy and Guidelines apply only to new water right permits.

2. Should our Comment 1 not be accepted, NMWD recommends that minor petitions for change to existing permits or licensed water rights not be subject to the proposed Guidelines. Minor petitions are often needed to refine or "fine tune" water rights and operations thereunder, without re-opening the balancing which occurred when the right was issued.
3. NMWD recommends that permit applications for diversions from streams, which are tributary to existing on-stream surface water storage reservoirs, be excluded from the proposed Guidelines.
4. The policy must include flexibility to enable appropriate water use in situations where the Guidelines are not applicable. Please see the precautionary example below.

Precautionary example where "postage stamp" Guidelines are inappropriate:

NMWD's existing diversion from wells located adjacent to Lagunitas Creek under permitted and licensed rights is in the tidal reach of the stream, which is tributary to Tomales Bay. In 1992 a hearing was held before the SWRCB to address issues regarding diversion of water from Lagunitas Creek by Marin Municipal Water District, NMWD and Waldo Giacomini. The resulting Order (WR 95-17) amended the parties' water rights and required changes in water diversion practices to protect fishery resources and to prevent unauthorized diversion and use of water from Lagunitas Creek. The Order determined that, due to the low natural flow of Lagunitas Creek and the existence of senior water rights, there ordinarily would be no water available for diversion by NMWD (due to its junior priority) during July through October of dry years. NMWD was ordered to notify the SWRCB of an alternative source of water to be used by its 1700 West Marin customers during those periods.

In 1995 NMWD worked out a cooperative physical solution with Giacomini to acquire a portion of his senior water right, in exchange for NMWD delivery of irrigation water to the Giacomini Ranch. Since that time, in an attempt to perfect a change in place/purpose of use for the more senior water right acquired from Giacomini (which was originally permitted and licensed for irrigation on the Giacomini Ranch) NMWD has:

- Reduced the portion of the senior water right acquired from Giacomini by 40%, well below the portion originally proposed to the SWRCB.
- Agreed to operate without a summer dam on Lagunitas Creek, thus subjecting NMWD's water supply for 1700 people to potential salinity intrusion from the tidal influence of Tomales Bay.
- Agreed to dedicate an existing junior water right to instream use purposes, thus insuring that this water would not be available for NMWD's use or for other appropriators in normal years.
- Enhanced the NMWD water conservation programs in the Point Reyes Station area to regularly inform NMWD customers of the District's water supply status and of necessary conservation measures (including water shortage contingency measures tied to community wide water demand); and finally
- Agreed to a volumetric limit on the total amount of NMWD diversions during summer

## Appendix A

SWRCB re North Coast Instream Flow Policy Substitute Environmental Document  
August 24, 2006  
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months of dry years.

Notwithstanding these measures to balance fishery and community water supply needs, NMWD has been stymied from obtaining SWRCB approval of its minor change petition to ensure a safe and reliable source of water supply for the 1700 people in the Point Reyes Station area. The California Department of Fish and Game (DFG) protested our petition for change to limit the annual volume diverted (and NMWD has agreed to this limit), and has most recently requested a limit on NMWD's instantaneous diversions. NMWD has clearly demonstrated that this simply cannot work absent protection of municipal supplies from salinity intrusion (e.g., installing a summer dam on Lagunitas Creek). The Guidelines and DFG's request for an instantaneous diversion limit are both immaterial in the geographic location of NMWD's diversion since the area is tidally influenced and all parties agree that in the summer months of all years, no anadromous fish reside, spawn or migrate in the vicinity of the NMWD diversion.

The District respectfully requests that these comments be included in the record of the SWRCB's and considered in the proposed policy. NMWD hopes that this example points out that the Guidelines are not appropriate in all circumstances and there must be measures in any Guidelines and Procedures adopted by the SWRCB to accommodate the widely different circumstances that occur on the streams in the area in question.

Should you have any questions about NMWD comments, please contact the undersigned.

Sincerely,



Chris DeGabriele  
General Manager  
(415) 897-4133

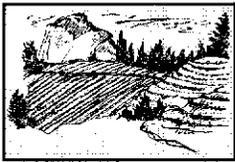
cc:

Mr. Dave Bolland  
Regulatory Affairs Specialist  
Association of California Water Agencies  
910 K Street, Suite 100  
Sacramento, CA 95814-3512

Mr. Randy Poole  
Sonoma County Water Agency  
P.O. Box 11628  
Santa Rosa, CA 95406

CD/rr

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# ALDER SPRINGS RANCH & VINEYARD

10 Maybridge Road  
Belvedere, CA 94920

Telephone: 415-435-1961

Fax: 415-435-1724

DMR WATER RIGHTS  
SACRAMENTO  
2006 AUG 31 AM 11:38  
STATE WATER RESOURCES  
CONTROL BOARD

July 31, 2006

Mr. Eric Oppenheimer  
State Water Resources Control Board  
P.O. Box 2000  
Sacramento, CA 95812

**RE: North Coast Instream Flow Policy Substitute Environment Document**

Dear Mr. Oppenheimer:

I wanted to write to you regarding the instream flow policy document that you are preparing. I have large properties in Mendocino County on the north fork of the Eel, on the main branch of the Eel and on the Garcia River. I hold a number of permits for ponds, etc., and have many small year round streams that run on my ranches.

Keeping instream flows during summer and early fall is a big challenge. Every one needs water and streams are the easiest place to get it. Also, riparian rights are simple and straightforward. There is just enough water in most small coastal streams in late summer to just keep the fish alive without every human being putting a pump or a dam in the creek.

Storage into stock ponds or storage ponds has a number of advantages: Ponds can be filled during the winter months when stream flows are high (often very high), they are very good for wildlife, and a great deal of water can be stored so that water doesn't need to be taken from the streams in the summer. These ponds, in my view, have very few disadvantages and many things to recommend them, yet they are very hard to get permits for. (Years of applications and red tape.)

In our area, a great number of parcel owners put a pump in the creek for domestic use and yard irrigation. This is not much of a problem most of the year but can dry up a stream in late summer when water demand is the highest and supply the lowest.

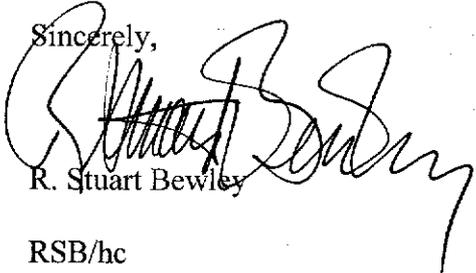
Many of these parcel owners don't want to invest the money (about \$10,000.00) to dig a 200-250 foot deep well. Wells would take a great strain off the coastal streams but only when there is an incentive to dig wells will this happen. For example: 50% grant for digging a well, \$500.00 annual riparian fee for every landowner who pumps directly from a stream.

Many streams on our ranches run year round only to be as dry as a bone two or three property owners down stream with each having pump in the creek. Most of these have no permits or filed rights.

I encourage you and your staff to walk a few of these streams before you write your reports and recommendations. It is easy to see in many cases why our fish are having such a tough time.

In your solution please try not to just add more paperwork and red tape. Take some away in an area that is beneficial such as ponds. It's the fees, red tape, and hassle that keeps people from doing things, or they just do them without permits.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Stuart Bewley". The signature is written in a cursive style with a large initial "R" and "S".

R. Stuart Bewley

RSB/hc

**Sheila Pitts**

---

**From:** Maggard Michelle [mmaggard@CFBF.com]  
**Sent:** Wednesday, August 23, 2006 4:36 PM  
**To:** FlowPolicy@waterboards.ca.gov  
**Subject:** North Coast Instream Flow Policy; Scoping Comments on Notice of Preparation and Environmental Checklist

Please consider the attached comments.

<<Instream Flow Policy Comments.pdf>>

**Michelle Maggard,**  
*Legal Secretary*  
Natural Resources & Environmental Division  
2300 River Plaza Drive  
Sacramento, CA 95833  
**Tel.: (916) 561-5653**  
Fax: (916) 561-5691



CALIFORNIA

FARM BUREAU FEDERATION



# CALIFORNIA FARM BUREAU FEDERATION <sup>Appendix A</sup>

## NATURAL RESOURCES AND ENVIRONMENTAL DIVISION

2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3293 • PHONE (916) 561-5665 • FAX (916) 561-5691

August 23, 2006

**Via Regular Mail and E-Mail ([FlowPolicy@waterboards.ca.gov](mailto:FlowPolicy@waterboards.ca.gov))**

Karen Niiya  
State Water Resources Control Board  
P.O. Box 2000, 1001 I Street, 14th Floor  
Sacramento, CA 95812-2000

***Re: North Coast Instream Flow Policy  
Scoping Comments on Notice of Preparation and Environmental Checklist***

Dear Ms. Niiya:

The California Farm Bureau Federation ("Farm Bureau") is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the State of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing over 88,000 farm families and individual members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

The Farm Bureau appreciates the opportunity to review the Notice of Preparation and Environmental Checklist recently released in relation to the North Coast Instream Flow Policy, prepared by your office in response to the requirements of Assembly Bill 2121 (Water Code § 1259.4), and to provide comments on that document and the scope of the Substitute Environmental Document ("SED") during formulation of the North Coast Instream Flow Policy. The following comments are provided:

1. *The SED should include an adequate description of the project.*

The SED should include a clear statement of whether and how this policy will apply to existing water right applications, to existing petitions for change, to existing permits and licenses, and to pre-1914 water rights and riparian rights.

2. *The SED should include an adequate range of alternatives.*

The Environmental Checklist identified no policy alternatives other than a policy alternative based upon draft "Guidelines for Maintaining Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Coastal Streams," developed in 2002 jointly by the California Department of Fish and Game and the National Marine Fisheries Service. The SED should include a range of reasonable policy alternatives, other than a policy based solely upon these draft guidelines.

3. *The SED should evaluate the project's impacts upon groundwater resources.*

The SED should evaluate the project's impacts to groundwater resources, including effects related to increased substitution of groundwater pumping to meet water demands.

4. *The SED should evaluate the project's impacts upon agricultural resources.*

The SED should evaluate the project's impacts upon agricultural resources, to include the retirement or fallowing of productive agricultural land.

5. *The SED should evaluate the project's impacts on surface water systems, including sediment transport, erosion and flood control.*

The SED should evaluate the project's impacts on surface water systems, including resultant effects upon sediment transport, riverbank erosion and flood control capacities.

6. *The SED should evaluate the project's impacts on utilization of surface diversions, including storage impacts.*

The SED should evaluate the project's impacts on utilization of surface water diversions, including seasonal adjustments to surface diversions and the storage impacts of reduced on-stream storage in favor of increase off-stream storage.

The Farm Bureau appreciates your consideration of the above, and looks forward to review of the SED when it is publicly released. If you have any questions or concerns in relation to these comments, do not hesitate to contact me by telephone directly at (916) 561-5667.

Very truly yours,



CHRISTIAN C. SCHEURING

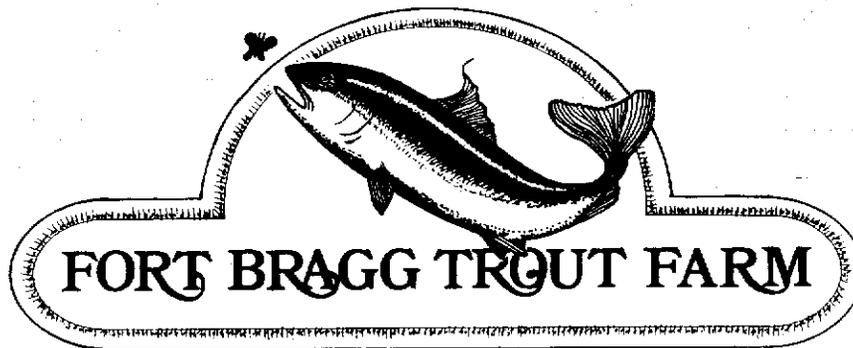
CCS\mmm

cc: Tony Francois

E10/KN

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Appendix A



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3 August 2006

Kkaren Niiya or Eric Oppenheimer

There seems to be no provision to exclude or exempt safe diversions that do not consume water but merely temporarily divert it before its clean, unpolluted return. Or to protect vast wetlands and riparian habitat that grandfathered (well established) diversions create. Animals and plants do not abide by NMFS-DFG draft guidelines. Some situations are unique and should have an avenue for exemptions and variances that make sense.

Therefore, be sure and allow exemptions and special conditions when necessary. DFG, Water Quality Control Board, Water Rights and Stream bed diversion permits have all noted our unique situation, long standing for nearly 100 years, no negative on consumptive water use. But your blanket office type guidelines do not always make sense in the real world of nature.

Also stipulate that if your guidelines damage or end a family livelihood, financial restitution must be forthcoming.

Best regards,

A handwritten signature in black ink, appearing to read "Michael Domenici".

Michael Domenici

**Sheila Pitts**

---

**From:** Stephen Hall [pipsteve@pacific.net]  
**Sent:** Friday, August 25, 2006 11:16 AM  
**To:** flowpolicy@waterboards.ca.gov  
**Subject:** comment on scoping of SED for AB2121



letter to SWRCB  
about SED.doc

Dear Ms Niiya,

Please accept my comments (attached) on scoping for the SED for AB2121.

Thank You.

Stephen Hall

## Friends of the Navarro Watershed

PO Box 739

Boonville CA 95415 707 895-2735

State Water Resources Control Board  
P.O. Box 2000  
1001 I Street, 14<sup>th</sup> Floor  
Sacramento, CA 95812

Re: Draft SED North Coast Instream Flow Policy Comments

Attention: Ms. Karen Niiya Division of Water Rights

Dear Ms. Niiya:

Thank you for the chance to address the SED for the implementation of AB2121. The flows in the streams addressed by AB2121 have been rapidly diminishing for years now, none much worse than the Navarro. Anderson Creek is the worst hit of the tributaries of the Navarro. It was declared fully-appropriated (for the summer months) years ago, yet has 13 pending (winter) applications, many of which were discovered in the 1998 WIP. I mention Anderson Creek in particular because it should still be running by my house at this time of year, especially after a late and wet spring. The fact that it isn't indicates a serious problem that has to be addressed with some will if there's any chance of saving the salmon and steelhead. AB 2121 presumably was intended for this very problem, and the 2002 Draft Guidelines are the standards for water appropriation that need to be rigorously applied. Somehow all water that would end up in the streams has to be brought under some level of regulation, or French drains and pumping of ground water will pick up where the regulation of surface water has left off, and instream needs won't be met.

The problem faced by the SWRCB, as I see it, is how to deal with the obvious over-drafting of the water that should still be flowing in the streams. While I'm using Anderson Creek, and the Navarro, as the example I'm most familiar with (having protested many applications in the vain attempt to mitigate the current water grab), there is reason to believe much of the area covered by AB2121 is in similar shape. Surely there will be difficult cases where onstream reservoirs, illegally installed, will have to be removed if they cannot be adequately bypassed. Even legally installed reservoirs being decommissioned can be considered if the owner can be convinced and if their seniority is unaffected. In either case, the physical removal needn't be a huge sediment load to the watershed downstream, given the technology and technique available such as temporary dams and planting of riparian vegetation to capture the soil deposited in the reservoir.

Surely the gain in flow would more than offset the mitigated sediment release and help create a rich expansion of riparian habitat in the captured soil.

Somehow, we need to not just stop the diminishment of instream flows, but actually to regain flow in some cases. While it cannot be easy or cheap, it's desperately necessary, and the Endangered Species Act, Clean Water Act, and TMDL process—to name a few—are all going in the same direction and trying to address the same problem. Please don't be deterred by the difficulties ahead. Please find a way.

Thank you,

Stephen Hall, for Friends of the Navarro Watershed

## Appendix A

**Sheila Pitts**

---

**From:** Chris Malan [cmalan@starband.net]  
**Sent:** Thursday, August 24, 2006 12:18 PM  
**To:** Flowpolicy@waterboards.ca.gov  
**Subject:** CEQA Scoping SED

Hi Karen Niiya or Eric Oppenheimer,  
Please see these comments from Living River's Council and Earth Defense for the Environment Now.  
Thank you,  
Chris Malan  
Manager  
EDEN/LRC  
707-255-7434



E.D.E.N.  
1325 Imola Ave. West  
PMH614  
Napa, Ca. 94558  
[www.napaeden.org](http://www.napaeden.org)  
[www.livingriverscouncil.org](http://www.livingriverscouncil.org)



August 17, 2006

State Water Resources Control Board  
P.O box 2000, 1001 I Street, 14<sup>th</sup> Floor  
Sacramento, Ca. 95812-2000

Contact: Karen Niiya or Eric Oppenheimer

#### SUBSTITUTE ENVIRONMENTAL DOCUMENT SCOPING COMMENT

1. EDEN has been submitting protests to the SWRCB for four years on the Napa River. This River is literally dying from lack of water. Recent kayaking down the river by EDEN members has brought forth alarming conditions. Many streams do not have adequate flows. Lack of flow is killing off whole watersheds to anadromous fish and exacerbating already poor water quality. Illegal dams should not be permitted and required to be removed. If the SWRCB dismisses illegal use by asking people to simply apply for the water, and then accept the application, it sets an agency wide precedent that grabbing water illegally will be ultimately forgiven. We can not afford this kind of policy that harms the public benefit in a civil society.
2. On stream dams or reservoirs, everywhere in the watershed, in the future must be prohibited. Stream habitat below dams is altered hydrologically and changes the geomorphology of the stream. These impacts are environmentally significant. On stream dams and reservoirs that are illegal should be removed at the property owner's expense and placed off stream. Verification of amount of water use by the user must be made by the SWRCB. The actual place of use should remain a condition of any diversion permit. In practice some illegal users waste water, don't need it but store it anyway or top off their reservoirs by pumping from the stream. Reservoir capacity should be limited to the amount of permitted use.
3. SWRCB may decide to set guidelines that streams above reservoirs may not fall within AB2121. On the Napa sediment TMDL the SWQCB final EIR excluded streams above dams from TMDL guidelines because the SWQCB contends that the fish above the dam are not protected species. We would disagree with this guideline or policy. AB2121 does not specify that streams above a dam shall not fall under this law. Fish trapped above barriers could become anadromous if given the chance. Salmon and steelhead trapped by dams carry the

same DNA as ocean going fish. Therefore, they can be protected specie. Minimum flows must apply to all streams above barriers such as dams. The US Supreme Court ruled on May 15<sup>th</sup> that under the Clean Water Act, a hydroelectric dam in the state of Maine must release sufficient flows for fish into US navigable waterways and provide for fish passage. (SD Warren Co v. Maine Board of Environmental Protection, et al, Case 04-1527) This ruling applies to all dams in all jurisdictional waters.

4. The Environmental Check List (ECL) on page 12 states that Population and Housing will have no impact. There are housing subdivisions on the North coast currently seeking water rights in wildlands. Wildland conversion to subdivisions that seek a new use for prior water rights must apply for a new water withdrawal permit from the SWRCB. Housing and population depend on the availability of water. CEQA requires the SWRCB to determine any significant impacts within the ECL. Wildland conversion to agriculture and then conversion houses will put a higher demand on existing water rights. The SWRCB should set strong policy and enforcement that change of use to housing shall require a full CEQA review. The SWRCB can not escape this discussion and shirk responsibility. Examples of this: A vineyard developer converts wildlands to vineyards and has water diversions for the vineyard. The developer than converts the acreage to houses and uses the water right for houses.
5. Unless the SWRCB determines water availability, they will not meet the intent of AB2121. This law requires that minimum flows be established. Therefore, each watershed should be determined as to what water is available. The SWRCB shall determine what water has been taken illegally in order to establish current availability for the future.
6. SWRCB should determine when a watershed is over allocated and cease issuing new water withdrawal permits. In other words, the watershed is 'SHUT'.
7. SWRCB should publicly provide complete GIS mapping updates on water availability in watersheds. This could notify potential users how much water could be used for what purposes.
8. SWRCB (WB) must include policy, guidelines for drought years and maintaining minimum flows.
9. The jurisdiction of the SWRCB concerning ground water is unclear. Riparian ground water is essential for maintaining minimum instream flows. If users start pumping riparian ground water in lieu of using their on stream reservoirs, flows may be jeopardized. Off stream pumping of riparian ground water must be clearly defined with published guidelines.
10. Encouraging off stream storage presents other problems such as: conversions from wildlands to storage could cause significant environmental impacts. This would require a CEQA review.
11. All construction projects recommended in the SED must be subject to CEQA. The SED should discuss this.

12. On stream barrier removal may cause release of toxic materials to the stream. Examples of this could be mercury and copper laden in soils and released to the stream as construction begins and the stream regains its course.

**Alternative One:** All illegal water users must cease all water withdrawals and apply for legal use, and then remedy their water grab with either switching to dry farming, construction of off stream reservoirs, or adopting alternate crops. As a policy of the SWRCB, the public use of water must be primary. The SWRCB will not grandfather in illegal users as this sends a message to future applicants it pays to grab water illegally and makes a mockery of the SWRCB.

