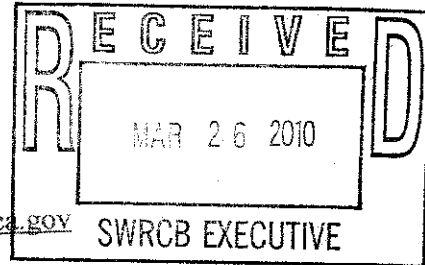




March 26, 2010

Charlie Hoppin, Chair and Board Members  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814



VIA ELECTRONIC MAIL – [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

**Re: Comment Letter – AB 2121 Policy**

Dear Chair Hoppin and Board Members,

We welcome the opportunity to submit comments on behalf of Russian Riverkeeper and our over 1450 members who primarily reside in the Russian River watershed. Russian Riverkeeper works with the community to advocate, educate and uphold our environmental laws for the health and benefit of our fisheries, wildlife and all who use and enjoy the Russian River.

We support the goal of the State Water Resources Control Board's (Board) proposed Policy for Maintaining Instream Flows in Northern California Coastal Streams (Policy) to ensure adequate flows for maintaining and restoring resident populations of Steelhead Trout and Coho Salmon. The populations of these fish are depressed due to numerous factors with water diversions being a primary cause of population declines through limiting or eliminating habitat by inadequate or absent flows in Russian River tributaries according to the just released NMFS Recovery Plan for Central California Coast Coho Salmon. We support the Policy's commitment to the use of administrative civil liability authority, cease and desist orders, and revocation of permits and licenses to help achieve needed waterway flows.

Our comments will focus on two key areas of the policy:

- Adequate description of existing conditions/ environmental baseline necessary to ensure new permits do not "tip" the balance if illegal diversions and offset diversions are not accounted for.
- No clear definition of Cumulative Effects
- Flow, diversion and enforcement data should be available to the general public by posting online in a user-friendly fashion.

**Adequate Description of Existing Conditions:**

We are concerned about the Policy's lack of attention and accounting for existing illegal diversions that do not have permits (i.e. non-filers) would fail to adequately describe the environmental setting and potentially lead to permitting of projects that would fail to meet the mandate to AB2121 to ensure adequate flows for the protection of all salmonid life stages. The policy does not perform an adequate analysis of existing conditions as required by CEQA. This is critical since some streams in the Russian River are de facto fully appropriated by both legal and illegal diversions and without adequate existing conditions or environmental baseline analysis of new projects might be permitted that perpetuate flows

or lack of flows that contribute or exacerbate the endangered and threatened condition of the fish populations.

It is not clear to us that the Water Availability Analysis (WAA) will reflect all diversions and produce an adequate environmental baseline as required under CEQA section 15130 1-(A) which reads; "(A) A list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, *those projects outside the control of the agency*" (emphasis added). This requires that the WAA reflect all diversions and would require possible multi-seasonal analysis of existing flows as some illegal diverters might take more or less water in a given water year. Additionally illegal diversions might be taking water outside the Policy's Dec 15 to March 15 primary diversion period so analyzing year-round flows is necessary to adequately describe the existing conditions/ environmental baseline to ensure new permits do not create violations of flow minimums.

#### **No clear definition of Cumulative Effects**

The policy should clearly define the acceptable level of cumulative impacts rather than rely on statements such as "The cumulative effects of water diversions on instream flows needed for the protection of fish and their habitat shall be considered and minimized" (Policy 2.1 #4) and ensuring that the "proposed diversion, in combination with senior diversions, will not adversely affect the instream flows needed for fishery resources." (Draft Appendix C.1.2.4.). In some streams on the Russian River notably the Maacama Creek watershed as detailed in the reports by Kondolf et al show that flows can bottom out at zero during spring frost control periods. In such a stream it is not clear how the Policy would ensure the effects of a new diversion be minimized and whether that would meet the Policy and AB2121 mandates. The Policy does not seem to address existing impairments for flow and directs applicants to perform incremental effects but not total cumulative effects with the effects threshold being a minimum bypass flow that meets requirements for all life stages of salmonids. In the Daily Flow Studies and Site Specific Studies sections of the Policy an incremental effects test is applied but not an adequate cumulative effects test, if this flaw is not addressed the Policy would seem to violate CEQA provisions for addressing and mitigating cumulative effects of a project in combination with all other projects. With no clear definition or analysis of what level of cumulative effects would be tolerable or acceptable under this Policy, the mandate of AB2121 to ensure the protection of all life stages cannot be achieved.

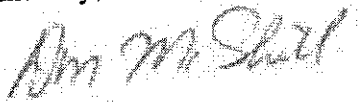
#### **Flow, diversion and enforcement data should be available to the general public by posting online in a user-friendly fashion.**

In order for the Policy to be transparent and to ensure adequate enforcement all bypass flow, diversion and enforcement data should be easily accessible on-line in a user-friendly fashion. The public resources at stake in this Policy have suffered from inadequate enforcement and accounting of water diversions. To address this condition interested members of the public, responsible water diverters and all enforcement agencies should have access to all reporting data in order to assist in the enforcement of this policy. Russian Riverkeeper members and other local residents who reside along streams covered by this policy have expressed an interest in helping monitor conditions during diversion and fish migration, spawning and rearing periods to ensure the policy achieves the goals of protecting and restoring Coho and Steelhead. Due to limitations on public agency resources and recognizing the public plays a critical role in reporting violations of any laws including water rights law making the databases available and usable to the public would allow them to identify whether known diversions are properly reported in the database. This would not only protect the fishery resources covered by the

Policy but also protect lawful diverters from being harmed by illegal diversions and allow the public to be more effective stewards of our waterways and fish populations.

In addition to our comments above Russian Riverkeeper supports and applauds comments submitted by California Coastkeeper Alliance on enforcement issues, Trout Unlimited on numerous issues in particular monitoring provisions and Coast Action Group on all issues. We appreciate your consideration of our comments and look forward to working with the Board and Staff to ensure the Policy implementation to protect our native fishery and the cultural heritage they represent to our State.

Sincerely,

A handwritten signature in cursive script, appearing to read "Don McEnhill".

Don McEnhill  
Executive Director &  
Riverkeeper