RESPONSE TO PUBLIC COMMENTS ON THE FEBRUARY 2010 REVISION TO THE DRAFT POLICY FOR MAINTAINING INSTREAM FLOWS IN NORTHERN CALIFORNIA COASTAL STREAMS

Response to comments received on April 9, 2010 from Trout Unlimited, Wagner and Bonsignore, and Ellison, Schneider and Harris can be found in a separate volume.

APRIL 2010

Topics

Topic ID	Name
A	Policy Approach - General
B	Policy Approach - TU/WB/ESH Proposal
C	Policy Principles
D	Regional Criteria - General
E	Regional Criteria - Diversion Season
F	Regional Criteria - Minimum Bypass Flow
G	Regional Criteria - Maximum Cumulative Diversion
H	Site Specific Studies
I	Policy Applicability
J	Petitions
K	Small Domestic Use
L	Water Availability Analysis
M	Small Project Exemption
N	Upper Limit of Anadromy
O	Stream Classification System
P	Onstream Dams Permitting Requirements
Q	Mitigation Plans
R	Passive Bypass Systems
S	Bypass Flow Monitoring and Reporting
T	Monitoring and reporting of both diversions and streamflows
U	Stream gauge installation/regional stream gauging program
V	Compliance Plans
W	Policy Effectiveness Monitoring
X	Enforcement - General
Y	Enforcement - Prioritization of Enforcement
Z	Enforcement - Continuing Authority to Amend Permits and Licenses
SS	Miscellaneous

Topic ID	Topic Name
AA	Enforcement - Prohibition against Waste and Unreasonable Use
BB	Enforcement - Protection of Public Trust Resources
CC	Enforcement when water right application is pending
DD	Enforcement - Effect on Existing Permits and Licenses
EE	Enforcement - Timely and Appropriate Enforcement Actions
FF	Enforcement - Compliance Assurance
GG	Watershed Approach - General
HH	Watershed Approach - Project Charter
II	Watershed Approach - Required Technical Documents
JJ	Watershed Approach - Retraction of SWRCB Approvals
KK	Case by Case Exceptions
LL	CEQA - General Compliance
MM	CEQA - Alternatives to the Proposed Policy
NN	CEQA - Assessment of Environmental Impacts
OO	Socioeconomic Impacts
PP	Water Right Administration
QQ	Existing Water Rights
RR	Groundwater
SS	Miscellaneous

Commenters

Name	Affiliation
Alan Levine	Coastal Action Group
Alan Lilly	Bartkiewicz, Kronick and Shanahan/North Gualala Water Company
Andy Johnston	Individual
Brian Johnson	Trout Unlimited
Casey Caplinger and Stacy Li	New Old Ways Wholistically Emerging (NOWWE)
Catherine Kuhlman	State of California Regional Water Quality Control Board, North Coast Region
Chris DeGabriele	North Marin Water District
Chris Malan	North Coast Stream Flow Coalition
Chris Shutes	California Sportfishing Protection Alliance
Cindy DeVries	Fetzer Vineyards
Dan Takasugi	City of Calistoga
Daniel Myers	Sierra Club Redwood Chapter
David Garden	Individual
Don McEnhill	Russian Riverkeeper
GD Cousins and DM Miles	Individual
Gordon Bennett	Save Our Seashore
Hilary Gitelman	County of Napa
Jack Rice	California Farm Bureau
Jack Walton	Individual
James Jordan, Jr.	Sea Ranch Water Company
Jared Huffman	Assemblymember, 6th District
Jesse Noell and Stephanie Bennett	Individual
Jim Lincoln	Napa County Farm Bureau
John Ferons	City of St. Helena
John McCamman	State of California Department of Fish and Game
John Painter	Individual
Justin Oldfield	California Cattlemen's Association
Kenneth Petruzzelli	O'Laughlin and Paris, LLP
Kevin Collins	Lompico Watershed Conservancy
Kimberly Burr	Green Valley Creek Restoration Volunteer
Kristi Wrigley	Individual
Larry and Marsha Robinson	Individual
Larry Hanson	Northern California River Watch
Leigh Sharp	Napa County Resource Conservation District
Linda Sheehan	California Coastkeeper Alliance
Louis Foppiano	United Winegrowers for Sonoma County
Mark Leno	Senator, 3rd District
Mark Rentz	Association of California Water Agencies
Martha Lennihan	Lennihan Law

Martha Tyler	Individual
Michael Dunn	Individual
Mike Anderson	Mendocino County Farm Bureau
Nick Frey	Sonoma County Winegrape Commission
Noreen Evans	Assemblymember, 7th District
Patricia Wiggins	Senator, 2nd District
Patrick Higgins	Living Rivers Council/North Coast Streamflow Coalition
Paul Helliker	Marin Municipal Water District
Paul Spaulding	Farella Braun + Martel LLP/Golden Vineyards
Peter Kiel and Robert Wagner	Ellison, Schneider, and Harris, LLC and Wagner and Bonsignore Consulting Engineers
Richard Gates	Individual
Richard Johnson	Individual
Robert Baiocchi	California Fisheries and Water Unlimited
Roland Sanford	Mendocino County Water Agency
Ross Hall	Swanson Vineyards and Winery
Rudy Light	Individual
Thomas Lippe and Dennis Jackson	Living Rivers Council
Tim Schmelzer	Wine Institute
Victoria Wikle	Individual
Wesley Chesbro	Assemblymember, 1st District
William Hearn	US National Marine Fisheries

Commenters who submitted the Sea Ranch Form Letter

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Audrey Zavell	General Public
Barry Richman	General Public
Bart Holdener	General Public
Bettina M. Leong	General Public
Bruce & Deborah Plumer	General Public
Bruce & Penelope Luchessa	General Public
Bruce & Susan Burdick	General Public
Bruce Holder and Mary Ann Wheeler	General Public
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Byron & Cathy Levy	General Public
C.A. Winberg	General Public
Carla-Jean Barker	General Public
Carol Emory	General Public
Carole McQuarrie	General Public
Carolyn André	General Public
Carolyn Jones	General Public
Caryl Carr	General Public
Cathy Holdener	General Public
Charles & Myrna Greene	General Public
Chas Juricek	General Public
Christine B. Smith	General Public
Dard & Mary Hunter	General Public
Dave Krattebol	General Public
David Bertram and Dorothy Bill	General Public
David Hillmer	Empire Contracting, Inc.
Deborah Filipelli	General Public
Dennis & Lynn Kelleher	General Public
Devorah Samet Canter	General Public
Diane Boeke	General Public
Diane Preece	General Public
Dinah Carl	General Public
Donald Hoffhine	General Public
Douglas Gjerde	General Public
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Ed & Faye Hubert	General Public
Eric & Jacqueline Agnew	General Public
Eric Martin	General Public
Erin K. Riley	General Public
Fiona E. O'Neill	General Public
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Harley Jensen	General Public
Harry & Lois Lutz	General Public
Helen Gjerde	General Public
Herbert Abell	General Public
Hilla Ahvenainen	General Public
I. Hugh Holmes	General Public
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Jim & Susan Grenwelge	General Public
JoAnn Kahn and Tom Lyon	General Public
John & Barbara Forenti	General Public
John & Betsi Carey	General Public
John & Deanna Wallace	General Public
John & Ruthanne Dick	General Public
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John R. Skidmore	General Public
John Scott Graf	General Public
John Thomas Haines	General Public
John Wingate	General Public
Joya De Ranieri	General Public
Justine Rosenthal	General Public
Karin Swanson	General Public
Ken & Jill Michielson	General Public
Kurt & Stacy Fuchs	General Public
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Lloyd & Deborah Kreuzer	General Public
Lorin & Kristin Castleman	General Public
Lu Lyndon	General Public
Lucas Goettsche	General Public
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Maria & Marty Linker	General Public
Mary Kay Stolz	General Public
Matthew Holdener	General Public
Maureen Simons	General Public
Maynard Hale Lyndon	General Public
Mel & Janet Gerst	General Public
Melinda Lloyd	General Public
Michael Bloom	General Public
Michael Kruss	General Public
Michael Yockey	General Public
Mike Turner and Jay Felzien	General Public
Nancy Bickford	General Public
Ned & Connie Seale	General Public
Norman Wohlken	General Public
Orrin S. Cook	General Public
Pamela Todd and Edward Berger	General Public
Patricia McBratney	General Public
Paul & Susan Teicholz	General Public
Phil & Barbara Wendt	General Public
Phillip Roberts	General Public
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Randy H. Burke	The Sea Ranch Water Company
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Robert & Diane Frankle	General Public
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Thayer Walker	General Public
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William Voorhees	General Public

Sea Ranch Commenters Who Did Not Submit Form Letters
Responses to these comments are substantially contained in the responses to the Sea Ranch Form Letter and in the March 25, 2010 letter from Victoria Whitney to the City of St. Helena and the Sea Ranch Water Company

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Allan Abshez	General Public
Andre Ptaszynski	General Public
Annette Bork	General Public
Barbara and Jay Kelley	General Public
Barbara L. Gomes	General Public
Barbara McNulty	General Public
Barry Rapozo	General Public
Bernadette Bell	General Public
Bette Covington	General Public
Bill and Tana Stewart	General Public
Bill clyne	General Public
Bill Stephens	General Public
Bill Ward	General Public
Birthe & Jack Kirsch / Annette & Irwin Shapiro	General Public
Bob and Mary Kadarauch	General Public
Bob Dillon	General Public
Bonnie Plakos	General Public
Bruce Leibrock	General Public
Cameron Gundersen	General Public
Carol Emory	General Public
Caroline & John Haw	General Public
Carolyn Andre	General Public
CE Brown	General Public
Chareles M. Kinney	General Public
Charles and Kathleen Mills	General Public
Charles E. Rath III, MD	General Public
Charles Smith	General Public
Cheryl Ross	General Public
Chester and Shirley Case	General Public
Chris Kenber	General Public
Cindy Naoum	General Public
Clark Beall	General Public
Colette Coad	General Public
Cynthia Chilton Hauck	General Public
Dale and Jeannie Claypoole	General Public
Daniel B. Debra	General Public

Daniel C. Carlson	General Public
Daniel Chang	General Public
Daniel Wilson	General Public
David & Barbara Rice	General Public
David & Nacy Kyle	General Public
David G. Robertson	General Public
David Goheen	General Public
Dean R. Wolf	General Public
DeAnn Tyler	General Public
Denise and Kevin Lant	General Public
Dennis Shusterman	General Public
DeWitt F. Bowman	General Public
Diana & Dave Bower	General Public
Diane Hichwa	General Public
Don and Carrie Kreiger	General Public
Donlyn Lyndon	General Public
Donna Karch	General Public
Dorothy Gregor	General Public
Dorothy J. Porter	General Public
Doug Baker	General Public
Douglas Patterson	General Public
Dr. Harry & Mrs. Sandra Edwards	General Public
Dr. John C. Wiesner	General Public
Drew McCalley & Marilyn Green	General Public
Edward Smith,Jr.	General Public
Edward Zohman	General Public
Efren Carrillo	General Public
Elaine Paez Reed	General Public
Elizabeth Langdon	General Public
Eugene & Marianne Zapparelli	General Public
Eugene Kosso	General Public
Eve Bennett-Wood	General Public
F. K. Chapler	General Public
Frances Alman	General Public
Fred Sherman	General Public
Gail Spencer	General Public
Gary & Carol Hunter	General Public
Geoffrey and Irene Heller	General Public
Glenn and Marie Nakazawa	General Public
Greg and Anne Evans	General Public
Harper Smith	General Public
Howard Curtis	General Public

Howard Lloyd	General Public
James and Akiko Docker	General Public
James Daniel	General Public
James E Tackett	General Public
James Orenberg and Jane Seck	General Public
James Spudich	General Public
Jami Curlee	General Public
Jan Christofferson	General Public
Jan Cummins	General Public
Jan M. Christofferson	General Public
Jane Hook & Peter Brosig	General Public
Jane Schuler-Repp	General Public
Jane W. Evans	General Public
Janet Debar	General Public
Janet Venolia	General Public
Janice and John Batchelder	General Public
Janice Bonora	General Public
Jay Bond	General Public
Jay Tasho & John Kinsman	General Public
Jefferson Davis	General Public
Jerry L. Winges	General Public
Jim Grossman	General Public
Joanna Barnes	General Public
Joanne and Spencer Brooks	General Public
Joel, Linda, Jeremy & Jason Crockett	General Public
John & Elizabeth Escher	General Public
John and Cecelia Moelter	General Public
John D. Holloway	General Public
John Foley	General Public
John Linderman	General Public
John Lowry	Burbank Housing Development Corporation
John N. & Katherine C. Horn	General Public
John Tornquist	General Public
Jon & Laura Harwood	General Public
Joseph Alessandri	General Public
Joseph and Barbara Barrera	General Public
Joy A. Umbach	General Public
Karen Tracy	Gualala Arts
Karlene Paufler	General Public
Katherine and Alan Reinke	General Public
Kathleen Woodward	General Public
Kathryn and Barry Weiss	General Public