**Alternative Two: Watershed Stewardship Programs:** Waivers from compliance to the SWRCB regulations shall not be granted. However, illegal users could be in an Enforcement Diversion Program that requires the property owner to comply with a set of requirements time sensitive such as: 1) Establish a Watershed Stewardship where most land owners are encouraged to participate 2) Bioassessment of the watershed to establish baseline water quality information with yearly on-going monitoring with adaptive management 2) Peer Review annually 3) Active remedies of problems and reports to the stewardship. 4) A stewardship leader is hired by the watershed to manage the program, hold meetings, and report to the water board all recommendation, remedies and improvement. 5.) Water gauges installed for year around monitoring. 6.) All construction is subject to CEQA. NGOs become important as they can energize the success of this Enforcement Diversion Program and act a non biased party. If the Watershed Stewardship fails the Enforcement Diversion Program (time sensitive), then strict enforcement takes place, such as large fines, jail, removal and restoration.

Thank you  
Chris Malan  
Manager LRC and EDEN  
707-255-7434  
John Stephens  
LRC and EDEN  
Council Chair  
707-251-0106

**Sheila Pitts**

---

**From:** Darren Cordova [cordova@mbkengineers.com]  
**Sent:** Friday, August 25, 2006 4:37 PM  
**To:** FlowPolicy@waterboards.ca.gov  
**Cc:** EIOppenheimer@waterboards.ca.gov  
**Subject:** Comments to Notice of Preparation

Eric -

Attached is a letter containing our comments to the Notice of Preparation for a Draft Substitute Environmental Document for the proposed North Coast Instream Flow Policy. A hard copy of the attached will follow by mail. Please call if you have any questions.

Thank You -

Darren B. Cordova, P.E.  
MBK Engineers  
2450 Alhambra Boulevard, 2nd Floor  
Sacramento, California 95817  
Phone: (916) 456-4400, ext. 127  
Fax: (916) 456-0253  
e-mail: [cordova@mbkengineers.com](mailto:cordova@mbkengineers.com)  
web page: [www.mbkengineers.com](http://www.mbkengineers.com)

JOSEPH D. COUNTRYMAN, P.E.  
GILBERT COSIO, JR., P.E.  
MARC VAN CAMP, P.E.

ANGUS NORMAN MURRAY  
1913 - 1985

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CONSULTANTS:  
JOSEPH I. BURNS, P.E.  
DONALD E. KIENLEN, P.E.

August 25, 2006

Eric Oppenheimer  
State Water Resources Control Board  
Division of Water Rights  
P.O. Box 2000  
Sacramento, CA 95812-2000

**Subject: Comments to Notice of Preparation**

Dear Mr. Oppenheimer:

The purpose of this letter is to provide our comments relative to the Notice of Preparation (Notice) for a Draft Substitute Environmental Document (Draft SED) for the proposed North Coast Instream Flow Policy (Policy). Based on the information contained in the Notice provided by the State Water Resources Control Board, dated July 19, 2006, we are submitting the following are comments for consideration in the Draft SED:

- Address the basis and method to determine the timing and quantity of bypass flows.
- Identify and address the potential effects of the Policy to existing water right holders.
- Relative to the cumulative impacts of diversions, address the basis and method to determine the thresholds that would require additional hydrologic and biological studies.
- Address the appropriate method to identify Points of Interest (POI) and consider the potential impacts relative to selections of POIs based on location both upstream and downstream of confluences.
- Identify the monitoring needs for environmental conditions including, but not limited to fishery resources and habitat, water quality, and stream flow in order to develop additional data for future revisions to the Policy; and identify the responsible government agencies for the monitoring and reporting.

In advance, thank you for consideration of our comments. Please call if you have any questions.

Sincerely,  
MBK ENGINEERS

A handwritten signature in black ink that reads "Darren B. Cordova". The signature is written in a cursive style with a large, stylized initial "D".

Darren Cordova

DC/pp  
2050/ERIC OPPENHEIMER 08.25.06.DOC

**Sheila Pitts**


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**From:** Blacksfa@aol.com  
**Sent:** Friday, August 25, 2006 12:20 PM  
**To:** KYNiiya@waterboards.ca.gov  
**Cc:** amai@scwa.ca.gov; afrancois@cfbf.com; ajs@eslawfirm.com; abaggett@waterboards.ca.gov; bcornett@pacific.net; rrfc@saber.net; bwasson@earthlink.net; bcox@dfg.ca.gov; william.hearn@noaa.gov; b.andersson@comcast.net; bob@mbvllaw.com; bcoey@dfg.ca.gov; rcwagner@wagner-engrs.com; bhard@waterboards.ca.gov; bjohnson@tu.org; ckuhlman@waterboards.ca.gov; choppin@waterboards.ca.gov; cmalan@starband.net; comurray@scwa.ca.gov; cbonham@tu.org; colleenfernald@earthlink.net; dmyers@pacific.net; dhope@waterboards.ca.gov; dick.butler@noaa.gov; elarson@dfg.ca.gov; gary.stern@noaa.gov; wagenet@co.mendocino.ca.us; jweiner@vermontlaw.edu; jgolis@sonoma-county.org; jcollins@kmail.com; gantenbein@n-h-i.org; kfoster@scwa.ca.gov; kkaulum@cds1.net; leonard.l.holt@us.mwhglobal.com; lex@sonomacountyfarmbureau.com; lhanson@dfg.ca.gov; penningt@sonic.net; mnapolitano@waterboards.ca.gov; mferris@ci.santa-rosa.ca.us; mwa@mendowine.com; frey@scgga.org; parksteiner@pacific.net; pjwhealen@wagner-engrs.com; rgolden@n-h-i.org; rdp@scwa.ca.gov; rrcollins@n-h-i.org; rfoote@sbcglobal.net; sanfordr@co.mendocino.ca.us; selles@napafarmbureau.org; tucalif@earthlink.net; pipsteve@pacific.net; susanne\_zechiel@b-f.com; buckner@pacific.net; tsmith@sonoma-county.org; tito@att.net; tom.roth@mail.house.gov; vwhitney@waterboards.ca.gov  
**Subject:** Notice of Prep. of Substitute Env. Doc. for North Coast Instream Flow Policy

August 25, 2006

***VIA ELECTRONIC AND FIRST CLASS MAIL***

Karen Niiya  
 Division of Water Rights, State Water Resources Control Board  
 P.O. Box 100  
 Sacramento, CA 95812  
[KYNiiya@waterboards.ca.gov](mailto:KYNiiya@waterboards.ca.gov)

**Re: Notice of Preparation of Substitute Environmental Document for North Coast Instream Flow Policy**

Dear Ms. Niiya:

Thank you for the opportunity to comment on the State Water Board's NOP for the North Coast Instream Flow Policy SED.

As described at the State Board's July 19 Meeting, a diverse group of stakeholders has been meeting for almost a year to develop recommendations for improving the water rights permitting process so that it better benefits both fishery habitat and landowner interests. The stakeholder group includes representatives of agricultural and urban water users (including trade associations, engineers, and attorneys); conservation organizations; state and federal agencies and counties (see list below). A substantial majority of participants in this stakeholder group has approved submittal of this letter. The group has benefited greatly from the contributions made by Vicky Whitney, State Board Division Chief, Division of Water Rights.

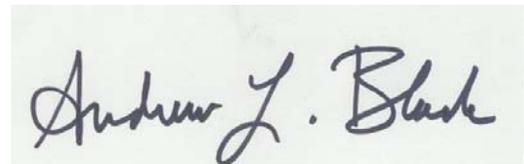
## Appendix A

This fall, we expect to provide recommendations for consideration as part of the Board's proposed North Coast Instream Flow Policy. First, we are preparing a package of recommended improvements to the existing water rights system. The recommendations we are considering include suggestions for improving the water rights noticing process, with a goal of involving all interested parties at an earlier date; early coordination of permit proceedings involving the State Board and other interested permitting and trustee agencies; and improvements to the environmental review and protest resolution process. We are also discussing new approaches to substantive water rights standards, and compliance and enforcement. For example, we are reviewing mechanisms for encouraging development of offstream storage projects to replace existing onstream projects; the fishery benefits of such a program could be significant.

We have also been discussing and developing proposals for approaches/alternatives based on a collaborative effort that could meet water users' needs, conserve fish and wildlife habitat, and provide key data necessary for managing resources. The goal of this collaborative effort would be to take advantages of opportunities within a watershed, such as cost sharing, that may not be available in the traditional arena. Under this "watershed approach", diverters could join together to develop local physical solutions to their watershed specific problems. For example, they could share costs associated with developing data and monitoring conditions and could work together on projects that improved habitat at the most significant locations in the watershed, rather than only on their individual properties. Although this idea is still in its formative stages, it would require instream flow protection provisions for the watershed and a "critical mass" of landowners to be implemented,

We appreciate the willingness expressed by the Board at its July 19 meeting to consider our suggestions. Many of the issues we have been discussing could be part of a State Board North Coast Instream Flow Policy. We look forward to providing you with specific recommendations by the end of September.

Sincerely,

A handwritten signature in cursive script that reads "Andrew L. Black". The signature is written in dark ink on a light-colored, slightly textured background.

---

Andrew Black  
Consultant and Facilitator  
No.Coast Water Rights Working Group

**Stakeholder List**

National Marine Fisheries Service  
California Department of Fish and Game  
North Coast Regional Water Quality Control Board  
Mendocino County  
Sonoma County  
Sonoma County Water Agency  
Mendocino County Water Agency  
Agricultural Water User Representatives  
California Farm Bureau Federation  
National Heritage Institute  
Trout Unlimited  
Peregrine Audobon Society  
Redwood Chapter Sierra Club

Andrew Black Consulting  
102 Hancock  
San Francisco, California 94114  
415-565-0225  
[blacksf@aol.com](mailto:blacksf@aol.com)

## Appendix A

**Sheila Pitts**

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**From:** HoopArb@aol.com  
**Sent:** Friday, August 18, 2006 7:11 AM  
**To:** FlowPolicy@waterboards.ca.gov  
**Subject:** Response to NOP: North Coast Instream Flow Policy

Dear Ms. Niiya and Mr. Oppenheimer:

Please find attached a letter renewing my request ( letter dated November 15, 2001) for a determination that the Garcia River is fully appropriated and my protest of Point Arena Water Works' application to increase its extraction of water from the Garcia River. That protest was accepted based on environmental considerations (ref: 331:YM:30892 dtd 12/24/01) but never acted upon by your agency.

Please acknowledge receipt of this correspondence and assure me that it has been placed in the appropriate files (Request for determination tht Garcia River is fully appropriated; protest of Point Arena Water Works application to increase water extraction, and North Coast Instream Flow Policy File)

Please also make sure my name is placed on the appropriate notification lists for all these matters.

Sincerely,

John C. Hooper  
OZ Farm (on the Garcia River)  
201 Buena Vista Ave East  
San Francisco, CA 94117  
415-626-8880  
707-882-3046

OZ Farm  
c/o John C. Hooper  
201 Buena Vista Ave East  
San Francisco, CA 94117  
415-626-8880  
Email: [hooparb@aol.com](mailto:hooparb@aol.com)

August 18, 2006

State Water Resources Control Board  
Attn: Karen Niiya and Eric Oppenheimer  
PO Box 2000  
1001 I St, 14<sup>th</sup> floor  
Sacramento, CA 95812-2000

Re: North Coast Instream Flow Policy

Dear Ms. Niiya and Mr. Oppenheimer:

Please make this letter a part of the files on this matter. You will note that:

1. On November 6, 1998, Friends of the Garcia River (FROG) petitioned your agency to determine that the Garcia River is fully appropriated during low flow periods. This petition has never been acted upon.
2. On November 15, 2001, the undersigned protested an application (permit # 30892) on the part of Point Arena Water Works to increase its rights to extract water from the Garcia River and requested a determination that the Garcia River is fully appropriated. That protest was accepted based on environmental considerations (ref.331:YM:30892 dated 12/24/01). It has never been acted upon by your agency.
3. Also, during the fall of 2001, your agency received several other letters protesting the application of the Point Arena Water Works and requesting a determination that the Garcia River is fully appropriated. See, inter alia, Gundling 9/21/01; Dahlhoff 11/12/01) To the best of my knowledge, these concerns have never been addressed.

With this letter, I renew my protest of the Point Arena Water Works application which I understand to be pending though I have received no notice on this matter, and my request for determination that the Garcia River is fully appropriated.

I would appreciate your acknowledgement of this letter and your assurances that it will be filed in the Point Arena Water Works file, the file requesting determination that the Garcia river is fully appropriated and the file on this new matter (N. Coast Instream Flow Policy)

Please add my name to all the appropriate mailing lists concerning these matters.

Thank you for your attention to these concerns. I am sending this letter by email and regular mail.

Sincerely,

John C. Hooper

Cc: FROG  
Concerned citizens  
NCWQCB

# PORGANS & ASSOCIATES

## ~~Environmental Bio-Terrestrial Solutions~~

August 25, 2006

Appendix A

DM  
OLIVE  
MARTINICHIS  
SACRAMENTO

2006 AUG 32 AM 11:3

STATE WATER RESOURCES  
CONTROL BOARD

To: State Water Resources Control Board, Division of Water Rights  
From: Patrick Porgans & Associates, Inc.

Fax: (916) 341-5400 Tel: 341-5426

Project: SWRCB's North Coast Instream Flow "Policy" Substitute Environmental Document and "Public Scoping" Meeting in Santa Rosa, CA., August 16, 2006

Attention: Karen Niiya or Eric Oppenheimer

1 At the request of its clients, On August 16, 2006, Porgans & Associates (P&A) attended the State Water Resources  
2 Control Board-Division of Water Rights' "Public Scoping Meeting" in Santa Rosa, California, regarding the Board's  
3 Notice of Preparation and Substitute Environmental Document for the **North Coast Instream Flow Policy**. The  
4 purpose of this letter is threefold:

- 5 ① To provide the Board with how P&A and other perceived the so-called "Public Scoping Meeting."
- 6 ② To express both P&A's and its clients' concerns relative to the expeditious and haphazard manner in which  
7 the entire meeting/matter was presented to the public and the time constraints imposed by your Board on  
8 the public to provide "input" into the so-called "policy."
- 9 ③ Lastly, and most important, to review a portion of the conversation that P&A had with the Board retained  
10 facilitator, and with Board personnel, and to provide "input" to the SWRCB's yet-to-be drafted **North Coast**  
11 **Instream Flow Policy**.

12 The comments stated herein should not be misconstrued as anything more or less than what they represent - the  
13 TRUTH.

14 ① Based upon P&A's 33-plus years of attending government sponsored "public" meetings, this one set a "new"  
15 all-time substandard for perfunctionality, disengenousness and meaninglessness. The meeting started off  
16 with the Board hired "facilitator" providing an extremely vague synopsis of what the so-called public scoping  
17 meeting was suppose to be about. After his brief salique, he introduced Victoria Whitney, Division of Water  
18 Rights' Chief and/or former chief, stating that when she completed her comments there would be a Q and  
19 A. In addition, the faclitator said that there would be a "power-point presentation" and that several stations  
20 had been "set up" around the room, at which Board staff and its retained consultants would be avilable for  
21 discussion.

22 The fact of the matter is that NO one from the public was given the opportunity to question Ms. Whitney  
23 or any other person representing the Board from the floor, during or subsequent to her presentation. There was  
24 no "power-point presentation, and most of the people answering the questions, at each of the set-up stations, were  
25 not Board personnel. Upon completion of Ms. Whitney's saliquiy, the public was instructed to go to the station(s) of  
26 their choice. P&A immediate went to the facilitator to discuss the manner in which the "meeting" was orchestrated,  
27 and asked WHO was responsible for its "format." He said it was the Board's doing. He asked for P&A's input, which  
28 he received, and it is as follows:

Project: SWRCB's North Coast Instream Flow "Policy" Substitute Environmental Document and "Public Scoping" Meeting in Santa Rosa, CA., August 16, 2006

Attention: Karen Niiya or Eric Oppenheimer

---

1 ② According to the SWRCB's statement: "*Effective January 1, 2005, Assembly Bill 2121 (Stats. 2004, ch. 943§*  
2 *3) added section 1259.4 to the Water Code, which requires the State Water Resources Control Board (State Water*  
3 *Board) to adopt principles and guidelines for maintaining instream flows in coastal waters streams from the Mattole*  
4 *River to San Francisco and in coastal streams entering northern San Pablo Bay, for purposes of water right*  
5 *administration (North Coast Instream Flow Policy).*" Although approximately 20 months have passed since the bill  
6 became effective, the "public notice" regarding the "public scoping meeting" was not published until the August 9,  
7 2006, and again on August 13, wherein it stated that the meetings were to be scheduled for August 16, and "*Written*  
8 *comments must be received by 25 August.*" Therefore, from the date of the notice to the scheduled date of the  
9 scoping meeting provided less than seven (7) days for a member of the public to have read and/or prepared for such  
10 a meeting! This time frame, in and by itself, is extremely disconcerting and would be a major challenge for a member  
11 of the public to first even been aware of its scheduling, make arrangement to be there, and lastly to have been  
12 prepared to participate in a meaningful way; notwithstanding this is the summer season when many people are on  
13 vacation.

14 **The meeting was a one-way street.** It preempted meaningful input and public dialogue, either between the  
15 public and Board staff and/or between the various NGO's. It placed the public at a very distinctive disadvantage  
16 relative to getting clarification from either Ms. Whitney or other staff members pertinent to the myriad of  
17 ambiguities inherent in the so-called yet-to-be drafted policy. The format, for all intent and purposes, was a facade.  
18 Although, to his credit, the facilitator appeared genuinely perplexed when apprised of the dog-and-pony show, he  
19 took the initiative to ask if P&A could provide him with a few examples of our take on the meeting. Sensing the  
20 sincerity of the facilitator's inquiry, P&A provided him with a few examples referenced above. Ironically, the most  
21 pronounced was revealed to him, about one-half hour later, when P&A showed him a copy of the written comments  
22 that had been made by two other public participants, which were quite informative, that had been left on the table.  
23 Unfortunately, the majority of the other participants present at the "public meeting" did not have the advantage  
24 of either reading and/or hearing about those comments. Those comments were in-line with many of the issues and  
25 concerns P&A had briefed the facilitator about just minutes earlier. (See attached comments.) The scope and depth  
26 of those comments would have been of interest to any member of the public. They would have provided them with  
27 a sense of perspective and provoked and/or inspired meaningful interaction among ALL participants.  
28 Notwithstanding, the meeting format did not allow for such interaction and/or related dialogue.

29 The issue of not having adequate time to provide meaningful input would have also been an issue that members  
30 of the public would have had a mutual interest. Neither the facilitator nor the Board's staff apprised the public as  
31 to whys and wherefores behind the extended delay in "setting up" the scoping meeting, and/or the wait and hurry  
32 up and get it over with component of the so-called "public" meeting.

33 ③ **The issue of enforcement of the yet-to-be drafted policy would have been of paramount concern to the**  
34 **public,** and it would have been refreshing and helpful if your staff informed those present that one of the so-called  
35 reasons for the wait and hurry up and get it over with meeting, was the result of the Legislature's failure to provide  
36 your Board with the funding to carry out the policy mandate required in AB 2121. More importantly, it would have  
37 been extremely beneficial if those members of the public attending the meeting had been apprised of your  
38 Board's repetitive failures to protect the waters of the State, in cases involving either other state or federal  
39 agencies, who had routinely violated water right permits requirements and/or water quality standards, until Porgans  
40 & Associates pushed the issue. The SWRCB's actions and/or failure to act, were the predominant force behind bring

Project: SWRCB's North Coast Instream Flow "Policy" Substitute Environmental Determination and "Public Scoping" Meeting in Santa Rosa, CA., August 16, 2006

Attention: Karen Niiya or Eric Oppenheimer

1 the Sacramento-San Joaquin Delta and the San Francisco Bay Estuary to a near ecological collapse, resulting from  
2 massive illegal exports of water from the system which was exported by both state and federal water projects. He  
3 SWRCB in conjunction with other federal and state agencies were the primary reason that the Bay/Delta was pushed  
4 to a near ecological collapse, during the state's last major drought (1987-1992) which it has yet to recover from and  
5 placed a number of species as either threaten and/or endangered on the Endangered Species Act.

6 During the August 16 meeting, P&A expressed that and other enforcement concerns with Ms. Whitney,  
7 relative to the Board's deplorable enforcement track record, and asked her just how the Board would enforce such  
8 a policy, especially in light of the fact that the Legislature has a pattern not to fund the enforcement component  
9 of such policies? Ms. Whitney conceded that it would be extremely difficult. To Ms. Whitney's credit she always  
10 seemed to conduct herself in a manner conducive to a responsible public servant; notwithstanding, she is neither a  
11 Board member or a policy maker.

12 The deplorable conditions of many of the watersheds throughout the State of California, including those in  
13 the North Coast, are the result of the governments' collective actions and/or failure to fulfill their respective public  
14 trust mandates. There are a plethora of laws, rules and/or regulations to provide protections for both public trust  
15 resources, the waters of the state and private property; however, for there are also a myriad of reasons and/or  
16 excuses why the full weight of such laws, rules and/or regulations are either not being enforced or selectively  
17 enforced. Your Board has ample existing authority to protect the waters of the state and/or the trust resources  
18 therein. Notwithstanding, the record will also attest to the fact that in many of the projects Porgans & Associates  
19 have been involved with, wherein your Board had legal jurisdiction, it simply failed to perform its regulatory and/or  
20 trust responsibilities. This so-called North Coast Instream Flow Policy will be yet another perfunctory facade that  
21 will only be used as a pacification and/or delay tactic that ultimately will do more harm than good. Whether it is  
22 the result of no or limited legislative funding for enforcement personnel or do to the political forces and pressures  
23 that exert their influence over the Board members, all of whom are pre-screened by the you know whose who.

