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Humboldt
Baykeeper

April 18, 2014

Inland Empire
Waterkeeper

Ms. Katharine Carter
North Coast Regional Water Quality Control Board
5550 Skylane Blvd, Suite A
Santa Rosa, CA 95403

Klamath
Riverkeeper

Monterey
Coastkeeper

Via Electronic Mail to Katharine.Carter@waterboards.ca.gov

Orange County
Coastkeeper

Re: Response to recent workshop comments regarding the North Coast Regional Water Quality Control Board March 14, 2014 "Public Review Draft Staff Report for the 2012 Integrated Report"

Russian
Riverkeeper

Dear Ms. Carter:

San Diego
Coastkeeper

California Coastkeeper Alliance (CCKA) and its 12 member Waterkeeper organizations advocate for clean, abundant water flows from San Diego to the Oregon border. The California Waterkeepers work daily to address California's water problems using science, law and policy tools. In particular, Klamath Riverkeeper, Humboldt Baykeeper, and Russian Riverkeeper have been integrally involved in collecting and submitting data to support waterways in need of listing under Clean Water Act Section 303(d). We direct your attention to their respective letters providing specific information on proposed listings in their watershed.

San Francisco
Baykeeper

San Luis Obispo
Coastkeeper

Santa Barbara
Channelkeeper

We are writing in response to issues raised at the North Coast Regional Water Quality Control Board (Regional Board) April 8th working in Santa Rosa and the April 9th workshop in Redding on the "Public Review Draft Staff Report for the 2012 Integrated Report" (Draft Staff Report). During the workshops, the Regional Board staff provided justifications for omitting the listing of water bodies as impaired by flows. We provide brief responses to these points below to inform the Regional Board's response to comments. We also incorporate by reference our letters of August 20, 2010, May 15, 2013, and April 1, 2014, which discuss these issues in detail.

Los Angeles
Waterkeeper

Ventura
Coastkeeper

1) Proposed Counterpoint: The Regional Board Does Not Have Sufficient Evidence to List Water Bodies As Impaired By Flow.

In the four years following our initial submission of data to support flow listings in August 2010, a diverse coalition of tribes, fishing groups and environmental organizations have worked collaboratively with the State Water Board to illustrate a clear basis in science for the requested Section 303(d) flow listings. Our partner groups have gone so far as to develop sample lines of evidence for the Shasta River, Scott River, Mattole River, and the Eel River to illustrate the viability of flow listings. Regardless of the data submitted, it is the Regional Board's duty to consider all available science relevant to the potential impairment of water bodies. This includes reports and findings by state and federal agencies, and a consideration of the fact that a complete absence of flow in certain rivers is a clear and scientifically defensible demonstration of impairment.

2) *Proposed Counterpoint: There Are No Accepted Methodologies for Measuring How Or When A Water Body Is Flow Impaired.*

California completed several listing cycles successfully before the Listing Policy was adopted. Numerous other states around the country already successfully list for flow impairments, as indicated in the attached May 2013 letter. Even the Listing Policy makes clear that when “weight of evidence indicates non-attainment, the water segment shall be placed on the section 303(d) list,” even when all other Listing Factors do not result in a listing. Thus, where beneficial uses are impaired due to altered flows, water bodies *must* be placed on the Section 303(d) List.

3) *Proposed Counterpoint: There Is No Clear Guidance From The State On How To List For Flows.*

As explained in previous comments submitted to the Regional Board, it is the Clean Water Act, its implementing regulations and U.S. EPA Guidance that provide a clear mandate for state action, not the Listing Policy. The Clean Water Act requires states to identify waters for which effluent limitations for specified point sources are not stringent enough after implementation of technology-based controls to implement water quality standards applicable to those waters. In other words, if a water body’s standards are not being met in the water body, then it *must* be listed in the state’s Section 303(d) list. Water segments impaired by altered flows at a minimum should be placed in Category 4C, which houses water segments “impaired or affected by non-pollutant related [e.g., “pollution”] cause(s).” This is consistent with the U.S. EPA’s 2006 Guidance and will ensure that the waterways appropriately are included on the state’s 303(d) list, which in turn will highlight the need for swift action to restore altered flows.

4) *Proposed Counterpoint: Temperature and Sediment Listings Already Mandate CFS Requirements On Certain Rivers.*

Under Section 303(d)(1)(A) of the CWA, if a water body’s standards are not being met, then it must be listed in the state’s Section 303(d) List. Without adequate flow, beneficial uses that require water will obviously be impaired, including use as fish habitat.¹ Listing of flow-impaired waterways is a separate and distinct task from determining whether or not total maximum daily loads (TMDLs) are required to address those impairments, as discussed in CWA Section 303(d)(1)(C). Further, existing TMDLs and listings for the attached waterways has not addressed the underlying issue of lack of flow. The rivers and streams identified must be listed in Section 303(d) as impaired due to altered flow.