Kathy Gerwig	General Public
Kathy Kretchmer	General Public
Kevin White	General Public
Kim Park	General Public
Klaus Heinemann	General Public
Kristine Rose	General Public
Laurence Feigenbaum	General Public
Laurence Rowinsky	General Public
Laurie Mueller	General Public
Lee Zorn	General Public
Linda Lambert	General Public
Lois Lindstrom	General Public
Loren Adrian & Anne O'Donnell	General Public
LouAnne Fredrickson	General Public
Lynn R. Bailey	General Public
Marc Gelman	General Public
Marcus Boggs	General Public
Margery Tarp	General Public
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Mark McDonald	General Public
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Mary Boyvey	General Public
Mary Condon	General Public
Mary Keller	General Public
Mary Williams and Peter Elias	General Public
Massomeh I. Roberts	General Public
Melvin and Estelle Mirsky	General Public
Merilyn Lafferty	General Public
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Michael and Mary Lynn Tuft	General Public
Michael and Peggy Mee	General Public
Michael Lapinsky	General Public
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Ralph Samuelson	General Public
Raymond E & Verena R. Borton	General Public
Renate L. Welch & T. Richard Blair	General Public
Rich Fredrickson	General Public
Richard & Kristine Thomure	General Public
Richard Alman	General Public
Richard and Marilyn Limbaugh	General Public
Richard Chamber	General Public
Richard Heaton	General Public
Richard Knarr	General Public
Richard Picket	General Public
Rita Peck	General Public
Robert & Deborah Fischler	General Public
Robert & Grace Carter	General Public
Robert & Steve Bramlett	General Public
Robert and Joyce Perkins	General Public
Robert and Karen Boyd	General Public
Robert B. Welch & Francine Shapiro	General Public
Robert Kirkwood	General Public
Robert Peck	General Public
Roland & Lynn Coombs	General Public
Roland Stoughton	General Public
Ronald Bierman	General Public
Rosemarie Hocker	General Public

Ross and Diana Bruce	General Public
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Ruth Erickson	General Public
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Sandra L. Sloan	General Public
Sandy Bush	General Public
Scott Smith	General Public
Sita Dimitroff Milchev	General Public
Stan & Joyce Sutfin	General Public
Steve & Linda Lipkin	General Public
Steve and Mary Beth Stewart	General Public
Steve Mader	General Public
Steve Wilcox	General Public
Steven Karch	General Public
Susan Achtman	General Public
Susan Grenwelge	General Public
Susan Shepard	General Public
Sushan Shipley and Craig Allison	General Public
Suzanne Hansen & Barbara Penney	General Public
Tad Simons	General Public
Teresa Youtz	General Public
Thomas Cochrane	General Public
Thomas J. Smith	General Public
Thomas Ryan	General Public
Timothy Bower	General Public
Tom Ingersoll	General Public
Tracy & Robert Young	General Public
Tracy Takahashi	General Public
Trudy Armer	General Public
Vincent & Marjorie Hoversten	General Public
Walter and Nancy Custer	General Public
Walter Mitchell	General Public
William Lawson	General Public

Topic A: Policy Approach-General

Comment Number	Commenters	Comment	Response
A-1	Coastal Action Group	Peer Review and Sensitivity Analysis documents assess diversion policy in terms of maximum instantaneous diversion on a specific flow regime (stream). This review and analysis does not fully assess effectiveness of policy implementation criteria and standards. The Peer review and the policy itself does not discuss or address the effect (cumulative effect) of subsurface flow diversion (inclusive of all diverters) and how the policy, as stated, would address all users to arrive at policy that would attain desired results.	The Policy applies to pending and new water diversions within the Policy area that are subject to the State Water Board's water right permitting authority, including extractions from subterranean streams. Extractions from percolating groundwater are not subject to the State Water Board's water right permitting authority. The SED points out 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 increased groundwater extraction, including reduction in stream flow. Certain actions that affected parties take to increase groundwater extraction 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 cumulative impacts such as reduction in stream flow, to a level of less than significant. It will be the responsibility of the lead agency to ensure that the any techniques used in the CEQA review to evaluate the connection between the proposed extraction project and streamflow is scientifically sound and is in accordance with standard engineering practice. Furthermore, the State Water Board may exercise its authority under the doctrines of reasonable use and the public trust to address diversions of surface water or groundwater that reduce instream flows in the Policy Area and thus adversely affect fish, wildlife, or other instream beneficial uses.
A-2	Coastal Action Group	Is the proposed policy aimed solely at providing flows that would support salmonid spawning and rearing to provide smolts that would make it to the ocean? Is the SWRCB considering the science that shows that if smolts are not sufficiently large after rearing in streams and making their way to the ocean there is little chance of them surviving and returning. There is sufficient science on this and it must be considered in policy implications. Flow regimes necessary to support fish must provide sufficient flows in all life stages to produce viable smolts capable of ocean survival.	Section 2.3 of the Scientific Basis Report discusses juvenile rearing habitat needs of salmonid. Section 4.2.3 of the Scientific Basis Report discusses methods for assessing juvenile winter rearing habitat needs. Page 2-5 of the Scientific Basis Report states "Experience with Physical Habitat Simulation (PHABSIM) and other flow assessment methods indicates that minimum instream flows for juvenile salmonids as defined by depth and velocity distributions tend to be lower than minimum instream flows for adults and spawning, irrespective of channel size (Vadas 2000; R2 2004). Hence, for this analysis, it was assumed that flows that meet spawning habitat criteria will also provide sufficient water to protect juvenile rearing habitats." In addition, by protecting natural flow variability through the MCD element, the policy provides for flow conditions conducive to smolt growth that are comparable to under unimpaired flow conditions.

A-3	Paul "Skip" Spaulding, Farella Braun + Martel LLP/Golden Vineyards	The scientific bases for the Proposed Policy are fundamentally flawed and incomplete for the reasons set forth on page 7 of Exhibit "A," which are specifically incorporated herein. Although the policy drafters apparently considered new scientific and technical comments that were submitted to them, they have not made meaningful changes to the flawed scientific bases of the policy, particularly those underpinning the minimum bypass flow, maximum cumulative diversion limitation and onstream dam provisions. Accordingly, the legal and scientific deficiencies identified in Exhibit "A" on this subject still remain.	The comments received from the DFG and NMFS during the public comment period have not questioned the scientific basis behind the recommendations of the Draft Policy. In addition, external technical peer reviewers have indicated the scientific basis is sound. The scientific uncertainty noted by the peer reviewers was whether the proposed criteria might not have enough conservatism for the protection of instream flows. The peer reviewers comments are answered in a separate response document. The Draft Policy was developed with full recognition that uncertainty exists relative to its applicability to all streams. This is why the Draft Policy includes the option for conducting site specific studies as a means to allow the collection and evaluation of information specific to a given stream, with the recognition that one-size does not fit all and that stream conditions can be highly variable between and even within a given watershed. Collection of site specific data should reduce the overall uncertainty regarding the applicability of specific Draft Policy elements on a given stream.
A-4	Patrick Higgins/Living Rivers Council/North Coast Streamflow Coalition	Lang (2008) and McMahon (2008) pointed out that flow diversion into dozens or hundreds of legal and illegal reservoirs, when Chinook and coho salmon are trying to ascend streams, may prevent them from successfully completing their spawning migrations. These fish have life histories that include adult migration and spawning from October through January. Therefore, even diversions after the December 15 start date could cumulatively effect the ability of these fish to access their home streams, yet this in not discussed in the proposed Policy.	Comment noted. Staff could not find these comments in Lang (2008) or McMahon (2008), and the commenter did not identify where they could be found in the documents. However, policy appendix B contains a cumulative diversion analysis to determine whether the proposed project, in combination with senior rights, affects instream flows needed for fishery resources. In addition, by protecting natural flow variability through the MCD element, the policy provides for flow conditions conducive to upstream passage that are comparable to under unimpaired flow conditions.
A-5	Patrick Higgins/Living Rivers Council/North Coast Streamflow Coalition	The relationship of increased sedimentation from agricultural operations and diminished flows pointed out by Band (2008) are also ignored. He notes that the combination is likely to cause sediment deposition in channels at points of convergence that are often preferred spawning sites.	Please see the response to peer review comment 1.2.1 in Response to Scientific Peer Review Comments on the Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams, June 2009.

A-6	Thomas Lippe/Dennis Jackson/Living Rivers Council	1. The proposed Policy does not apply to existing water appropriation permits and licenses, only to certain new applications. 2. The proposed Policy does not apply to applications that do not propose a reduction in stream flow. 3. The proposed Policy does apply to applications that propose a reduction in stream flow. 4. However, if the applicant determines that application of the above "regionally protective criteria" would "over-regulate" beyond the level needed to protect listed salmonids and their habitat, the applicant may elect to conduct "site specific studies" to develop "site specific criteria" to protect the resource. (Policy p. 6, § 2.2.2.)	Commenter's items 2 and 3 pertain to the application of the regional criteria to water right petitions, not water right applications.
A-7	North Coast Stream Flow Coalition, Northern California River Watch	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?	Please see staff's responses to Dennis Jackson's comments elsewhere in this document.
A-8	Marin Municipal Water District	We believe that the current version of the draft policy is only a marginal improvement over the December 2007 version. We also believe that it will take additional time to produce a workable plan to allow additional beneficial use of water from North Coast watersheds while still protecting the important environmental resources there. To that end, we suggest that the Division of Water Rights consider adopting the recent plan developed for Fish and Game Code Section 1602 permits. That is: (1) The applicant submits a detailed plan and appropriate CEQA compliance work to the Department; (2) The Department has 30 days to determine whether the submittal is complete enough to allow adequate assessment of the project and, if not, how it could be made adequate. (3) After the submittal is deemed adequate, the Department has 60 days to issue a permit with appropriate conditions. This system seems to work well with the smaller projects that make up much of the Section 1602 permits and should be adaptable to the small diversion permits, as defined in Section 2503 of the Water Code, that seem to be much of the water rights application backlog in the North Coast area.	The State Water Board and the Division are continuously evaluating the water rights process looking for efficient ways to process water right applications and petitions. Section 3.4 of the Policy describes new review procedures for water right applications and petitions.

A-9	Sonoma County Winegrape Commission, United Winegrowers for Sonoma County	Direction was given by the State Legislature to adopt principles and guidelines for maintaining instream flows in coastal streams. The primary goal is to maintain instream flows to protect fishery resources. The policy provides that new applications should be limited seasonally; divert water only when above certain flows needed for spawning, rearing and passage; maintain adequate structure and habitat; consider and minimize cumulative effects and restrict construction of new onstream dams. Those applications, by individuals or watershed groups, who can demonstrate they have met these basic principles should be provided a process that leads to timely and expedited review and decision.	The draft policy allows the use of either regional protective criteria or site specific studies. The regional criteria are a less costly alternative to conducting site specific studies.
A-10	Sonoma County Winegrape Commission, United Winegrowers for Sonoma County	As pointed out by Trout Unlimited, there is need for both policy judgments and expert opinion regarding science. If it were simple, the long debate would have been over and done long ago. Guidelines can be written and formulas crafted, however, they must work not in theory but actual practice in a watershed. The policy must be a framework for making decisions, not more study.	Comment noted.
A-11	County of Napa	The County would like to reiterate its request that any standards of compliance or measures of attainment resulting from this proposed policy be aligned with other policies/regulations that are currently approved or under development by the State and Regional Water Boards in our area (i.e., Region 1, 2 and 5), such as TMDL Implementation Plans, Basin Plan/Water Quality Control Plan Amendments, Waste Discharge Requirements an/or Waivers, and Wetland/Stream/Riparian Policies. Inconsistency among compliance, permitting, monitoring and reporting requirements will result in confusion, failure to attain policy goals and public/community discontent.	The response to comment 23.7.1 in Responses to Public Comments On the Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams, volume 1, January 2010 provides some examples of potentially significant indirect impacts of the Policy and the regulatory requirements and mitigation measures for these impacts that may be incorporated at a project-specific level. These include regulatory requirements that would be implemented by the US Army Corps of Engineers, the Regional Water Quality Control Boards, DFG, or other federal, state, and local governmental agencies. For enforcement efforts, the staff from the State Water Board, NMFS, DFG, and the District Attorney's Offices of Mendocino and Sonoma Counties have held several meetings on enforcement related to water diversions. The State Water Board intends to continue meeting with these agencies to coordinate enforcement efforts.