24 P&A would be extremely please if the SWRCB just fulfilled its existing regulatory mandates. However, when P&A  
25 participated in the SWRCB's 15-plus years of so-called public hearings to strengthen the minimal water quality  
26 standards to protect the Sacramento-San Joaquin Delta and the San Francisco Bay, P&A and you staff documented  
27 hundreds of violations of the existing standards, which your Board failed to enforce. For detailed information please  
28 refer to the SWRCB's hearing records, wherein P&A pushed for and participated in the separate "public" hearings  
29 related to the state and federal governments' failure to comply with their respective water right permits.

30 Please enter P&A's statement into the record, and IF you are posting other participants' comments on your website,  
31 include P&A's. I would appreciate a telephone call when your receive these comments to confirm that they were  
32 received. Thank you.

33

Respectfully,



Patrick Porgans

fnl:lapone/swrcb/nowwe/ncinstreamflowpolicy

cc: Interested Parties

STATE WATER RESOURCES CONTROL BOARD

### Written Comment Form Public Scoping Meeting

2006 AUG 25 PM 1:36

### SUBSTITUTE ENVIRONMENTAL DOCUMENT FOR THE NORTH COAST INSTREAM FLOW POLICY

DIV OF WATER RIGHTS  
SACRAMENTO

State Water Resources Control Board, Division of Water Rights

Your input is important to us; please use this sheet to submit written comments concerning policy alternatives, significant effects, and mitigation measures that should be included in the Substitute Environmental Document (SED). Your comments will assist in preparation of the SED. Please be sure to provide your name and address, below.

The Salmon Creek Watershed Council's goal is to restore Salmon to Salmon Creek. The last Coho was sighted in 1996. We have obtained grants from DFG (stream assessment) and The Coastal Conservancy (Estuary study) and DFG has habitat typed the 18 mile creek and its tributaries. Basically the creek is pretty healthy (viable steelhead population) but the estuary study conducted aquatic, water quality morphology + hydrodynamics, fisheries and upstream factors. The conclusion was that the estuary + creek cannot support salmon because of diminished flow. Flow is the limiting factor.

I heartily support the NMFS/DFG Draft guidelines and strongly suggest that you withhold all appropriative permits applications (previously given out in the past) until your instream flow policy is implemented.

Additional space? Please use other side.

Name\* Ann Cassidy (Salmon Creek Watershed Council)  
Address P.O. Box 748  
City/State/Zip Code Bodega CA 94922

Comments, including names and home addresses of respondents, will be made available for public review. Individual respondents may request their home address be withheld from public disclosure. Please check this box if you wish your name and/or address withheld from public disclosure.

Please submit your comments at the Comment Station or send your comments to:

*If you would like an electronic copy of the estuary report go to www.bodeganet.com (bodeganet)*

Karen Niiya or Eric Oppenheimer  
State Water Resources Control Board  
P.O. Box 2000, 1001 I Street, 14<sup>th</sup> Floor  
Sacramento, CA 95812-2000

or  
via e-mail to: [FlowPolicy@waterboards.ca.gov](mailto:FlowPolicy@waterboards.ca.gov)

To ensure that your comments are considered in the SED, written comments must be received by August 25, 2006.

**Sheila Pitts**

---

**From:** Eric [eric@sanctuaryforest.org]  
**Sent:** Friday, August 25, 2006 4:43 PM  
**To:** FlowPolicy@waterboards.ca.gov  
**Subject:** Instream Flow Policy Comment Letter



Instream Flow  
Comments Final.p...

Dear Ms. Niiya and Mr. Oppenheimer:

Please find attached Sanctuary Forest's comment letter regarding development of the North Coast Instream Flow Policy.

As you can see by the diversity of co-signers to this letter including private landowners, federal, state and county agencies, local and state governments, environmental groups, and business, there is widespread interest in the outcome of the development of this policy.

We look forward to working with SWRCB and your contractors to create a policy responsive to the diversity of approaches needed to maintain instream flows necessary to sustain salmon and our community.

Sincerely,

Eric Goldsmith, Executive Director  
Sanctuary Forest  
PO Box 166 Whitethorn, CA 95589  
707-986-1087, 707-986-1607(fax)  
eric@sanctuaryforest.org  
www.sanctuaryforest.org

--

Open WebMail Project (<http://openwebmail.org>)



**Sanctuary Forest**

P.O. Box 166  
Whitethorn  
California 95589

Karen Niiya, Eric Oppenheimer  
State Water Resources Control Board  
PO Box 2000  
1001 I St. 14<sup>th</sup> Floor  
Sacramento, CA 95812-2000

August 22, 2006

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*Development Director, HHNI*

Frank Letton  
*Engineer*

**Executive Director**

Eric Goldsmith

voice: 707-986-1087  
fax: 707-986-1607  
sanctuary@sanctuaryforest.org  
www.sanctuaryforest.org

Dear Ms. Niiya and Mr. Oppenheimer:

Maintaining healthy instream flows on the rivers and streams of California's North Coast is vital to sustaining the social and ecological fabric of our community. For this reason we welcome the initiation of development of a North Coast Instream Flow Policy by the Division of Water Rights through the Notice of Preparation of a Substitute Environmental Document.

The current situation of seasonal de-watering or intensified low-flow conditions on many North Coast streams is a significant contributing factor influencing the health of our salmonid fisheries and other aquatic species. These conditions also affect agricultural productivity, recreational opportunity and domestic water supply.

Depressed flow conditions in many North Coast streams have prompted a growing movement among state and federal agencies, local governments, land trusts, watershed groups, and agricultural and domestic water users to proactively address flow issues through a host of creative, innovative, voluntary and incentive-based measures and programs.

One such example is the Mattole Flow Program taking place in the Mattole River watershed. This water management program assists existing riparian diverters to reduce or eliminate surface water diversions during key periods of the year, through the use of off-stream water storage tanks. This program involves the use of voluntary forbearance agreements between local entities and water users, and has the potential to dramatically increase dry season flows in the Mattole River headwaters. The Mattole Flow Program is based on decades of flow and salmonid population data. Some of the diversions involved in this program may require permits, registrations and other approvals from the State Water Resources Control Board. As such, our organizations are very interested in the State Board's North Coast Instream Flow Policy.

One potential concern that we have with the development of the North Coast Instream Flow Policy is that valuable grass roots initiatives such as the Mattole Flow Program not be inadvertently undermined by the blanket imposition of the guidelines developed to address problems or issues in other watersheds and coastal streams. It is critically important that the instream flow policies developed through this process not foreclose or hinder the projects under development in the Mattole River watershed, and that such policies not discourage or undermine voluntary participation by landowners and water users participating in these innovative programs. Specifically, the development of enforcement element to the Instream Flow Policy should encourage the development of locally based programs, and should provide incentives for those water users who may be out of compliance to come into compliance with the policies.

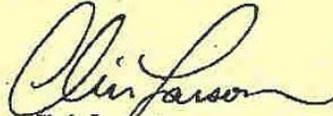
We understand that, as part of this process, the State Board will be considering the 2002 Draft Instream Flow Guidelines developed by the Department of Fish and Game and National Marine Fisheries Service (“Draft Guidelines”). The Draft Guidelines propose default criteria in cases lacking “site specific biologic and hydrologic assessments”. We urge you to work with groups such as ours to develop the specific framework whereby the unique hydrologic and biological conditions of a given stream, and the voluntary programs and efforts already underway, would be the primary considerations influencing the State Board’s water rights policies. These processes and policies must be fair, cost effective, efficient and functional in order to encourage similar programs to develop in other watersheds. .

We believe voluntary, incentive based efforts such as those occurring in the Mattole Flow Program are an essential aspect of a comprehensive strategy to maintain instream flows on the North Coast, and offer the best chance of success. We respectfully request that the State Board consider and include these locally driven efforts and programs by conducting field hearings in communities within the project area as it refines the scope of the North Coast Instream Flow Policy.

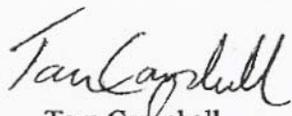
Sincerely,



Eric Goldsmith  
Executive Director  
Sanctuary Forest



Chris Larson  
Executive Director  
Mattole Restoration Council



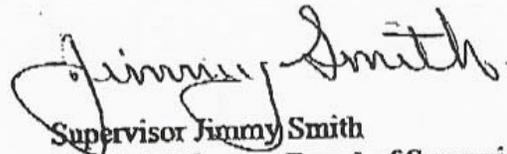
Tom Campbell  
Executive Director  
Mattole Salmon Group



Supervisor Roger Rodoni  
Humboldt County Board of Supervisors



Patty Berg  
State Assembly Member  
1<sup>st</sup> District



Supervisor Jimmy Smith  
Humboldt County Board of Supervisors



Ken & Theresa Vallotton  
Landowner  
Participant in Mattole Flow Program



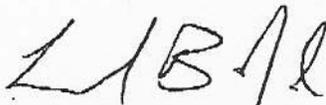
Sam Schuchat, Executive Officer  
California State Coastal Conservancy



Roland A. Sanford  
General Manager  
Mendocino County Water Agency



Kendall Smith  
4<sup>th</sup> District Supervisor  
County of Mendocino



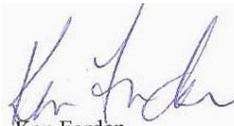
Leonard Job, Engineer  
Arcata Area Bureau of Land Management  
U.S. Department of the Interior



Randy Klein  
Hydrologist



Robert C McKee  
Whitethorn Construction  
Pioneer Tank Sales & Installation



Ken Forden  
Landowner  
Participant in Mattole Flow Program



Leah Mahan  
National Oceanic and Atmospheric  
Administration

**Sheila Pitts**

---

**From:** Daniel Myers [dmyers@pacific.net]

**Sent:** Friday, August 25, 2006 3:42 PM

**To:** FlowPolicy@waterboards.ca.gov; Catherine Kuhlman; Roger Foote; Park Steiner; Brian Johnson Ji; Alan Levine; Roland Sanford Bil; Vicky Whitney; William Hearn; Paul Mason; Jim Metropulos; Nandananda; Linda Hanson; Glen Spain; REDWOOD-EXCOM@LISTS.SIERRACLUB.ORG; leonard.l.holt@mwhglobal.com; Linda Perkins; Marc Pandone; John Stephens; Steve Hall; Brock Dolman

**Subject:** Instream Flow policy SC Comments

Karen Niiya,

Attached are Sierra Club comments on the Instream Flow Policy SED. Hard copy with attachment is in the mail.

Any questions please contact me.

Daniel Myers  
707 895-3887



Redwood Chapter P.O. Box 466 Santa Rosa, CA 95402 Ph 544-7651  
25 August 2006

State Water Resources Control Board  
P.O. Box 2000  
1001 I Street, 14<sup>th</sup> Floor  
Sacramento, CA 95812

Re: Draft SED North Coast Instream Flow Policy Comments

Attention: Ms. Karen Niiya Division of Water Rights

Dear Ms. Niiya;

We appreciate the opportunity to comment on the environmental review of this very important document. The passage by the legislature and signing of AB 2121 by the governor was a very major step in addressing the decline of our North Coast watersheds and the salmonid fishery. We welcome and support the prospect of instream flow protection, an end to new onstream dams and a new enforcement policy proposed in the 2002 Draft Guidelines drafted by the California Department of Fish and Game and National Marine Fisheries Service. Our comments are based upon what we have experienced first hand and represent our interest in the restoration and protection of the salmonid fishery and public trust uses of these watersheds.

We have been working for many years in the watersheds of AB 2121. We have personally seen the Navarro River, referenced in the Draft Guidelines, reduced to dryness. Summer flows have dropped progressively over the past three decades<sup>1</sup> as more and more diversions have been placed on the river. The Navarro Watershed Restoration Plan of June 1998 by Entrix Inc. states:

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<sup>1</sup> See attachment A

*... studies indicate that summer flows in the lower reaches of Anderson , Rancheria and Indian Creek are at times significantly reduced by agricultural pumping. In aggraded stream reaches summer flow may be entirely subsurface. Several monitored streams dried up completely, or had only isolated pools during the late summer months...*

In 1998 the Department of Water Resources (DWR), in response to complaints, initiated a new Watershed Investigation Program (WIP). By using existing aerial photographs of the Navarro River Watershed, the program identified the existence of 94<sup>2</sup> unpermitted dams requiring applications. The study was conducted using aerial maps of 1991<sup>3</sup> of the Navarro River watershed. The DWR log of submitted applications and approved permits for the Navarro Watershed through 1991 shows 68 existing storage sites. These newly discovered 94 diverters added to the existing 68 permitted diverters represent 58.3% of the total diversions.

Another WIP aerial survey by DWR of the Maacama Creek tributary of the Russian River disclosed " 73 sites, of which 64 had reservoirs with no known water rights."<sup>4</sup> We agree with the Trout Unlimited/Audubon Petition that these studies show a majority of the diverters at the time of the study were illegal and unknown to DWR.

These two aerial surveys, both in the geographic scope of AB 2121, disclosed:

- Four dams were voluntarily removed,
- 52 did not require permits
- Approximately 150 of the diverters, either voluntarily, or in response to Administration Civil Liability (ACL) fines, applied for water rights permits and entered the regulatory system.
- 122 inspections were necessitated by the DWR
- Several uncooperative diverters incurred ACL fines that did not cover SWRCB's costs of enforcement.

These surveys done in 1998 indicate that there were more unpermitted diversions in those areas than permitted. The magnitude of the problem is as

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<sup>2</sup> See SWRCB Order WR 2000-03

<sup>3</sup> See Trout Unlimited Petition Section 102 page 34 footnote 1..

<sup>4</sup> See SWRCB Order WR 2000-11

yet not fully determined, but these 1998 surveys done with 1991 GIS maps represent only a small proportion of the geographic scope.<sup>5</sup> If the Navarro and Maacama surveys turn out to be typical, the backlog will become *significantly* larger. Two current surveys in Sonoma County in process should be evaluated as soon as relevant data is available.

The problem is not just the number of unpermitted dams onstream, it is that the dams are constructed prior to environmental review. Many of these dams on the Navarro River were constructed onstream, without any provision for by-pass or even the capability of retrofitting a suitable by-pass. These dams are still in the application stage, still involved in studies, still unpermitted eight years after being "outed" by the WIP program.

The aerial surveys of 1998 did not stop the practice of building onstream unpermitted dams but rather confirmed that one can get away with it by applying for a water diversion permit. The Director of the SWRCB reported at the recent scoping meeting that 70% to 80% of all current pending applications are for existing illegal diversions! Because no penalties are assessed for diversion without permit, the current regulatory system tends to promote evasion of the law.

Unpermitted agricultural diverters have an economic competitive advantage over those who comply with the rules. They have usually not paid for the necessary studies on water availability, may have built less expensively on stream perhaps without by-pass control, may not have paid fees associated with water rights permits and, evaded the payment of property tax (as was shown in Mendocino County) for their capital improvement.<sup>6</sup> The permit policy needs to require compliance of all to achieve economic equity

### NO NEW ONSTREAM DAMS

The first, most essential step is to reassert control over the watershed and stop the continued construction of new onstream dams and illegal diversions. To that end we support the adoption of the 2002 Draft Guidelines (Section 3, page 6) that states:

*3) No Additional Permitting of Small On-Stream Reservoirs  
Water diversion projects requiring new permits should avoid*

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<sup>5</sup> See Trout Unlimited Petition Section 102 page 34.

<sup>6</sup> See attached letter of the Mendocino County Assessor.

*Construction or maintenance of on-stream dams and reservoirs, including unpermitted storage ponds....*

***Justification:*** *On-stream reservoirs should be prohibited...*

The term "avoid" instead of "prohibit" was probably used because Section 7 sets out reasonable exceptions in the section titled Special Circumstances Allowing Onstream Reservoirs. However, we suggest limiting administrative discretion to those stated exceptions and suggest the following language:

*Construction or maintenance of on-stream dams and reservoirs, including unpermitted storage ponds is prohibited unless covered by the exceptions listed in Special Circumstances Allowing Onstream Reservoirs.*

#### ENFORCEMENT

We have addressed most of our suggestions to the Project Goals and Objectives at Page 6 of the Checklist that states "...*the Division (DWR) proposes to include an enforcement element as part of the policy that will govern water rights enforcement actions...*" We would like to see policy provisions to return the rule of law to the process. We strongly believe there should be an enforcement policy that has consequences for failure to comply, not simply for punishment, but to restore fairness to the process. To that end we would offer several specific recommendations for consideration.

#### GRACE PERIOD

A short grace period should be established prior to a date certain when the no-new-dams-onstream policy goes into effect. This could encourage unidentified illegal diverters to come out of the shadows and apply for permits under the current policy. The grace period could make adoption of the new policy more palatable to diverters giving them an option of the current policy where they would voluntarily come into the system, submit an application and bring their diversion into compliance, or failing to do so, stay in the shadows until discovered and face removal under the new policy. It would also make the point that violation of water rights law will, in the future, no longer go unpunished.

### FINANCIAL DISINCENTIVES

Progressive financial consequences must attach for the failure to comply with the new policy prohibiting building onstream dams. We would suggest non-discretionary automatic fines based on the acre-foot capacity of the diversion. Additional discretionary fines could be imposed for willful misconduct.

### PROFESSIONAL CONSULTANTS LIABILITY

Many dams are built with professional advice prior to application that are incapable of compliance with the water rights law. Applications are submitted to the Water Board by consultants that intentionally contain false or misleading information that results in the permitting of illegal dams. Diverting water without a permit is breaking the law and anyone who directly participates in that should be held responsible. The regulatory system currently imposes civil liability only upon the applicants and not their representatives. We recommend that in the case of willful misconduct of design professionals, the new policy include financial and/or professional sanctions such as denial of the right to represent clients before the board or in the permitting process. Design professionals who produce designs in conformance with the law should not be at a financial disadvantage to those who do not.

### WORK WITH THE REGIONAL WATER QUALITY CONTROL BOARD

The North Coast Regional Water Quality Control Board's (RWQCB) prepares Action Plans to address temperature TMDL impairment in North Coast rivers. The WIP program should be coordinated with this activity. Current temperature TMDLs for the Scott and Shasta Rivers have established the relation of high instream temperatures to low flow from diversions, but these TMDLs do not have the definitive data that the WIP program would provide. Essentially all of the rivers in the geographic scope of AB 2121 are listed as temperature impaired and will be addressed by RWQCB in the future. Aside from the WIP program, DWR and RWQCB have a common interest in unpermitted diversions that should be examined. They also now have a common interest in restoring adequate instream flows to coastal rivers.

### WATERSHED INVESTIGATION PROGRAM WIP

This is an excellent program that has disclosed the extent of illegal dams on a watershed basis and should be continued. We suggest that a summary report be prepared on the findings of each study and be made available to the public, internal staff and other regulatory agencies. That is not the case now. The studies should be done in cooperation with the county's planning or resource agency and shared with the county's assessor and the RWQCB.

### INCREASE STAFFING FOR DWR

The long delays in the current processing of applications pointed out in AB 2121 needs to be addressed since the provisions of AB 2121 will increase that load. Six staff members for the enforcement group is **not** adequate. We understand the reluctance of the senior staff and the Board to request additional personnel, however in this case it is the legislature and governor that is asking this staff to take on additional administrative work. This is work that will benefit the economy of the state by more efficient and equitable distribution of water. It is important to have the necessary resources to succeed. It would be very unfortunate to adopt these guidelines and have them fail for the lack of sufficient personnel.

### PROVIDE INCENTIVES FOR APPLICANTS

Applicants who comply with the system and present applications with all the necessary studies showing water availability and environmental compliance with the water law should be authorized for construction expeditiously. Priority should be given to proposed legal diversions over those that are not. Where water availability reports are complete and all other environmental concerns addressed, a temporary permit system authorizing the start of construction should be considered .

### DAM REMOVAL

Dam removal is not normally a desired outcome but must be considered in appropriate cases. There will be many difficult decisions where there isn't any easy answer. We ask that criteria be developed by DWR that would justify an order to remove a dam. The burden to fix such problems should be on the applicant with a time limit from date of application.

Criteria should identify issues that must be brought into conformance such as fish passage, season of diversion, diversion rate and volume of diversion as well as CDF&G Stream Bank Alteration Permits, CEQA review

#### DWR TO COORDINATE WITH COUNTY PLANNING

DWR and the counties in the geographic scope should establish regular communication channels on the construction of new dams. Currently DWR sends the counties information and requests that they pass it on to dam builders informing them of their obligation to apply for a water rights permit. That is not adequate. The DWR should require that the counties provide DWR summary reports of new dam construction. Counties have this information and can routinely supply it to DWR. Mendocino County reported 66 new dams in a 2000-2001 report<sup>7</sup> following the 1998 WIP study. This information is far more timely, accurate and less expensive to obtain.

We are aware of alternatives that propose to by-pass the current water policy with a watershed approach to administration. These efforts may have limited benefit but do not address the basic compliance and enforcement issues. We also question the viability of such programs in counties where the necessary resources for support do not exist. We are concerned that this should not be a foil to evade fixing the basic regulatory water rights system.

