



# COUNTY of NAPA

BOARD OF SUPERVISORS

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April 22, 2008

Karen Niiya  
Division of Water Rights  
State Water Resources Control Board  
1001 I Street, 2nd Floor  
Sacramento, CA 95814

[Transmitted via email: [AB2121Policy@waterboards.ca.gov](mailto:AB2121Policy@waterboards.ca.gov) and Fax: (916) 341-5400]

**RE: Comment Letter – AB 2121 Policy  
Draft Policy for Maintaining Instream Flows In Northern California Coastal Streams**

Dear Mrs. Niiya:

While Napa County generally supports the proposed goals of the Water Board's Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams, we are very concerned about the potential impacts on our community from the requirements currently under consideration, and question the scientific basis upon which they are founded.

The proposed Policy attempts to address a very important matter, balancing the use and protection of our ecosystem/watershed services, maintenance of habitat for endangered species, and the provision of freshwater for domestic, agricultural, industrial and commercial uses. These issues are certainly of critical concern in Napa County and central to our agriculturally based community. However, the County strongly feels that significant revisions to the draft policy are necessary if we are to achieve the balance which is vital to our community and the region.

The Water Board also received substantial peer review comments from a respected and diverse scientific community, and can expect to receive additional comments and local examples from agriculture, resource professionals, environmentalists, and municipalities within Napa County. Central to the peer review comments and from those throughout our community is the high level of uncertainty inherent in the scientific assumptions upon which it is based. As a result, this calls into question the Policy's effectiveness in meeting its primary objectives and casts doubt on the proposed instream flow criteria. It is imperative that the State Board carefully consider the comments it receives and revisit both the scientific foundation for the Policy and the effectiveness of the regulatory tools and requirements being proposed.

On behalf of Napa County, I would like to thank you for the opportunity to provide comments on the draft instream flow policy. More specific comments are provided in the attachment to this letter. We hope that our comments are both informative and constructive in your efforts to develop a policy that will reflect the varied needs and values of current and future generations of Napa County.

Sincerely,

  
Brad Wagenknecht,  
Chair

BRAD WAGENKNECHT  
DISTRICT 1

MARK LUCE  
DISTRICT 2

DIANE DILLON  
DISTRICT 3

BILL DODD  
DISTRICT 4

HAROLD MOSKOWITZ  
DISTRICT 5

## **Attachment: Napa County Comments – AB 2121 Policy**

### **Draft Policy for Maintaining Instream Flows In Northern California Coastal Streams**

1. A more detailed analysis of local watershed-level flow records, channel conditions, sediment transport and biological habitat integrity is warranted to provide a more complete and effective basis for developing the Policy's proposed regulatory mechanisms. A watershed-level analysis of the policy's impacts and benefits is also necessary. Additional information would obviate the need for the overly conservative restrictions proposed region-wide as a means of dealing with the Policy's high degree of scientific and environmental uncertainty. If implemented as currently proposed, the by-pass requirements (or allowed rates of diversion) could significantly decrease the rate of downstream discharge (i.e., reduce "rising" and "peak" stream flows) per unit of drainage area. This type of hydrologic modification due to changes in water diversion patterns will impact the delivery and transport course and medium size sediments, cause unexpected sedimentation, and possibly degrade the important fishery habitat values the policy strives to protect.
2. Many detailed watershed studies have been conducted in Napa County. The Water Board should consider these in depth surveys and seek advice from locally knowledgeable watershed experts (hydrologists, biologists, restoration-ecologists, and others) as to the policy's potential "real-world" effects on local watershed systems in Napa County.
3. The policy's narrow focus on the protection of endangered fish species ignores the habitat needs of native fishery species. The Napa River is home to one of most diverse native fisheries in Northern California, supporting well-over 20 native species. It is not clear if the protective measures proposed under the policy will serve to safeguard habitat and flow requirements for native fisheries and other species.
4. If the objectives of the policy are to be met, the policy must recognize the interactions between surface and groundwater. This interaction is particularly important in alluvium dominated watersheds such as Napa River. Depending on the timing and duration of seasonal rains, surface flows in the upper watershed of the Napa River often percolate into streambed gravels/soils, leaving dry mid-slope channels, before re-surfacing again in downstream reaches. During the proposed seasonal diversion period, it is not uncommon for tributaries to the Napa River to exhibit discontinuous surface flows within the mid-reaches of the channel network. Downstream benefits to fishery resources at these times are in the form of groundwater interflow and not surface flow. The Policy will not be successful with a one-size-fits-all stream flow bypass requirement. Until the Policy addresses specific geology and site conditions present within the wide variety of watersheds located within the policy area, the assumed benefits to the fisheries resources will not be obtainable.
5. The policy does not address foreseeable secondary impacts of the increased groundwater pumping that may result from restrictions on surface water diversions, and the Water Board should consider likely changes in groundwater interflow to both "gaining" and "losing" stream reaches. The policy does not consider locally increasing needs of surface and groundwater resources due to increasing populations and likely changes in long-term climatic conditions (i.e., sustained droughts and/or global warming). The policy area covers a diverse landscape of rural and urban populations,