A-12	Victoria Wikle	The current draft of the Flow Policy has problems. It needs more monitoring for flows and policy effectiveness. It needs to take into account the cumulative effects. It needs an enforcement plan. It needs to address existing diversions and new applications. The final policy must include provisions for recovery of listed fish in all circumstances and be enforceable.	Staff is considering adding policy provisions that would implement monitoring for flow and policy effectiveness. The programs would be implemented if and when resources become available.Policy appendix B contains a cumulative diversion analysis to determine whether the proposed project, in combination with senior rights, affects instream flows needed for fishery resources. Enforcement provisions can be found in Section 8 and Appendices F, G, and H of the February 2010 proposed policy. The policy ensures that habitat conditions will not deteriorate beyond conditions already imposed by existing permitted diversions. Effectiveness of the policy would ultimately need to be determined through monitoring. Staff note that anadromous fish populations are influenced by many other factors besides flow. Thus, there is no certainty that numbers of salmon and steelhead will increase upon implementation of the policy. However, the opportunity for populations to increase will most certainly be less without the policy.
A-13	North Coast Stream Flow Coalition	How does this PD take into account global climate change? The PD set out the February mean flows where no more than 5% of the 1.5 storm peak flows can be diverted. This is the bases for establishing the Minimum Bypass Flows and the Maximum Cumulative Diversion analysis that drives the Regional Criteria or the Site Specific Criteria that water users must apply to determine if there is water availability in a stream. The February mean is based upon historical records coming from stream gauges and precipitation records. We know that California has long historical records of drought. Global climate change may increase the frequency and duration of droughts in California thereby changing the February mean. This PD does not discuss how the DWR may assert their continuing jurisdiction to set terms and conditions which would put limits on water permits in the event that drought conditions may vastly change given global climate change and this can become a larger limiting factor to water availability.	Policy sections A.1.8.1 and A.1.8.2 require the February median flow to be maintained on Class II streams. The minimum bypass flow on Class I streams can be determined using regional criteria or through site specific study. Policy section B.5.3.6 requires the February median flow to be estimated using at least 10 years of record. The median flow was picked over the mean flow because it is a statistic that is less variable than the mean flow. Additionally, water availability is based on a seniority system. During times of drastic drought conditions, only the most senior rights are allowed to divert based on priority. If climate change increases the frequency and duration of droughts, fewer diverters will be allowed to divert. Standard permit terms already allow the Division to assert the priority system in cases of drought. New permit terms do not need to be added during times of drought.

A-14	California Fisheries and Water Unlimited	The proposed Flow Policy must contain the following requirements in all stream environments under the regulatory authority of the Board to prevent the extinction of California coastal endangered Coho salmon and also the extinction of threatened steelhead trout and their habitat, including endangered Tidewater Goby species in the lagoon areas: (a) Daily flow requirements that sustain spawning habitat; (b) Daily flow requirements that sustain rearing habitat; (c) Daily flow requirement that sustain resting habitat areas; (d) Daily flow that provide for food producing habitat; (e) Migration flows from the lagoons to spawning areas; (f) Migration flows from the rearing areas to the lagoons; (g) Daily flows into the lagoons to sustain the anadromous species and lagoon habitat; (h) Daily flows into the lagoons to sustain Tidewater Goby species and lagoon habitat; (i) Breaching of lagoons for the migrating of adults Coho and steelhead to the spawning areas; (j) Others not noted.	Comment noted. Water Code section 1259.4 requires the State Water Board to adopt principles and guidelines for maintaining instream flows in coastal streams from the Mattole River to San Francisco and in coastal streams entering northern San Pablo Bay.
A-15	Sea Ranch Form Letter	The proposed policy may be applicable to some hypothetical regional norm, but it does not take into account the actual hydrology of the Gualala River watershed. Nor does the proposed policy recognize that the primary threats to fish in the South Fork Gualala River are silt, high temperatures caused by de-vegetation of riparian zones, and de-watering of the upper reaches of the Gualala River watershed. The "one size fits all" proposed regional policy has no basis in science applied to the Gualala River watershed or to our operation of diversion from the aquifer underlying the Gualala River watershed. The geology, hydrology, and biology of the Gualala River watershed are dramatically different from the conditions of the areas that served for validation of the proposed policy. In particular, the aquifer from which The Sea Ranch pumps its water extends several hundred feet deep into the San Andreas Fault zone. To the best of our knowledge, it has been asserted, but not demonstrated, that surface flows in the river are reduced by diversion of aquifer storage. Even if this occurs, the relationship may well be quite attenuated. There are no studies showing that flows in the aquifer are correlated with the short, high volume, bursts of surface flow characterized in the proposed policy. If the SWRCB is proposing to destroy the community in which I live (a remarkable and unacceptable proposal), at the very least the SWRCB must demonstrate that the proposed policy as applied to the South Fork Gualala River has scientific validity and will lead to demonstrable increases in salmonid populations. Presently, these Regional Criteria would dedicate far more water to one use than is reasonably needed, while causing enormous damage to other reasonable existing uses.	Sea Ranch has existing water right permits and is not subject to the policy. The proposed policy does not change the State Water Board's obligation to comply with applicable law or to consider, when acting on applications to appropriate water, the relative benefit of all beneficial uses of the water concerned. (See Wat. Code, § 1257.)

A-16	Patrick Higgins/Living Rivers Council/North Coast Streamflow Coalition	The proposed Policy continues to create the illusion that it will help stem the decline of salmon and steelhead, but in fact only flows for adult passage and spawning are considered not those for juvenile rearing. McMahon (2008) pointed out this problem: "Implementation of a diversion season along with the proposed minimum base flow (MBF) and maximum cumulative diversion (MCD) standards to maintain the fall-winter hydrograph could offer a false sense of protection to the listed species if flow levels during other seasons are insufficient to support the completion of rest of the freshwater life cycle." As substantiated in previous comments (Higgins 2008a, 2008b), the lack of flow to support the juvenile life history phase of coho salmon and steelhead trout is most limiting in the region. Therefore, ignoring summer and fall flows before the proposed season of diversion means that the most serious water supply question is not even discussed let alone resolved.	Please see the response to peer review comment 5.1.5 in Response to Scientific Peer Review Comments on the Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams, June 2009. In addition, the legislative digest for AB 2121 directed the State Water Board to develop principles and guidelines to ensure that new water right permits include appropriate fish measures that are protective of anadromous salmonid and related aquatic resources. The Draft Policy proposes that new water right applications could divert water during a December 15 through March 31 diversion season. New water diversions would not be allowed at other times of the year unless a site-specific study shows through collection and analysis of site specific data that the diversion would have no impact on the fishery resource. The Information Sheet accompanying the February 2010 policy revision notes that Policy section 3.3.2.3 was added that allows projects that improve conditions for fish and wildlife to receive expedited water right processing. The processing is expedited under the assumption that the changed condition is better for fish. This section of the proposed policy includes a requirement that the project proponent agree to conditions of approval that will ensure that any water dedicated to instream beneficial use pursuant to a petition filed under Water Code section 1707 will remain instream.

Topic B: Policy Approach - TU/WB/ESH Proposal

Comment Number	Commenters	Comment	Response
B-1	Peter Kiel, Robert Wagner	Many pages were used to discredit the use of the "riffle crest thalweg" as a biological and hydrological reference point for managing instream flows because the concept has not been peer reviewed. The Revised Draft's criticism ignores the more fundamental element of our recommendations that the policy should utilize stream stage at critical reaches of streams as the principal biological and hydrological criteria for managing instream flows. The concept of utilizing stage for purposes of analyzing quantifiable biologic processes is so fundamental that peer review of the concept shouldn't be necessary. The Joint Recommendations present simpler, more coherent resource management criteria and improved water right procedures that will expedite water right permitting in contrast to the Revised Policy that continues to rely upon overly conservative Regional Criteria that will only compound the existing inefficient water right permitting system.	Division staff continue to have concerns that reliance on the riffle crest thalweg method to examine effects of diversion may be unprotective. Division staff are considering revisions to the policy to utilize stream stage thresholds (examined via mapped habitat) in site specific studies. The revised Joint Recommendations received in April 2010 appear to have removed the references to the riffle crest thalweg approach and exclusively apply stream stage thresholds to site specific studies for examination of the maximum cumulative diversion. The regional criteria as proposed in the draft policy were included in the April 2010 Joint Recommendations. The intent of providing regional criteria is to provide water right applicants an avenue for quicker processing of pending applications while still being protective of fishery resources. The regionally protective criteria provide applicants the opportunity to show that operation of their projects will not cause impacts to instream resources using data that would not be expensive to obtain as they assess whether water is available for appropriation.

B-2	Peter Kiel, Robert Wagner	The Policy should be based upon the Joint Recommendations' Flow Threshold and Management Objective Framework. The Joint Recommendations define two stream stage thresholds that provide significant biological functions, namely salmon or steelhead spawning and migration (Salmon Spawning Flow) and inundated riffles (Winter Low Flow). These management objectives have been designed to allow diversions to be permitted without creating significant cumulative impacts within watersheds sustaining, or potentially sustaining, anadromous salmonid populations. The Salmon Spawning Flow and Winter Low Flow thresholds are more practical than the Revised Policy because the thresholds may be calculated using site specific studies or by regional estimates. Unlike the Revised Policy, the Joint Recommendations also include flow management objectives that define acceptable changes in stage to the Salmon Spawning Flow and Winter Low Flow thresholds, thus enabling the Board to make informed permitting decisions regarding project effects on instream resources.	Division staff are considering revisions to the policy based on the version of the Joint Recommendations received in April 2010. As suggested therein, the revisions would include a stream stage threshold above the minimum bypass flow as an option for site specific studies to examine the maximum cumulative diversion. Additionally staff are considering inclusion of a cumulative threshold in the cumulative diversion analysis per the April 2010 Joint Recommendations.
B-3	Peter Kiel, Robert Wagner	Adopt the criteria in the Joint Recommendations for processing water right applications and petitions on small watersheds.	Comment noted. Please see the response to comment B-2.
B-4	Peter Kiel, Robert Wagner	Further develop and apply biological metrics for evaluating potential impacts to instream resources discussed by Dr. Trush in the Joint Recommendations.	Comment noted. Please see the response to comment B-2.
B-5	Association of California Water Agencies	ACWA is disappointed that the SWRCB staff's February 2010 revised policy does not embrace the TU/Wine Industry Recommendations or address other critical comments submitted on the 2007 draft policy.	Comment noted. Staff addressed comments on the 2007 draft policy in Responses to Public Comments On the Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams, volumes 1 and 2, January 2010. In addition, please see the response to comment B-2.

B-6	Wine Institute, Assemblymembers Noreen Evans, Wesley Chesbro, and Jared Huffman; Senators Mark Leno and Patricia Wiggins	We are disheartened to see that staff rejected the Joint Recommendations that were submitted in April, 2009 by Trout Unlimited, Wagner & Bonsignore, and Ellison, Schneider & Harris. As a result, we are forced to respectfully ask that the State Water Resources Control Board reject the Proposed Policy and direct staff to work with stakeholders on the instream flow policy to develop a workable framework that will be both protective of fishery resources and ensure adequate water. Wine Institute would like to specifically endorse comments submitted on the Proposed Policy by the California Farm Bureau Federation as well as the joint comments submitted on the Proposed Policy by Wagner & Bonsignore Consulting Civil Engineers, and Ellison, Schneider & Harris LLP. Wine Institute remains committed to supporting the development of a workable instream flows policy, but the Proposed Policy is not the answer. We strongly urge the Board to direct staff to reconstruct a policy based upon the Joint Recommendations. The resulting policy should provide meaningful protection, a careful balancing of uses, and have the support of stakeholders.	Comment noted. Please see the response to comment B-2.
B-7	California Farm Bureau	An unreasonably protective standard, which is the level of protectiveness relied upon in the Proposed Policy, will not work. Instead, an instream flows policy should rely upon a meaningfully protective standard like that in the Joint Recommendations. It is hard to understand why the Joint Recommendations were so completely rejected. Staff did not even include the Joint Recommendations' methodology in the Proposed Policy as an optional approach.	For the February 2010 revised policy staff considered the following concepts presented in the Joint Recommendations: (1) providing an alternate method to evaluate the effects of cumulative diversions on fishery resources; (2) providing recommendations for implementing the proposal for projects located above salmonid spawning habitat, including evaluating the effects of fill and spill onstream dams; and (3) providing for the possibility that diversion limitations may not be needed on some diversions. For example, staff modified the instream flow analysis requirements to take into account a given project's location in the watershed, and included a small project exemption, based on the proposal. Staff are considering further revisions to the policy based on the version of the Joint Recommendations received in April 2010. As suggested therein, the revisions would include a stream stage threshold above the minimum bypass flow as an option for site specific studies to examine the maximum cumulative diversion. Additionally staff are considering inclusion of a cumulative threshold in the cumulative diversion analysis per the April 2010 Joint Recommendations.

