

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2010-___**

**ADOPTION OF A PROPOSED POLICY FOR MAINTAINING
INSTREAM FLOWS IN NORTHERN CALIFORNIA COASTAL STREAMS**

WHEREAS:

1. Assembly Bill 2121 (Stats. 2004, ch. 943, §§ 1-3) added sections 1259.2 and 1259.4 to the California Water Code. Water Code section 1259.4 requires the State Water Resources Control Board (State Water Board or Board) to adopt principles and guidelines for maintaining instream flows in northern California coastal streams for the purposes of water right administration. The principles and guidelines must be adopted as part of state policy for water quality control pursuant to chapter 3, article 3 (commencing with section 13140) of the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.).
2. As required by Water Code section 1259.4, the State Water Board has developed a Policy for Maintaining Instream Flows in Northern California Coastal Streams. The policy establishes principles and guidelines for maintaining instream flows for the protection of fishery resources, while minimizing the water supply impacts of the policy on other beneficial uses, including irrigation, municipal use, and domestic use. The geographic scope of the policy encompasses coastal streams from the Mattole River to San Francisco and coastal streams entering northern San Pablo Bay and extends to five counties: Marin, Sonoma, and portions of Napa, Mendocino, and Humboldt Counties.
3. Coastal streams within the policy area provide habitat for steelhead trout, coho salmon, and Chinook salmon. The National Marine Fisheries Services (NMFS) and the California Department of Fish and Game (DFG) have listed steelhead trout and Chinook salmon as “threatened” under the federal Endangered Species Act (ESA) and the California Endangered Species Act (CESA), respectively. Coho salmon are listed as “endangered” on both the ESA and the CESA lists.
4. Water diversions result in a significant loss of fish habitat in California. Water withdrawals change the natural hydrologic patterns of streams and can directly result in loss or reduction of the physical habitat that fish occupy. Flow reduction can exacerbate many of the problems associated with land use practices by reducing the capacity of streams to assimilate pollutants. Construction and operation of dams and diversions create barriers to fish migration, thereby blocking fish from access to historical habitat. Dams also disrupt the flow of food (i.e., aquatic insects), woody debris, and gravel needed to maintain downstream fish habitat.
5. On December 28, 2007, the State Water Board publicly noticed and distributed for public review and comment a draft policy, substitute environmental document, and supporting technical documents, in accordance with applicable State laws and regulations. On January 7, 2008, and March 14, 2008, the State Water Board publicly noticed and distributed for public review and comment corrections to the December 2007 draft policy, substitute environmental document, and certain supporting technical documents, in accordance with applicable State laws and regulations.

6. Between December 28, 2007 and February 1, 2008, the scientific basis for the draft policy was subjected to an independent external peer review pursuant to the requirements of Health and Safety Code section 57004. A response to peer review comment document was completed on June 29, 2009.
7. On February 18, 2010, the State Water Board issued public notice that the Board would consider adoption of the policy on April 27, 2010, in accordance with applicable State laws and regulations. The State Water Board also distributed for public review and comment revisions to the draft policy and supporting documentation, and distributed responses to comments on the December 2007 draft policy and supporting documentation.
8. The adoption of a policy for water quality control is a regulatory program that has been certified by the State's Secretary for Resources as exempt from the requirements of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) to prepare an Environmental Impact Report (EIR) or Negative Declaration. (Cal. Code of Regs., tit. 14, § 15251, subd. (g); Cal. Code of Regs., tit. 23, § 3782.) Accordingly, the State Water Board has prepared a substitute environmental document (SED) in lieu of an EIR or negative declaration. The SED consists of the draft SED dated December 2007 and responses to comments on the draft SED. The State Water Board has also prepared a scientific basis report, a sensitivity study, and responses to comments submitted during the public participation phase in the development of the policy. Together, these documents constitute the required environmental documentation under CEQA. (See Cal. Code Regs., tit. 14, §§ 15250, 15252; Cal. Code of Regs., tit. 23, § 3777.)
9. The project is the adoption of principles and guidelines for maintaining instream flows in northern California coastal streams, as required by Water Code section 1259.4. The proposed policy itself will not approve any particular water diversion project(s). Moreover, in general the proposed policy will operate to protect the environment by ensuring that water rights are administered in a manner designed to maintain instream flows.
10. As required by Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187, the State Water Board has evaluated the potential environmental impacts of reasonably foreseeable methods of compliance with the policy. In addition, the State Water Board has prepared an analysis of the costs of compliance with the policy and identified potential sources of funding. As described in the SED, the policy requires limitations on diversions which could lead some affected parties to take actions that could in turn result in indirect environmental impacts. An indirect physical change in the environment is a physical change which is not immediately related to adoption of the policy, but which may occur as a result of the policy being adopted. The policy could have potentially significant indirect environmental impacts as a result of the following activities that third parties might take in response to the policy: (1) increased groundwater pumping, (2) increased diversions under riparian rights, (3) increased reliance on alternative water sources, (4) modification or removal of onstream dams, and (5) construction of offstream storage facilities. It is impossible to predict which affected parties will take any of these actions, or exactly how many affected parties will take any of those actions. Accordingly, the SED evaluates indirect environmental impacts at a programmatic level.
11. Many of the water diversion projects that might be undertaken by third parties as a result of the policy would be subject to a project-level CEQA review conducted by the State Water Board or by another lead agency, which would entail identification and mitigation of any

