REVISED PORTIONS OF THE 2010 RESPONSE TO PUBLIC COMMENTS ON THE DRAFT POLICY FOR MAINTAINING INSTREAM FLOWS IN NORTHERN CALIFORNIA COASTAL STREAMS

VOLUME 1

FEBRUARY 2013

This document contains the revised portions of the document entitled "Response to Public Comments on the Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams Volume 1." Revisions are organized by comment number and shown using red font for additions and strikethrough for deletions.

DIVISION OF WATER RIGHTS
STATE WATER RESOURCES CONTROL BOARD
California Environmental Protection Agency

Comment 1.3.2: Mark West Creek and its tributaries have been great spawning grounds for steelhead, silver and king salmon. About 5 to 6 years ago, water levels became totally erratic with every year being worse than the previous year. Small storms now are providing an almost instantaneous runoff followed by an immediate low flow in the creek. The summertime flows appear to be down by about 70 to 80% from 10 years ago. At a neighborhood meeting I heard that large tracts of forest above my property had been turned into vineyards and wineries built. Experts point out that the lowering of the water table in the upper reaches of the watershed by these activities will in short order eliminate the remaining fish. I don't see this issue being addressed in your documentation. If it is not, then large numbers of fish will disappear in areas where intense agriculture takes place in the upper watershed, and much monies will be wasted on policies that will have little effect on helping fish. I understand that some counties are aware of the problem and are taking remedial actions, but Sonoma County most certainly is not one of them. I have gathered thousands of pages of backup material, numerous photos, stream and rainfall records of Mark West Creek to prove the results of this upper watershed denuding of forests for intensive agricultural development. *(Jim Doerksen)*

Response: The Policy applies to water diversions from all streams and tributaries in the Policy area that are subject to the State Water Board's water right permitting authority, including extractions from subterranean streams. The Policy does not directly apply to land use activities, but to the extent that land use activities, such as conversion of forested land to vineyard, involve water diversion that requires a new water right permit from the State Water Board, then the Policy would apply.

The Policy does not apply to extractions from percolating groundwater because such extractions are not subject to the State Water Board's water right permitting authority. Accordingly, the SED recognizes that the Policy could give rise to increases in groundwater extraction as affected parties take actions in response to the Policy requirements. Section 6.2 of SED, in particular Table 6-3, describes the possible environmental impacts resulting from affected persons switching from surface water diversions to ~~increased~~ groundwater extraction, including reduction in stream flow. As discussed in section 6.2 of the SED, the potential switch from surface water diversions to pumping of percolating groundwater as a result of the Policy is unlikely to cause a significant reduction in surface water flows. In addition, the State Water Board has the legal authority under the doctrines of reasonable use and the public trust to address any groundwater pumping that reduces instream flows in the Policy area and thus adversely affects fish, wildlife, or other instream beneficial uses, regardless of whether the reduction in instream flows is caused by the Policy. Certain actions that affected parties take to increase groundwater extraction also would be subject to CEQA review at the "project-level" and the lead agency would be required to adopt mitigation measures to reduce significant project impacts, including any cumulative impacts such as reduction in streamflow, to a level of less than significant. The five counties in the Policy area have the authority to mitigate the potential impacts of increased groundwater pumping by regulating groundwater use pursuant to their police powers, but most of the counties are unlikely to do so. Out of the five counties, only Napa County has developed a comprehensive program to regulate groundwater use. In addition, the State Water Board does not have permitting authority over percolating groundwater. Accordingly, there will likely be little to no project-level CEQA review of the potential increase in the use of percolating groundwater in the four counties with no regulatory framework for groundwater management.

Comment 4.3.7: It appears the bypass flow recommendations are excessive in order to insure adequate water for spawning. By increasing bypass flows, less water will be available for winter diversion and subsequent use during the summer months. The results will include increasing downstream flooding in the winter and increasing pumping from streams or nearby groundwater in the summer. The policy does not consider the impacts of increasing winter bypass flows on summer flows and therefore fish survival. *(Nick Frey, Sonoma County Winegrape Commission)*

Response: The regional protective criteria developed for the Draft Policy should not be considered to have site specific accuracy, and are not intended to be used to predict the site specific needs accurately for every stream. The regional criteria were designed to protect all streams in the absence of site specific data, and thus may just protect some streams and may over-protect others. Only site specific study can determine where on the protectiveness spectrum a given site lies, as described in section D.5 of Appendix D of the Task 3 report. ~~Appendix~~ D Sections 6.2 and 6.3 of the SED identify~~ies~~ the potential impacts of shifting to groundwater pumping and riparian diversions, respectively, ~~and~~ including the potential ~~its~~ effects on summer flows. As discussed in section 6.2 of the SED, the potential switch from surface water diversions to pumping of percolating groundwater as a result of the Policy is unlikely to cause a significant reduction in surface water flows.

Comment 6.0.57: The review process in evaluating new water applications must be updated to reflect that all fresh water sources are dependent on precipitation and resultant runoff. Sonoma County located within the study area has a greater density of individual wells than any other rural county in the state. Hundreds of wells are located alongside streams which support salmonids, while ground water levels and well recharge rates have declined. *(NA, Maacama Watershed Alliance)*

Response: The Policy requires applicants to prepare a water availability analysis which quantifies the amount of unappropriated water remaining instream after senior rights are accounted for and evaluates the effects of the proposed project, in combination with existing diverters, on instream flows needed to protect the fishery resource. These effects must be assessed at a minimum of two Points of Interest (POIs) as determined by the State Water Board in consultation with the California Department of Fish and Wildlife~~Game~~. In determining the POIs, the State Water Board will consider specific geology and site conditions present within the watershed and other pertinent information to ensure that the effects on fishery resources are adequately assessed. By maintaining instream (surface) flows needed to protect the fishery resource, the Policy ~~also~~ will also help maintain riparian groundwater (subsurface) supplies. During development of the Policy, the State Water Board directed its consultant, Stetson Engineers Inc., to prepare maps delineating subterranean streams to potentially improve the effectiveness of the Policy by identifying locations where the State Water Board's permitting authority may be applicable. The methodology and approach used to develop these maps is described in technical memoranda dated May 16, 2008, and February 28, 2008, respectively. The maps and memoranda are available on the State Water Board website or upond request. Adoption of the subterranean stream delineations is not a feasible mitigation measure for the potential increase in groundwater pumping attributable to the Policy taking into consideration all relevant factors including the following: (1) the speculative nature of the potential impact, (2) the fact that the potential switch from surface water diversions to groundwater pumping is unlikely to cause a significant reduction in surface water flows, (3) the

fact that any localized impacts to groundwater resources are unlikely to be mitigated by adoption of the subterranean stream delineations, which cover only a small portion of the watersheds within the Policy area, (4) the extensive amount of time and high cost associated with a proceeding to consider adoption of the delineations, (5) the fact that even if the subterranean stream delineations are not adopted, the State Water Board can consider the delineation maps and supporting information on a case-by-case basis to assist in determining whether a particular groundwater well is subject to the State Water Board's permitting authority, and (6) the fact that the State Water Board has the legal authority to regulate any unacceptable impacts associated with the potential increase in groundwater pumping pursuant to the State Water Board's authority to prohibit the unreasonable use of water.

~~The State Water Board has completed mapping of subterranean streams and areas where groundwater pumping could potentially cause streamflow depletion in the Policy area. This mapping information is available from the State Water Board in a compilation of technical memoranda and maps entitled "Delineated Subterranean Streams and Potential Streamflow Depletion Areas," dated November 14, 2008 by Stetson Engineers Inc.~~