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**State Water Resources Control Board**

**NOTICE OF ADOPTION HEARING**

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

**The State Water Resources Control Board will hold a  
public hearing to consider adopting a proposed  
Policy for Maintaining Instream Flows in Northern California Coastal Streams**

The Public Hearing will be held on  
**Tuesday, October 22, 2013**

in the  
Coastal Hearing Room  
Joe Serna, Jr.-Cal/EPA Building  
1001 I Street, Second Floor  
Sacramento, CA 95814

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**BACKGROUND**

Water Code section 1259.4, which was added by Assembly Bill 2121 (Stats. 2004, ch. 943, § 3), requires the State Water Resources Control Board (State Water Board) to adopt principles and guidelines for maintaining instream flows in northern California coastal streams as part of state policy for water quality control, for the purposes of water right administration. The proposed Policy for Maintaining Instream Flows in Northern California Coastal Streams (Policy) was developed to comply with Water Code section 1259.4. The purpose of the Policy is to preserve the instream flows needed to protect fishery resources, while minimizing the water supply impacts of the proposed Policy on other beneficial uses, including agricultural, municipal, domestic, and industrial uses. The Policy will apply to applications to appropriate water; small domestic use, small irrigation use, and livestock stockpond registrations; and water right petitions. The geographic scope of the Policy encompasses coastal streams from the Mattole River to San Francisco and coastal streams entering northern San Pablo Bay, and extends to five counties -- Marin, Sonoma, and portions of Napa, Mendocino, and Humboldt Counties. Streams in the Policy area provide habitat for steelhead trout, coho salmon, and Chinook salmon, which have been listed as threatened or endangered species under the federal Endangered Species Act and the California Endangered Species Act.

The Policy contains guidelines for evaluating whether a proposed water diversion, in combination with existing diversions in a watershed, may affect instream flows needed for the protection of fishery resources. It prescribes protective criteria limiting the season of diversion, establishing minimum bypass flows, and limiting the maximum cumulative rate of diversion from a watershed. As an alternative to the criteria specified in the Policy, the Policy allows site-specific studies to be conducted to evaluate whether different protective criteria could be

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

applied. The Policy also limits construction of new onstream dams and contains measures to ensure that approval of onstream dams does not adversely affect instream flows needed for fishery resources. The Policy provides for a watershed-based approach to evaluate the effects of multiple diversions on instream flows within a watershed as an alternative to evaluating water diversion projects on an individual basis. Enforcement requirements contained in the proposed Policy include a framework for compliance assurance, prioritization of enforcement cases, and descriptions of enforcement actions.

Earlier versions of the Policy were released for public review and comment in December 2007 and March 2008. In order to comply with the California Environmental Quality Act (CEQA), the State Water Board prepared a substitute environmental document (SED) in connection with the State Water Board's consideration of the Policy. At the close of a hearing held on April 27 and May 4, 2010, the State Water Board approved [Resolution No. 2010-0021](#), which adopted the Policy and certified that the SED and other environmental documentation complied with CEQA.

On August 9, 2012, the Alameda County Superior Court granted in part a petition for writ of mandate challenging the Policy and associated environmental documentation pursuant to CEQA. (*Living Rivers Council v. State Water Resources Control Board* (Sup. Ct. Alameda County, 2012, No. RG10-543923).) The Court issued a writ of mandate, directing the Board to set aside Resolution No. 2010-0021, which adopted the Policy and certified that the environmental documentation complied with CEQA. In addition, the writ directed the State Water Board to take the following two actions in order to comply with CEQA: (1) evaluate certain subterranean stream delineations as a potentially feasible mitigation measure for the potential increase in use of percolating groundwater that could be caused by the Policy and make appropriate disclosures regarding that evaluation and resulting decision; and (2) present sufficient information to enable the decision makers and the public to understand and to consider meaningfully the limited legal options facing the State Water Board to mitigate any increase in the use of percolating groundwater and the implications for the effectiveness of the Policy.