The urgent need for the regulatory reform of AB 2121 is apparent in an environment where the great majority of water rights applications are for illegal pre-existing diversions and where a very large percentage of our water is diverted illegally and unseen by the regulatory system. This has to be stopped. The Draft Guidelines are a major step in the right direction. We support them and endorse the provisions prohibiting future onstream dams. We support the instream flow provisions critical to the fishery and supportive of our obligations under the TMDL program. The refinements proposed by Trout Unlimited are consistent with our goals. To succeed this entire program must have the necessary funding and staff support.

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<sup>7</sup> See attached.

We would encourage the State Board to implement their resolution 2006-0046 that would expand the geographic scope of these measures to include the Klamath River and its tributaries. The Eel River and its tributaries must also be included as soon as feasible. We look forward to addressing the final Draft SED.

Very truly yours,

Margaret Pennington  
Chair, Redwood Chapter Sierra Club

Chris Malan  
Water Committee Chair, Redwood Chapter Sierra Club

Daniel Myers  
Water Committee Chair, Mendocino Group Sierra Club  
707 895-3887

CC: Catherine Kuhlman  
Roger Foote  
Park Steiner  
Brian Johnson  
Alan Levine  
Roland Sanford  
Vicky Whitney  
William Hearn  
Steve Hall  
Paul Mason  
Jim Metropulos  
Nadananda  
Linda Hanson  
Glen Spain



STATE WATER RESOURCES  
CONTROL BOARD

2006 AUG 29 AM 11:28

DIV. OF WATER RIGHTS  
SACRAMENTO



Appendix A

770 L Street, Suite 800  
Sacramento, California 95814  
main 916.447.0700  
fax 916.447.4781  
www.stoel.com

August 25, 2006

BARBARA A. BRENNER  
Direct (916) 319-4676  
babrenner@stoel.com

Ms. Song Her  
Clerk to the Board  
State Water Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814

**Re: Comment Letter re Notice of Preparation of North Coast Instream Flow Policy  
Substitute Environmental Document and referenced documents**

Dear Ms. Her:

Please consider the following comments on the North Coast Instream Flow Policy Substitute Environmental Document.

Although the California Environmental Quality Act provides for substitute environmental documents in lieu of an Environmental Impact Report or negative declaration, for any certified program, the substitute document shall include at least the following items:

1. Either alternatives to the activity and mitigation measures to avoid or reduce significant or potentially significant effects the project may have on the environment; or
2. A statement that the Agency's review of the project showed that the project would not have any significant or potentially significant effects on the environment, and therefore no alternatives or mitigation are proposed. (CEQA Guidelines, Section 15252.)

The State Water Resources Control Board ("State Water Board") Substitute Environmental Document must analyze whether there are any significant or potentially significant effects that the North Coast Instream Flow Policy may have on the environment. Such potential significant environmental effects should include not only those provided in the July 19, 2006 Environmental Checklist, but also the following potential impacts of the proposed program.

The potential restriction on development within the North Coast area, which is likely to result in greater development in other parts of the state. Restricting the available water supply as contemplated by the policy will directly hamper the ability of water purveyors to supply water to potential new development. With the projected increase in population in California, this will

Oregon  
Washington  
California  
Utah  
Idaho



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August 25, 2006  
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result in development that could occur within the North Coast area to be forced to other parts of the state.

At page 14 of the Environmental Checklist, it is concluded that adoption of the policy in itself will not cause direct impacts to biological resources. However, minimizing flushing flows in sediment-impaired and nutrient-impaired coastal streams which will be the result of implementation of the policy, could have a significant effect on biological resources. The proposed policy is likely to result in several of the proposed stream systems lacking sufficient flushing flows, which would impair fish habitat. This is a potential direct biological impact of the adoption and implementation of the policy. Such a result is in direct contravention of the purpose of the policy. This potential significant impact should be fully analyzed in the Substitute Environmental Document.

At page 24 of the Environmental Checklist, the narrative response indicates adoption of the policy in itself will not cause direct impacts to hydrology and water quality. This conclusion is incorrect. Adoption of the policy itself will cause direct impacts to both hydrology and water quality.

The policy under consideration will set in place a series of actions that, at the most critical time of the hydrologic year, and over a series of impacted watersheds, will systematically divert the water (and the energy) needed to flush sediment and nutrient accumulations from presently-impaired channels, route that water into off-channel storage reservoirs, and uselessly dissipate that much-needed energy.

The text of the Environmental Checklist addresses "minimum bypass flows". "Minimum bypass flows" are desirable from a biologic viewpoint, but even more critical is the need to recognize and protect flushing flows in sediment-impaired and nutrient-impaired coastal streams. Without modification, the proposed instream flow policy will conflict with the court-imposed requirements that led to the designation of sediment-impaired watersheds. The conflict between these policies must be resolved and the method of conflict resolution should be explained before the Instream Flow Policy is adopted.

The Environmental Checklist at Section 9, page 26, indicates that the policy will not cause direct impacts to existing land uses, nor will it conflict with applicable land use plans, policies, regulations, habitat conservation plans, or natural community conservation plans. The policy as currently proposed by the fishery agencies applies to new diversions from the North Coast area. As discussed during the scoping meeting, the State Water Board is considering applying the



Ms. Song Her  
August 25, 2006  
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policy to existing water rights. Applying the policy to existing water rights could directly impact existing land uses and conflict with the applicable land use plans, policies, regulations and water management plans relied upon by water purveyors to project supply and demand 20 to 25 years into the future. Such impact to existing water supplies should be analyzed in the Substitute Environmental Document. This same comment applies to Section 13, page 32 of the Environmental Checklist.

The Environmental Checklist concludes that there will be no direct impact to utilities and service systems, and that adoption of the policy would not require new or expanded water supply entitlements. (Environmental Checklist at pp. 36-37.) Adoption of the policy as indicated above will directly impact water supply, especially if applied to existing water rights. Such direct impact could result in the need for new or expanded water supply entitlements in order to meet the continued increased demand for water in California. This direct impact to the North Coast area's water supply should be analyzed in the Substitute Environmental Document.

The State Water Board, as part of its evaluation of the North Coast Instream Flow Policy, should consider and balance the increase in water demand over the next 20 to 25 years. As projected by the Department of Water Resources, by the year 2025, the state will experience a significant increase in water demand, yet there is no current planning to meet this demand. As indicated in the Project Description, the State Water Board is responsible for administering surface water rights, and the Board's mission is to ensure their proper allocation and efficient use for the benefit of present and future generations. The reasonable and beneficial use of the North Coast surface supplies must be balanced against the protection of public trust uses, including fish and wildlife habitat. The Public Trust Doctrine requires the protection of public trust uses whenever *feasible*. Consequently, the State Water Board is placed in the unique position of having to balance the protection of public trust uses against the need to efficiently use an increased amount of surface water in the future. As currently described, the North Coast Instream Flow Policy does not attempt to balance these conflicting obligations. The State Water Board, however, is required to undertake this effort before adopting the proposed policy.

The State Water Board is also considering applying the policy to existing water rights. The methodology and application of this policy to existing rights is not described, analyzed or considered in the Environmental Checklist. Before the State Water Board can apply this policy to existing water rights, it must first develop the methodology under which it would apply to existing water rights, evaluate those potential environmental impacts, and consider whether such application of the policy could result in a takings of private property.



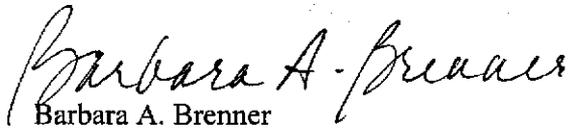
Ms. Song Her  
August 25, 2006  
Page 4

The proposed policy requires quantitative data, yet there is no information as to how that data will be collected. Requiring individual diverters to collect the data is impractical. Imposing a policy that cannot practically be implemented misses the mark. If there are proposals as to how to collect the data, such proposals should be explained to the public and fleshed out through the public review process.

It is also suggested that other alternatives to the policy could be recommended or considered by the State Water Board. Again, until such alternatives are fully described and analyzed in the Substitute Environmental Document, including an opportunity for public input, the State Water Board cannot adopt such alternatives. The State Water Board must flesh out all feasible alternatives, describe such alternatives to the public, solicit public input to such alternatives, and then engage the CEQA process.

Thank you for considering these comments as part of the scoping phase of the State Water Board's environmental review process.

Best Regards,

  
Barbara A. Brenner

BB:lt *lt*

## Appendix A

**Sheila Pitts**

---

**From:** Julie Gantenbein [gantenbein@n-h-i.org]  
**Sent:** Friday, August 25, 2006 4:01 PM  
**To:** KYNiiya@waterboards.ca.gov  
**Cc:** bjohnson@tu.org; Richard Roos-Collins; cbonham@tu.org  
**Subject:** Trout Unlimited and Peregrine Audubon's Comments In Response to SED for North Coast Instream Flow Policy

Ms. Niiya:

Please find attached Trout Unlimited and the Peregrine Audubon Society's comments in response to the "Notice of Preparation of a Draft Substitute Environmental Document" for the proposed North Coast Instream Flow Policy issued by the State Water Resources Control Board, Division of Water Rights on July 19, 2006. We would appreciate it if you would confirm receipt.

Please contact me with any questions or concerns. Thank you. Julie

---

*Julie Gantenbein, Staff Attorney*  
*Natural Heritage Institute*  
*1423 Marshall Street*  
*Houston, Texas 77006*  
*Telephone: (707) 931-0034*  
*Facsimile: (866) 779-4316*  
[gantenbein@n-h-i.org](mailto:gantenbein@n-h-i.org) <<mailto:gantenbein@n-h-i.org>>  
[www.n-h-i.org](http://www.n-h-i.org) <<http://www.n-h-i.org>>

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# Natural Heritage Institute

100 Pine Street, Ste. 1550  
San Francisco, CA 94111  
(415) 693-3000  
(888) 589-1974 (fax)  
[rrcollins@n-h-i.org](mailto:rrcollins@n-h-i.org)

## Other Offices

Anchorage, AK  
Nevada City, CA  
Sacramento, CA  
Houston, TX

August 25, 2006

*VIA ELECTRONIC AND FIRST CLASS MAIL*

Karen Niiya  
Division of Water Rights, State Water Resources Control Board  
P.O. Box 2000  
Sacramento, CA 95812  
[KYNiiya@waterboards.ca.gov](mailto:KYNiiya@waterboards.ca.gov)

**Re: Notice of Preparation of Substitute Environmental Document for North Coast Instream Flow Policy**

Dear Ms. Niiya,

Trout Unlimited (TU) and the Peregrine Audubon Society (Peregrine) provide these comments in response to the “Notice of Preparation of a Draft Substitute Environmental Document” for the proposed North Coast Instream Flow Policy issued by the State Water Resources Control Board, Division of Water Rights on July 19, 2006. We provide brief comments below, but incorporate herein our “Petition for Timely and Effective Regulation of New Water Diversions in Central Coast Streams” (Oct. 27, 2004) (Petition), *available at* <http://www.tucalifornia.org/CentralCoastPetition.pdf>, for the State Water Board’s consideration in developing the scope of the Substitute Environmental Document (SED).

We filed the Petition to seek reform of the water rights system – beginning with review of applications for water right permits and ending with compliance – as necessary to protect steelhead and coho salmon fisheries, riparian habitat, and birds and wildlife dependent on such habitat, in good condition. We expressed serious concern that the coho and steelhead fisheries within the North Coast are threatened with extinction, due in large part to water diversions. We also expressed concern that, despite the significant impact to fisheries, the State Water Board does not have written guidelines (namely, policies which guide substantive review of water right permit applications) for the purpose of deciding how much water is divertible for water supply, and how much must remain to protect the coldwater fisheries in good condition. We claimed that this is inconsistent with state law which provides that the State Water Board may approve a permit application for unappropriated water, only on conditions that protect fish and wildlife as a beneficial use of water (*see* Water Code § 1243) and prevent impairment of water quality standards (*see id.*, §§ 1243.5, 1258). *See* Petition at ¶¶ 156-161.

Ms. Karen Niiya  
August 25, 2006  
Page 2

One of the remedies we requested was that the State Water Board adopt guidelines for the substantive review of permit applications. We agreed that the Draft “Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Streams” (2002) (NMFS-DFG Draft Guidelines) should be the starting point for the Board’s adoption of substantive guidelines, but requested that the Board consider the following amendments and any others agreed to by, what is now called, the North Coast Water Rights Working Group.

- (A). The guidelines will apply to modified as well as new permit applications.
- (B). Each permit will specify management objectives for fish and associated riparian habitats in the reach affected by a diversion. The objectives will be measurable either directly or through an indicator, or by indicators of riparian health such as canopy, standards for which have been developed for timber harvest practices or as determined through stream surveys and GIS analysis. The management objective for a given reach will be sufficient to maintain or restore a functional range of naturally occurring spawning and rearing habitat where salmonids can exist. Similarly, management will also be for protection or restoration of functional riparian systems and associated wildlife.
- (C). The design of each storage or diversion facility will, without active intervention (such as an operator’s control), limit diversion to the allowed maximum and allow the required bypass flow. A licensed engineer will certify the adequacy of such design.
- (D). Each point of diversion will include continuous monitoring and reporting of diversion, or (if infeasible) an alternative that provides the functional benefit.
- (E). Each point of diversion will include real-time monitoring and reporting of physical conditions necessary to achieve a quantifiable management objective for the affected reach, such as inflow, outflow, water quality conditions, depth or width of wetted channel, or some combination.
- (F). State Water Board or RWQCB staff, alone or with DFG or NOAA Fisheries staff, will have reserved authority to inspect a point of diversion without prior notice. Peace officer status will not be necessary.
- (G). State Water Board will have reserved authority to remedy cumulative impacts on fisheries, riparian habitat, and associated wildlife under applicable law (including ESA), in addition to general reservation to protect public interest. The term will specify the procedures for exercise of this authority, including a duty to periodically assess the cumulative impacts.

*See* Petition at ¶ 202.

Ms. Karen Niiya  
August 25, 2006  
Page 3

As stated above, rather than restating our comments on enforcement and other relevant issues, we request that the Board consider our Petition in developing the scope of the SED. We also expect to file more specific, supplemental comments in the future, both in our capacity as Petitioners and in our capacity as participants in the North Coast Water Rights Working Group.

Thank you for this opportunity to provide comments. We look forward to working with the State Water Board in its efforts to reform the water rights system as necessary to protect the steelhead and coho fisheries and other public trust resources associated with these waters.

Sincerely,



---

Richard Roos-Collins  
Julie Gantenbein  
100 Pine Street, Suite 1550  
San Francisco, CA 94111  
(415) 693-3000  
[rcollins@n-h-i.org](mailto:rcollins@n-h-i.org)  
[gantenbein@n-h-i.org](mailto:gantenbein@n-h-i.org)

On behalf of

TROUT UNLIMITED and  
PEREGRINE AUDUBON SOCIETY

**Written Comment Form**  
**Public Scoping Meeting**  
 SUBSTITUTE ENVIRONMENTAL DOCUMENT FOR  
 THE NORTH COAST INSTREAM FLOW POLICY

State Water Resources Control Board, Division of Water Rights

Your input is important to us; please use this sheet to submit written comments concerning policy alternatives, significant effects, and mitigation measures that should be included in the Substitute Environmental Document (SED). Your comments will assist in preparation of the SED. Please be sure to provide your name and address, below.

Concerned about role of riparian vegetation corridors in protecting flow regimes. What are flow benefits from various possible set back "buffer" zones?

What flows are needed to maintain temperature that are beneficial to threatened & endangered species? How would healthy riparian protect both temp & flows?

What is the interrelation of flows & erosion & sediment pollution & water quality?

*Additional space? Please use other side.*

Name\*

Brenda Adelman

Address

PO Box 501

City/State/Zip Code

Guerneville CA 95446

Comments, including names and home addresses of respondents, will be made available for public review. Individual respondents may request their home address be withheld from public disclosure. Please check this box if you wish your name and/or address withheld from public disclosure.

Please submit your comments at the Comment Station or send your comments to:

Karen Niiya or Eric Oppenheimer  
 State Water Resources Control Board  
 P.O. Box 2000, 1001 I Street, 14<sup>th</sup> Floor  
 Sacramento, CA 95812-2000

or

via e-mail to: [FlowPolicy@waterboards.ca.gov](mailto:FlowPolicy@waterboards.ca.gov)

To ensure that your comments are considered in the SED,  
**written comments must be received by August 25, 2006.**

Post-it® Fax Note	7671	Date	8/25/06	# of pages	2
To	KAREN NIIYA	From	JOHN DICKSON		
Co./Dept	STATE WATER RESOURCES CONTROL BOARD	Co.			
Phone #	916-341-5426	Phone #	707 255-5739		
Fax #	916-341-5400	Fax #	707 255-4939		

Appendix A

**Comment Form**  
**Opening Meeting**  
**ENVIRONMENTAL DOCUMENT FOR**  
**INSTREAM FLOW POLICY**

State Water Resources Control Board, Division of Water Rights

Your input is important to us; please use this sheet to submit written comments concerning policy alternatives, significant effects, and mitigation measures that should be included in the Substitute Environmental Document (SED). Your comments will assist in preparation of the SED. Please be sure to provide your name and address, below.

STEELHEAD TROUT (AN ENDANGERED SPECIES) CONTINUE TO DIE DURING SUMMER MONTHS DUE TO UPSTREAM DIVERSIONS AND PRESENT WATER RIGHT USERS OVER TAKING THE NORMAL WATER FLOW ALONG MURPHY CREEK IN NAPA COUNTY. MURPHY CREEK FLOW INTO TULOCAY CREEK AND THE NAPA RIVER, LINKING TO THE SAN PABLO BAY. IT IS A CLASS 1 STEELHEAD SPANNING STREAM, WHICH IN MY OPINION AND THE CONSIDERED STUDY OF OTHER STATE OFFICIALS (IE. FISH & GAME), MAY ALREADY HAVE BEEN OVER ADJUDICATED AS TO WATER RIGHT APPROPRIATIONS. ANY FUTURE WATER RIGHT GRANTS OR RIPARIAN WATER USES ALONG MURPHY CREEK WILL ONLY FURTHER IMPACT AND THREATEN THIS VITAL BIOLOGICAL RESOURCE. THERE IS NO FISHING, AND FOR GOOD REASON, EVEN THIS SUMMER NEIGHBORS ALONG THIS YEAR-ROUND CREEK HAVE COLLECTED DEAD STEELHEAD AFTER WATER FLOWS HALT DUE TO EXCESSIVE OVER PUMPING. ONCE PUMPING STOPS THE CREEK FLOWS AGAIN ALONG THE UPPER REACHES OF MURPHY. MANY YEARS AGO LONG-TIME RESIDENTS, WELL BELOW WHERE THE CREEK NOW DRIES UP, HAVE SAID THEY RECALL SWIMMING. THAT, OF COURSE, NO LONGER OCCURS, AS EVEN THE STEELHEAD AND OTHER TROUT DO NOT HAVE ENOUGH WATER TO INSURE SURVIVAL.

Additional space? Please use other side.

Name\* JOHN DICKSON  
 Address 5290 WILD HORSE VALLEY RD.  
 City/State/Zip Code NAPA, CA 94558

Comments, including names and home addresses of respondents, will be made available for public review. Individual respondents may request their home address be withheld from public disclosure. Please check this box if you wish your name and/or address withheld from public disclosure.

Please submit your comments at the Comment Station or send your comments to:

Karen Niiya or Eric Oppenheimer  
 State Water Resources Control Board  
 P.O. Box 2000, 1001 I Street, 14<sup>th</sup> Floor  
 Sacramento, CA 95812-2000

or  
 via e-mail to: [FlowPolicy@waterboards.ca.gov](mailto:FlowPolicy@waterboards.ca.gov)

To ensure that your comments are considered in the SED, written comments must be received by August 25, 2006.

STATE WATER RESOURCES CONTROL BOARD  
 SACRAMENTO  
 AUG 25 2006 PM 4:42  
 DIVISION OF WATER RIGHTS

**Sheila Pitts**

---

**From:** Colleen Fernald [colleenferald@earthlink.net]  
**Sent:** Friday, August 25, 2006 6:16 PM  
**To:** Vicky Whitney; flowpolicy@waterboards.ca.gov  
**Subject:** A voice of the No. Coast Water Rights Working Group

Greetings,

I have been a member of the Water Rights Working Group as a representative for the Russian River Watershed Council. As it is that the Council elected not to have a vote, my comments are my own.

I support the efforts of the group and I see the facilitator as a benefit to this process. The group has a good balance of stakeholders who seem to be intent on doing their best. I support the spirit of their position statement below.

I strongly support this order of priorities in determining solutions:

#1 Protection for watersheds and all natural resources

#2 Protection of property rights

#3 Support for local economic interests

I believe watershed stewardship is a benefit to climate protection; those who rise to, and surpass best management practices, deserve a sliding scale eco-credit.

I support the State Water Resources Control Board in doing what it takes to ensure there is enough clean water available for the current population, and for the future generations of endangered species to flourish. I think we have met, maybe surpassed, our ability to meet demand for water in this region. It's time for everyone to face that fact, and learn how to sustain our economy without further sprawl, and degradation to our natural resources.