high-value cropland and vast areas of open space. If the social and economic reliance on water is not fully considered in the policy's regulatory mechanisms, we are concerned that the indirect consequences may be detrimental to the watershed services and endangered species the policy intends to protect.

6. The policy appears focused on water rights applications submitted after January 1, 2008 and prior/pending applications that the Water Board determines are not consistent with 2002 National Marine Fisheries – Department of Fish & Game Guidelines. There is concern as to the policy's effect on existing diversion facilities, particularly as it relates to their ongoing operation, maintenance and periodic relicensing/permitting. As mentioned above, the effectiveness of the policy will depend upon how water diverters respond to the relatively restrictive regulations. The Water Board should not underestimate the diverter's economic interests and the ability of diverter to respond to the proposed regulations in a manner that will lessen the effectiveness of a policy.
7. It is likely that the proposed policy implementation measures will impact currently funded stream and river flood and restoration projects. Many of the flood protection and riparian restoration projects in Napa County have been hydraulically designed based upon current flow conditions. Modifications to the timing and volume of current stream flows may influence the effectiveness and performance of these projects and could reduce value of public and private dollars invested in these projects.
8. The Water Board should strive to understand and manage surface water resources within the broader context of a watershed, by examining the relationships between people, land and water. Similar to the "watershed approach" suggested in the policy, the Water Board should consider and companion alternative means of increasing and managing stream flow within a watershed, such as the development of alternative water sources by municipalities, agriculture and private land owners, alternatives in forest and upland land management practices, potential decommissioning or modification of existing water resources infrastructure and direct support for community-based initiatives that reduce water demand and improve water use efficiencies.
9. It is not clear if the policy's regulatory actions and rules are aligned with other policies/regulations that are currently approved or under development by the State and Regional Water Quality Control Boards in our area (i.e., Region 1, 2 and 5). Inconsistency among compliance, permitting, monitoring and reporting requirements of these interrelated regulatory programs will result in confusion, failure to attain policy goals and public/community discontent for the Water Board and Regional basin planning processes. As with any policy, enforcement and oversight is imperative. The Water Board must be willing to provide the necessary oversight and enforcement for this and the many other State policies under development.
10. The County is an advocate of long-term watershed monitoring and the prudent management of Napa County's watershed resources. The policy advocates for an "adaptive management approach" as a means of updating the policy's regulatory framework over time. This adaptive approach is warranted and necessitates the development of an integrated watershed framework by which to monitor and assess environmental, economic and social feedback. The detailed monitoring program envisioned is an imperative element of the policy's success, and needs to provide meaningful feedback to inform future regulatory adjustments and assess whether the overall policy goals are being accomplished. Over time, as site-specific studies and monitoring data become available (or are used to request variances from the policy criteria), understanding of local watershed function and change will increase, and should substantially reduce the environmental uncertainties inherent in the policy's science and proposed regulatory actions.