On October 16, 2012, the State Water Board set aside Resolution No. 2010-0021, thereby vacating the Board's adoption of the Policy and certification of the environmental documentation, as required by the Court. ([State Water Board Resolution No. 2012-0058](#).) On February 22, 2013, the State Water Board circulated additional CEQA documentation, including revised sections 6.2, 6.9, and 7 of the 2008 SED, a new Supplement to Appendix D of the 2008 SED, and revised portions of the 2010 Response to Public Comments, Volumes 1 and 2, for public review and comment in accordance with applicable State laws and regulations. The primary purpose of the revisions was to satisfy the Court's requirements. The written public comment period ended at noon on April 8, 2013. On April 23, 2013, a public hearing for the receipt of oral comments on the adequacy of the additional CEQA documentation was held during a regularly scheduled State Water Board meeting. No significant revisions to the Policy are proposed based on the additional CEQA documentation and comments received.

#### **DOCUMENT AVAILABILITY**

The proposed Policy and supporting documents are available on the State Water Board's website at [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/instream\\_flows/](http://www.waterboards.ca.gov/waterrights/water_issues/programs/instream_flows/). Alternatively, you may receive a copy of the documents on CD by leaving a voicemail message at (916) 327-2414, or by sending an email to [AB2121Policy@waterboards.ca.gov](mailto:AB2121Policy@waterboards.ca.gov).

To subscribe to an email list for future notifications about the Policy, go to the State Water Board's website at [http://www.waterboards.ca.gov/resources/email\\_subscriptions/swrcb\\_subscribe.shtml](http://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.shtml), and choose "AB 2121 Instream Flow Guidelines for Northern Coastal Streams."

### **SUBMISSION OF WRITTEN COMMENTS**

The State Water Board has received and considered extensive written comments on the content of the Policy, SED, and supporting technical documents. Interested persons should focus their comments on the 2013 revisions to the proposed Policy only. The written public comment period for comments on the revised SED ended at noon on April 8, 2013. The Board is not required to respond to late CEQA comments. (Cal. Code Regs., tit. 23, § 3779, subd. (d).) Participants are encouraged to submit their comments, evidence, and other material electronically. Comment letters can be submitted by email to [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov) (if less than 15 megabytes in total size) or by fax at (916) 341-5620 with the subject "**Comment Letter – AB 2121 Policy.**" Pursuant to Water Code section 13147, the deadline for written recommendations concerning the revisions to the Policy from the Regional Water Quality Control Boards was October 2, 2013. In order to be fully considered, all other **written comments** concerning the **October 4, 2013 revisions to the Policy** must be received by **12:00 noon on Thursday, October 17, 2013.** Written comments may also be delivered by via-mail or hand-delivered to the following address:

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814

### **PROCEDURAL MATTERS**

The hearing will be informal. There will be no sworn testimony or cross-examination of participants, but the State Water Board and its staff may ask clarifying questions. Participants are encouraged to submit written comments prior to the hearing. At the hearing, participants will be given an opportunity to summarize and supplement their written materials with oral presentations. To ensure a productive and efficient hearing in which all participants have an opportunity to participate, oral presentations may be time-limited. For other presentation recommendations, go to [http://www.waterboards.ca.gov/board\\_info/meetings/board\\_presentations.shtml](http://www.waterboards.ca.gov/board_info/meetings/board_presentations.shtml) at the State Water Board's Web site. Parties with questions concerning the hearing may also leave a voicemail message at (916) 327-2414.

### **PARKING AND ACCESSIBILITY**

For directions to the Joe Serna, Jr. (Cal/EPA) Building and public parking information, please refer to the map on the State Water Board Web site at: <http://www.calepa.ca.gov/EPAbldg/location.htm>. The Cal/EPA Building is accessible to persons with disabilities. Individuals requiring special accommodations are requested to call (916) 341-5881 at least 5 working days prior to the meeting. TDD users may contact the California Relay Service at 1-800-735-2929 or voice line at 1-800-735-2922. An audio broadcast of the meeting will be available via the internet and can be accessed at: <http://www.calepa.ca.gov/broadcast/>. All visitors to the Cal/EPA Building are required to sign in and obtain a badge at the Visitor Services Center located just inside the main entrance. Valid picture identification may be required. Please allow up to 15 minutes for receiving security clearance.

**ADDITIONAL INFORMATION**

Parties with questions about this notice may leave a voicemail message at (916) 327-2414 or send an email to [AB2121Policy@waterboards.ca.gov](mailto:AB2121Policy@waterboards.ca.gov).

October 7, 2013  
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Date

  
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Jeanine Townsend  
Clerk to the Board