The Russian River Watershed Council is looking at ways of working with the Sonoma County Water Agency to help facilitate the results of the Water Rights process with landowners. Perhaps this can be a model for other regions.

Everyone on a well, every water rate payer, and every fish depends on you to act with wisdom. I appreciate you rising to this very big challenge.

Best regards,

Colleen Fernald

PO Box 30 Sebastopol, CA 95473  
707.876.9610

Associated with:

Graton Community Projects  
[www.graton.info](http://www.graton.info)

Russian River Watershed Council  
[www.rrwc.net](http://www.rrwc.net)  
[www.russianriverwatershed.net](http://www.russianriverwatershed.net)

Sonoma County Water Coalition  
[www.scwatercoalition.org](http://www.scwatercoalition.org)

Links for optimal living:

Climate Protection Campaign  
www.climateprotectioncampaign.org

Green Mary  
www.green-mary.com

U.S. Green Building Council - Redwood Empire Chapter www.usgbc.org/chapters/redwoodempire

ICLEI Cities for Climate Protection Campaign  
ICLEI Local Governments for Sustainability  
www.iclei.org/us

Ecological Footprint  
www.myfootprint.org  
www.redefiningprogress.org

Cities for Progress  
www.citiesforprogress.org

Find out your body's burden at: www.insidebayarea.com/bodyburden

\*\*\*\*\*

Sent: 8/25/2006 12:20:40 PM  
Subject: Notice of Prep. of Substitute Env. Doc. for North Coast In-stream Flow Policy

August 25, 2006

VIA ELECTRONIC AND FIRST CLASS MAIL

Karen Niiya  
Division of Water Rights, State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812  
KYNiiya@waterboards.ca.gov

Re: Notice of Preparation of Substitute Environmental Document for  
North Coast Instream Flow Policy

Dear Ms. Niiya:

Thank you for the opportunity to comment on the State Water Board s NOP for  
the North Coast Instream Flow Policy SED.

As described at the State Board s July 19 Meeting, a diverse group of stakeholders has

been meeting for almost a year to develop recommendations for improving the water rights permitting process so that it better benefits both fishery habitat and landowner interests. The stakeholder group includes representatives of agricultural and urban water users (including trade associations, engineers, and attorneys); conservation organizations; state and federal agencies and counties (see list below). A substantial majority of participants in this stakeholder group has approved submittal of this letter. The group has benefited greatly from the contributions made by Vicky Whitney, State Board Division Chief, Division of Water Rights.

This fall, we expect to provide recommendations for consideration as part of the Board's proposed North Coast Instream Flow Policy. First, we are preparing a package of recommended improvements to the existing water rights system. The recommendations we are considering include suggestions for improving the water rights noticing process, with a goal of involving all interested parties at an earlier date; early coordination of permit proceedings involving the State Board and other interested permitting and trustee agencies; and improvements to the environmental review and protest resolution process. We are also discussing new approaches to substantive water rights standards, and compliance and enforcement. For example, we are reviewing mechanisms for encouraging development of offstream storage projects to replace existing onstream projects; the fishery benefits of such a program could be significant.

We have also been discussing and developing proposals for approaches/alternatives based on a collaborative effort that could meet water users' needs, conserve fish and wildlife habitat, and provide key data necessary for managing resources. The goal of this collaborative effort would be to take advantages of opportunities within a watershed, such as cost sharing, that may not be available in the traditional arena. Under this watershed approach, diverters could join together to develop local physical solutions to their watershed specific problems. For example, they could share costs associated with developing data and monitoring conditions and could work together on projects that improved habitat at the most significant locations in the watershed, rather than only on their individual properties. Although this idea is still in its formative stages, it would require instream flow protection provisions for the watershed and a critical mass of landowners to be implemented,

We appreciate the willingness expressed by the Board at its July 19 meeting to consider our suggestions. Many of the issues we have been discussing could be part of a State Board North Coast Instream Flow Policy. We look forward to providing you with specific recommendations by the end of September.

Sincerely,

\_\_\_\_\_  
Andrew Black  
Consultant and  
North Coast Water

\_\_\_\_\_  
Facilitator  
Rights Working Group

Stakeholder List

National Marine Fisheries Service

California Department of Fish and Game

North Coast Regional Water Quality Control Board

Mendocino County

Sonoma County

Sonoma County Water Agency

Mendocino County Water Agency

Agricultural Water User Representatives

California Farm Bureau Federation

National Heritage Institute

Trout Unlimited

Peregrine Audobon Society

Redwood Chapter Sierra Club

Andrew Black Consulting  
102 Hancock  
San Francisco, California 94114  
415-565-0225  
blackssf@aol.com

RUDOLPH H. LIGHT, PH.D.  
P. O. Box 736  
REDWOOD VALLEY, CA 95470  
(707) 485-1335

22 August 2006

Appendix A

STATE WATER RESOURCES  
CONTROL BOARD

2006 AUG 24 AM 10:39

DIV. OF WATER RIGHTS  
SACRAMENTO

Karen Niiya  
Russian River Watershed Unit  
State Water Resources Control Board  
Division of Water Rights  
P.O. Box 2000  
1001 I Street, 14<sup>th</sup> Floor  
Sacramento, CA 95812-2000

References: AB2121 North Coast Instream Flow Policy  
Notice of Preparation of a Substitute Environmental Document (SED)  
North Coast Instream Flow Policy Project Description and Environmental Checklist  
[http://www.waterrights.ca.gov/HTML/instreamflow\\_nccs.html](http://www.waterrights.ca.gov/HTML/instreamflow_nccs.html)

Dear Ms. Niiya:

I recently received a copy of the Notice of Preparation of a Substitute Environmental Document and Notice of Public Scoping Meeting for the North Coast Instream Flow Policy. Subsequently, I obtained a copy of the North Coast Instream Flow Policy Project Description and Environmental Checklist. The subject of this letter is to comment on these documents, in the context of the Environmental Checklist. I should mention that I live in Redwood Valley 12 miles north of Ukiah in Mendocino County. Our ranch is adjacent to and spans the West Fork of the Russian River.

At the outset, let me say that the discussions are well thought out and professionally done. In most cases, the Checklist analyzes the potential impacts realistically. However, I would like to add some things which I believe will be helpful or to expand on topics you have discussed.

## **SECTION 1. Environmental Checklist**

### **6.0 Environmental Issues to be Analyzed.**

I would simply comment that it is all but certain that if limitations on diversions are too restrictive, some affected landowners will respond as you suggest, by: 1) pumping groundwater; 2) directly diverting using their riparian rights; and 3) allowing previously irrigated land to lie fallow. As you point out, each of these potential actions could result in significant environmental impacts.

## **Checklist Topics**

### **1. Aesthetics**

#### **c) Degradation of existing visual character or quality of the site.**

The narrative says that the impacts would be less than significant with mitigation incorporated.

If the policy is implemented in such a way as to force a landowner (or public agency) to drain a pond or a large reservoir, it will degrade the existing visual character of the site, and will directly cause a significant impact to aesthetics. In a Mediterranean climate such as this, nearly all people appreciate the visual qualities of bodies of water of any size. I realize the narrative discusses long-term effects but it concludes that, "It is expected that with mitigation, these potential indirect impacts of the policy will be less than significant." The aesthetic impact of lost reservoirs cannot be mitigated even with construction of pit ponds, which themselves are strictly utilitarian, generally unattractive, and which seldom are constructed with any aesthetic purpose whatever.

## **2. Agricultural Resources**

### **b) Conflict with existing zoning for agricultural use or a Williamson Act contract.**

Your narrative states that, "Adoption of the policy will not result in a conflict with zoning for agricultural use or a Williamson Act contract."

I think that this conclusion is wrong, and that there could be significant potential impacts. Under the Williamson Act, landowners promise to keep land in production agriculture (Type I) or for grazing (Type II). In return for retaining agricultural uses for the property, the real estate taxes are substantially lower than on land not under a Williamson Act contract.

The Williamson Act is clear that land must be retained in agricultural use and from time to time a county may require the landowner to document the agricultural use using receipts and inventories for crops or livestock. If the land is not kept in agricultural production, a county may initiate termination of the contract because of the production provision not being met. Therefore, the landowner will no longer be eligible for tax breaks.

Under the proposed instream flow policy, it is very possible that some landowners will lose current water diversion and storage, and may have to let land lie fallow. Your narrative on page 7 includes a bullet point addressing this. If that land is covered under a Williamson Act contract, the landowner may no longer be able to conform with the terms of the contract due to loss of water essential to successful farming. In consequence, a county has the authority to terminate that Williamson Act contract based on noncompliance, and might do so. The landowner in turn, no longer being under the obligations of the Williamson Act and faced with the burden of much higher property taxes, may well subdivide and sell the land for development, which will lead to many significant impacts.

Thus, I think that 2b) needs to be changed because this policy could lead to a conflict with a Williamson Act contract, and is also an agricultural zoning issue. The box should be checked for "potentially significant impacts" and deserves further study. This leads back to your discussion of 2a) and 2c) which are correct.

## **4. Biological Resources**

### **a-d)**

Your narrative expresses the issues perfectly. While it is clear that the listed anadromous fish

species are considered most important, adoption of the policy could result in significant impacts to many other species. The forced removal of ponds built especially for wildlife will result in loss of habitat for resident and migratory birds such as ducks, geese, loons, herons, egrets and others. Mammals such as deer, raccoons, otters, muskrat and others routinely use such ponds and were these ponds removed, these species could no longer exist at those sites. Although the three species of *Oncorhynchus* are listed and discussed, other vertebrate and invertebrate species cannot be ignored. They too are important elements in an ecosystem. Pond removal could be hazardous for some individuals, and would at the least result in forced migration by others. If many ponds are removed in an area, whole populations of aquatic invertebrates such as dragonflies and damselflies, hemipterous water bugs, beetles and the like could go extinct. The same could happen to frogs and salamanders. The potential loss of species other than fish must be studied carefully.

## **7. Hazards and Hazardous Materials**

### **g) Impair implementation of or physically interfere with emergency response plan.**

The narrative says there will be no impact because the implementation of the policy will not "physically interfere with an adopted emergency response plan or emergency evacuation plan."

This may not be the case. The instream policy could interfere with the Army Corps of Engineers (COE) emergency flood control releases from Lake Mendocino or Lake Sonoma. In a flood or potential flood emergency the COE may want to release more water and the instream flow policy might dictate lower flows to ensure salmonids are able to swim upstream at the same time there is a flood emergency because with very high releases and concurrent flooding, ascending salmonids might leave main channels for temporary backwaters, become stranded and die. This is a significant potential impact, but probably one that can be mitigated. In any case, this issue should be carefully studied.

### **h) Exposing people or structures to significant risk involving wildfires.**

The narrative discusses the potential loss of water for firefighting purposes which is correct. However, the fire risk will likely become greater along highways as well.

If as a result of the policy implementation, cropland along roadways is reduced or eliminated, the risk of wildfire along the roadways will increase. If pastures aren't irrigated, or if vineyards are removed and non-irrigated grasses and forbs take their place, the risk of fire is increased. If landowners lose ponds, there's no guarantee that landowners will build offstream storage, so again the risk is increased and no mitigation is available on this point. Therefore, this is a potentially significant impact, and one not easily mitigated unless substitute water sources for fire protection are available.

## **12. Population and Housing**

### **a) Induce substantial population growth in an area.**

Your narrative says there will not be any impact to population or housing due to implementation of the policy.

I believe the impact to population and housing is potentially highly significant if certain provisions of the policy are implemented. If water becomes unavailable for storage or if construction of offstream storage is too expensive, there is a high probability that some landowners will let their land lie fallow and pull it out of production. See your bullet on page 7 which acknowledges this possibility, and your comment on page 10 for 2c) which suggests some landowners might convert farmland to non-agricultural use. A likely land use change would be to development and houses, especially in areas peripheral to cities, and to rural residential areas away from cities. Implementation of the policy will result in potentially significant impacts to housing and population. This topic needs further study.

### **13. Public Services**

#### **a) Fire protection.**

The narrative says there will be no impact on fire protection services. This directly contradicts what the narrative says on page 22, 7h) where the narrative says "Actions taken by affected parties in response to adoption of the policy, specifically the removal of on-stream reservoirs that provide water for fire suppression, could limit the ability to contain fires that may arise in proximity to these reservoirs."

CDF helicopters routinely use onstream ponds to fill their bags of 325 gallons and then dump the water to put out rangeland fires. If the policy is implemented to remove existing ponds, one possible alternative is for the landowner to construct offstream storage. However, offstream pit ponds are almost always of larger surface area but are much shallower than corresponding onstream storage ponds of similar volume. Being quite shallow, helicopters cannot fill the bags as easily as in a deeper pond, so there will likely be a significant impact to fire protection services.

Another and in many cases a more likely consequence of policy implementation of pond removal is that if a pond is removed the landowner will not replace the pond at all. This will deprive CDF and other firefighters of using this water at all, either for a helicopter bag or for filling fire engines or water tankers from a pond. Potential impacts are significant and may on occasion be catastrophic.

#### **b-e)**

The narrative says that, "Adoption and implementation of the policy, as well as any actions taken by affected parties in response to adoption of the policy, would not result in a change in the level of fire or police protection services provided in the policy area, and would not result in the construction of any facilities that would directly or indirectly induce population growth and necessitate the need for additional school facilities, parks, or other public facilities in the policy area, and would therefore have no impact on public services."

If water storage becomes unavailable, there is a possibility of land use conversion to higher density development. Higher density development always requires more police and fire protection, which are significant impacts. The increased development may or may not have an impact on schools or parks, so this should be treated as less than significant provided mitigation is incorporated. The

topic deserves further study.

## SECTION 2. Additional Environmental Impacts

Having made what I hope are useful comments about the scoping process for this proposed instream flow policy, I would like to add some more material. Although adoption of the policy itself may not lead to significant impacts not already considered, its implementation will. While I realize your narrative and box checking may be constrained, there are two areas which have been overlooked in this request for public input. Both deal with the potential impacts to the environment should this instream flow policy be implemented. Thorough study should address each of these issues.

### 1. Department of Fish and Game Draft Guidelines of 2000 (slightly revised in 2002)

The proposed discussions for the instream flow policies include treatment of the draft guidelines and to evaluate a policy based on these guidelines.

Before the Division of Water Rights does this, staff and the public need to understand what is actually contained in the guidelines. Specifically, people need to understand just how much water is proposed to go for anadromous fishes, and how little there will be for other wildlife species or for human use. This leads directly to the need to study this subject in the light of the environmental impacts when so little water is available for anything except anadromous fishes. Your narrative discusses these potential impacts and they will be studied. But what is missing is a discussion of the draft guidelines, and how they would be applied to each of the rivers and streams of the Policy Area.

I will give one actual example of application of these draft guidelines. There is a stream gage on the West Fork of the Russian River which has operated continuously since 1952. It is located not far upstream from the confluence of the East Fork which contains Lake Mendocino. The West Fork's flow is basically unimpaired, and there are no large reservoirs. Stream flow data and summaries from this gage are available at <http://nwis.waterdata.usgs.gov/ca/nwis>. The following table shows the average monthly flow in acre-feet at this gage.

Oct	Nov	Dec		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Total
504	6181	22748		34488	29382	21749	9544	2682	682	145	38	37	128180
		Dec 1-14	Dec 15-31										
		7949	14799										

The draft guidelines specify that all water from the beginning of the rainy season on October 1 until the 15<sup>th</sup> of December be passed through for benefit of fish. This amounts to 14,634 acre-feet.

The guidelines then say that the unimpaired flow during the collection season of December 15 through March 31 should result in no more than 5% cumulative impairment at any point on the

river or any of its tributaries. In other words, 95% of the water during the 3 ½ month collection season should go downstream for the benefit of fish. On average, during the collection season from December 15 through March 31, there is 100,418 acre-feet flowing past the gage. The fish are to get 95% of this, or 95,397 acre-feet, and no more than 5,021 acre-feet will be available for storage.

(I should mention that there is a provision that there may be impairment of up to 10%, but only after special studies are done, and it is clear that DFG and NMFS do not want that provision exercised. The draft guidelines are preparing agencies and the public to accept a policy in which 95% of the winter flow is reserved for anadromous fish and that the 5% available water be collected only in that 3 ½ month season.)

After March 31, the collection season is over and all water from April 1 through September 30 prior to the beginning of the subsequent rainy season is to go downstream. On the average, this is 13,128 acre-feet for the West Fork.

Let me summarize these average values of flow in acre-feet in the table shown below.

	Oct 1 - Dec 14	Dec 15 - Mar 31	Apr 1 - Sep 30	Total
Flow (acre-feet)	14,634	100,418	13,128	128,180
Storage allowed (acre-feet)	-0-	5,021	-0-	5,021
Storage allowed (%)	0.0%	5.0%	0.0%	3.9%

Looked at the other way, anadromous fish are to get more than 96% of the annual average water flow in the entire West Fork of the Russian River. Here is an issue which warrants critical and unbiased study, to demonstrate why anadromous fish need 95% of the water during the collection period. I have yet to see the scientific data that supports such a percentage during that time of maximum water availability, often to the point of flooding.

As written, the draft guidelines do not stand up to such a conclusion. Before you adopt these guidelines, there must be a better justification than that presented or the guidelines themselves need to be changed. In other words, the issue for this scoping process is a thorough study in order to justify why 95% of the water is necessary for salmonids during December 15 - March 31. It may well prove to be the case that a significantly lower percentage is sufficient. Please refer to the report of August 1997 which was prepared by the Division of Water Rights staff. This report concluded that far more water is available for storage (as much as 35,000 acre-feet in a dry year and 70,000 acre-feet in a normal year) and far less is needed for anadromous fish to thrive. Further study should be made to determine why these professional estimates are in such vast disagreement. The Division of Water Rights study wanted a certain minimum amount of water reserved for anadromous fish each year, and this makes more sense than to require 95% of a variable quantity, no matter what that amount is. Perhaps the actual needs for fish should be based on an absolute minimum value, and perhaps the anadromous fish can thrive with less than 95% of the seasonal flow. This is a topic for further study.

## 2. Potential Removal of On-Stream Reservoirs

Section 4.0 of the Notice of Preparation and Public Scoping Meeting for the North Coast Instream Flow Policy SED proposes discussion of the policy with an end to protecting the environment by ensuring water rights are administered in a manner designed to maintain stream flows. The Notice reads, "Future actions that could occur as a result of adoption and implementation of the policy include the removal of existing, on-stream storage reservoirs and the construction of off-stream storage reservoirs."

This policy will have significant environmental impacts as discussed in the scoping document. However, the environmental impact discussion also must include an answer to the following question: Why would existing legal onstream water storage and water storage structures be an issue if there is an agreement to restrict the collection dates from December 15 through March 31? This Division of Water Rights has in the past proposed these dates when water availability is at a maximum, quite often to the point of flooding in numerous places. The Division has studied potential environmental impacts and developed the collection season based on environmental needs for anadromous fish.

If this policy is adopted and results in removal of onstream ponds, it will cause many landowners severe hardship and may result in some closing down their vineyards and their ranches. Even though the current focus must be on environmental impacts of the policy, there is a "tipping point" at which economic reality must also come into play. I can't easily think of a more cruel regulation to be imposed on landowners than to be forced into removing their legally licensed ponds which they operate in a legal manner. Already, under the draft guidelines the fish are to get 96% of the annual water flow, and now it is proposed to potentially deny landowners the remaining 4% by denying storage.

I noticed that the actual water right is not being challenged, but the method of storage is, and this policy will affect ponds built many decades ago. It may be beyond the scope of the Environmental Checklist but at some time in the near future there should be a full and open discussion about what appears to be an "end run" to take away water rights by taking away the ability to store water, especially on older permitted ponds. This is a legal, political, moral and ethical issue rather than an environmental one, but at some time it must be addressed if government agencies wish to retain the confidence of the citizenry.

There is a suggestion to construct new off-stream storage to substitute for onstream storage. This will never happen. To build a new pond requires permits from DFG, the Army Corps of Engineers, Division of Water Rights, and in some places, the county. In all probability, no one will ever get a new permit from DFG or from the Division of Water Rights. The Division cannot finish the permitting process for ponds from applications which go back 12 years, so why would anyone believe a landowner will obtain a permit for any pond in the future? Although this may look on the surface like a procedural matter rather than an environmental one, the fact of the matter is, that based on the requirements for environmental reviews, environmental impact reports and protests on environmental grounds, the likelihood of a permit for a new offstream storage pond is essentially nil.

Furthermore, as a practical matter, the cost of construction of a pit pond is much greater than for an onstream pond because more dirt has to be moved. Also, many locations don't have flat ground to put a pond in, so it is environmentally impossible to construct an offstream storage facility. Once more, this is an issue for detailed further study, the goal of which would be to answer the following questions.

- 1) Will it be possible to get a permit for a new pond?
- 2) How realistic is it for all landowners to actually build offstream storage?

The paragraph in Section 4.0 of the Notice of Preparation of a Substitute Environmental Document is worth quoting because it sums up the problem and probable consequences.

