



California Regional Water Quality Control Board

San Francisco Bay Region



Linda S. Adams
Secretary for
Environmental Protection

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Arnold Schwarzenegger
Governor

May 1, 2008

Ms. Karen Niiya
State Water Resources Control Board
1001 I Street, 2nd Floor
Sacramento, CA 95814

Subject: Comments on the Draft North Coast Instream Flow Policy

Dear Ms. Niiya:

STATE WATER RESOURCES CONTROL BOARD
 2008 MAY - 1 AM 11:55
 DIVISION OF WATER RIGHTS
 SACRAMENTO

The Draft North Coast Instream Flow Policy (Draft Policy) would establish guidelines to maintain instream flow to protect fishery resources. The area covered by the Draft Policy includes several water bodies in the San Francisco Bay Basin including all streams in Marin County, and streams in Napa, Sonoma, and Solano counties that drain into San Pablo Bay. It is our understanding that the water rights actions affected by the Draft Policy are:

- a) New applications to appropriate water;
- b) New small domestic use and stock pond registrations;
- c) Water rights petitions; and
- d) Compliance and enforcement actions related to new and/or existing diversions.

With regard to existing diversions, the only actions called for by the Draft Policy are compliance inspections, complaint investigations, and resultant enforcement actions. Although we recognize the priority and challenges associated with establishing protective terms and conditions for new permits and petitions, we also think that the policy as adopted will need to establish whether existing levels of instream flow, especially in the southern portion of the policy area, are protective of anadromous salmonids, and if not, the actions that should be taken to achieve protective instream flows. With these points in mind, and based on consultation with the North Coast Regional Water Quality Control Board, the San Francisco Bay Regional Water Quality Control Board submits the following comments:

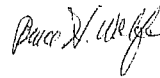
- A. We concur in general with all the comments, and specifically with those pertaining to attaining and maintaining water quality objectives, provided by the North Coast Regional Water Quality Control Board (Catherine Kuhlman, letter to Karen Niiya, May 1, 2008).
- B. Many of the listed salmonid populations in the southern portion of the policy area appear to face a very high risk of extinction (Spence et al., 2007). Typically in these same streams, there also is a relatively high existing level of diversion. Therefore, we recommend that the adopted policy include a more detailed and specific description of the compliance inspection program actions, and their schedule. For example, we have mapped more than 1100 reservoirs within the Napa River watershed, over 400 of which

are located on stream channels (Dietrich et al., 2004). It is unclear to the Regional Water Board how many of these reservoirs have or should have water rights. Both for the protection of fishery resources and the rights of legal water users, we recommend that the schedule for a survey of illegal storage in the Napa River watershed, and other highly appropriated watersheds, be considered as part of the adopted policy. These surveys should be completed promptly both to protect aquatic life and the rights of legal water users (Regional Water Board, 2007).

- C. Strong incentives should be provided in the adopted policy to promote changes to existing diversions that would enhance conditions for fish and aquatic wildlife species. One means of accomplishing this would be through a streamlined process for petitions that enhance flow and/or habitat conditions. Regional Water Board staff are aware of several landowners in the Napa River watershed who would be willing to modify existing water uses and rights in ways that would substantially enhance conditions for fish and wildlife. Typically however, the cost and/or uncertainty associated with the petition and/or permit processes has precluded landowners from initiating these actions.
- D. Streamflow, habitat structure and dynamics, salmonid ecology, and land and water development vary substantially both within and between watersheds in the policy area. In order to protect anadromous salmonids, this diversity should be acknowledged, and, if possible, reflected in the approaches and conditions developed to protect instream flows. Within the policy area there are additional streamflow gaging sites on small streams that have long periods of record, and where complimentary data characterizing salmonid populations has been collected. It would be our pleasure to work with State Water Board staff to see that these sites are included within the analysis to further evaluate the protectiveness of the instream flow criteria proposed under the Draft Policy.

Thank you for the opportunity to comment on the Draft Policy. Should you have any questions, please contact Mike Napolitano of my staff at 510-622-2397 or via email at mnapolitano@waterboards.ca.gov.

Sincerely,



Digitally signed
by Bruce Wolfe
Date: 2008.05.01
11:05:46 -07'00'

Bruce H. Wolfe
Executive Officer

CC: Catherine Kuhlman, Executive Officer, North Coast Region

References Cited

Dietrich, W. E., et al., 2004. "The use of Airborne Laser Swath Mapping Data in Watershed Analysis to Guide Restoration Priorities: the Napa River Watershed Study." *Eos Transactions of the American Geophysical Union* 85(47), Fall Meeting Supplement, Abstract G11B-06.

Regional Water Board, 2007. Napa River Sediment Reduction and Habitat Enhancement Plan, Basin Plan Amendment, as approved by the Regional Water Board in January 2007: Oakland, CA.

Spence, B., 2007. A Framework for assessing the viability of threatened and endangered salmon and steelhead in North-Central California Coast Recovery Domain. Public Review Draft dated June 14, 2007. National Marine Fisheries Service, Southwest Fisheries Science Center, Fisheries Ecology Division: Santa Cruz, California.