

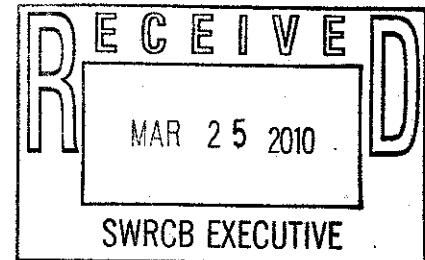
State of California
Department of Fish and Game

Memorandum

Date: March 24, 2010

To: Charles R. Hoppin, Chair
State Water Resources Control Board
1001 I Street, 25th Floor
Sacramento, CA 95812-2000

From: John McCamman
Director
Department of Fish and Game



Subject: Response to Notice of Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams

The Department of Fish and Game (DFG) appreciates the revisions to the Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams (Policy).

DFG supports the change to the season of diversion. This change is an important step to help ensure the Policy is protective of instream flows and the resources those flows are intended to support.

The revised Policy continues to narrowly define fish as finfish. Fishery resources covered by the Policy should include a broader definition of fish¹. The Water Board's response to this concern was that if finfish are protected then other aquatic resources will also be protected. As the Policy is implemented, DFG will assume that the Policy is intended to protect fish as defined in Fish and Game Code section 45.

DFG understands that the intent of the Policy is to evaluate the effects of each project in combination with senior diverters on instream flow, including cases where there is unappropriated water to supply the proposed project. The Cumulative Diversion Analysis requires the applicant to evaluate whether or not the proposed project, in combination with senior diversions, adversely affects instream flows needed for the protection of fishery resources. Unfortunately, the proposed methodology and analysis detailed in B.5.3.4 and B.5.3.6 will not satisfy the intent of the Policy. Though the data requested for analysis appears sufficient, the determinations of no effect in sections B.5.3.4 and B.5.3.6 do not fully address cumulative effects. Specifically, the analysis excludes evaluation of the effects of senior diversions and only evaluates the

¹"Fish" means wild fish, mollusks, crustaceans, invertebrates, or amphibians, including any part, spawn, or ova thereof. (Fish and Game Code section 45)

change in conditions caused by the project in isolation. By definition, a cumulative effects analysis must consider the effects of previous projects to determine if the project under review is having a significant adverse effect on resources that may not otherwise be considered significant if viewed in isolation. Each project should be evaluated in combination with all senior diverters against both the unimpaired condition and the impaired condition at the time of the Policy. Further, the Policy should be revised to recognize that the impaired condition at the time of the Policy's implementation may already be causing significant adverse impacts to fisheries resources and any additional projects could be considered cumulatively significant even if they meet proposed standards. As such, DFG is recommending that the following changes be considered to Appendix B:

B.5.3.4

(4) the impaired flow time series without the proposed project or senior diverters, using the guidance provided in section B.5.3.2

(5) the number of days that impaired flows without the proposed project or senior diverters meet or exceed the minimum bypass flow

(6) the impaired flow time series with the proposed project and all senior diverters, using the guidance provided in section B.5.3.3

(7) the number of days that the impaired flows with the proposed project and all senior diverters meet or exceed the minimum bypass flow.

If the number of days counted in (7) is equal to the number of days counted in (3-5), the proposed project does not contribute to a significant reduction in the instream flows needed for spawning, rearing, and passage. If the number of days counted in (7) is equal to the number of days counted in (5), the proposed project may not contribute to a significant reduction in the instream flows needed for spawning, rearing, and passage and further analysis may be required."

B.5.3.6

4. Is the number of days the February median flow is exceeded affected by the proposed project?

For each POI on the Class II stream(s), calculate the following:

a. The number of days that impaired flows without the proposed project or senior diverters meet or exceed the February median flow;

b. The number of days that the impaired flows with the proposed project and senior diverters meet or exceed the February median flow.

c. The number of days that unimpaired flows meet or exceed the February median flow.

e.d. If the number of days counted in (b) is equal to or greater than the number of days counted in (a), the proposed project may will not significantly reduce the February median flow at the POI and may require further analysis. If the number of days counted in (b) is equal to or greater than the number of days counted in (c), the proposed project will not significantly reduce the February median flow at the POI.

