

NORTH COAST STREAM FLOW COALITION

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Comment to the California State Water Resource Control Board on proposed
2012 Integrated Report 303 (d) Impaired Listing Decisions

The North Coast Stream Flow Coalition (NCSFC) is composed of 17 organizations, listed at the end of this comment, representing citizens who live and work in North Coast and Klamath River Basin communities stretching from the San Francisco Bay to the Oregon Border. Several of these organizations and the Coalition itself have participated in processes at the North Coast Regional Water Quality Control Board (North Coast Board) resulting in that body's recommendations now before the State Board. These are our comments on those recommendations to list, not list or to delist streams and stream segments pursuant to section 303(d) of the Clean Water Act.

The Board should list streams as flow-impaired

The staff recommendation to not list streams proposed by Earth Law Center and others, including Coalition members, as flow impaired is illogical, detrimental to public health, safety and welfare and contrary to law and will damage and unnecessarily delay action to restore beneficial uses which rely on adequate streamflows. For the details of why the SWRCB must under law list those streams for which the weight of evidence confirms a significant flow-impairment, we refer you to input and testimony submitted to Regional Boards and the State Board by the Earth Law Center.

In addition, there is new information on flow impairments for North Coast and Klamath River Basin streams prepared by Riverbend Sciences for the National Marine Fisheries Service which was used in formulating the recovery plan for SONC Coho salmon. That new information is available at this link: <https://drive.google.com/open?id=0B2p7GuVSL4OXSVIVMWM4WURXUDQ&authuser=0>

We would like to emphasize that failure of the State Board to list streams which are obviously flow impaired will damage efforts by the Coalition and its members to forestall developments which would further damage beneficial uses including, in the case of North Coast and Klamath streams, Chinook and Coho Salmon and Steelhead trout. On the other hand, a decision by the State Board to list the nominated streams as flow impaired would provide Coalition members and other citizens with an effective tool to forestall further dewatering of our streams. Let's consider groundwater regulation in the Shasta and Scott River Basins, two of the streams which should be listed as flow impaired, as an example of how a flow-impaired listing would help citizens forestall further stream dewatering.

Both the Shasta and Scott River Basins are identified by California's Department of Water Resources as "medium" priority for groundwater extraction impacts and therefore, pursuant to recent groundwater legislation, local or regional entities must develop sustainable groundwater management plans and begin regulating groundwater extraction in these basins.

Those management plans and subsequent regulation may address, but are not required to address, the impacts of groundwater extraction on stream flows. A flow-impaired listing would confirm that groundwater extraction may be a factor in causing the flow impairment and therefore should be

assessed via groundwater plans and, if found to be significant, addressed via groundwater regulations. Absent a flow impaired listing, however, local or region management entities could claim that, because the SWRCB declined to list the waterbody as flow impaired, that action constitutes a finding that no flow impairment exists. Such an interpretation, whether justified or not, would provide the local or regional management entity with a ready rationalization for neither assessing nor addressing the impact of groundwater extraction on beneficial uses of surface water that are flow dependent.

In the Shasta and Scott River Basins cold water fisheries, including Coho and Chinook salmon and Steelhead trout, are flow dependent. So too, in many cases, are riparian and appropriative surface water rights. Therefore, the State Board's failure to list these streams as flow impaired may well frustrate, efforts to remediate flows that are inadequate to support Public Trust resources and surface water rights. In the worst case scenario, the State Board's failure to list the Shasta and Scott as flow-impaired could be used to justify new groundwater extraction which further damages flow-dependent beneficial uses of surface water including not just fisheries but also irrigation from surface sources.

Similar situations obtain on significant portions of several other North Coast streams which have been proposed for listing as flow impaired including the Eel River, Mattole River, Napa River and Mark West Creek. Failure to list these streams as flow impaired will make it much more difficult for our member organizations to convince local and regional groundwater management entities that they should assess and address the impact of groundwater extraction on those beneficial uses dependent on adequate stream flows.

On the other hand, a decision by the State Board to list those streams proposed for listing as flow impaired would assist those working to secure and restore stream flows. We would not, for example, have to work to convince groundwater management entities that a stream is flow impaired, we could rely on the State Board's listing. Similarly a state board listing will assist our members in preventing new developments which would further dewater our streams and rivers or in securing modifications of those new developments to reduce impacts to stream flow.

A watershed's inclusion on the 303d impaired waterbodies list would mean that CEQA reviews for new and expanding developments with potential to negatively impact streamflows in a flow-impaired watershed would be required to analyze and disclose potential impacts to stream flows. If there would likely be impacts, new and expanding developments would be required to explore options to avoid those impacts. In this manner, some part of the regulatory responsibility for preventing damage to beneficial uses of surface water is shifted from the SWRCB and regional boards to the planning entities responsible for environmental review of new or expanding developments.