"Adoption and implementation of the policy also could lead water diverters to switch to alternative water supplies in order to avoid any limitations applicable to new water right applications that may be contained in the policy. Some diverters might switch to groundwater pumping, which could impact groundwater levels, potentially resulting in a reduction in summer instream flows. Other diverters might choose to directly divert under riparian rights, instead of seasonally storing water, for which a permit is required. An increased reliance on riparian rights could result in increased surface water diversions during the spring, summer, and fall, potentially reducing instream flows to levels that might cause reductions in or loss of habitat. Decreases in summer groundwater elevations and instream flows due to groundwater pumping and riparian diversions could result in the loss of riparian vegetation. The loss of riparian vegetation could affect terrestrial and aquatic species that rely on riparian vegetation for habitat and food and lead to declines in water quality, such as increased water temperature and fine sediment levels. Finally, some diverters might choose to cease diverting altogether, and fallow lands that are currently being irrigated, or switch to dryland farming, or convert existing farmland to non-agricultural uses."

Further discussion is in order. A likely response to that portion of the policy which would require removal of existing ponds is that many people will convert farmland to non-agricultural use or go out of business. They will simply quit rather than attempt to secure new water supplies. Given that expense and the potential impacts to the environment, there must be a careful study about the switch to alternative water supplies. I recognize that environmental impacts at this stage are more of an issue for study than are economic impacts, but at some point of restriction of water use and storage, there will be economic consequences which will have highly significant environmental impacts. These must be studied integrally and not merely confined to the environment.

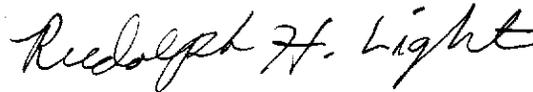
Well drilling and well development are expensive, and there are significant annual pumping costs. Furthermore, in many areas, there is no underground water to use, no matter how deep the well is drilled. So, wells may be an option for some people but not for others. This alternative must be studied more recognizing the connection of environmental and economic impacts. Considering direct diversion, some landowners may be able to take advantage of this, but they may do so only if

their lands adjoin a river. Given the annual rainless period of five to seven months and the low flows of naturally running streams, this alternative will be sparingly adopted. As your narrative points out, there will be environmental impacts. These impacts may well be more harmful than letting the ponds remain in place. Both wells and direct diversion are obvious areas which need careful study.

I can't leave this topic without injecting a bit of humor. No mention is made to exempt large reservoirs. If this policy is implemented, does DFG and the Division expect that Lake Mendocino and Lake Sonoma will be removed to ensure unimpaired instream flow? Opening up these streams will result in the beneficial acquisition of several hundred miles of spawning habitat currently unavailable for anadromous salmonids. Fish would no longer be subject to rapid artificial flow changes in the Russian River. Given the benefits to the fish if these dams were removed, perhaps there should be a study to examine the effects of these dams on spawning.

Thank you for the opportunity to submit comments regarding the proposed Instream Flow Policy. If it is implemented with the requirement to remove legal onstream storage reservoirs, the environmental and economic impacts will be more severe than anyone can imagine.

Very truly yours,



Rudolph H. Light

RHL:lep

## Appendix A

**Sheila Pitts**

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**From:** T1kamm@aol.com  
**Sent:** Wednesday, August 23, 2006 11:59 AM  
**To:** FlowPolicy@waterboards.ca.gov  
**Subject:** Comment on SED

Attn: Karen Niiya or Eric Oppenheimer, State Water Resources Control Board

I am the holder of License #9373, Permit 15221, Application 22432. for the reservoir located at my ranch at 11000 Chalk Hill Road, Healdsburg, CA 95448.

This reservoir permit was transferred to me 32 years ago at the time of my purchase of this 86 acre farm, and is the sole factor in providing year-round water to the farm. The farm is listed as in a "scarce water area," and I tried to drill wells twice but found no water available.

The reservoir contains about 12.5 acre feet of water when full. It is located on an occasional stream which only flows during the rainy season. After our use during the summer months, it will fill up after 8 inches of rain, and then flows out into the stream bed.

There is no alternative site on the property for an off-stream reservoir as the SED suggests. As stated there is no chance for finding water by drilling.

The reservoir is stocked with Bass and Sunfish, and is used for recreation, as well as fire protection.

Relying on the license, I have built 2 homes on the property, which are totally reliant on the reservoir for year-round supply as well as stock watering for our Angus cattle herd.

As noted in my Report of Licensee for 2003, 3004, 2005, we have continued to implement water conservation efforts, including aquatic vegetation removal and erosion control (by monitoring many culverts and drains on this hilly property).

Finally I would submit that reasonable use of existing licenses should continue to be honored by the State Board, without impinging on the property rights of the user.

Respectfully Yours,

Thomas A. Kamm

Please acknowledge receipt of the above.

Aug 13 - 2008 Appendix A

P.O. Box 698

Layton, UG, Ca

95454

I'm writing because I received a notice of preparation of a draft Substitute Environmental Document.

I called one of the people (Karen Niya or Eric Oppenheimer) and was told to write this letter.

This is Mrs Pauline Sanderson, I'm 70 years old and I'm raising 6 grandchildren I also have 2 other grandchildren and there family living in small cabins on my land. I've lived here for 35 years I live 8 miles from town. So we have no city water. We use the water from Long valley creek. We have land on both sides of the creek. We pump water from the creek to a tanks. We pump for 1 1/2 AM and 1 1/2 PM. We have a small spring which runs for a couple of months in winter we tried to get it ~~fixed~~ <sup>but</sup> it can't be because there is no water but for the couple of months in the winter.

In the past we had 4 wells dug but couldn't get water.

So we use the creek water for all our families needs, water a small veg and flower garden to raise a calf or pig and a ~~few~~ few chickens. We also need the water for fire protection as we live 12 miles from the fire station.

We don't waste water but we do need ~~need~~ the water from the creek to live on our land.

Pauline Sorduno  
P.O. Box ~~698~~ 698  
Jaytonville, Ca  
95454

39200 Hwy 101 South

Phone 707-984-6524

DIV. OF WATER RIGHTS  
SACRAMENTO

2008 AUG 16 AM 11:27

STATE WATER RESOURCES  
CONTROL BOARD

Appendix A  
8/16/06

# Written Comment Form Public Scoping Meeting

SUBSTITUTE ENVIRONMENTAL DOCUMENT FOR  
THE NORTH COAST INSTREAM FLOW POLICY

State Water Resources Control Board, Division of Water Rights

Your input is important to us; please use this sheet to submit written comments concerning policy alternatives, significant effects, and mitigation measures that should be included in the Substitute Environmental Document (SED). Your comments will assist in preparation of the SED. Please be sure to provide your name and address, below.

- ① POLICY IMPLEMENTED BY STATE OR LOCAL AGENCY?
- ② ENFORCEABILITY OF POLICY? POTENTIAL OVERLOAD OF CODE ENFORCEMENT (LOCAL) - TEETH?
- ③ ~~SEE~~ EFFECT ON LOCAL PERMIT/REGULATORY AGENCY IF LOCAL RESPONSIBILITY
- ④ EASE OF IMPLEMENTATION BY LOCAL AGENCY - MINISTERIAL OR DISCRETIONARY APPROVAL
- ⑤ POLICY EXTEND TO PRIVATE WATER WELLS? SEE ③ & ④ & ②
- ⑥ POLICY TO COVER EXISTING WELLS & WATER DIVERSIONS/DAMS RETROACTIVE?
- ⑦ POLICY TO COVER BLUE LINE STREAMS? TRIBUTARIES? EPHEMERAL? PERENNIAL?  
WHERE WILL LINE BE DRAWN? BASIN PLAN MAY NEED TO DEFINE EPHEMERAL/PERENNIAL BETTER
- ⑧ CAN POLICY PROVIDE CONCISE CLARITY WITHOUT AMBIGUITY?
- ⑨ HOW DO YOU PROVIDE INTELLIGENT COMMENTS TO AN AS YET UNDEFINED POLICY?
- ⑩ IF LOCAL RESPONSIBILITY, POLICY SHOULD NOT LENGTHEN LOCAL PERMIT PROCESS ③
- ⑪ POLICY MAKERS SHOULD ANTICIPATE UNINTENDED CONSEQUENCES
- ⑫ EFFECT ON LOCAL GENERAL PLANS? CONSISTENCY? CONFLICTING?
- ⑬ POLICY FUNDED MANDATE?

Additional space? Please use other side.

Name\* DEWAYNE STARNES

Address 2550 VENTURA AVENUE

City/State/Zip Code SANTA ROSA, CA 95403

Comments, including names and home addresses of respondents, will be made available for public review. Individual respondents may request their home address be withheld from public disclosure. Please check this box if you wish your name and/or address withheld from public disclosure.

Please submit your comments at the Comment Station or send your comments to:

Karen Niiya or Eric Oppenheimer  
 State Water Resources Control Board  
 P.O. Box 2000, 1001 I Street, 14<sup>th</sup> Floor  
 Sacramento, CA 95812-2000

or  
via e-mail to: [FlowPolicy@waterboards.ca.gov](mailto:FlowPolicy@waterboards.ca.gov)

To ensure that your comments are considered in the SED,  
written comments must be received by August 25, 2006.

Beth Trachtenberg  
PO Box 56  
Occidental, CA 95465  
707-874-2090  
betht@saber.net

### **SWRCB Inflow Study Comments**

I am a property owner on Salmon Creek in Sonoma County with water rights.

**Allow complaints to remain anonymous to the person that is in violation.**

Allow someone to issue a complaint and identify themselves to The SWRCB, but not the person in violation. Often it is a person complaining about their neighbor. This can create tension between them, so many times the person will chose not to issue a complaint because of this.

**Allow storage of Riparian water from winter flow to be used in the dry months in struggling waterways.**

If people had other water to use in the dry months usually August – October, the creeks might not dry up.

**Do not issue any more permits on waterways that do not have enough water.** There already is not enough water for the current fish and habitants in many of the North Coast waterways.

**Provide education for surface water users.** Mail out information to people that can use or have riparian &/or appropriative water rights regarding their rights and responsibilities in easy to understand wording. Possibly hold seminars in convenient locations.

**Provide alternatives for surface water users.** Mail out information to people that can use or have riparian &/or appropriative water rights regarding alternatives to using surface water, such as rainwater water catchment. Possibly provide financial &/or design assistance. Possibly hold seminars in convenient locations.

**Work with the local county permitting departments to create and maintain a policy for well permits within a prescribed buffer zone of the waterways.**

Sonoma County is currently working on their new plan, so this would be a great time to get involved with them on creating new guidelines for wells and septic systems that could possibly affect the waterways.

**Enforce stiffer penalties for violators.** If people knew they would have to pay &/or give up water rights for violating water usage, there would probably be less violations. Violators cause a lot of the flow problems in the dry season.

**Provide mediation between common water users when all parties are willing.** This could also be done in cooperation with the local county (& city) planning departments.

**Look at the data collected from the waterways from federal, state and local organizations.** The USGS has some flow data from meters, but it is not regular and complete. In Sonoma County The Community Clean Water Institute has over 5 years of accurate data on waterways in Sonoma County. The Salmon Creek Watershed Council has data from testing Salmon Creek and an Estuary Study. I am sure other watershed councils have accurate data they have collected as well. Please collect and look at this data!

**Survey the people that live along the waterways and use the surface water, as well as the people that steward them.** They are the ones that know what is going on with their particular stream or river and are one of the best sources of this information. I think you might be surprised by the overwhelming response you might get.

**Remove any known un-permitted dams and systems.** Violators cause a lot of the flow problems in the dry season. Fine them a lot if they re-build the dams or continue to use their systems.

***APPENDIX B***

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***SCOPING MEETING ATTENDANCE LISTS***

## Public Meeting Attendance List and Sign-Up Sheet for the North Coast Instream Flow Policy Substitute Environmental Document (SED)

State Water Resources Control Board

Session 1

<b>Name/Affiliation</b>	Alan Foppiano
<b>Address</b>	15097 Kinley Dr
<b>City/State/Zip</b>	Hearldsburg Ca 95448
<b>Email</b>	alan_foppiano@yahoo.com
<input type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

<b>Name/Affiliation</b>	ROLAND SANFORD
<b>Address</b>	890 NORTH BUSH STREET
<b>City/State/Zip</b>	UKIAH, CA 95482
<b>Email</b>	SANFORDR@CO.MENDOCINO.CA.US
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

<b>Name/Affiliation</b>	Gordon Bennett Sierra Club-Marin
<b>Address</b>	40 Sunnyside Dr
<b>City/State/Zip</b>	Inverness CA 94937
<b>Email</b>	gbatmuirb@aol.com
<input type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

<b>Name/Affiliation</b>	Roger Warner
<b>Address</b>	P.O. Box 331
<b>City/State/Zip</b>	St. Helena, Calif
<b>Email</b>	saugrae@napaer.net
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

<b>Name/Affiliation</b>	Mike Napolitano / SF Bay Water Quality Board
<b>Address</b>	1515 Clay Street, 14th Floor
<b>City/State/Zip</b>	Oakland, CA 94612
<b>Email</b>	mnapolitano@waterboards.ca.gov
<input type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

## Public Meeting Attendance List and Sign-Up Sheet for the North Coast Instream Flow Policy Substitute Environmental Document (SED)

State Water Resources Control Board

Session 1

<b>Name/Affiliation</b>	Trude Kirschenfeld
<b>Address</b>	PO Box 582
<b>City/State/Zip</b>	Nicasio, CA 94946
<b>Email</b>	kirschenfeld@prodigy.net
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

<b>Name/Affiliation</b>	Jeanette Howard - The Nature Conservancy
<b>Address</b>	201 Mission St. 4th Floor
<b>City/State/Zip</b>	San Francisco, CA 94105
<b>Email</b>	jeanette-howard@tnc.org
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

<b>Name/Affiliation</b>	Ann Cassidy Salmon Creek Watershed Council
<b>Address</b>	Box 148
<b>City/State/Zip</b>	Bodega Ca 94927
<b>Email</b>	alistair@sonic.net
<input type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

<b>Name/Affiliation</b>	Chuck Conner Gallo Vineyards
<b>Address</b>	3387 Dry Creek Rd
<b>City/State/Zip</b>	Healdsburg CA 95448
<b>Email</b>	chuck.conner@ejgollo.com
<input type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

<b>Name/Affiliation</b>	Roger German Sonoma Developmental Center
<b>Address</b>	15000 Arnold Drive
<b>City/State/Zip</b>	Eldridge Ca CA
<b>Email</b>	Roger.German@Sonoma.CA.Gov.
<input type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

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State Water Resources Control Board

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Name/Affiliation	Thomas A. Kamm
Address	11000 Chalk Hill
City/State/Zip	Healdsburg, CA 95448
Email	T.KAMM@AOL.COM
<input type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	Barbara Brenner / Steel River
Address	770 L Street #800
City/State/Zip	Sacramento, CA / 95814
Email	babrenner@steel.com
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	Paul W. Wade, City of Calistoga
Address	914 Washington St.
City/State/Zip	Calistoga, CA
Email	
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	Everett + Gloria Ball
Address	16970 Hwy 128
City/State/Zip	Calistoga, CA 94515
Email	evglobal@sbcglobal.net
<input type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	Emily Althoen Intern NCRWQCB
Address	
City/State/Zip	
Email	ealthoen@waterboards.ca.gov
<input type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

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State Water Resources Control Board

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Name/Affiliation	Paul Stutrud - owl foundation
Address	PO Box 2205
City/State/Zip	Rohnert Park
Email	pstutrud@sbcglobal.net
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	Randy Leach - Sonoma Co. PRMD
Address	2525 Ventura Ave
City/State/Zip	S. Rosa
Email	Rleach@sonoma-county.org
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	Nathan Quarles
Address	2550 <del>St</del> Ventura Ave.
City/State/Zip	Santa Rosa CA 95403
Email	nquarles@sonoma-county.org
<input type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	Beth Trautenberg - property owner of SCWC
Address	PO Box 56
City/State/Zip	OCCIDENTAL CA 95465
Email	beth@e-saber.net
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	K. KAULUM
Address	5972 YERBA BUENA RD
City/State/Zip	S R, CA 95409
Email	
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

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<b>Name/Affiliation</b>	Brenda Adelman Russian River Watershed Protection Committee
<b>Address</b>	PO Box 501
<b>City/State/Zip</b>	Guerneville CA 95446
<b>Email</b>	rwpc-1@comcast.net
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

<b>Name/Affiliation</b>	DARREN CORDOVA MBK ENGINEERS
<b>Address</b>	2450 AUTAMBRA BLVD. 2 <sup>ND</sup> FLOOR
<b>City/State/Zip</b>	SACRAMENTO, CA 95817
<b>Email</b>	CORDOVA@MBKENGINEERS.COM
<input type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

<b>Name/Affiliation</b>	Jon Mann
<b>Address</b>	PO Box 828
<b>City/State/Zip</b>	Occidental, CA 95465
<b>Email</b>	jmann@pcz.com
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

<b>Name/Affiliation</b>	Rue Furd
<b>Address</b>	
<b>City/State/Zip</b>	
<b>Email</b>	prst@monitor.net
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

<b>Name/Affiliation</b>	Amy Mai Sonoma County Water Agency
<b>Address</b>	404 Aviation Boulevard
<b>City/State/Zip</b>	Santa Rosa CA 95403
<b>Email</b>	amai@scwa.ca.gov
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

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State Water Resources Control Board

*Session 1*

Name/Affiliation	<i>CRAIG HARRINGTON</i>
Address	<i>PO 2240</i>
City/State/Zip	<i>HEALDSBURG, CA 95448</i>
Email	<i>crh@qphdc.com</i>
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	<i>Seena Club Redwood Chapter</i>
Address	<i>2945 ATLAS Peak Rd.</i>
City/State/Zip	<i>Napa Co. 94558</i>
Email	<i>CMADAN@starbond.net</i>
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	<i>Carver Brown, Mendocino Co. Farm Bureau</i>
Address	<i>3030 Talmage Rd</i>
City/State/Zip	<i>Ukiah, CA 95482</i>
Email	<i>mendofb@pacific.net</i>
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	<i>Pete Downs / Kendall-Jackson</i>
Address	<i>421 Aviation Blvd</i>
City/State/Zip	<i>Santa Rosa, CA 95403</i>
Email	<i>pete.downs@kjmilk.com</i>
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	<i>Peter Kiel, Ellison, Schneider &amp; Harris</i>
Address	<i>2015 H Street</i>
City/State/Zip	<i>Sacramento, CA 95814</i>
Email	<i><del>pkiel@eslawfirm.com</del> pjk@eslawfirm.com</i>
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

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Session 1

Name/Affiliation	Dawna Gallagher
Address	P.O. Box 1003
City/State/Zip	Rohnert Park, Ca, 94927
Email	dawnagal@kizplanet.com
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	DAVID MYERS
Address	P.O. Box 178
City/State/Zip	Philo
Email	dmyers@psccic.net
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	RICHARD LAVON / City of Fort Bragg
Address	416 N FRANKLIN ST
City/State/Zip	FORT BRAGG CA 95437
Email	rlavon@fortbragg.com
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	John Roberts Atascadero Green Valley Creek WC
Address	13809 Green Valley Rd
City/State/Zip	Sebastopol Ca 95472
Email	jahilltop@earthlink.net
<input type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	Levi Glenn Vati Vineyards
Address	4001 Dry Creek Rd (P.O. Box 1463) Marshall
City/State/Zip	Healdsburg, CA 95448
Email	levi@vativineyards.com
<input type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

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State Water Resources Control Board

Session 1

Name/Affiliation	Brian Johnson / Trout Unlimited
Address	1808 B 5th St.
City/State/Zip	Berkeley CA 94710
Email	bjohnson@tu.org
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

→ should be on already

Name/Affiliation	JONATHAN GOLDMAN / CITY OF ST HELENA
Address	1480 MAIN ST
City/State/Zip	SAINT HELENA CA 94574
Email	jonathang@ci.st-helena.ca.us
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	Stan Triffin
Address	27 Dorset Lane
City/State/Zip	Mill Valley Ca
Email	TUCRIF@earthlink.net
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	JOHN STEPHENS / EDENIT LRC
Address	348 MILDAYAN ST
City/State/Zip	NAPA CA 94559
Email	JOHNSTEPHENS@AOL.COM
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	ROY MCNAMEE / STATE PARKS
Address	845 CASA GRANDE RD
City/State/Zip	Petaluma CA
Email	RMcNA@PARKS.CA.GOV
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

**Public Meeting Attendance List and Sign-Up Sheet for the  
North Coast Instream Flow Policy  
Substitute Environmental Document (SED)**

State Water Resources Control Board

Session 1

Name/Affiliation	Bryan McFadin, NCRWQCB
Address	5580 Skyline Blvd. Ste. A
City/State/Zip	Santa Rosa CA 95403
Email	bmcfadin@waterboards.ca.gov
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	DEWAYNE STARNES / SONOMA COUNTY PRMD
Address	2550 VENTURA AVE
City/State/Zip	SANTA ROSA CA 95403
Email	vstarnes@sonoma-county.org
<input type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	Bob Harchut
Address	P.O. Box 368
City/State/Zip	Bodega Bay CA 94
Email	bharchut@kempersports.com
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	Frank Robertson
Address	P.O. Box 809
City/State/Zip	Guerneville CA 95426
Email	kayver1@comcast.net
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	Lester Hardy
Address	P.O. Box 667
City/State/Zip	St Helena CA 94574
Email	lester@lhardy.com
<input type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

**Public Meeting Attendance List and Sign-Up Sheet for the  
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State Water Resources Control Board *Session 1*