Eel River Clarification on Shortlist for Flow Listings

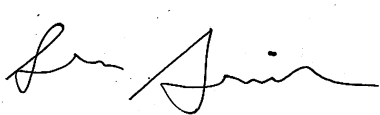
In our original “Five Disappearing Rivers” document, we urged the Regional Board to list the Upper Eel River as impaired by flows. Reflecting updated scientific input since the original submission of comments, we would like to clarify this request to ask that the Regional Board list the major tributaries of the Eel River as impaired by flow. Specifically, historic land use, including pervasive logging that altered stand composition across the region, vastly increased

¹ “[W]ater quantity is closely related to water quality; a sufficient lowering of the water quantity in a body of water could destroy all of its designated uses, be it for drinking water, recreation, navigation, or . . . a fishery.” *PUD No.1 v. Washington Department of Ecology*, 511 U.S. 700, 719 (May 31, 1994).

sedimentation and altered hydrology and soils is exacerbated in many areas by unregulated dry-season diversions related to marijuana cultivation has significantly contributed to low flows that impair the tributaries of South Fork, Van Duzen, Upper Main and Middle Main. We attach to this letter the updated version of the shortlist, which reflects this information regarding Eel River listings.

The identification of waterways threatened or impaired by altered flows is a critical step in protecting and restoring the vital aquatic habitats that sustain culture economy, and ecosystems of Northern California. Such formal identification will recognize the impacts of our flawed water use practices, help advance implementation of holistic governance tools, and assist with the evolution of needed governance alternatives. For the reasons described above, we urge the State Water Board to take action now to begin listing waterways impaired by altered flows. We stand ready to assist with this effort, along with a vibrant coalition of fishing groups, watershed groups, scientists, tribes and community members. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sara Aminzadeh', written in a cursive style.

Sara Aminzadeh
Executive Director



Five Disappearing Northern California Rivers Using the Clean Water Act to Resuscitate Waterways Sucked Dry

In August 2010, tribal, fishing, and conservation groups submitted more than one thousand pages of detailed studies, data, and analysis to inform the Board's development of the 2012 Clean Water Act Section 303(d) List. As detailed in that letter, and at several subsequent State Water Board meetings on this matter, California is legally required to include on its 303(d) List *all* of the waterways that "readily available" data indicate are impaired, including impairments due to alterations in natural flow.

Other states (Idaho, Washington, North Carolina, South Carolina, Tennessee, Michigan, Vermont) have begun this essential task of identifying water bodies impaired by altered flows, with support by U.S. EPA. Within California, U.S. EPA's Bay Delta Action Planⁱ notes, "identifying those impairments and identifying the cause (whether it is a "pollutant" for purposes of Section 303(d) or some other cause) is a critical part of the Clean Water Act response to the Estuary's problems."

To support the Board's effort, our coalition developed a shortlist of waterways in Region 1 that are clearly and incontrovertibly impaired, and for which low flows are so clearly a cause that there are no reasonable arguments against their 303(d) listing: **Scott River, Shasta River, Upper Main Eel River, Mattole River, and Russian River tributaries (Maacama Creek & Mark West Creek).**

Our coalition worked with local groups throughout the region to create a shortlist of priority waterways based on the following criteria, among others:ⁱⁱ

- a. Significant data was submitted prior to August 2010 as part of the CWA 2012 303(d) scoping process, or is otherwise readily available (e.g., such as in government databases) and demonstrates altered flows such that impairment could not be dismissed as either naturally occurring or episodic.
- b. Local stakeholders are invested in the health of the waterway, and could inform and participate in restoration of the health of the listed waterway.
- c. Prior formal recognition of flow issues with the waterway by State Water Board, Department of Fish and Game, or other state or local agencies.
- d. Ongoing or potential injury to threatened or endangered species.
- e. Waterways within the National or California Wild and Scenic River System, or Class I streams (habitat for fishery resources) or Class II streams (habitat for aquatic non-fish vertebrates and/or aquatic benthic macroinvertebrates).
- f. Waterways where listing would help prevent waste, unreasonable use or unreasonable method of use of water, or unreasonable diversion or method of diversion of water.