DFG appreciates the Water Board's response to our comment (10.0.37 in Vol. 1, pg. 231) stating that Federal and State Agencies will be provided the opportunity to review and comment on site-specific mitigation plans prior to issuance of any permit. It is unclear where in the Policy that process is identified. In several sections of the Policy (e.g., Determination of Upper Limit of Anadromy, Determination of Class by Stream Survey, and selection of POIs) this process is clearly defined, while in other sections it is not as clear and states only that the State Water Board may consult with DFG. As a trustee of public resources and to help ensure the protection of those resources, we ask additionally that the Policy state that the Department shall be provided opportunity for review and comment, specifically, in the processes pertaining to the development of Mitigation Plans (Appendix D) and Site-Specific Studies (Appendix C).

A monitoring program is needed to assess the effectiveness of the required actions. As identified in our April 2008 comments and in the Water Board's response to comments (e.g., Comment 17.0.4 and 4.4.22), the Policy does not follow the Technical Report recommendations for a monitoring program. Monitoring compliance with the provisions of the Policy is necessary to ensure the long-term protection of salmonids and other fish and protect the habitat. The Water Board should establish in the Policy the need and requirement for an effectiveness monitoring program.

If the Water Board does not intend to include a State-led effectiveness monitoring program, DFG recommends that the Policy clearly define how the applicant will:

"...demonstrate the proposed diversion, in combination with senior diversions, will not adversely affect the instream flows needed for fishery resources..." Section C.1.2.4.

The Policy discusses environmental documents watershed groups might prepare for public trust resources assessment as well as for consulting with other agencies regarding their regulatory processes. Many of the projects under the Policy will also be subject to other regulatory authorities, therefore it might benefit the applicant to

prepare needed environmental documents while they prepare information for compliance with the Policy. This could potentially assure landowners that their environmental documents for Policy implementation and associated CEQA documents contain information necessary to support CEQA findings for our permitting authorities under FGC §1600 et seq. and NCRWCB TMDL process. Collaboration on mitigation measures or best management practices between landowners and all regulatory agencies could reduce the need for subsequent environmental review documents required for other regulatory permitting processes. DFG recommends that the Policy briefly mention that consulting with other regulatory agencies early in the environmental review process for their informational requirements and permitting process could facilitate obtaining other permits or watershed-wide permitting (Section 4.3.2.(5) of the Policy).

Lastly, DFG recommends the following comments and changes to the definitions listed in Appendix I:

Bankfull flow and width The definitions used narrowly define bankfull to be only the 1.5 year discharge event for a region where geomorphic and hydrologic characteristics are highly variable. A definition of bankfull that encompasses the larger range of channels and discharges that occur in the Policy area would be more descriptive. One such definition is "Bankfull stage is generally defined as the height of the floodplain surface or the flow that just fills the stream to its banks or the stage at which water starts to flow over the floodplain. The floodplain is the relatively flat depositional area adjacent to the river that is formed by the river as a result of existing climatic and hydrologic conditions. Bankfull events have a recurrence interval of approximately 1.5 to 3.0 years, but in streams with sharp peak flows and accentuated low flows the channel capacity may be more influenced by less frequent, higher events." Anner, T., I. Chisholm, H. Beecher, A. Locke, et.al. 2004. Instream Flows for Riverine Resource Stewardship, revised edition. Instream Flow Council, Cheyenne, WY.

Canopy — The woody branches and leaves of streamside vegetation are typically the canopy intended to be measured. Berries and non-woody vegetation should not be considered canopy. This definition could lead to large berry vines or other herbaceous vegetation being called canopy. A clear definition that includes woody, vegetation would be more appropriate and meet the intent of vegetation that shades a stream and provides for woody inputs and a filter strip.

Active bar — In a stream channel, regions of distinct deposits of sand, gravel, or cobble that are not yet colonized by older, well-established

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riparian vegetation, and which may be mobilized during high flow; includes mid-channel island deposits and point bars.

Coarse gravel, coarse sediment — particle sizes ~~Stones~~ of ¼-inch size or larger, including particles derived from debris flows, that either contribute directly to spawning gravel, or that reduce ~~coarse~~ to a smaller usable size, or influence stream channel morphology by forming a **substrate** framework.

Nature [of coarse sediment and large wood] — Characteristics other than size, such as type of wood, ~~or rock~~, or angularity, and roundness of rock.

Substrate — The materials (e.g., ~~dirt, rocks, sand~~, gravel, cobbles, boulders, bedrock, and combinations thereof) that forms the bed of a stream.

DFG appreciates the Water Board's leadership in developing this important Policy. Should you have any questions or require clarification regarding our recommendations or comments, please contact Carl Wilcox, Chief of the Water Branch, at (916) 445-1231.

cc: Board Members
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