Name/Affiliation	Linda Hanson DFG
Address	PO Box 47
City/State/Zip	Yountville, CA 94599
Email	lhanson@dfg.ca.gov
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	CHRIS SCHEURINS
Address	CALIFORNIA FARM BUREAU FEDERATION / 2300 RIVER PLAZA DRIVE
City/State/Zip	SACRAMENTO, CA 95833
Email	cscheuring@cfbf.com
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	Tim Buckner Mendocino Winegrowers Alliance
Address	1111 East Road
City/State/Zip	Redwood Valley CA 95470
Email	buckner@pacifi.net
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	Michele Ferri
Address	PO Box 582
City/State/Zip	Nicasio, CA 94946
Email	Ferri-inc@hotmail.com
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	Steve Hall / Friends of the Navarro
Address	P.O. Box 739
City/State/Zip	Boonville, Ca. 95415
Email	pipsteve@pacifi.net
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

**Public Meeting Attendance List and Sign-Up Sheet for the  
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Substitute Environmental Document (SED)**

State Water Resources Control Board

Session 1

<b>Name/Affiliation</b>	Bob Anderson
<b>Address</b>	PO Box 382
<b>City/State/Zip</b>	Santa Rosa CA 95402
<b>Email</b>	b.andersson@comcast.net
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

<b>Name/Affiliation</b>	Carson Cox / Sustainable Conservation
<b>Address</b>	121 Second St 6 <sup>th</sup> floor
<b>City/State/Zip</b>	San Francisco CA 94105
<b>Email</b>	CCOX@Suscon.org
<input type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

<b>Name/Affiliation</b>	
<b>Address</b>	
<b>City/State/Zip</b>	
<b>Email</b>	
<input type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

<b>Name/Affiliation</b>	
<b>Address</b>	
<b>City/State/Zip</b>	
<b>Email</b>	
<input type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

<b>Name/Affiliation</b>	
<b>Address</b>	
<b>City/State/Zip</b>	
<b>Email</b>	
<input type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

**Public Meeting Attendance List and Sign-Up Sheet for the  
North Coast Instream Flow Policy  
Substitute Environmental Document (SED)**

State Water Resources Control Board

Session 2

Name/Affiliation	Kimberly Burr
Address	PO Box 1246
City/State/Zip	Forestville
Email	kimlarry2@comcast.net
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	Colleen Fernald RRWC
Address	PO Box 30
City/State/Zip	Sebastopol CA 95473
Email	colleenfernaldd@earthlink.net
<input checked="" type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	Chris Murray Sonoma County Water Agency
Address	
City/State/Zip	
Email	CMURRAY@SCWA.CA.GOV
<input type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	Harry A. Merlo Jr Lago di Merlo Vineyards
Address	3495 Skaggs Springs Rd
City/State/Zip	Geyserville CA 95441
Email	ham@sonic.net
<input type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

Name/Affiliation	<del>Richard</del> Aelene Dinges North Bay Planning
Address	1150 Castelletto Pl
City/State/Zip	Windson CA 95492
Email	a.dinges@comcast.net
<input type="checkbox"/> I would like to be added to the distribution list for the North Coast Instream Flow Policy	

**Public Meeting Attendance List and Sign-Up Sheet for the  
North Coast Instream Flow Policy  
Substitute Environmental Document (SED)**

State Water Resources Control Board

*Session 2*

<b>Name/Affiliation</b>	<i>Richard A. Dinges Stinson Beach Co. Water Dist</i>
<b>Address</b>	<i>3785 Shoreline Hwy</i>
<b>City/State/Zip</b>	<i>Stinson Beach, Ca. 94970</i>
<b>Email</b>	<i>richard@stinson-beach-cwd.dst.ca.us.</i>
<input type="checkbox"/> <i>I would like to be added to the distribution list for the North Coast Instream Flow Policy</i>	

<b>Name/Affiliation</b>	<i>Bruce Ho North Coast RW&amp;CB</i>
<b>Address</b>	<i>5550 Skyline Blvd, Ste A</i>
<b>City/State/Zip</b>	<i>Santa Rosa, CA 95404</i>
<b>Email</b>	<i>bho@waterboards.ca.gov</i>
<input checked="" type="checkbox"/> <i>I would like to be added to the distribution list for the North Coast Instream Flow Policy</i>	

<b>Name/Affiliation</b>	<i>Samantha Olson</i>
<b>Address</b>	<i>1001 I Street, 22nd floor</i>
<b>City/State/Zip</b>	<i>Sacramento, CA 95814</i>
<b>Email</b>	<i>solson@waterboards.ca.gov</i>
<input checked="" type="checkbox"/> <i>I would like to be added to the distribution list for the North Coast Instream Flow Policy</i>	

<b>Name/Affiliation</b>	
<b>Address</b>	
<b>City/State/Zip</b>	
<b>Email</b>	
<input type="checkbox"/> <i>I would like to be added to the distribution list for the North Coast Instream Flow Policy</i>	

<b>Name/Affiliation</b>	
<b>Address</b>	
<b>City/State/Zip</b>	
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<input type="checkbox"/> <i>I would like to be added to the distribution list for the North Coast Instream Flow Policy</i>	

**Public Meeting Attendance List and Sign-Up Sheet for the  
North Coast Instream Flow Policy  
Substitute Environmental Document (SED)**

State Water Resources Control Board

Session 2

<b>Name/Affiliation</b>	Patrick DORGANS
<b>Address</b>	P.O. Box 60940
<b>City/State/Zip</b>	SACRAMENTO CA 95860
<b>Email</b>	
<input type="checkbox"/> <i>I would like to be added to the distribution list for the North Coast Instream Flow Policy</i>	

<b>Name/Affiliation</b>	
<b>Address</b>	
<b>City/State/Zip</b>	
<b>Email</b>	
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**Public Meeting Attendance List and Sign-Up Sheet for the  
North Coast Instream Flow Policy  
Substitute Environmental Document (SED)**

State Water Resources Control Board

*Session 2*

<b>Name/Affiliation</b>	<i>Charles T. Wehn LAZY W RANCH</i>
<b>Address</b>	<i>7550 Westside Rd</i>
<b>City/State/Zip</b>	<i>Healdsburg CA 95448</i>
<b>Email</b>	<i>CTWEHN@CS.COM</i>
<input checked="" type="checkbox"/> <i>I would like to be added to the distribution list for the North Coast Instream Flow Policy</i>	

<b>Name/Affiliation</b>	<i>JEFF SHARP NAPA COUNTY PLANNING</i>
<b>Address</b>	<i>1195 THIRD ST. SUITE 210</i>
<b>City/State/Zip</b>	<i>NAPA CA 94559</i>
<b>Email</b>	<i>Jsharp@co.napa.ca.us</i>
<input checked="" type="checkbox"/> <i>I would like to be added to the distribution list for the North Coast Instream Flow Policy</i>	

<b>Name/Affiliation</b>	
<b>Address</b>	
<b>City/State/Zip</b>	
<b>Email</b>	
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<b>Email</b>	
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<b>Name/Affiliation</b>	
<b>Address</b>	
<b>City/State/Zip</b>	
<b>Email</b>	
<input type="checkbox"/> <i>I would like to be added to the distribution list for the North Coast Instream Flow Policy</i>	

*APPENDIX C*

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*SCOPING MEETING PRESENTATION SLIDES*

# Welcome to the Public Scoping Meeting for the North Coast Instream Flow Policy Substitute Environmental Document (SED)

Wednesday, August 16, 2006  
3:00 – 5:00 pm / 5:30 – 7:30 pm

- Please take a moment to sign in. Be sure to indicate on the sign-in sheet if you would like to be added to the distribution list for the North Coast Instream Flow Policy.
- Two sessions are scheduled, from 3:00 to 5:00 pm and from 5:30 to 7:30 pm. The same information will be presented at both sessions. Each session will begin with brief opening remarks.
- Please visit the information stations located around the room. Each station is staffed by project representatives who are available to answer questions you may have about the policy, the policy formulation and adoption process, or the SED / CEQA process.
- Please visit our Comment Station to submit your written comments. You may also mail or email comments to the State Water Resources Control Board at the address provided on the comment form. All scoping comments must be received by August 25, 2006.

***Thank You for Attending!***

# **Roles and Responsibilities of the State Water Board**

**The State Water Board consists of the Division of Water Rights, Division of Water Quality, and Division of Financial Assistance.**

**The State Board's mission is to preserve, enhance and restore the quality of California's water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations.**

**The Division of Water Rights' mission is to establish and maintain a stable system of water rights in California to best develop, conserve, and utilize in the public interest the water resources of the State while protecting vested rights, water quality, and the environment.**

**The Division is responsible for:**

- Allocating surface water rights;**
- Adjudicating water right disputes; and**
- Water quality control planning.**

# North Coast Instream Flow Policy Background

**Assembly Bill 2121 (Stats. 2004, ch. 943, § 3) added section 1259.4 to the Water Code.**

**“On or before January 1, 2008, the [State Water Resources Control Board] shall adopt principles and guidelines for maintaining instream flows in coastal streams from the Mattole River to San Francisco and in coastal streams entering northern San Pablo Bay, in accordance with state policy for water quality control . . . for the purposes of water rights administration.”**

**--Water Code section 1259.4**

**The State Water Board will comply with this section of the Water Code by developing a North Coast Instream Flow Policy.**

# **North Coast Instream Flow Policy Background, Continued**

**The North Coast Instream Flow Policy may apply to the following:**

- **Water right applications**
- **Small domestic use and livestock stockpond registrations**
- **Existing water right permits and licenses**
- **Petitions to change the place of use, purpose of use, or point of diversion of water right permits or licenses, including transfer petitions**
- **Petitions for extensions of time to complete water development projects**
- **Wastewater change petitions**
- **Water right complaints and enforcement actions**
- **Other State agency-issued permits**



## North Coast Instream Flow Policy Area

# The California Environmental Quality Act (CEQA)

The California Environmental Quality Act (CEQA) – CEQA is a state statute that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible.

The adoption of a North Coast Instream Flow Policy (Policy) is a “certified regulatory program”, and therefore is exempt from the requirement to prepare an Environmental Impact Report or Negative Declaration. Certified regulatory programs, are, however, still subject to the other provisions of CEQA, including the policy of avoiding significant environmental impacts where feasible. Development of a policy will necessitate the preparation of a Substitute Environmental Document (SED) by the State Water Board.

SED – An SED is a public document. The State Water Board plans to include a discussion of the following topics in the SED for the North Coast Instream Flow Policy:

- a project description
- range of feasible alternatives
- analysis of environmental impacts
- analysis of cumulative impacts
- mitigation measures to minimize effects on the environment

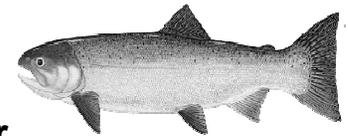
# CEQA, Continued

The project is adoption of a North Coast Instream Flow Policy. The policy itself will not approve any particular water diversion projects, but will operate to protect the environment by ensuring that water rights are administered in a manner designed to maintain instream flows. Adoption and implementation of a policy; however, could lead persons affected by such a policy to take the following actions:

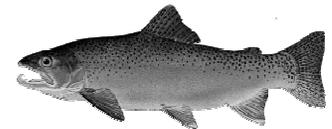
- pumping groundwater instead of diverting surface water
- directly diverting under riparian rights instead of seasonally storing water
- ceasing diverting and allowing irrigated land to fallow
- removing or modifying onstream storage reservoirs
- constructing new offstream storage reservoirs

Potential indirect impacts from these future actions will be evaluated at a programmatic level in the SED. Potential indirect impacts may include:

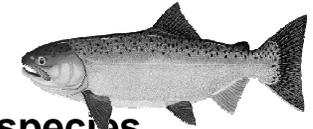
- lower groundwater levels
- reduced instream flows during spring, summer, and fall
- loss of riparian vegetation/wetlands and associated impacts to dependent species
- increased water temperatures and fine sediment levels
- loss of agricultural resources
- loss of recreational opportunities
- construction related impacts, such as temporary noise and air quality impacts



Coho Salmon  
Spawning Female



Steelhead Salmon  
Spawning Male

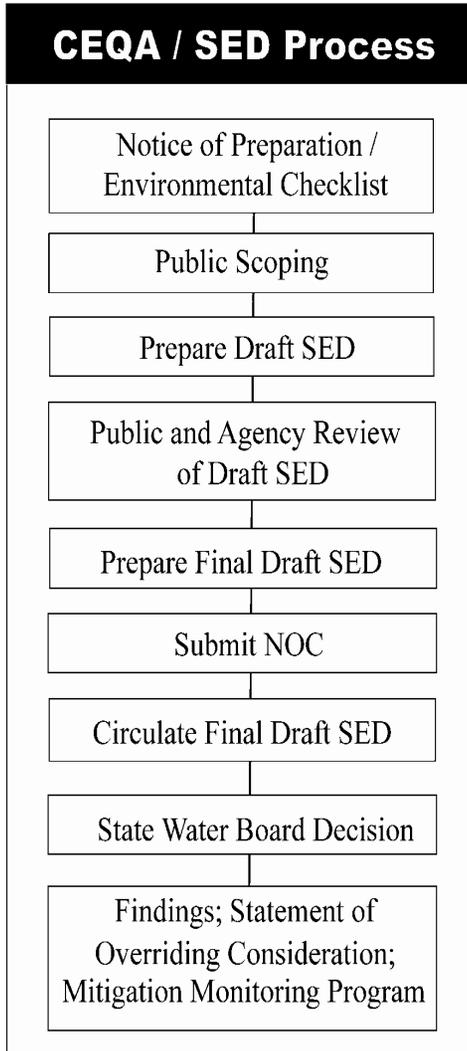


Chinook Salmon  
Spawning Female



CALIFORNIA  
**Water Boards**  
STATE WATER RESOURCES CONTROL BOARD  
REGIONAL WATER QUALITY CONTROL BOARDS

# Public Involvement Opportunities During the CEQA / SED Process



**August 16, 2006 – Public Scoping Meeting in Santa Rosa, CA**

**August 25, 2006 – Deadline for Agency / Public Scoping Comments**

**Summer 2007 – Public Review / Comment on the Draft SED / Draft Policy**

- Availability of the Draft SED / Draft Policy will be announced in 2007 in local and regional newspapers and notification will be sent to those on the Distribution List.
- The Draft SED / Draft Policy will be available on the State Water Board website: [http://www.waterrights.ca.gov/HTML/instreamflow\\_nccs.html](http://www.waterrights.ca.gov/HTML/instreamflow_nccs.html)
- The State Water Board will provide at least 45 days for public review of the draft SED. The 45-day comment period commences with the announcement of the availability of the Draft SED.

**Summer 2007 – Public Workshop on the Draft SED / Draft Policy**

**Late Fall 2007 – Public Review Final Draft SED / Final Draft Policy**

- Notification will be sent to those on the Distribution List
- The Final Draft SED / Final Draft Policy will also be available on the State Water Board website.

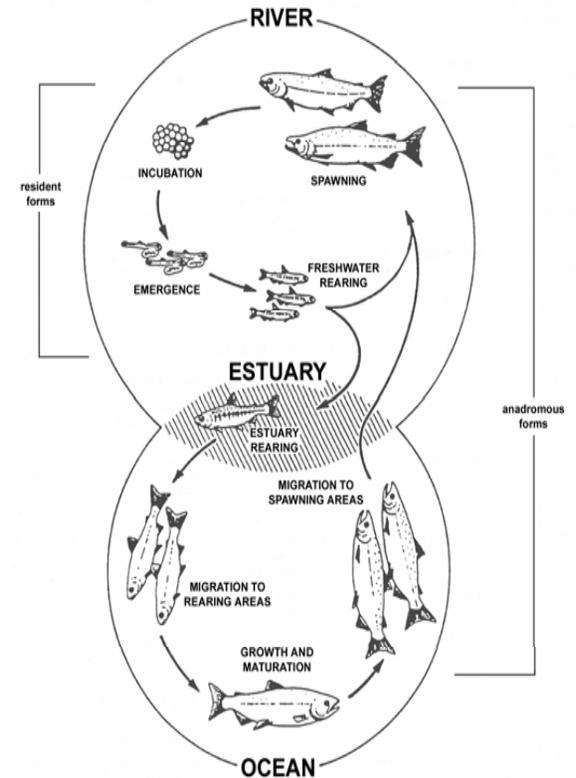
**Winter 2007 – State Water Board Hearing / Adoption Meeting**

*While it is our goal to meet these dates, all dates are tentative and may be adjusted as circumstances dictate during the CEQA / SED process.*



# Generalized Life Stages and Timing for North Coast Salmonids

	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
<b>COHO SALMON</b>												
Upstream Migration												
Spawning												
Incubation												
Emergence												
Rearing												
Emigration												
<b>STEELHEAD</b>												
Upstream Migration												
Spawning												
Incubation												
Emergence												
Rearing												
Emigration												
<b>CHINOOK SALMON</b>												
Upstream Migration												
Spawning												
Incubation												
Emergence												
Rearing												
Emigration												



# Salmonid Habitat Requirements

(By Freshwater Life Stage)

## Upstream Migration (Accessibility)

- Sufficient Flow, Water Depth, and Velocity (Not Too Fast Over Riffles)
- Frequency and Duration of Passage Events (Deep Enough Water For a Long Enough)
- Suitable Water Temperatures
- Holding/Resting Habitat

## Spawning Habitat Availability

- Spawning Habitat Area
- Sufficient Depth, Suitable Velocity Range
- Suitable Substrates (Gravel), Low % Fine Sediments
- Influenced by High Flows

## Incubation Conditions

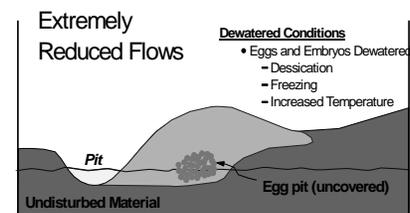
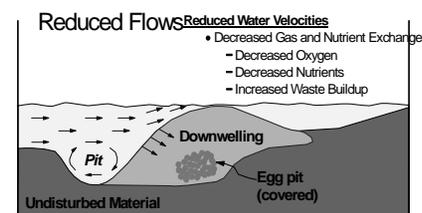
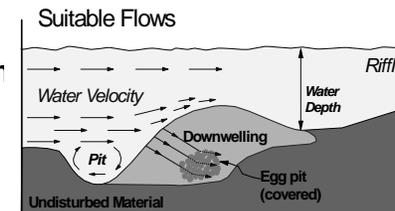
- Sufficient Flow and Velocity to Keep Embryos Wet, Deliver Oxygen, Remove Wastes
- Location of Redd and High Flow Effects on Infiltrating Fines, Scour
- Suitable Water Temperatures for Embryo Development and Survival

## Rearing Habitat Quantity, Quality

- Sufficient Water Depth, Velocity
- Suitable Water Temperatures
- Instream Food Production/Bioenergetics
- Riparian: Overhead/Instream Cover and Nutrients/Food
- Habitat Structure/Diversity and High Flows

## Emigration (Downstream Migration)

- High Flow Stimulus, Timing
- Suitable Water Temperatures and Smolting
- Cover/Refuge From Predators



# Potential Impacts of Water Diversions on Salmonid Habitat

## Water Withdrawal / Reduced Flows

- Insufficient Flow For Upstream Migration, Spawning, Incubation (Dewater Redds)
- Reduced Spawning Habitat
- Reduced Water Velocity (Reduced Inter-Gravel Flow, Changes in Distribution of Aquatic Insects)
- Dewater Streams in the Dry Season (Late Spring, Summer, Fall) and Reduce Rearing Habitat and/or Concentrate Fish/Increase Predation
- Changes to Springtime High Flow Cues/Stimulus - Delayed Migratory Movement of Fish
- Increased Summer Water Temperatures
- Changes to Natural Hydrograph/Peak Flow Reduction/Changes to Channel Forming Flows
  - Long-Term Changes to Channel Geometry and Riparian Ecosystem
  - Reduced Recruitment of Woody Instream Cover and Structure, Reduced Shading
  - Decreased Ability to Cleanse Fine Sediments From Gravels/Increased Sedimentation
- Entrainment of Fish on Pump Intakes

## Onstream Dams

- Block Fish Passage / Diversion Structures May Physically Block Fish From Reaching Their Historical Habitats
- Eliminate Free Flowing Stream Habitat That May Support Fish or Aquatic Insects That Provide Food For Fish
- Trap Gravel/Interrupt Downstream Gravel Requirement at Spawning Sites, Interfere Aquatic Insect Drift
- Provide Habitat For Invasive Species

# NMFS-DFG Draft Guidelines

In developing a North Coast Instream Flow Policy, the State Water Board will consider the Draft “Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Coastal Streams,” which were developed in 2002 by the National Marine Fisheries Service (NMFS) and the California Department of Fish and Game (DFG) (NMFS-DFG Draft Guidelines). In developing a North Coast Instream Flow Policy, the State Water Board plans to consider the NMFS-DFG Draft Guidelines and other feasible policy alternatives identified during the scoping process.

The NMFS-DFG Draft Guidelines apply to applications for small water diversions (direct diversions of three cubic feet per second or less, or diversions to storage of 200 acre-feet per year or less).