Given California's current drought, long history of water management issues, and the challenges to come with climate change, every tool must be used to prevent further damage and to restore degraded waterways. Including these critically impaired waterways on the 2012 303(d) List for Region 1 (North Coast Regional Water Quality Control Board) is an important first step to restoring these rivers and creeks. The brief descriptions provided below summarize the detailed flow data and information that has been submitted to the State Water Board.

1. **Scott River.** Sections of the Scott River are completely dewatered during summer months, while other sections are severely flow-impaired. Adjudicated water rights alone are sufficient to allow complete dewatering of the Scott River during the summer and early fall. In addition, a shift from surface diversions, which are naturally self-limiting, to groundwater wells have made worse the apparent over- appropriation of water in the watershed.ⁱⁱⁱ
2. **Shasta River.** Seven major diversion dams and numerous smaller structures located on the Shasta River, substantially and rapidly reduce flows in the main stem when they are in operation. In addition, Dwinnell Dam, located at about river mile 40, has dramatically altered the flow regime in all seasons of the main stem river. During various times of the year, no water is released from Dwinnell Dam for fish in the Shasta River. These flow alterations have adversely affected salmonid populations in the river.^{iv}
3. **Eel River Tributaries.** Historic land use, including pervasive logging that altered stand composition across the region, vastly increased sedimentation and altered hydrology and soils is exacerbated in many areas by unregulated dry-season diversions related to marijuana cultivation. Consequently, the major Eel River tributaries of South Fork, Van Duzen, Upper Main and Middle Main suffer from low flows that often produce temperatures lethal to listed fish species. These issues are particularly pronounced in the Outlet Creek portion of the Upper Main River, several South Fork drainages, and Van Duzen River.
4. **Mattole River.** A detailed study of the Mattole River Basin found that lack of adequate late summer and early fall stream flow is recognized as one of the most important limitations on salmonid habitat in the Mattole River basin. In recent years, juvenile salmonids have become stranded in pools due to excessively low flows, causing mortality and necessitating fish rescue operations.^{vi}
5. **Russian River Tributaries:**
 - a. **Maacama Creek.** In Maacama Creek “[s]tanding crops of fall fish show a major reduction in many years, suggesting that low flow conditions are limiting, and these low flow conditions are likely linked to agricultural water use.”^{vii} “Coho salmon are at very high risk of extinction in the Russian River basin. Because “the biggest problem is over-consumption of water,” listing of these waterways as impaired by natural flow alterations/water diversions is an important step in ensuring their return to good health.
 - b. **Mark West Creek.** Ten years ago all 28 miles of Mark West Creek had water in the summer. Today, because of increased diversions, only 3½ miles have water. Department of Fish and Wildlife flow records of Mark West Creek dating back to the 1960s show that the lowest summer stream flow has historically been 2 cfs; recent summer stream flows are averaging at approximately that level.

For additional information, contact Sara Aminzadeh, California Coastkeeper Alliance (Sara@cacoastkeeper.org) or Linda Sheehan, Earth Law Center (lsheehan@earthlaw.org).

ⁱ U.S. EPA. “Water Quality Challenges in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary: EPA’s Action Plan,” p. 9, available at <http://www.epa.gov/sfbay-delta/pdfs/EPA-bayareaactionplan.pdf> (August 2012).

ⁱⁱ Criteria 4-6 taken from the State Water Board’s AB 2121 Enforcement Priorities. See Appendix G AB 2121 work (see Appendix G).

ⁱⁱⁱ S.S. Papadopoulos & Associates Inc. 2012. Groundwater Conditions in Scott Valley, California. Report prepared for the Karuk Tribe, Happy Camp, CA.

^{iv} Lestelle, L. 2012. Effects of Dwinnell Dam on Shasta River salmon and considerations for prioritizing recovery actions. Report prepared for the Karuk Tribe, Happy Camp, CA.

^v Patrick Higgins, Consulting Fisheries Biologist, “Evaluation of the Effectiveness of Potter Valley Project National Marine Fisheries Service Reasonable and Prudent Alternative (RPA): Implications for the Survival and Recovery of Eel River, Coho Salmon, Chinook Salmon, and Steelhead Trout” (February 2010).

^{vi} Randy D. Klein, Hydrologist, “Hydrologic Assessment of Low Flows in the Mattole River Basin 2004-2006,” (March ‘07).

^{vii} Letter from Patrick Higgins, Consulting Fisheries Biologist to Traci Tesconi, County of Sonoma, “Pelton House Winery Application #PLP05-0010,” (Dec. 29, 2008), p. 12 (included in Appendix A).