significant environmental effects. In addition, other regulatory mechanisms can be expected to provide opportunities for minimizing and avoiding significant environmental effects. Regulatory requirements and mitigation measures are described in the SED, specifically the Response to Public Comment, volume 2. These regulatory requirements and mitigation measures are likely to reduce many, but not all, of the potential indirect impacts of the policy to less than significant levels. Some indirect impacts may not be identified or mitigated because it is impossible to predict who will take action in response to the policy, or what action they will take. In some cases, it may not be feasible to fully mitigate for the indirect impacts of the Policy. For example, it may not be possible to fully mitigate for the loss of wetland habitat as a result of onstream dam removal.

12. The State Water Board has duly considered the SED, which finds that the policy could result in potentially significant indirect environmental impacts. The State Water Board and other public agencies that approve individual water diversion projects can and should incorporate feasible mitigation measures into any projects or project approvals that they undertake. To the extent that implementation of regulatory requirements and mitigation measures do not fully mitigate indirect impacts, or are not deemed feasible by the agencies implementing or approving individual projects, the economic, social, and environmental benefits of the policy outweigh any unavoidable adverse environmental effects. These benefits include: (1) protection of stream flows needed for fish passage, spawning, and rearing; (2) protection of natural stream flow variability and the various biological functions that are dependent on that variability; (3) reduction of man-made barriers to fish passage; (4) protection of adequate stream temperatures for habitat; (5) protection of stream and riparian habitat complexity; (6) enhanced recreational, aesthetic, and cultural experiences that are associated with healthy fisheries; (7) overall enhancement of stream and riparian habitats and their functions; and (8) conservation of salmonid populations within the watershed for the benefit of current and future generations, including recreational and commercial fishermen.
13. The State Water Board has carefully considered all comments and testimony received on the proposed policy, responses to comments, and all of the other evidence in the administrative record.
14. The State Water Board will continue to work with stakeholders to evaluate and implement reforms to the water right permitting process. Among other things, the State Water Board will implement a pilot program whereby applicants and protestants will be afforded an opportunity for interim review of certain staff determinations concerning the processing of applications and protests. In order to implement the program, the State Water Board will make any necessary revisions to State Water Board Resolution No. 2007-0057, which delegates to the Board Members individually and to the Deputy Director for Water Rights the authority to take certain actions in connection with water right applications.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board certifies that the Draft Substitute Environmental Document, Scientific Basis Report, Sensitivity Study, and responses to comments have been completed in compliance with CEQA. The State Water Board has reviewed and considered the information contained in these documents, which reflect the State Water Board's independent judgment and analysis.

2. The State Water Board adopts the Policy for Maintaining Instream Flows in Northern California Coastal Streams, including its appendices, as set forth in Exhibit A attached hereto.
3. The State Water Board directs staff to submit the policy to the Office of Administrative Law (OAL) for final approval.
4. If, during the approval process, State Water Board staff, the State Water Board, or OAL determines that minor, non-substantive corrections to the language of the policy or supporting documentation are needed for clarity or consistency, the State Water Board Executive Director may make such changes.
5. The State Water Board will continue to work with stakeholders to evaluate and implement reforms to the water right permitting process. Among other things, the Board will implement a pilot program whereby applicants and protestants will be afforded an opportunity for interim review of certain staff determinations concerning the processing of applications and protests. In order to implement the program, the State Water Board will make any necessary revisions to State Water Board Resolution No. 2007-0057.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Board held on April 27, 2010 and May 4, 2010.

AYE:

NO:

ABSENT:

ABSTAIN:

DRAFT

Jeanine Townsend
Clerk to the Board

Attachment