B-8	California Farm Bureau	The key to understanding the difference between the Proposed Policy and the Joint Recommendations is how they function. The Proposed Policy uses regional criteria to set standards while the Joint Recommendations establish a framework to evaluate the meaningful impact of a diversion on the fishery. While using unreasonably protective regional criteria may work for screening projects that will require particular consideration, they do not work well as"principles and guidelines" for maintaining instream flows. For that, we need something much more like the Joint Recommendations, which is a framework for evaluation. Farm Bureau respectfully requests that the State Water Board reject the Proposed Policy and direct staff to rebuild the instream flow policy on a framework that will work to protect flows and provide water.	Comment noted. Please see the response to comment B-2.
B-9	California Farm Bureau	Recognizing that the Joint Recommendations were a better opportunity, Farm Bureau began working on recommended changes to the Joint Recommendations months before the Proposed Policy was released. Please consider these changes not only specifically in regards to how the Joint Recommendations could be improved, but also as a reflection of support for what a workable alternative to the Proposed Policy.	Comment noted. The commenter's letter did not provide recommended changes to the Joint Recommendations.
B-10	Rudy Light	The Water Board never acknowledged the Joint Recommendations until the Response to Comments document came out, and then the Joint Recommendations were lightly criticized and heavily ignored. Their work was entirely discounted by the Division of Water Rights staff. TU, ESH and W&B together put in all this effort to develop the Joint Recommendations and nothing came of it; they may as well have never sat down to confer, let alone write a document. However, there is a bit more to this story. The Water Board staff contracted with two firms, R2 Resource Consultants and Stetson Engineers, to respond in detail to the Joint Recommendations. It should be publicly noted that R2 Resource Consultants and Stetson Engineers did a thorough "trashing" of the Joint Recommendations, finding fault with nearly everything that their engineering colleagues Wagner and Bonsignore had prepared. And it also should be remembered that R2 Resource Consultants and Stetson Engineers were not independent peer reviewers of the Joint Recommendations, but rather these two companies were the very highly paid consulting firms which wrote the Scientific Basis for the original Draft Policy in August 2007. There is a profound conflict of interest. The Water Board should have hired an independent firm to evaluate the Joint Recommendations, not the firms which were contracted to write the original documents.	Comment noted.

B-11	Rudy Light	As you may be aware, I provided my own critique of the Joint Recommendations on September 14, 2009. While the Joint Recommendations may not be perfect, they are far more workable, scientifically sound and more defensible than the original Draft Policy, and now the Revised Draft Policy. So, my request is that the Board carefully examine the Joint Recommendations and meet with its authors to see what portions of the Joint Recommendations can be incorporated into a policy. It would be far better for anadromous fish and their habitats, and for farming for the Water Board to accept the Joint Recommendations instead of the Revised Draft Policy, and I support adoption of the Joint Recommendations.	Comment noted. Please see the responses contained in "Staff Responses to Suggested Edits Received From Trout Unlimited, Wagner and Bonsignore, and Ellison, Schneider, and Harris on April 9, 2010", April 2010.

Topic C: Policy Principles

Comment Number	Commenters	Comment	Response
C-1	Trout Unlimited	Appendix C refers applicants back to the Policy "Principles" located in Section 2.1 for guidance. But by themselves, the Principles do not contain actionable guidance. There are two reasons for this. First, they are intentionally written in a general way. For instance, Principle 4 states that "The cumulative effects of water diversions on instream flows needed for the protection of fish and their habitat shall be considered and minimized." That is not necessarily a failing for a "principle," but by definition it is not the sort of guidance that can be used directly by the State Water Board for decision-making. Second, like the Daily Flow Studies, the Principles lend themselves more readily to an incremental effects analysis than a cumulative effects analysis. In particular, Principle 2 states that "Water shall be diverted only when streamflows are higher than the minimum instream flows needed for fish spawning, rearing, and passage." Because many existing, legal diversions do not operate in this manner, almost every stream within the policy area is already out of compliance with this Principle. Even some newly permitted diversions under the draft Policy would violate this principle, including specifically many diversions located above the Upper Limit of Anadromy.	The draft policy contains requirements for site specific studies in Appendix C. Staff believe that the guidance in Appendix C will be helpful for decision making. As stated by the commenter, any proposed site-specific criteria shall be consistent with the principles described in Section 2.1. This is a general requirement, Appendix C includes several specific requirements intended to provide guidance to the applicant as well as the staff reviewing submitted work products. For example, Appendix C includes criteria for minimum passage and spawning depths and favorable stream velocities. Furthermore, the State Water Board may consult with DFG and NMFS regarding study plans and study results. This process of consultation and review is currently being used to evaluate and make decisions on projects under the 2002 DFG-NMFS Draft Guidelines. The commenter also suggests that the many existing legal diversions may create situations in which streams are out of compliance with the policy even before any new water rights are approved. The State Water Board does not plan to place minimum bypass flow requirements on all existing water rights. The State Water Board already has continuing authority to protect public trust uses and to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water in the state, regardless of basis of right. The State Water Board's exercise of these authorities may require notice and an opportunity for hearing. As written the draft policy does not allow for reduction of flows necessary for protection of salmonids regardless of habitat conditions (pristine or degraded).

C-2	Kimberly Burr	In several important instances in the draft policy, the state opts for discretionary language where none is warranted and in fact if were adopted would contradict the affirmative duty that, the draft policy properly acknowledges, lies with the state. In Section 2.2, the word "may" should read "will". "Instream flow criteria will be required for proposed water diversions to comply with policy principles."	Policy section 2.2, as currently worded, correctly acknowledges that some diversions may comply with policy principles without instream flow criteria.
C-3	Kimberly Burr	Section 2.2 states that plans shall be reviewed and approved by the Deputy Director. Strike the words "and approved" as unnecessary and presumptuous.	Requiring site-specific study plans and supporting documentation to be reviewed and approved by the Deputy Director is necessary to ensure that site-specific study plans are adequate.
C-4	Casey Caplinger/Stacy Li/NOWWE	These are laudable principles, but what if SWRCB permits a project that is inconsistent with these principles? Is the project subject to challenge? What liability does SWRCB incur if the project is inconsistent with these principles?	All state agencies, including the State Water Board, must comply with state policies for water quality control, including the proposed policy, unless otherwise directed or authorized by statute. (Wat. Code, § 13146.) The State Water Board's approval of a water right application is subject to administrative and judicial review. (See Wat. Code, § 1126.)
C-5	Sea Ranch Water Company	The State Water Resources Control Board should retain its ability to take into account, and should take into account, multiple beneficial uses of water, other water right laws and policies, and equitable considerations. In section 2.2.2, and in the Principles set forth in Section 2.1, provision should be made to take into account feasibility and impacts to other beneficial uses of water. Section 2.1 should be amended to add a new subsection 5: 5. Feasibility shall be taken into account. Impacts to other beneficial uses of water shall be avoided where possible. The Policy will be applied in a manner consistent with other applicable water laws and policies and equitable considerations.	The proposed policy does not change the State Water Board's obligation to comply with applicable law or to consider, when acting on applications to appropriate water, the relative benefit of all beneficial uses of the water concerned. (See Wat. Code, § 1257.) The amendment proposed by the commenter is not necessary.
C-6	North Marin Water District	Policy Principle No. 1: "Water diversions shall be seasonally limited to periods in which instream flows are naturally high." How will this affect existing permits/licenses if a minor change (e.g., including but not limited to an extension of time to put water to beneficial use for M&I purposes) is requested?	The applicability of the policy to water right petitions is described in policy section 3.3.2.
C-7	Peter Kiel, Robert Wagner	Section 2.2 suggests that an alternative approach for evaluating protectiveness, such as the Joint Recommendations, could be approved. Section 2.2 requires that the alternative regional criteria be at least as protective of fishery resources as the criteria in the Revised Draft Policy. Section 2.2.1, however, states that "The regional criteria are by necessity conservative and err on the side of resource protection ... at some sites, therefore, more than adequate flows will be provided by regionally protective criteria." Why must alternative criteria that are tailored to actual stream conditions be "at least as protective" of the Regional Criteria that are by definition over-protective?	Regional criteria would be applied throughout the policy area. Any alternative regional criteria should be protective throughout the policy area.

C-8	Assemblymembers Noreen Evans, Wesley Chesbro, and Jared Huffman; Senators Mark Leno and Patricia Wiggins	We would like to express our support for the principles outlined in the draft and believe they form a good basis for the Policy. It is encouragine that such a large and diverse array of stakeholders, representing both conservation and agricultural interests, has been able to express support for the policy principles.	Comment noted.

Topic D: Regional Criteria - General

Comment Number	Commenters	Comment	Response
D-1	Coastal Action Group, North Coast Stream Flow Coalition	The Peer Review and Sensitivity Analysis did not consider effects of impoundment and diversion above anadromy. The proposed policy has no scientific or logical grounds to ignore effects of impoundment/diversion of water (hydro- modification and interception) on instream flows necessary to support salmonids in all life stages.	Please see the response to comment D-2.
D-2	Coastal Action Group, North Coast Stream Flow Coalition	The PD has no scientific or logical ground to ignore effects of impoundments/diversions of water (hydro-modification) on instream flows necessary to support salmonids in all life stages. The health of a watershed is determined from the headwaters to the confluence or in other words, watersheds have a linear interconnectivity. The PD promises to protect wildlife and fish yet the PD escapes this responsibility by allowing areas of the watershed to have less importance (areas above anadromy) than other portions of the watershed (areas where there is fish). We can not recover/restore these watershed basins unless we see the watersheds as a unit for the entire life cycle of the fish. Given that streams above anadromy supply the entire basin with both water and food for healthy aquatic ecosystems, what is the scientific basis for the PD determining that streams above anadromy water diversions may not have to meet Minimum Bypass Flows and Maximum Cumulative Diversion criteria? Was this peer reviewed? If so could you provide this information to the public?	Appendix E, page E-20 of the Scientific Basis indicates that the minimum bypass flow in non-anadromous habitat should be limited to the flow that meets the MBF requirement for a stream at its upstream point of anadromy. This science was peer reviewed. The December 2007 Draft Policy applied this science with the use of a prorated bypass flow based on the drainage area at the upper limit of anadromy. Public comments on the December 2007 draft asked for a reconsideration of this method of implementation. Staff developed the approach presented in the February 2010 Draft Policy, which continues to provide the minimum bypass flow needs of anadromous fish at points of anadromy, and allows more water for diversion than the previous draft. The approach evaluates whether or not a proposed diversion is contributing to reductions in flows needed to maintain the minimum bypass flow at point of anadromy and below. Stetson Engineers and R2 Resource Consultants reviewed the approach and found it to be protective.

D-3	Sea Ranch Water Company	The Regional Criteria would result in an unreasonable use of water in many or most instances where there are competing beneficial uses of water. There is a serious risk that they will be viewed as establishing a state endorsed fish protection standard. The Policy should be amended to avoid this, by stating that absent the water right holder's agreement, the Regional Criteria apply only where there are no competing beneficial uses of water. Section 2.2.1 should be amended to add at the end: Absent agreement of the water right holder, the regional criteria will not apply where there are competing beneficial uses of water.	Please see the response to comment C-5.
D-4	Association of California Water Agencies	The policy applies to all applications and changes to existing permits and licenses. However, the Regional Criteria, the principle element of the policy, are so narrow they will only apply to a subset of projects (small agricultural offstream storage). Projects that cannot meet the Regional Criteria will have to conduct site-specific studies in order to request an "exception" or "variance" from the Regional Criteria.	Please see the responses to comments D-11 and E-3.
D-5	Association of California Water Agencies	As stated above, no project requiring a longer season of diversion—essentially all municipal diversions—can satisfy the Regional Criteria. Existing municipal and agricultural diversions initiated before these new rules will be entangled in the policy criteria when any changes are required to their existing permits and licenses, with significant attendant public expense, including scarce SWRCB resources. Furthermore, analyses by agricultural water users show that even new agricultural projects designed as small winter offstream storage projects cannot meet the Regional Criteria.	Permitted and licensed diversions that are in compliance with their permits and licenses will not be affected by the policy. However, the State Water Board may impose instream flow requirements on existing water rights pursuant to the Board's authority to protect public trust resources and prevent the unreasonable use of water. The State Water Board's exercise of these authorities will involve a hearing if warranted. In addition, please see the responses to comments D-11 and E-3.
D-6	Peter Kiel, Robert Wagner	We submitted a substantial critique of the Draft Policy and its purported scientific bases (May 1, 2008). We will not restate our prior comments in detail but note that most of these criticisms were not adequately addressed by the Response to Comments.	Staff believes adequate responses were provided to the commenter's previous comments (May 1, 2008) in Responses to Public Comments On the Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams, volumes 1 and 2, January 2010.