In general, the NMFS-DFG Draft Guidelines recommend:

- Limiting diversions to December 15 - March 31
- Maintenance of minimum bypass flows
- Protection of the natural hydrograph and avoidance of cumulative impacts
- No permitting of existing or newly constructed onstream storage reservoirs
- Providing adequate fish passage facilities and screened intakes where needed

# Comment Station

The public scoping meeting provides you the opportunity to submit written comments concerning policy alternatives, potential environmental impacts, and mitigation measures that should be included in the Substitute Environmental Document (SED).

The State Water Resources Control Board will consider information and comments that are timely received.

**YOU CAN PROVIDE COMMENTS IN EITHER OF THE FOLLOWING WAYS:**

1. You may submit written comments at this meeting by using the form provided at the Comment Station.
2. You may mail or email comments to the State Water Resources Control Board at the address below:

Attn: Karen Niiya or Eric Oppenheimer  
State Water Resources Control Board  
P.O. Box 2000, 1001 I Street, 14<sup>th</sup> Floor  
Sacramento, CA 95812-2000

*FlowPolicy@waterboards.ca.gov*

All scoping comments must be received by August 25, 2006.

*APPENDIX D*

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*NEWSPAPER NOTICES*

## SCOPING MEETING PUBLICITY

The State Water Resources Control Board's Division of Water Rights held a public scoping meeting on the proposed North Coast Instream Flow Policy and Substitute Environmental Document at the North Coast Regional Water Quality Control Board office at 5550 Skylane Blvd., Suite A, in Santa Rosa, California, on August 16, 2006. Notice of the Scoping Meeting was included in the NOP and published in the following newspapers of general circulation: *Humboldt Times Standard*, *Marin Independent Journal*, *Ukiah Daily Journal*, *Napa County Valley Register*, *Solano Times-Herald*, and *Sonoma Press-Democrat*. Following are copies of the notices published in these newspapers.

Humboldt Times Standard

**PUBLIC SCOPING MEETING FOR THE  
NORTH COAST INSTREAM FLOW POLICY  
SUBSTITUTE ENVIRONMENTAL DOCUMENT**

The State Water Resources Control Board, Division of Water Rights, invites all interested persons to attend a public scoping meeting on the Substitute Environmental Document (SED) to be prepared for the North Coast Instream Flow Policy as required by the California Environmental Quality Act. The purpose of the meeting is to explain the purpose of the policy that will be developed and provide other information to trustee agencies and the interested public. The public scoping meeting will also provide agency personnel and concerned public citizens the opportunity to submit written comments concerning policy alternatives, the potential environmental impacts of the policy, and mitigation measures that should be included in the SED. A Notice of Preparation (NOP) of the SED was filed with the California State Clearinghouse on July 19, 2006. The NOP may be obtained on the State Water Board Website at: [http://www.waterrights.ca.gov/HTML/instreamflow\\_nccs.html](http://www.waterrights.ca.gov/HTML/instreamflow_nccs.html)

**The public scoping meeting will be held on Wednesday, August 16, 2006, at the North Coast Regional Water Quality Control Board; 5550 Skylane Blvd., Suite A; Santa Rosa, California. Two sessions have been scheduled:  
From 3:00 to 5:00 pm  
AND  
From 5:30 to 7:30 pm  
The same information will be presented at each session.**

**Attendance at the meeting is not required in order to comment on the NOP. Written comments may be sent to: Attn: Karen Niiya or Eric Oppenheimer; State Water Resources Control Board; P.O. Box 2000, 1001 I Street, 14th Floor; Sacramento, CA 95812-2000. For questions concerning the SED process, or to obtain a copy of the NOP, please contact Karen Niiya or Eric Oppenheimer at (916) 341-5426 or [FlowPolicy@waterboards.ca.gov](mailto:FlowPolicy@waterboards.ca.gov).**

**Written comments must be received by August 25, 2006.**

8/9, 13

**Marin Independent Journal****PUBLIC SCOPING MEETING FOR THE  
NORTH COAST INSTREAM FLOW POLICY  
SUBSTITUTE ENVIRONMENTAL DOCUMENT**

The State Water Resources Control Board, Division of Water Rights, invites all interested persons to attend a public scoping meeting on the Substitute Environmental Document (SED) to be prepared for the North Coast Instream Flow Policy as required by the California Environmental Quality Act. The purpose of the meeting is to explain the purpose of the policy that will be developed and provide other information to trustee agencies and the interested public. The public scoping meeting will also provide agency personnel and concerned public citizens the opportunity to submit written comments concerning policy alternatives, the potential environmental impacts of the policy, and mitigation measures that should be included in the SED. A Notice of Preparation (NOP) of the SED was filed with the California State Clearinghouse on July 19, 2006. The NOP may be obtained on the State Water Board Website at: [http://www.waterrights.ca.gov/HTML/instreamflow\\_nccs.html](http://www.waterrights.ca.gov/HTML/instreamflow_nccs.html)

**The public scoping meeting will be held on Wednesday, August 16, 2006, at the North Coast Regional Water Quality Control Board; 5550 Skylane Blvd., Suite A; Santa Rosa, California. Two sessions have been scheduled:**

**From 3:00 to 5:00 pm**

**AND**

**From 5:30 to 7:30 pm**

**The same information will be presented at each session.**

**Attendance at the meeting is not required in order to comment on the NOP.** Written comments may be sent to: Attn: Karen Niiya or Eric Oppenheimer; State Water Resources Control Board; P.O. Box 2000, 1001 I Street, 14th Floor; Sacramento, CA 95812-2000. For questions concerning the SED process, or to obtain a copy of the NOP, please contact Karen Niiya or Eric Oppenheimer at (916) 341-5426 or [FlowPolicy@waterboards.ca.gov](mailto:FlowPolicy@waterboards.ca.gov).

**Written comments must be received by August 25, 2006.**

NO. 5121 August 9, 13, 2006

Ukiah Daily Journal

570-06

8-9,13/06

**PUBLIC SCOPING MEETING FOR THE  
NORTH COAST INSTREAM FLOW POLICY  
SUBSTITUTE ENVIRONMENTAL  
DOCUMENT**

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**Written comments must be received by August 25, 2006.**

## Napa County Valley Register

**PUBLIC NOTICE  
PUBLIC SCOPING MEETING FOR THE  
NORTH COAST  
INSTREAM FLOW POLICY  
SUBSTITUTE ENVIRONMENTAL DOCUMENT**

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**Written comments must be received by August 25, 2006**

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Solano Times-Herald

**PUBLIC  
SCOPING MEETING  
FOR THE  
NORTH COAST  
INSTREAM FLOW POLICY  
SUBSTITUTE  
ENVIRONMENTAL DOCUMENT**

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The public scoping meeting will be held on Wednesday, August 16, 2006, at the North Coast Regional Water Quality Control Board, 5550 Skylark Blvd., Suite A, Santa Rosa, California. Two sessions have been scheduled:

From 3:00 to 5:00 pm

AND

From 5:30 to 7:30 pm

The same information will be presented at each session.

Attendance at the meeting is not required in order to comment on the NOP. Written comments may be sent to: Attn: Karen Niiya or Eric Oppenheimer; State Water Resources Control Board; P.O. Box 2000,

1001 I Street, 14th Floor, Sacramento, CA 95812-2000. For questions concerning the SED process, or to obtain a copy of the NOP, please contact Karen Niiya or Eric

Oppenheimer at (916) 341-5426 or [FlowPolicy@waterboards.ca.gov](mailto:FlowPolicy@waterboards.ca.gov).

Written comments must be received by August 25, 2006.

V31723  
August 9, 13, 2006

## Sonoma Press-Democrat

**PUBLIC SCOPING  
MEETING FOR THE  
NORTH COAST  
INSTREAM FLOW  
POLICY SUBSTITUTE  
ENVIRONMENTAL  
DOCUMENT**

The State Water Resources Control Board, Division of Water Rights, invites all interested persons to attend a public scoping meeting on the Substitute Environmental Document (SED) to be prepared for the North Coast Instream Flow Policy as required by the California Environmental Quality Act. The purpose of the meeting is to explain the purpose of the policy that will be developed and provide other information to trustee agencies and the interested public. The public scoping meeting will also provide agency personnel and concerned public citizens the opportunity to submit written comments concerning policy alternatives, the potential environmental impacts of the policy, and mitigation measures that should be included in the SED. A Notice of Preparation (NOP) of the SED was filed with the California State Clearinghouse on July 19, 2006. The NOP may be obtained on the State Water Board Website at: [http://www.waterrights.ca.gov/HTML/Instreamflow\\_nccs.html](http://www.waterrights.ca.gov/HTML/Instreamflow_nccs.html)

The public scoping meeting will be held on Wednesday, August 16, 2006, at the North Coast Regional Water Quality Control Board; 5550 Skylane Blvd., Suite A; Santa Rosa, California. Two sessions have been scheduled:

From 3:00 to 5:00 pm  
AND

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Written comments must be received by August 25, 2006.

1722283 - Pub. Aug. 9, 13,  
2006 2th.

*APPENDIX E*

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*NOTICE OF PREPARATION AND NOTICE OF PUBLIC SCOPING MEETING*

**NOTICE OF PREPARATION OF A SUBSTITUTE ENVIRONMENTAL DOCUMENT (SED) AND  
NOTICE OF PUBLIC SCOPING MEETING FOR THE NORTH COAST INSTREAM FLOW POLICY**



**PROJECT LOCATION / POLICY AREA**

If you would like to remain on the mailing list and receive future announcements about the North Coast Instream Flow Policy, please provide a mailing address and/or email address below and return this form by August 25, 2006, to the State Water Resources Control Board, Division of Water Rights: Karen Niiya; P.O. Box 2000, 1001 I Street, 14th Floor; Sacramento, CA 95812-2000

Name	Agency	Email	
Street	City	State	Zip Code

# Notice of Preparation

Form B

To: State Clearinghouse, Governor's Office of Planning and Research  
(Agency)  
P.O. Box 3044  
(Address)  
Sacramento, CA 95812-3044

**Subject: Notice of Preparation of a Draft Substitute Environmental Document**

<b>Lead Agency:</b>	<b>Consulting Firm (If applicable):</b>
Agency Name <u>State Water Resources Control Board</u>	Firm Name <u>North State Resources, Inc.</u>
Street Address <u>P.O. Box 2000, 1001 I Street, 14<sup>th</sup> Floor</u>	Street Address <u>1321 20th Street</u>
City/State/Zip <u>Sacramento, CA 95812-2000</u>	City/State/Zip <u>Sacramento, CA 95814</u>
Contact <u>Karen Niiya or Eric Oppenheimer</u>	Contact <u>Kerri Mikkelsen Rose</u>

The State Water Board's Division of Water Rights (Division) will prepare a Substitute Environmental Document for the proposed North Coast Instream Flow Policy. Although the adoption of state policy for water quality control is exempt from the California Environmental Quality Act (CEQA) requirement to prepare a Negative Declaration or an Environmental Impact Report, (Cal. Code Regs., tit. 14, §§ 15250, 15251, subd. (g)), a Substitute Environmental Document must be prepared for the project. The Substitute Environmental Document will evaluate the potential environmental impacts of the policy and any alternatives or mitigation measures necessary to avoid any significant environmental impacts.

The Division is seeking comments from trustee agencies and interested persons concerning the scope and content of the environmental information to be included in the Substitute Environmental Document.

Please send your response to **Karen Niiya or Eric Oppenheimer** at the address shown above. We will need the name for a contact person in your agency.

The Environmental Checklist may be obtained via the Internet on the State Water Board Website at: [http://www.waterrights.ca.gov/HTML/instreamflow\\_nccs.html](http://www.waterrights.ca.gov/HTML/instreamflow_nccs.html)

You may also receive a copy by writing to the Division of Water Rights, State Water Resources Control Board; 1001 I Street, 14th Floor, P.O. Box 2000; Sacramento, CA 95812, or by contacting Karen Niiya or Eric Oppenheimer at (916) 341-5426, FAX: (916) 341-5400, email: [FlowPolicy@waterboards.ca.gov](mailto:FlowPolicy@waterboards.ca.gov)

**Project Title:** North Coast Instream Flow Policy Substitute Environmental Document

**Project Location:** Not applicable Napa, Marin, Sonoma, Humboldt & Mendocino  
City (nearest) Counties

Name Victoria A. Whitney Signature  Date 7/19/06  
Title Chief, Division of Water Rights, State Water Resources Control Board Telephone (916) 341-5426

**DATE:** July 19, 2006  
**TO:** Distribution List  
**FROM:** State Water Resources Control Board, Division of Water Rights (Division)  
**SUBJECT:** North Coast Instream Flow Policy – Notice of Preparation of a Substitute Environmental Document and Notice of Scoping Meeting

Effective January 1, 2005, Assembly Bill 2121 (Stats. 2004, ch. 943, § 3) added section 1259.4 to the Water Code, which requires the State Water Resources Control Board (State Water Board) to adopt principles and guidelines for maintaining instream flows in coastal streams from the Mattole River to San Francisco and in coastal streams entering northern San Pablo Bay, for purposes of water right administration (North Coast Instream Flow Policy).

The purpose of this Notice of Preparation is: (1) to advise trustee agencies and interested persons that the State Water Board intends to prepare a Substitute Environmental Document for the North Coast Instream Flow Policy, and (2) to seek input on significant environmental issues, reasonable alternatives, and mitigation measures that should be addressed in the Substitute Environmental Document. (No responsible agencies exist for this project because no other agency has authority to carry out or approve the North Coast Instream Flow Policy. Other agencies may have authority to carry out or approve activities that will be subject to the policy, but the project in this case is the policy itself, not the activities that may be subject to the policy.)

**Responses to this Notice of Preparation must be received in writing by the close of business on August 25, 2006.** Responses must be received on schedule to allow complete consideration of all concerns.

**A public scoping meeting has been scheduled** to explain the policy and provide other information to trustee agencies and the interested public. The public scoping meeting will also provide agency personnel and concerned public citizens the chance to submit written comments concerning the range of actions, policy alternatives, mitigation measures, and significant effects that should be analyzed in the Substitute Environmental Document. The public scoping meeting has been scheduled for:

Two Sessions | 3:00 PM – 5:00 PM or 5:30 – 7:30 PM | **August 16, 2006** |  
North Coast Regional Water Quality Control Board; 5550 Skylane Blvd., Suite A; Santa Rosa, CA

## **1.0 Project Description**

The primary objective of the proposed project is to develop a State Water Board policy that provides, through the State Water Board's administration of water rights, for the maintenance of instream flows in coastal streams from the Mattole River to San Francisco Bay and in coastal streams entering northern San Pablo Bay. The policy is likely to address the State Water Board's administration of water right applications; small domestic use and livestock stockpond registrations; existing permits and licenses; change petitions, including transfers, time extensions, and wastewater change petitions. In addition, the Division proposes to include an enforcement element as part of the policy that will govern water right enforcement actions in the coastal streams described above.

In developing the policy, Water Code section 1259.4 authorizes the State Water Board to consider the Draft "Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Coastal Streams," which were developed in 2002 by the National Marine Fisheries Service (NMFS) and the California Department of Fish and Game (DFG) (NMFS-DFG Draft Guidelines). Accordingly, the Division proposes to evaluate in the Substitute Environmental Document a policy based on the NMFS-DFG Draft Guidelines.

The NMFS-DFG Draft Guidelines were recommended for use by permitting agencies (including the State Water Board), planning agencies, and water resources development interests when evaluating proposals to divert water from northern California coastal streams. The NMFS-DFG Draft Guidelines were developed to protect and restore anadromous salmonids and their habitat. The Division currently considers the NMFS-DFG Draft Guidelines when reviewing water right applications, but the guidelines have not been adopted as formal State Water Board policy. The NMFS-DFG Draft Guidelines are available at: <http://swr.nmfs.noaa.gov/hcd/policies/Waterdiversion%20guidelines.pdf>

The NMFS-DFG Draft Guidelines recommend that terms and conditions be included in new water right permits for small diversions to protect fishery resources in the absence of site-specific biologic and hydrologic assessments. (Small diversions are defined as direct diversions of three cubic feet per second or less, or diversions to storage of 200 acre-feet per annum or less.) Specifically, the NMFS-DFG Draft Guidelines recommend:

- limiting new water right permits to diversions during the winter period (December 15–March 31) when stream flows are generally high;
- maintaining minimum bypass flows and cumulative maximum rates of diversion to ensure that streams are adequately protected from new winter diversions;
- conserving the natural hydrograph and avoiding significant cumulative impacts by limiting the maximum cumulative volume of water that can be diverted in a watershed;
- constructing storage ponds off-stream rather than on-stream; and
- providing fish screens and fish passage facilities where appropriate.

The Division anticipates that the policy that will be evaluated in the Substitute Environmental Document will cover the same issues as the NMFS-DFG Draft Guidelines, but specific details or criteria may differ. For example, the policy may be expanded to cover small domestic use and livestock stockpond registrations, change petitions, and time extension petitions.

## **2.0 Project Location / Policy Area**

The North Coast Instream Flow Policy will cover the same geographic area as the NMFS-DFG Draft Guidelines, including all coastal streams from the mouth of the Mattole River south to San Francisco Bay and coastal streams entering northern San Pablo Bay. This area includes approximately 5,900 stream miles and encompasses 3.1 million watershed acres (4,900 square miles) including all of Marin and Sonoma counties and portions of Napa, Mendocino, and Humboldt counties (policy area), as indicated on the map.

## **3.0 Potential Alternatives**

No policy alternatives have yet been identified as of the issuance of this Notice of Preparation. The Division seeks additional data and input on policy alternatives from trustee agencies, Tribes, and the interested public. At a minimum, any proposed policy alternatives must be designed to maintain instream flows in coastal streams through water right administration, as required by Water Code section 1259.4. The Division will consider all comments and available and relevant information received during the scoping process.

## **4.0 Probable Environmental Effects to be Analyzed in the Substitute Environmental Document**

The adoption of the North Coast Instream Flow Policy is a certified regulatory program, and therefore is exempt from the requirement to prepare an Environmental Impact Report or Negative Declaration. (Cal. Code Regs., tit. 14, §§ 15250, 15251, subd. (g).) The Division has determined that a Substitute Environmental Document is required for the proposed project. It has also determined that the following environmental issue areas will be evaluated in the Substitute Environmental Document: Aesthetics, Agricultural Resources, Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, Noise, Recreation, and Utilities and Service Systems.

For purposes of CEQA, the proposed project is adoption of the North Coast Instream Flow Policy. The policy itself will not approve any particular water diversion projects. Moreover, in general, the policy will operate to protect the environment by ensuring that water rights are administered in a manner designed to maintain instream flows. Adoption and implementation of the policy could, however, lead diverters to take actions that could result in indirect environmental impacts.

Future actions that could occur as a result of adoption and implementation of the policy include the removal of existing, on-stream storage reservoirs and the construction of off-stream storage reservoirs. These construction activities could cause short-term impacts such as the following: increases in sediment discharged to streams due to construction or dam removal, temporary visual disturbances due to earthwork activities and vehicular traffic, temporary increases in air pollution from particulate matter and ozone, potential for site-specific erosion, temporary use of hazardous materials, temporary noise impacts, and temporary increases in solid waste generation.

The removal of on-stream reservoirs as a result of adoption and implementation of the policy also could cause long-term impacts. These could include: loss of wetlands, which could adversely affect species that rely on those wetlands for habitat and food; changes to channel and floodplain maintenance processes and riparian zone characteristics, which could affect habitat conditions; a reduction in available storm flow storage capacity, which could cause increased runoff during storm events, increased potential for downstream flooding, increased sedimentation, the potential for mudflow, and the potential for downstream dam failures; a reduction in emergency fire suppression water supplies; and a loss of recreational opportunities such as swimming and fishing.

Adoption and implementation of the policy also could lead water diverters to switch to alternative water supplies in order to avoid any limitations applicable to new water right applications that may be contained in the policy. Some diverters might switch to groundwater pumping, which could impact groundwater levels, potentially resulting in a reduction in summer instream flows. Other diverters might choose to directly divert under riparian rights, instead of seasonally storing water, for which a permit is required. An increased reliance on riparian rights could result in increased surface water diversions during the spring, summer, and fall, potentially reducing instream flows to levels that might cause reductions in or loss of habitat. Decreases in summer groundwater elevations and instream flows due to groundwater pumping and riparian diversions could result in the loss of riparian vegetation. The loss of riparian vegetation could affect terrestrial and aquatic species that rely on riparian vegetation for habitat and food and lead to declines in water quality, such as increased water temperature and fine sediment levels. Finally, some diverters might choose to cease diverting altogether, and fallow lands that are currently being irrigated, or switch to dryland farming, or convert existing farmland to non-agricultural uses.

The Substitute Environmental Document will analyze any policy alternatives or mitigation measures that would minimize or avoid the potential environmental impacts described above.

Please send your comments regarding the North Coast Instream Flow Policy Substitute Environmental Document to the address below. When submitting your comments, please identify a contact person in case we have any questions about the comments.

Attention: Karen Niiya or Eric Oppenheimer  
State Water Resources Control Board  
P.O. Box 2000, 1001 I Street, 14<sup>th</sup> Floor  
Sacramento, CA 95812-2000

Phone: (916) 341-5426  
Fax: (916) 341-5400  
Email: [FlowPolicy@waterboards.ca.gov](mailto:FlowPolicy@waterboards.ca.gov)