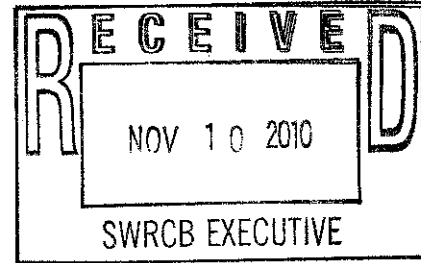




Brian J. Johnson

*Director, California Water Project
Staff Attorney*

November 10, 2010



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

**Re: Instream Flow Studies for Protection of Public Trust Resources
(SB X7 1)**

Dear Mr. Hoppin and Members of the Board:

Following are Trout Unlimited comments on the Draft Prioritized Schedule and Estimate of Costs for Instream Flow Studies. First, we wish to underscore the critical importance of prioritizing and funding studies for instream flow. Nothing is more important in the West than water. What is true for humankind is also true for fish; water is the one thing they cannot do without. Unfortunately, California has not done a very good job managing diversions to protect either stable water supplies or fish. As a result, stream flows are a limiting factor for salmon and steelhead, and other aquatic life throughout California.

The first step toward decent decision-making is to have decent information. For fish, this includes having good information about (1) streamflows, (2) diversions, and (3) the relationship between streamflows and habitat so as to answer "how much water do fish need?" TU has spent a great deal of time working with the Board on the first two questions. This report is a step toward answering the third.

Our first recommendation is therefore a simple one. We urge the Board to adopt a list prioritizing locations for instream flow studies and to seek funding for carrying them out.

Second, we urge the Board to explicitly state that the prioritization list is a "living document," and will be updated and refined as circumstances change. There is no doubt that things will change during the time it takes to carry out these studies, and the list should not be set in stone.

Third, we urge the Board to provide additional information as to what the agency intends to do with the studies. I recognize that the answer will vary by stream, and that the Legislature did not provide much direction. This is an opportunity for the Board to define an agenda that makes sense for its purposes. Even a sentence-long statement as to why each stream is on the list would make it easier to evaluate.

Trout Unlimited: America's Leading Coldwater Fisheries Conservation Organization

California Office: 1808B 5th Street, Berkeley, CA 94710

Direct: (510) 528-4772 • Fax: (510) 528-7880 • Email: bjohnson@tu.org • www.tu.org

Following are specific suggestions:

- **Include streams listed as high priority with respect to water diversions in the DFG list of prioritized streams, and the DFG or NMFS recovery plans.**
 - Streams that appear in the NMFS Coho Recovery Plan as high or very high for the threat of water diversion and impoundment, droughts, and/or climate change but that do not appear in the SWRCB list are:
 - Salmon Creek
 - Pine Gulch Creek
 - San Gregorio
 - Pescadero Creek
 - Streams that appear in the DFG priority list for ISF studies but not on the SWRCB list:
 - San Gregorio Creek
 - Santa Ana River
 - Middle Fork of the Feather River
 - Streams that are part of larger watersheds listed in the SWRCB list but are named specifically in the DFG list
 - Redwood Creek in the Russian River watershed
 - Redwood Creek in the Napa River watershed
 - Dry Creek in the Napa River watershed
- **Explain rationale for listing streams that are all but unimpaired.** Several streams appearing on the list are virtually unimpaired by water diversions, and quite a few others are unimpaired but for a few residences and perhaps some marijuana cultivation. To take an extreme example, it is not clear what an instream flow study on the Smith River would be used for. Is it a control stream? Lacking information as to why those streams are included, I would recommend downgrading them to lower priorities.
- **State rational for listing streams.** Even a sentence explaining the rationale for listing would help in review. Include **information about water diversions and streamflow needs**, and about **the regulatory context on the stream**.
 - Some streams on this list seem to be within a reach governed by a FERC hydroelectric process. It would appear that the licensee could be required to pay for the studies by either FERC or the SWRCB for its Water Quality Certification. It would be helpful to know how SWRCB views these streams.
 - Some streams have streamflows governed by specific water right orders or biological opinions.
 - The list includes the Lower Russian River. Is it a reference to lower Russian tributaries? TU would support ISF studies on many of those tributaries, and may be able to assist with matching funds through one of our partnerships. Or is that a reference to the mainstem? If so, flows will be mostly governed by the D-1610 proceeding, and studies could be required there if studies are needed.

- **Recognize potential for partnerships with other agencies and NGOs.** Not all of the streams listed in the report will need to be funded by SWRCB. Where matching funds are foreseeable, SWRCB should recognize that fact and should work with the other parties to coordinate the studies. Categories include, but are not limited to:
 - **DFG Water Branch is conducting studies on:**
 - Big Sur River
 - Shasta River
 - Santa Maria River
 - **TU and our partners are working on cooperative streamflow enhancement projects** in a number of places that should appear on a priority list. See www.tu.org/cssp, www.tu.org/waterandwine, and www.cohopartnership.org for more information. These streams include:
 - San Gregorio Creek - American Rivers and Stillwater are working on an instream flow study this winter
 - Mattole River Headwaters
 - Little Arthur Creek (Santa Clara County)
 - Russian River tributaries Grape Creek, Mill Creek, Dutch Bill Creek, Green Valley Creek, Mark West Creek
 - **FERC rivers** where licensee can pay, as discussed above
 - **Rivers where water right decisions or biological opinions govern**, such as the Russian River mainstem, as discussed above

- **Recognize that study approach will vary.** There are a number of factors that will affect the type of study conducted, preferred methodology, duration of study, and cost of study. For the draft report, it makes sense to provide a general cost range, but in real life costs will vary a tremendous amount. Not all studies will require 3 years of data collection, for example. In small coastal streams, a very good study can be conducted in much less time, for much less money. I am confident that the report authors understand this, but not all readers will. We recommend adding a more detailed discussion of the range of study approaches and costs that will be required. TU has particular experience in smaller coastal streams as well as FERC streams, and would be glad to work with SWRCB staff on these topics.

Thank you for your consideration of my comments.

Sincerely,



Brian J. Johnson