D-7	California Farm Bureau	Fishery resources need to be protected, but an instream flows policy needs to strike the balance between what is meaningfully protective of fisheries and what provides water to those who need it. Just because an action has a statistically discernable affect on habitat does not mean that it would also result in a meaningful harm to fisheries. On the other side, limiting the ability to divert water based on a statistically predictable (but practically meaningless) impact has a huge affect on water users. An illuminating example of this problem is found in the methodology used in the Draft Policy to establish regional criteria for Salmon Spawning Flows. In the review of the Joint Recommendations, it is explained that the "Draft Policy used a mean regression to fit data points that were considered protective at the site specific scale and conservatively increased the regression intercept by 3 standard errors to be protective at the regional scale." This approach definitively places any impact on Salmon Spawning Flows ahead of diversions, no matter how meaningless that impact may be. In using this approach to protectiveness, the Proposed Policy ensures that most people will not be able to comply with the regional criteria.	Please see the responses to comments D-11 and OO-10.
D-8	Peter Kiel, Robert Wagner	The Regional Criteria lack scientific basis. . . The Regional Criteria were nominally based on accepted scientific concepts related to the Principles (e.g., flows should be high enough to support salmonid spawning and channel forming processes), but the scientific concepts were rendered meaningless by overextension and overgeneralization. This problem is most obviously manifested in the minimum bypass flow (MBF) equation that was manipulated by artificial factors of safety so as to be conservative and overly protective of the actual flow needs in North Coast streams. One of the Responses to Comment acknowledges the lack of scientific basis for the Regional Criteria. Comment 4.4.11 objected to a lack of basis for the threshold of 5% of 1.5-year flow rate for the MCD. The Response to this Comment was: "The fact that a threshold cannot be defined precisely does not mean that no threshold should be proposed. Staff require a value for processing water right applications. In the absence of a clearly defined, regionally applicable threshold above which impacts to channel maintenance can be defined explicitly, one must be derived based on professional experience and judgment."	As the commenter indicated, the regionally protective maximum cumulative diversion was based, in part, on professional experience and judgement. It was also based on the science presented in the Scientific Basis Report. The comments received from the DFG and NMFS during the public comment period have not questioned the scientific basis underlying the recommendations of the Draft Policy. In addition, external technical peer reviewers have indicated the scientific basis is sound. The response to comment 4.4.11 also stated that "The Policy allows the use of results of a site-specific study instead of the conservatively protective regional criteria to more accurately assess the fishery resource instream flow needs at a particular location (Policy, Section 4.1.8). In addition, effectiveness monitoring may be implemented as a means for revising the proposed threshold either up or down. Note also that (1) DFG considers this level acceptable only if it is associated with effectiveness monitoring (the implication being that without monitoring the level should be closer to the DFG-NMFS 2002 Draft Guidelines), and that any stream with this level of diversion be classified as a fully appropriated stream, and (2) see comment 1535 [staff notes this is a typographical error, the correct comment number is 4.4.24] where the RWQCB North Coast Region recommends the DFG-NMFS 2002 draft guideline for MCD which is approximately equivalent to a 1% level. Thus the 5% level appears to be a reasonable compromise between opposing perspectives." The Policy allows the use of results of a site-specific study instead of the conservatively protective regional criteria to more precisely assess the fishery resource instream flow needs at a particular location (Policy, Section 2.2.2). The draft policy already contains site specific study details in Appendix C, and staff are

			considering incorporating suggestions for identifying quantitative thesholds for use in evaluating site specific impacts to peak flows.
D-9	Peter Kiel, Robert Wagner	The Draft Policy regional criteria are not applicable to most projects under application. The Responses to Comments admit that the regional criteria are not applicable and that site-specific analyses would be required. See Response to Peer Review Comment 6.2.2: "there were insufficient data to enable a detailed evaluation... the question could be answered by site-specific studies in small watersheds." See Response to Public Comment 4.3.21 "there are no representative-sized streams in the dataset used...." See Response to Comment 4.3.26: "to develop an accurate site-specific prediction tool ... would require years of data collection and analysis... the regional protective criteria developed for the Draft Policy should not be considered to have site specific accuracy." See Response to Comment 4.3.17: "the draft Policy does not attempt to predict instream flow needs for each stream, and instead relies on a protective regional criterion to establish a suitable threshold flow below which uncertainty on site-specific instream flow needs can only and must be addressed by site specific study." See Response to Comment 5.0.4: "Staff does not believe the regional protective criteria developed for the Draft Policy have site specific accuracy..." See Response to Comment 1.5.2; "Site specific studies are the best way to determine whether a project located in a small watershed would not adversely affect instream flows and anadromous salmonids in a particular stream." The Revised Policy admits that the approach utilized to develop the Regional Criteria is non-representative and inaccurate for many sites.	The MBF regional criteria are based on data for streams that appear to be representative of streams larger than 1 sq.mi. The Scientific Basis Report (R2, 2008) demonstrates that the data used to develop and evaluate the draft Policy MBF regional equation reflect habitat-flow needs that have the same general data scatter across regions, reflecting fundamental, first order relationships between flows and fluvial geomorphology and fish habitat. After considering the collective peer review and public comments, Staff's experts concluded that an MBF criterion for streams drainage less than 1 sq.mi. set equal to the criterion at 1 sq.mi. appears reasonable from a protectiveness standpoint. The intent of providing regional criteria is to provide water right applicants an avenue for quicker processing of pending applications while still being protective of fishery resources. The regionally protective criteria provide applicants the opportunity to show that operation of their projects will not cause impacts to instream resources using data that would not be expensive to obtain as they assess whether water is available for appropriation. Because of the complex habitat needs of salmonids, the regional criteria should not be expected to have site specific accuracy. However, to ensure application of the regional criteria will create protective conditions when they are applied, the regional criteria were designed to limit water diversions so that adequate flows are available for spawning and passage at sites with the most restrictive instream flow needs. At some sites, therefore, more than adequate flows will be provided by regionally protective criteria. More precise estimates of flow needs at specific sites may be developed from site specific study. Site specific studies are described in Appendix C.

D-10	Mendocino County Water Agency, Assemblymembers Noreen Evans, Wesley Chesbro, and Jared Huffman; Senators Mark Leno and Patricia Wiggins	Our concern is that the Regionally Protective Criteria are so conservative with respect to the protection of fisheries resources that the majority of water right applicants will be forced to pursue the Instream Flow Policy's "site specific" study option, which in itself is not necessarily bad, except that the guidance provided for site specific studies is generally vague and for the most part, no improvement over the status quo. To summarize, even if the Instream Flow Policy was implemented as currently drafted there would continue to be a significant number of applicants, if not the majority, who would feel compelled to forgo use of Regionally Protective Criteria in lieu of site specific studies. We believe that the Instream Flow Policy could be improved through either use of less conservative Regionally Protective Criteria, more specifically defined categories of exempted projects, and/or a more thoroughly defined process for conducting site specific studies.	Please see the responses to comments B-2 and D-11.
D-11	Golden Vineyards	Golden Vineyards explained, in pages 4-5 of Appendix "A" (which text is specifically incorporated herein), that the combined effect of the minimum bypass flow and maximum cumulative diversion limitations in the Draft Policy would have a drastic adverse impact on water diversions by small farmers and the wine grape industry in general. Unfortunately, Golden Vineyards' comments still have not been addressed in the Proposed Policy. A very minor tweak was made to the minimum bypass flow guidelines in the Proposed Policy and the maximum cumulative diversion limitations have remained unchanged from the prior draft. Accordingly, small agricultural diverters will unfairly and illegally be bearing the brunt of this new policy.	The Information Sheet for the February 2010 revised policy indicates that in addition to modifying the regional criteria, the Instream Flow Analysis requirements were modified to account for the proposed diversion's location in the watershed. The analysis considers the proposed diversion, senior diversions in the watershed, and contributory flows from tributaries draining into the flow path. The analysis must consider the proposed project in combination with the flow reductions by senior diverters and contributory flows from stream tributaries. Application of this modification to small diversions could result in no minimum bypass flow or rate of diversion limitations for the project. Table 1 in the Information Sheet shows the revised policy allows more water for diversion at points above anadromy than the previous draft.
D-12	Patrick Higgins/Living Rivers Council/North Coast Streamflow Coalition	While one of the proposed Policy's objectives is to protect Pacific salmon, your sensitivity analysis does not consider impoundments and diversions on headwater streams and swales above anadromy. Even a basic hydrology text book makes clear that subsurface flow accumulates in headwater areas, sometimes flowing on the surface during periods of high rainfall, but otherwise contributing to downstream flow through groundwater connections...Permit requirements should include an entire watershed and there is no scientific justification for not including the entire stream length.	The sensitivity analysis involved the regional criteria, which protect stream flows where anadromy are present. The policy acknowledges the contributory flows of upstream reaches, and requires an analysis to determine the flow requirements at the point of diversion. Policy section 2.2.1.2 contains language stating, "If a diversion is located above the upper limit of anadromy, the bypass flow at the diversion point is determined based on an evaluation of the effects of the proposed project at the upper limit of anadromy and at other POIs within the range of anadromy, rather than at the diversion location."

D-13	Thomas Lippe/Dennis Jackson/Living Rivers Council	The section 2.2.1 of the Policy claims that the regionally protective criteria are conservative and will always err on the side of resource protection. This claim is not substantiated by the Policy's supporting documents. The following procedures; (a) to determine if unappropriated water is available for diversion; (b) the procedure to determine the MBF; (c) the procedure to determine the MCD; and (d) the daily flow study all utilize the same methodology to estimate flows at an ungauged site (POD or POI) based on the discharge record of a nearby reference stream gauge. There is no discussion of the validity of the methodology used and no substantiation that it always produces an estimate that errs on the side of resource protection. The commenter's analysis indicates the methodology to estimate the various flow parameters at an ungauged site will not be protective of anadromous salmonids and their habitat at some sites. The MBF is determined by multiplying the estimated mean annual flow by a scalar factor that varies with drainage area (see table in Section 2.2.1.2). The magnitude and direction of error of the MBF is the same as for the estimate of the mean annual flow.	Staff are considering modifying the Policy to incorporate Mr. Jackson's recommendation for gage selection. Mr. Jackson commented as follows in his March 22, 2010, letter. The Regionally Protective Criteria should be modified so that a reference stream gauge is selected on the basis of watershed characteristic such as geology, soils, topography, vegetation and land use including the amount of diversion and other modifications of runoff processes.
D-14	Lompico Watershed Conservancy	The complexity of the problems with stream flow should not prevent your agency from stepping in aggressively. There will be many instances were multiple water diversions are impacting a salmon stream or river. In these cases the question of which diverter is most responsible should not be allowed to confuse this issue to a standstill. The data necessary to determine a maximum allowable rate of diversion for every permit will always be in dispute. The issue of new permits will in some cases be moot. Preventing water diversion during low flow conditions is especially important.	Comment noted.

Topic E: Regional Criteria – Diversion Season

Comment Number	Commenters	Comment	Response
E-1	Dept of Fish and Game, NMFS, California Sportfishing Alliance	Supports the decision to reduce the season of diversion to December 15 through March 31.	Comment noted.
E-2	Casey Caplinger/Stacy Li/NOWWE	Good Section; consistent with the present guidelines; implementation will reduce potential for conflict.	Comment noted.

