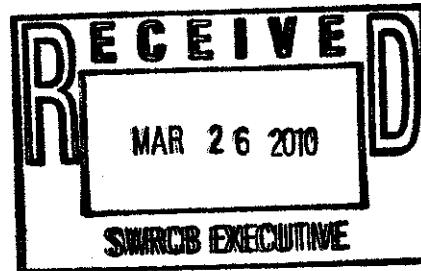


Northern California River Watch 500 N. Main St. Ste. 110 Sebastopol CA 95472 www.ncriverwatch.org

March 26, 2010

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Re: Policy for Maintaining Instream Flows in Northern California Coastal Streams Draft

My comments are focused on issues of hydrology, public trust, and enforcement.

Hydrology and Public Trust

The policy states that during periods of diversions the bank full stage shall not diminish more than 5% of the 1.5 historical storm peak flows (based on 10 years of data) in order to be protective of fish. The policy recognizes that many streams do not have stream gauges so the policy recommends that water users determine MBF by using the next closest stream gauge. Yet, not all watershed basins are created equal.

All watersheds are not equal in geology, soils, vegetation types, topography and land use.

Is the baseline from which the MBF and MCD methodology constructed reliable? Will it protect fish?

Shouldn't the priority of the policy be to establish reliable data in order to protect fish? Shouldn't the SWRCB put stream gauges in all streams in order to have a reliable baseline of data in order to construct an accurate MBF and MCD per watershed for the protection of fish and wildlife? Couldn't the DWR select watersheds to compare according to similar watershed characteristics?

Why did the policy decide to use the last 10 years of data from stream flow gauges?

In some highly impacted watersheds, shouldn't there have been a discussion about the watershed land use changes in the last 20, 30 or 50 years (depending on availability of stream flow gauge historical data) that have in some cases (Napa River) watershed changes have severely altered the natural hydrograph where deforestation, urbanization, contouring and channelization of streams changes the storm peak flows? Considering these impacts to the watersheds is the 10-year stream flow data to establish the 5% of the 1.5 historic storm peak flows a good baseline?

Accordingly, there will be artificially more water in the streams due to increased runoff (urbanization) at storm peak flows but less water held in storage (subsurface/groundwater) that feeds the streams during low flow months of the year.

Before the DWR approves this PD isn't it vital to investigate and discuss these hydrological problems as it is the basis for determining MBF and MCD?

In highly urbanized watersheds there could be higher spiked (hydrograph) peak storm flows with a fast drop of flows in the winter (false peak flows not conducive to fish migrations) and less stored water in the dry months.

Doesn't this artificial 1.5 storm peak flow then put fish at risk during the summer and fall because too much water got diverted or ran out of the watershed FAST during the winter? The PD fails to discuss this.

The goal of AB2121, passed by the California Legislature in October 2004, is to achieve flow protection for fish and other wildlife and to preserve the Public Trust values for people to have the right to clean flowing water for the enjoyment of swimming fishing, boating and recreation. Yet, the DWR allows the PD to let new applicants choose between the Regional Criteria, Site Specific Criteria and other modeling of their choice. All of these methodologies may not be reliable and could have a large margin of error that could prove to not be protective of fish and other wildlife but must be. (See by reference to comments submitted by expert hydrologist Dennis Jackson on behalf of Living Rivers Council to the SWRCB DWR regarding this PD.)

What will the DWR do to improve 'reliability' of the PD in order to protect the Public Trust values?

NMFS/DFG JOINT GUIDELINES FOR MAINTAINING INSTREAM FLOWS FOR SALMONIDS

Can the PD project provide a CEQA level comparison of the NMFS and DFG Joint Guidelines?

The goal of AB2121 is to establish guidelines and principles to expedite approvals of water right applications and to ensure that there shall be healthy instream flows in Northern California coastal streams for fish and other wildlife.

Monitoring and Enforcement

Will the DWR make groundwater monitoring available to the public for easy access where the DWR has asserted its jurisdiction?

The PD does not require performance standards for water diversions. Why not?

The PD does not require adaptive management. Why not?

Was the enforcement policy peer reviewed for effectiveness potential?

Given this framework:

"(1) identifying and investigating instances of noncompliance, (2) taking enforcement actions that are appropriate in relation to the nature and severity of the violation, and (3) prioritizing enforcement resources to achieve maximum environmental benefits and compliance with the policy."

Enforcement cannot occur unless real time monitoring devices are in place.

Thank you for consideration of my comments.

Larry Hanson

Manager, NCRW