The State Board should not make the efforts of those who are working to protect and restore beneficial uses of surface water more difficult by failing to list as flow-impaired those watersheds in which there is substantial and persuasive evidence that beneficial uses have been damaged or destroyed as a result of dewatering. Rather the Board should consider those doing this work as partners. Please give us the flow impaired listings which are supported by substantial evidence.

The Water Boards should be resolved to appropriately list waterbodies as flow impaired to afford all resources the State can muster to restore stream flows since it is in the best interest of the State to have healthy stream flows.

Re-segmentation and subsequent failure to list the Upper and Lower Scott River as impaired by

aluminum and biostimulatory substances

Staff of the NCWQCB originally recommended listing the Scott River from its head at the confluence of the East and South Forks to where it discharges into the Klamath River (roughly 57 river miles) as impaired by aluminum and biostimulatory substances. However, based on only one comment letter, staff decided to "resegment" the Scott River without any public process. "Resegmentation" in that manner allowed staff to recommend listing only the new "middle" segment of Scott River as impaired for aluminum and biostimulatory substances. Staff recommended that both the newly created upstream and the new downstream segments not be listed as impaired by aluminum and biostimulatory substances based on no samples from those segments indicating impairment. The North Coast Board accepted the staff's "resegmentation" of the Scott and related staff listing recommendations as part of approving the 2012 Integrated Report (decision ID 24531).

The decision to "resegment" Scott River was actually a decision to segment the River for the first time. That decision fragments, for regulatory purposes, what is in reality a single, connected water body. Furthermore, the newly adopted segmentation ignores stream habitat types. It fragments the alluvial Scott Valley into two segments, lumps valley and canyon sections of stream in the newly created "middle" segment, and fragments the continuous forested canyon section of Scott River into two separate sections. The new "upper" segment is the upper portion of the alluvial Scott Valley dominated by agriculture. The new "middle" segment is comprised of roughly equal portions of agricultural alluvial valley and forested river canyon. The new "lower" section is forested canyon of the same, continuous character as the lower portion of the new "middle" segment. All segments include and are influenced by both industrial forestland and national forest land.

The decision to segment Scott River was made without public input or tribal consultation. If allowed to stand, that decision makes it more difficult to obtain an impaired listing or, for that matter, a delisting because more samples will have to be obtained for a smaller section of stream. Segmentation of Scott River imposes costs on the Quartz Valley Indian Reservation (QVIR), a federally recognized tribe. QVIR has undertaken monitoring water quality throughout the Scott River Basin as an environmental justice necessity tied to the deep connection of the Tribe's members with Scott River salmon and the streams that support them. Environmental justice funding from US EPA made it possible for the QVIR to implement water quality testing basin-wide. The Tribe also advocates on behalf of salmon and clean water, including before the State Water Board. The decision to segment Scott River makes it more difficult for the QVIR to advocate on behalf of the Scott River and Scott River Salmon. It is an environmental injustice which the State Water Board should reject.

The Water Boards and the DWR are funding grant projects that give high priority to disadvantaged communities of which tribal communities qualify. Grant applicants must provide evidence that grant funds are necessary to improve water quality and quantity. Difficulties in achieving listings when water bodies are polluted or delays in those listings causes disadvantaged communities to suffer harm when waterbodies of their lands are polluted and depleted due to lack of flows.

The process undertaken by the NCWQCB to segment the Scott River for purposes of impaired listings, if not reversed by the State Board, opens the door to further arbitrary "resegmentation" of water bodies. That process could be used to make it appear that fewer miles of stream are impaired, that a Regional Board has made progress toward removing impairments when, in fact, no improvement has been achieved. It provides political cover for extractors of natural resources i.e., logging, cattle grazing, agriculture, and mining to claim that their land use practices are harmless. Because it opens the door to

manipulation of 303d listings to obtain organizational objectives, it is especially important that the SWRCB forestall this sort of behavior at this point.

Therefore, we request that the SWRCB reject the decision of the NCWQCB to segment a single water body, the Scott River, into arbitrary segments for purposes of assessing and recommending 303d listings and delistings. Furthermore, we ask the State Board to develop and adopt guidance for when and how a regional board can "resegment" a single water body. That guidance should be based on the best available science and should recognize the unity of water bodies. Because "resegmentation" decisions have important regulatory implications, including for subsequent 303d listing and delisting decisions, the Coalition believes those decisions should be made as Basin Plan amendments in order to assure public participation and the utilization of the best available science.

Coalition Member Organizations

Environmental Protection Information Center; Community Clean Water Institute;
Forest Unlimited; Friends of the Navarro Watershed; Friends of the Gualala; Friends
of the Eel River; Institute for Conservation Advocacy, Research and Education;
Klamath Forest Alliance; Klamath Riverkeeper; Maacama Watershed Alliance;
Willetts/Outlet Creek Watershed Group; Pacific Coast Federation of Fishermen's
Associations; Institute for Fisheries Resources; Sonoma County Water Coalition;
Living Rivers Council; Save Mark West Creek; Willits Environmental Center