E-3	Association of California Water Agencies	The Regional Criteria include an inflexible, curtailed winter season of diversion (December 15 to March 31), regardless of the availability of water in all other months of the year; conservative minimum bypass flow equations; and requirements to substantially modify or remove onstream dams on all but the smallest watersheds. Only small agricultural offstream storage projects can conceivably comply with these criteria. No municipal or other diversions requiring a longer season can satisfy the Regional Criteria.	The draft policy allows the use of either regional protective criteria or site specific studies. The regional criteria were developed as a less costly alternative to conducting site specific studies. Because the Policy area is a very diverse region the regional protective criteria 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. To be regionally protective, the regional criteria are designed to limit water diversions so that adequate flows are available for spawning and passage at sites with the most restrictive instream flow needs. At some sites, therefore, more than adequate flows will be provided by regionally protective criteria. 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 Scientific Basis Report (R2, 2008). The comments received from the DFG and NMFS during the public comment period have not questioned the scientific basis behind the recommendations of the Draft Policy. In addition, external technical peer reviewers have indicated the scientific basis is sound.
E-4	Golden Vineyards	The Proposed Policy shrinks the season of diversion from a start date of October 1 to December 15 each year. Golden Vineyards believes that the earlier diversion date set forth in the prior draft should be retained and that the new "start date" is scientifically unjustified and legally invalid.	Staff initially recommended a diversion season of October 1 through March 31; however, commenters pointed out that an October 1 start date might not be protective because dry periods commonly occur in October and November. For more explanation, please see comment 4.2.4 (NMFS) and the response to comment 4.2.3 in Responses to Public Comments On the Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams, volume 1, January 2010. Policy section 2.2.1.1 allows site specific studies for extending the diversion season.
E-5	North Marin Water District	Page 4. Section 2.2.1.1 Season of Diversion: The regionally protected criteria limit new water diversions in the policy area to a diversion season beginning on December 15 and ending on March 31 of the succeeding year. How will this affect existing permits/licenses if a minor change (e.g., including but not limited to an extension of time to put water to beneficial use for M&I purposes) is requested?	The applicability of the policy to water right petitions is described in policy section 3.3.2.

E-6	Marin Municipal Water District	Section 2.2.1.1, states that the diversion season will be limited to December 15 till March 31. This seems to inappropriately narrow, especially without any specific study of the magnitude of the proposed diversion to the hydrology of the area. In many areas of the North Coast there is water available outside of this narrow window that could be diverted without significant environmental impact. This section seems to be in opposition to Section 106 of the Water Code that states that water supply for domestic and irrigation use are the highest priority water uses in the State. If the Division of Water Rights believes that no water is available for diversion outside this narrow window it would seem that it should be handled by the Section 1205-07 process for declaring those streams as fully appropriated during those time periods and not by this draft Policy.	Please see the response to comment E-4. In addition, contrary to this comment, the season of diversion restriction in the draft Policy does not amount to a declaration, pursuant to Water Code sections 1205 through 1207, that water is unavailable for appropriation outside of the season. The season of diversion restriction, which limits new diversions to the December 15 through March 31 season, is one of five regionally protective instream flow criteria designed to ensure that water right applications, registrations, and petitions will not adversely affect fishery resources. The season of diversion restriction is based on the assumption that diversions outside the season may adversely affect fishery resources, but the restriction does not amount to a determination that water is unavailable for appropriation outside the season in every case, and the draft Policy does not contain an absolute prohibition against diversions outside the season. Instead, the draft Policy would allow an applicant to appropriate water outside of the season if the applicant can demonstrate, based on a site specific study, that water is available for appropriation, taking into consideration the instream flows needed to protect fish and their habitat. Similarly, the draft Policy allows for a watershed approach for determining water availability and the environmental impacts of multiple diversions, as an alternative to using the regionally protective criteria set forth in the Policy.
E-7	Kimberly Burr	Just as site-specific studies may extend the season of diversion (2.2.1.1), so the policy must explicitly state that, if and when a winter rain pattern dictates, the state shall shorten the season of diversion. It is not clear from the draft policy that the state agencies will retain this discretion. An explicit reference to the state's duty to avoid harm to listed species and their habitat could reconcile the sections that explicitly permit diversions between December 15 and March 31 with sections 2.1(1); 2.2.1.2, and sections and Appendix C.1.0. For example, 2.2.1.2 states that the minimum bypass flow requirement "prevents water diversions during periods when stream flows are at or below the flows needed for spawning, rearing, and passage." This could, in very dry years, conflict with the permission to divert during the diversion season. State discretion in this situation, based upon weather patterns and the needs of the listed species, must be express.	Please see the response to comment E-4.

E-8	Sierra Club Redwood Chapter	Do not allow site specific studies to extend the diversion season. (1) It opens the door not just to new applicants but existing applicants within the AB 2121 geography would certainly petition to expand their season of diversion. The Navarro River has established Special Permit Terms Relating to Monitoring and Compliance that allow diversion only within uniform fixed dates. Adopting permissive provisions in this policy will certainly place agreements such as the Navarro's back into play. Every existing applicant or license holder could make equitable and legal claims for the same rights petitioning for an enhanced season of diversion. (2) The DWR would be required to resolve these contests with hearings, appeals and litigation for which you do not have the staff resources. This draft does not address this staffing need, but as set out below indicates an intention to ignore the problem. This program if it is to be initiated must be supported with significant increases of personnel. We would support the comments of Coast Action Group on this point. (3) The problem of enforcement will be greatly magnified by having many different periods where diversions are permitted. Most illegal diversions come to the attention of the Division of Water Rights (DWR) from the public, based on the observations of other landowners. The discovery of 1771 illegal diversions from aerial maps shows that enforcement by the State Board is actually a rare and in this case of illegal diversions, an accidental event.	Any request for extending the diversion season would need to include site specific studies that address the provisions of policy section C.1.1.2.3 that states "The site specific studies for extending the diversion season shall evaluate whether the extended diversion season affects stream temperatures needed for maintaining adequate habitat conditions." Section C.1.2 states that approvals of site specific studies are delegated to the Deputy Director of the Division of Water Rights. Enforcement staff are aware that existing water right permits and licenses contain a wide variety of diversion seasons.
E-9	North Coast Stream Flow Coalition	The PD allows some diverters to divert water from the streams outside the designated December 15-March 31st seasons. For example on page 4, 2.2.1.1- "Site specific studies may indicate that the season of diversion can be extended into other times of the year." This incongruence makes the Policy unreliable and not protective of fish and other wildlife.	Policy section C.1.1.2.3 states "The site specific studies for extending the diversion season shall evaluate whether the extended diversion season affects stream temperatures needed for maintaining adequate habitat conditions." Because the Policy area is a very diverse region, the regional protective criteria 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.

Topic F – Regional Criteria – Minimum Bypass Flow

Comment Number	Commenters	Comment	Response
F-1	Coastal Action Group	Will near stream diverters (licensed and unlicensed) diverting from subsurface flows be subject to minimum bypass flow requirements at the POD? If not, and if not considered in the effects of cumulative diversion, how can policy work to maintain minimum flows?	If the POD is an offset well that is known to be diverting from the underflow of the stream or river or from a subterranean stream with defined bed and banks it falls under the jurisdiction of the State Water Board. Diversion points subject to the permitting authority of the State Water Board will be subject to the minimum bypass flow requirements of the Policy and be considered in the cumulative diversion analysis.

F-2	Coastal Action Group	For areas of diversion above anadromy, it is assumed that study and criteria will be presented to support standards and policy that apply to specific projects and diversions. It can not be assumed that diversion above anadromy has no effect on stream flow. There is plenty of science out there that shows that such diversion does have steam flow effects, effects on hydrology. Such studies related to effects of diversion above anadromy must considered effects of cumulative diversion downstream and habitat conditions.	The Policy requires that projects above anadromy evaluate the effects of their project and the cumulative effects senior diverters plus their project at locations where fish are present. An evaluation of the cumulative effects on the regional criteria or site specific criteria at the upper limit of anadromy and other locations downstream is a Policy required component to project approval.
F-3	O'Laughlin and Paris, LLP	The minimum bypass flow, by definition, only considers fish spawning, rearing, and passage and, unlike water quality objectives, the protection provided does not have to be "reasonable" in light of all demands made on the system. (AB 2121 Policy, p. 4, 10.) It does not meet the legal requirement of a water quality objective enacted under Porter-Cologne, but nonetheless operates as one. If the SWRCB wants a regulatory standard it can use like a water quality objective, then it should proceed as required under Porter-Cologne, adopt a water quality objective and program of implementation, and then implement that water quality objective through water right proceedings if necessary.	Hydrologic characteristics of streams in the Policy area vary from stream-to-stream. Because the Policy area is a very diverse region, the regional protective criteria 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. They were developed to provide a less costly alternative to conducting site specific studies. To be regionally protective, the regional criteria are designed to limit water diversions so that adequate flows are available for spawning and passage at sites with the most restrictive instream flow needs. At some sites, therefore, more than adequate flows will be provided by regionally protective criteria. 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 Scientific Basis Report (R2, 2008). The policy contains provisions for site specific studies.
F-4	North Marin Water District	Page 4. Section 2.2.1.2 Minimum Bypass Flow: The minimum bypass flow is the minimum instantaneous flow rate of water that is adequate for fish spawning, rearing and passage as measured at a particular point in the stream. The minimum bypass flow must be met on an instantaneous basis at the point of diversion (POD) before water is diverted. How will this affect existing permits/licenses if a minor change is requested?	The commentor did not define what they considered to be a minor change. If a proposed change to an existing permit or license is simply moving a point of diversion a short distance and the change in point of diversion will not cause a change to instream flow then the Policy would not apply to the processing of the proposed change and would not affect the existing permit or license. However, if a permittee is petitioning for an extension of time to further develop their maximum beneficial use under the permit, they could be subject to the Policy. For example, if an existing permit authorizes a diversion rate of 5 cfs and a total annual amount of 200 acre-feet to be diverted, but the permittee has only been able to divert at a rate of 2 cfs for an annual amount of 100 acre-feet and the permit has expired, the permittee would need an extension of time if they wanted to try to maximize use under the permit to that which was authorized. The potential for an increase in diversion from 2 cfs to 5cfs and from 100 acre-feet to 200 acre-feet would have an affect on instream flow. Therefore the Policy would apply to that type of change. Circumstances surrounding whether or not a proposed change to an existing permit or license is subject to the Policy is based on whether or not approval of the change will impact instream flow.

F-5	Association of California Water Agencies	The Regional Criteria bypass flow criteria are over-conservative, formulaic requirements that are not based on applied science and that do not account for actual conditions in north coast streams. In most instances the bypass flow requirements would far exceed the amounts of water actually required for instream resources.	The comments received from the DFG and NMFS during the public comment period have not questioned the scientific basis behind the recommendations of the Draft Policy. In addition, external technical peer reviewers have indicated the scientific basis is sound. As indicated by Table 1 in the Information Sheet for the February 2010 revised policy, the revised policy allows more water for diversion at points above anadromy than the previous draft.
F-6	Rudy Light	Concerning the watersheds of less than 1 square mile, the formula requiring an instantaneous minimum bypass flow of nine times the mean annual flow is still very restrictive to most projects, especially those high in the watershed where most diversions occur, and especially to those with watershed areas of less than about 200 acres. Without access to actual streamflow data, I can't accurately assess the percent of water that would have to be bypassed compared to total flow, but the required instantaneous bypass amount must represent around 97% to 99% of the total annual flow, and the number of days it would be permissible to divert and store water surely cannot exceed more than about 15 days per water year. None but the very smallest of ponds would ever fill.	The commentor appears to have not read Sections A.1.8.1 and A.1.8.2 of the Policy. Projects high in the watershed are likely to be located on Class II or Class III streams. Exceptions regarding the minimum bypass flow and maximum rate of diversion have been included in the Policy to allow for small projects in small watersheds to operate without a bypass flow or maximum rate cap if they do not contribute to affects at the upper limit of anadromy or below. The analysis requires an evaluation at the upper limit of anadromy or locations downstream of that point. If the location being evaluated in the analysis is less than 1 sq mile, then projects above anadromy will need to evaluate the cumulative effect to nine times mean annual flow at that location, not the POD of the pending project. Additionally the analysis for projects above anadromy is iterative. The bypass flow is determined based on what effects the project is having on locations where fish are present. If a project can operate without a bypass flow or only bypass the february median flow at their POD and not cause effects to loactions where fish are present, then they will not have to bypass nine times mean annual flow at their POD.

