

May 1, 2008

2008 MAY -1 PM 11:56

DIV. OF WATER RIGHTS
SACRAMENTO

Via Email to AB2121Policy@waterboards.ca.gov

Karen Niiya, Senior Engineer
Division of Water Rights
State Water Resources Control Board
1001 I Street, Second Floor
Sacramento, CA 95814

Re: **Comment Letter - AB 2121 Policy: Joint Instream Flow Policy Comments of Trout Unlimited, Peregrine Audubon Society, Wagner & Bonsignore Consulting Civil Engineers, and Ellison, Schneider & Harris LLP**

Ms. Niiya:

The conservation organizations Trout Unlimited and the Peregrine Audubon Society (TU/PAS) and the Wagner & Bonsignore water resource engineering firm and the Ellison, Schneider & Harris law firm (WB/ESH) submit these joint comments on the State Water Resource Control Board's (SWRCB) Draft North Coast Instream Flow Policy (Draft Policy). TU, who sponsored AB 2121 and with PAS filed a Petition for Timely and Effective Regulation of water diversions in the AB 2121 policy area, and WB/ESH, who together represent over 100 water right applications within the North Coast region pending before the SWRCB, have collaborated over the last three years to develop joint recommendations to improve the SWRCB's administration of water rights for the consideration and maintenance of instream flows.

TU/PAS and WB/ESH understand the complexities of the North Coast region, and we are concerned that the Draft Policy will not accomplish its objectives. Although TU/PAS and WB/ESH will be submitting separate comments on the Draft Policy, we believe that it is important for the SWRCB to understand the many areas in which we agree before the SWRCB considers revisions to its Draft Policy. We also recommend that the SWRCB direct staff to meet with stakeholders to further develop these joint recommendations and direct staff and stakeholders to report back to the Board as soon as possible, and no later than the July 2 Board workshop.

Both TU/PAS and WB/ESH consider the following set of shared principles to be mutually dependent, and we do not necessarily support each individual principle in the context of a policy that does not advance the other principles. (For instance, TU/PAS do not support a small project exception unless the policy includes scientifically-based regional criteria and both individual and policy effectiveness monitoring. Similarly, WB/ESH do not support adoption of regional criteria that include minimum bypass flow and maximum cumulative diversion calculations unless there are small project and de minimus project exceptions from the criteria, the minimum bypass flow and maximum cumulative diversion calculations consider the watershed size, hydrology and ecological resources affected by a given project, the extent of anadromy is based on actual field data, and applicants have a choice between regional criteria, site-specific and watershed permitting approaches.)