F-7	Rudy Light	As for the slightly larger watersheds, say 1 to 15 square miles, the new formula provides a nearly identical number of diversion days as the old formula from the original Draft Policy. I presented a table and graph in my comments of August 5, 2008 and showed that unless the watershed area is at least 10 square miles (= 6,400 acres) only a few diversion days are possible each winter. In the case of a diversion at the Soda Creek USGS gauge 11467850, there is a watershed area of 1.53 square miles. Under the Draft Policy, there would be 7 allowable diversion days, and under the Revised Draft Policy, there would be 5 days. For Willits Creek, a watershed area of 3.72 square miles, at USGS gauge 11462160, under the Draft Policy there could be no more than 5 diversion days and under the Revised Draft Policy there can be no more than 7 days of allowable diversion. Data from other locations are comparable, so the conclusion is that the new formula provides nearly identical results to the old formula, and both are so restrictive to diversion that few if any diversions will be allowed.	The commenter did not submit the analysis supporting these conclusions, therefore staff is unable to determine if the commenter applied the Policy correctly. Staff performed a quick check of the commenter's results regarding the Soda Creek gauge 11467850 using the Revised Policy criteria for the MBF. Staff finds the commenter is being misleading with the described results for this site. There is a total of 4 complete water years of daily data for this gauge site. In the 1965 water year there were 18 days where flow exceeded the MBF. In the 1966 water year there were 6 days where flow exceeded the MBF. In the 1967 water year there were 9 days where flow exceeded the MBF. In the 1968 water year there were 3 days where flow exceeded the MBF. As can be seen from these results, the 5 days the commenter suggests is the proper result did not occur in any of the water years. It can only be assumed that the commenter's analysis is incorrect and that the Policy criteria may not have been applied correctly. The results of staff's quick check for this site suggest that the ability to divert is dependant on water year types. Therefore, planning should be utilized when designing a proposed project to take advantage of wetter water years for use in drier water years. These results also suggest that diverters should not build the project first and seek a permit after the fact. Planning may indeed be necessary in the smaller watersheds in order to obtain the proper yield. Projects built prior to receiving a permit cannot utilize planning to find a solution and in fact are illegal diverters until a permit is received.
F-8	Sonoma County Winegrape Commission, United Winegrowers for Sonoma County	It would be helpful to have a map showing those areas where the watershed is deemed to be larger than 321 square miles. In an area that is almost equal in size to the state of Connecticut, there are many watersheds, large and small, but it is not entirely obvious why the regional criteria for minimum bypass flows sets the dividing lines at less than 1 square mile and those larger than 321 square miles.	For the explanation of the use of the 1 square mile "dividing line", please see the response to comment number 4.3.21 in Responses to Public Comments On the Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams, volume 1, January 2010. The establishment of the 321 square mile "dividing line" was obtained from equating the second and third equations in policy section 2.2.1.2, and solving for drainage area.

F-9	California Cattlemen's Association	CCA is also concerned that the bypass flow criteria outlined in the Proposed Policy are overprotective and do not allow the flexibility to address specific seasons of use and actual impacts on fishery resources. Most significantly, CCA does not believe the overprotective bypass flow policies and criterion currently proposed are based on the best available science that can be applied specifically to the North Coast and subsequently serve as a basis to justify the proposed instream flow policies and guidelines.	The draft policy allows the use of either regional protective criteria or site specific studies. The regional criteria were developed as a less costly alternative to conducting site specific studies. Because the Policy area is a very diverse region the regional protective criteria 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. To be regionally protective, the regional criteria are designed to limit water diversions so that adequate flows are available for spawning and passage at sites with the most restrictive instream flow needs. At some sites, therefore, more than adequate flows will be provided by regionally protective criteria. 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 Scientific Basis Report (R2, 2008). The comments received from the DFG and NMFS during the public comment period have not questioned the scientific basis behind the recommendations of the Draft Policy. In addition, external technical peer reviewers have indicated the scientific basis is sound.
F-10	Peter Kiel, Robert Wagner	The minimum bypass requirement, MBF, is intended to be very restrictive for small watersheds. For drainage areas 1 square mile and less, all flows less than nine times Qmean must be bypassed. On average in the Policy area, nine times Qmean is exceeded only eight days per year.	Comment noted. Commenter did not provide any supporting data or analysis supporting this conclusion and did not demonstrate that the drainage areas of 1 square mile or less used to reach the conclusion in the comment were actually fish bearing streams. Additionally, spawning and passage opportunities in drainage areas 1 square mile and less are also limited to a small number of days per year due to the flashy nature of those stream systems. In order to protect a threatened and/or endanger species that does use such small watersheds, diversion limitation should be considered.
F-11	Paul "Skip" Spaulding, Farella Braun + Martel LLP/Golden Vineyards	The policy drafters have made some minor adjustments in the minimum bypass flow limitation guidelines that make the conditions slightly less onerous in a few situations. However, these adjustments have not addressed the key legal deficiencies on this subject identified on page 8 of Exhibit A," which text is specifically incorporated herein. For this reason, all of these legal, policy and scientific deficiencies remain.	Comment noted. Staff responded to these concerns in the responses to comment numbers 4.3.62 and 6.0.64 in Responses to Public Comments On the Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams, volume 1, January 2010.

F-12	Casey Caplinger/Stacy Li/NOWWE	The stream size as determined by drainage area has changed from the initial AB2121 draft policy (R2 Resource Consultants/Stetson Engineers 2007); the formulae for determining minimum bypass flows have also changed. Please compare minimum bypass flows under NMFS/CDFG Guidelines (2002) and under the current proposed regional minimum bypass guidelines using 10 different unregulated streams in each of the different stream classes. Without these comparisons, the relative protection of the current formulae cannot be determined.	Please refer to Table 1 in the Information Sheet provided with the Notice of Adoption Hearing, found on the Division's website. A comparison of the minimum bypass flows under the NMFS/DFG Guidelines and the February 2010 version of the Policy can be found there. The table presents the results of evaluating different projects on different size watersheds and stream classes.

Topic G: Regional Criteria – Maximum Cumulative Diversion

Comment Number	Commenters	Comment	Response
G-1	Mendocino County Water Agency	One example of the Instream Flow Policy's overly conservative Regional Protective Criteria is the proposed Maximum Cumulative Diversion Rate provision, which limits the maximum diversion rate to five percent of the 1.5-year peak flow discharge. In view of the inherit inaccuracies of stream discharge measurements, simply confirming that no more than five percent ofthe 1.5-year peak flow discharge has been diverted could prove challenging. As noted in many publications of the United States Geological Survey, the accuracy of stream discharge data is characterized as "Excellent" when 95 percent of the readings are within five percent of actual stream discharge; "Good" when 95 percent of the readings are within ten percent of actual stream discharge; and "Fair" when 95% of the readings are within fifteen percent of actual stream discharge. The situation is compounded with increasingly greater stream discharges, because five percent of what constitutes the 1.5-year peak flow discharge is an even smaller percentage of the 2-year peak flow discharge, and so on. Even a Parshall Flume, one of the more accurate stream flow gauging devices, has an accuracy of plus or minus two percent. In summary, the Maximum Cumulative Diversion Rate criterion is so conservative that compliance will be difficult to confirm via conventional stream gauging practices. Even more alarming is the fact that the criterion severely limits the diversion of high winter flows - the only significant source of unappropriated water - in the policy area.	As indicated by Table 1 in the Information Sheet for the February 2010 revised policy, the revised policy allows significantly more water for diversion at points above anadromy than the previous draft. The commentor expressed concern that the MCD criteria "limits the maximum diversion rate" to 5% of the 1.5-year peak flow." Staff urges the commentor to review section 2.2.1.3 of the Policy, which describes the maximum cumulative diversion criteria. Specifically, Paragraph 3 on page 6 as follows: The maximum cumulative diversion rate puts limitations on the cumulative rate of water withdrawal in a watershed, not necessarily the rate of withdrawal at a point of diversion. The rate of diversion for a project is not necessarily equal to the maximum cumulative diversion rate in a watershed..." The MCD criteria is a statistical value used to measure the average annual flow needed for channel maintenance for a particular watershed.
G-2	Casey Caplinger/Stacy Li/NOWWE	Because what is changed upstream affects everything downstream, maximum diversion rate above the point of anadromy should also be 5% of the 1.5-year instantaneous flow.	The Policy considers contributory flows when estimating the rate of diversion limitation for projects above anadromy (see Appendix section A.1.8).

G-3	Rudy Light	As with the original Draft Policy, the Maximum Cumulative Diversion will make many projects, especially small ones, impossible to build. The reason is that many ephemeral streams contribute significant amounts of water to a pond only during and soon after large storm events. If the Minimum Bypass Flow is in place, no water may be diverted and collected until that requirement is satisfied and on an ongoing basis. Some water can be diverted after that requirement is met. However, when the Maximum Cumulative Diversion begins to apply, the window of opportunity to fill a pond is small. Small ponds high in the watersheds need the "flashy" conditions caused by intense rainfall in order to fill because of the restrictions due to the Minimum Bypass Flow. But, if the large volume of water during a rainstorm is denied to a pond because of the Maximum Cumulative Diversion, few projects will ever be built.	Please refer to Section 2.3 of the main Policy document, and Section B.5.3 of the Policy Appendices. Smaller reservoirs located near the top of a watershed, are often located on Class III streams. In that case, a project is not required to bypass flow unless flows are needed to meet minimum flows required at downstream POIs and/or the upper limit of anadromy. The Maximum cumulative diversion (MCD) is a long term watershed wide flow rate calculated to establish the amount of water needed for channel maintenance. The MCD is determined after a statistical evaluation of the percent change to the channel maintenance flow calculated at a POI. Instantaneous diversion limits are not placed on projects on Class III streams unless the project is found to fail one of the parameters outlined in Policy Section A.1.8.1. In that case there is a defined impact and it is quite possible the availability of water in the watershed is limited. Staff performed a survey of water availability to pending applications. The results are presented in Table 1 of the February 2010 revised Policy Information Sheet available on the Division's website. Table 1 compares the amount of water that could be authorized depending on whether the application were considered using existing guidelines and Policy drafts. Some of the projects in Table 1 were small reservoirs with small upstream drainage areas. The Table shows these projects would receive significantly more water under the February 2010 revised policy than in previous drafts.
G-4	Thomas Lippe/Dennis Jackson/Living Rivers Council	In the second paragraph of Section 2.2.1.3 quoted above, the phrase, "…the maximum cumulative diversion rate is set at the largest value of the sum of the rates of diversion of all diversions upstream of a specific location in the watershed" is in conflict with paragraph three of Section 2.2.1.3 which states that, "The maximum cumulative diversion rate criterion is equal to: five percent of the 1.5-year instantaneous peak flow."	The maximum cumulative diversion criterion is five percent of the 1.5-year instantaneous peak flow. It is the value that is compared against the sum of the rates of diversion of all diversions in the watershed. The sum of the rates of diversion for all diversions cannot exceed five percent of the 1.5-year instantaneous peak flow.

G-5	Thomas Lippe/Dennis Jackson/Living Rivers Council	The Policy document appears to have an inconsistent use of the term instantaneous with regard to flow. In hydrology, the term instantaneous flow means the flow over a very short period of time such as 15 minutes or less.In flood hydrology, the 1.5 year instantaneous peak flow is calculated from an analysis of the series of the maximum instantaneous flow from each year of record. The sample calculation of 1.5 year channel maintenance flows posted on the SWRCB AB 2121 website (Attachment 2 sample calculation of 1.5 year channel maintenance flows) demonstrate a calculation based on daily average discharges instead of instantaneous discharges. Using daily average values to calculate the 1.5-year flood will always result in estimates that are significantly lower than if the 1.5-year discharge was calculated with instantaneous data. Using the maximum annual daily average streamflow to calculate the 1.5-year discharge will provide a more conservative (lower) value of the MCD. Therefore, I recommend that the Policy be changed to define the MCD as 5% of the 1.5-year discharge calculated using daily average data instead of maximum annual instantaneous flow. However, the resulting discharge will significantly be less than the 1.5-year discharge defined by using the annual maximum instantaneous peak discharge that has been related to the bankfull discharge.	Staff used average daily flow in the development of the sample flow calculations. It is our understanding that the most common data that will be available to the Applicants and their consultants is the average daily data available through the USGS. Staff agrees with your suggestion that references to instantaneous flow data be replace with average daily data. There are more gages being added to the Policy area streams and many of those gages do record flow instantaneously. In the future as shorter time step data becomes available the Division may wish to require Policy calculations be made using data with a shortened time step.
G-6	Thomas Lippe/Dennis Jackson/Living Rivers Council	Section B.5.2.3-A, quoted above, recommends the use of the Peaks Over a Threshold (Partial Duration Series) to calculate the 1.5 year instantaneous flow. Part B.5.2.3-A.1 says to select a threshold so that an average of three peaks a year will be selected. However, it is not mentioned in Part B.5.2.3-A.1 that the peaks should be from distinctly different flood events, that is, the peaks over the threshold should be independent. The use of "peaks" from the same flood event will bias the result. The use of the partial-duration series (peaks over a threshold) procedure can produce good estimates of the 1.5- year discharge, but only if (a) independent peaks are used and (b) the recurrence interval is appropriately corrected by the use of Table 10-13 from Dunne and Leopold (1978).	The Commenter is correct. The "peaks" used in the Peaks Over Threshold method are suppose to represent flows from distinctly different flood events. Staff will consider this comment when making revisions to the policy.

G-7	Thomas Lippe/Dennis Jackson/Living Rivers Council	The ability of the Scaling Method to conservatively estimate the 1.5-year discharge at an ungauged location was tested by using Maacama Creek near Kellogg Big as the "ungauged" location and using Sulphur Creek near Cloverdale as the reference stream gauge. The 1.5-year discharge for Maacama Creek near Kellogg was calculated to be 3,440 cfs. The observed 1.5-year discharge for Big Sulphur Creek near Cloverdale was calculated to be 8,202 cfs. The Scaling Method was then applied using Big Sulphur Creek near Cloverdale as the reference stream gauge and Maacama Creek near Kellogg as the ungauged site (POD). The Scaling Method produced an estimate of 5,226 cfs for the 1.5-year discharge at Maacama Creek near Kellogg, overestimating the 1.5-year discharge by +1,786 cfs or +51.9%. The resulting MCD was overestimated by 89 cfs or 51.9%. Since the Scaling Method overestimates the 1.5-year discharge for Maacama Creek near Kellogg by 89 cfs or 51.9% there is a strong possibility that the channel forming discharges (bankfull) in Maacama Creek could be adversely impacted by the Instream Flow Policy.	Please see the response to comment L-28.
G-8	North Coast Stream Flow Coalition, Northern California River Watch	Watershed land use changes in the last 20, 30 or 50 years (depending on availability of stream flow gauge historical data), for instance, the Napa River watershed, have severely altered the natural hydrograph where deforestation, urbanization, contouring and channelization of streams change the storm peak flows. 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. 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?	Staff understands the Commenter's concern over the change in landuse and potential decrease if pervious surfaces that can assist the preservation of time base residence. The 10-year timeframe you referenced in your comment is a minimum requirement for stream flow gage period of record. The period was identified as the minimum period needed to reflect varying precipitation conditions expected in a particular watershed. The 10-year period was not proposed as a reasonable tiemframe over which to evaluate the change in resident baseflow in the Policy area. Staff will encourage applicants to analyze larger periods of record where available.
G-9	North Coast Stream Flow Coalition, Northern California River Watch	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 magnitude of the 1.5-year return flow calculated for a project should not have an effect on spring time or summer flows used by fish. The Policy protects spring and summer time flows by limiting the season of diversion to December 15 to March 31. Staff does understand the concern that urbanization can negatively impact infiltration and base flow residence time.

G-10	Patrick Higgins/Living Rivers Council/North Coast Streamflow Coalition	Band's (2008) observation about interaction between diversions is completely ignored. He asserts that if multiple diversions are operated that the Policy basin-wide flow depletion estimate of 5% may in fact total as much as 28% because of synergy. The SWRCB WRD continues to avoid the topic of this potential for interaction and none of the modeling methods recommended even have parameters that factor it in.	Please see the response to comment 1.2.1 in the Responses to Scientific Peer Review Comments on the Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams, June 2009.
G-11	Paul "Skip" Spaulding, Farella Braun + Martel LLP/Golden Vineyards	The policy drafters have made no real changes in the maximum cumulative diversion limitation guidelines. Accordingly, Golden Vineyards reasserts all of its comments on this subject set forth on pages 8-9 of Exhibit "A," which are specifically incorporated herein.	In the February 2010 draft policy, staff provided a cumulative diversion analysis. Staff are also considering recent suggestions to identify quantitative thesholds for use in evaluating site specific impacts to peak flows, which would be incorporated into the cumulative diversion analysis and the approach for determining a site specific maximum cumulative diversion.

Topic H: Site Specific Studies

Comment Number	Commenters	Comment	Response
H-1	Peter Kiel, Robert Wagner	Because the Regional Criteria are often not applicable, it is important for the Policy to recognize that alternative scientific approaches may not resemble the approach used to develop the Regional Criteria.	Section 2.2.2 of the draft Policy allows for site-specific approaches to develop criteria for parameters other than a minimum bypass flow, maximum cumulative diversion rate, or season of diversion. A description of the alternative approach and a study plan must be submitted to the State Water Board for review and approval prior to commencement of field work and analysis. The alternative approach and any proposed site specific criteria shall be consistent with the principles described in Section 2.1. Provisions for alternative approaches to site specific studies are described in Appendix C, section C.1.3.

H-2	Alan Lilly, Bartkiewicz, Kronick and Shanahan/North Gualala Water Company, Peter Kiel, Robert Wagner	We are pleased that the new draft of the policy explicitly recognizes that site-specific studies may be conducted and that the results of these studies may be used to develop proposed sitespecific criteria. However, there still may be some confusion regarding whether or not the regional criteria should be considered in situations where site-specific studies have been conducted. To eliminate this potential confusion, we request that the following sentence be added on page 6, at the end of the first paragraph of section 2.2.2: "When a site-specific study has been conducted pursuant to an approved study plan and a report of the study has been prepared, the regional criteria will not be considered for parameters for which proposed site-specific criteria have been developed."	Applicants may suggest using either the regional criteria parameter or parameters developed by site specific studies, or any combination of both. The commenter's suggested language does not consider outcomes in which the site specific study is not acceptable to the Division and/or DFG, nor whether issues raised during CEQA may require reconsideration of the regional criteria for theproject.
H-3	Sea Ranch Water Company	Add as a new second paragraph of Section 2.2.2: The regional criteria do not apply to, and will not be considered as parameters for, site-specific studies or site specific criteria.	This may not always be the case. As identified in appendix C, the applicant may propose implementing one or more regional criteria in combination with site specific criteria. Staff will consider including additional clarifying language in section 2.2.2.
H-4	Rudy Light	This section of the policy looks good on paper, but it is doubtful the approach will succeed when requested by an applicant. Criteria are in general too difficult to meet.	It is not clear which criteria the commenter is refering too. The criteria for minimum passage and spawning depths and favorable stream velocities identified in appendix C, section C.1.1.2.1.2 were based on a review of similar criteria derived from a variety of investigators. The level of flow necessary for upstream passage through shallow water constrictions depends on the ability of fish to negotiate specific water depths. This ability reflects predominantly body size, with larger bodied Chinook requiring deeper water than smaller bodied coho salmon. Criteria for critical depths needed for successful upstream passage are discussed in detail in Appendix G of the scientific basis report. The level of flow necessary for spawning reflects the size of the fish and other factors that influence habitat selection including depth, velocity, and spatial distribution and quantity of suitably-sized spawning gravel. Depth and velocities must be suitable over areas with suitable gravel at the correct time. Depth is generally limiting only in terms of shallowness, wereas there are lower and upper limits to suitable velocities for spawning. The criteria vary with species. As for upstream passage, larger bodied Chinook require deeper water than smaller bodied coho salmon. Criteria for critical depths and velocities needed for successful spawning are discussed in detail in Appendix G of the scientific basis report.

H-5	North Marin Water District	Page C-2, Section C.1.1.1 Reconnaissance Level Habitat Assessment. The assessment reach shall extend from the upper limit of anadromy to the ocean or to the confluence with a flow-regulated watercourse. How does this apply to Lagunitas Creek, which has been determined to be a flow regulated mainstem river and which is also a tidally influenced stream?	The policy defines a flow regulated mainstem river to be a river or stream in which scheduled releases from storage are made to meet minimum instream flow requirements established by State Water Board Order or Decision. State Water Board Order WR 95-17 directed amendment of Marin Municipal Water District's permits to require the District to provide minimum instream flows for protection of coho salmon, steelhead, and California freshwater shrimp in Lagunitas Creek. Therefore, Lagunitas Creek may be categorized as a flow regulated mainstem river.
H-6	North Marin Water District	Page 6. Section 2.2.2 Site Specific Studies: A site-specific approach may be proposed to develop criteria for parameters other than a minimum bypass flow, maximum cumulative diversion or season of diversion. Does this mean regional criteria must always be used for minimum bypass flow, maximum cumulative diversion or season of diversion, and that site-specific adaptation based on scientific data may never be utilized? How will criteria based on "a site-specific approach" be established and implemented?	Diverters may undertake site-specific studies to identify protective revised minimum bypass flow, maximum cumulative diversion rate, and / or season of diversion based on scientific data. The language identified by the commenter was included to encompass the possibility of a site-specific study using different parameters other than the minimum bypass flow, maximum cumulative diversion rate, or season of diversion. Appendix C describes the data and reporting requirements for the intial reconnaissance level habitat assessment, the development of the study plan from the results of the intial habitat assessment, and the reports documenting the results of a site-specific study. Criteria identified using a site specific approach will be established and implemented in the permit and/ or license for the proposed project, provided the site specific study is acceptable and the criteria as applied to the specific project are protective.
H-7	Association of California Water Agencies, Mendocino County Farm Bureau	The policy includes recommended site-specific study procedures. The only standard apparently applicable are the “principles”. These principles track, in more general form, the constraints reflected in the Regional Criteria. They likewise prioritize instream flow for fisheries over all other beneficial uses of water. There are no provisions to take into account impacts on other beneficial uses of water, feasibility or other factors. As previously discussed, projects not meeting the Regional Criteria must conduct expensive site-specific studies, but no regulatory certainty is provided. The policy offers no way to predict whether the study results will support a permitting decision by the SWRCB, and on what terms or conditions.	Projects not meeting the Regional Criteria have the option of conducting a site specific study. The Draft Policy contains guidelines on site specific studies in Appendix C. Site-specific studies may result in a revised minimum bypass flow, maximum cumulative diversion rate, and / or season of diversion based on scientific data, however the policy also allows development of a site-specific study using different parameters other than the minimum bypass flow, maximum cumulative diversion rate, or season of diversion. After the applicant develops proposed site specific criteria, the applicant would need to perform a daily flow analysis to demonstrate that the proposed diversion, will not adversely affect instream flow needs. Proposed project mitigation would be considered appropriate if the daily flow analysis shows there is no adverse affect from the project on instream flow needs. Results of the analysis will inform development of permit and license terms and conditions for the protection of fishery resouces. Because the site specific study focuses on fish protection it would be inappropriate to consider other beneficial uses of water to identify flows for protection of salmonids. Assembly Bill 2121 required the State Water Board to adopt guidelines for the protection of fishery resouces. Likewise, the regional and site specific criteria should reflect this requirement.

H-8	Sea Ranch Water Company, Martha Lennihan, City of Calistoga, City of St. Helena, Sea Ranch Form Letter	The Draft Policy contains a site-specific study approach that appears to allow exceptions to the regional criteria. Given the required studies, it would be extremely costly to pursue this alternative. However, because of the untenable impacts of the regional criteria, The Sea Ranch would have no choice. Even with such high cost, there is no certainty or reliability with respect to the outcome of the site-specific approach. The only applicable criteria prioritize fish flows over all other beneficial water uses. As with the regional criteria, there does not appear to be any provision in the draft Policy to take into account infeasibility or impacts to existing municipal users.	The proposed Policy was revised to clarify that site-specific studies may be conducted as an equal alternative to using the regional criteria, and the site-specific study provisions were given more detail and clearly defined expectations. Additionally, the discussion regarding the regional criteria was clarified to explain that the intent of providing regional criteria is to provide water right applicants an avenue for quicker processing of pending applications while still being protective of fishery resources. The regionally protective criteria provide applicants the opportunity to show that operation of their projects will not cause impacts to instream resources using data that would not be expensive to obtain as they assess whether water is available for appropriation. Similar to the regional criteria avenue, applicants who choose to pursue site specific studies, would need to perform a daily flow analysis to demonstrate that the proposed diversion, using the proposed site specific criteria, will not adversely affect instream flow needs. Proposed project mitigation would be considered apropriate if the daily flow analysis shows there is no adverse affect from the project on instream flow needs. Results of the analysis will inform development of permit and license terms and conditions for the protection of fishery resouces. Because the site specific study focuses on fish protection it would be inappropriate to consider other beneficial uses of water to identify flows for protection of salmonids. Assemby Bill 2121 required the State Water Board to adopt guidelines for the protection of fishery resouces. Likewise, the regional and site specific criteria should reflect this requirement. Staff prepared a Direct Cost Analysis report that evaluates the direct costs of reasonably forseeable methods of compliance, such as the costs of preparing permit applications, including required studies and analyses, and implementing fish and habitat protection measures as expressly required by the Policy. The revised report estimates that site specific studies costs are much lower than $1,000,000. (see Revised Direct Cost Analysis Report, Stetson Engineers, January 2010).
H-9	Sonoma County Winegrape Commission, United Winegrowers for Sonoma County	A minimum upstream passage depth criterion is set forth in Section C.1.1.2.1.1 (p.C-4). However, no explanation is provided describing why those particular depths are appropriate, their applicability to streams in these watersheds or likelihood and potential that those criteria can be met in typical tributaries throughout this area of northern California. Additionally, the same minimum depth criteria are being applied to juvenile rearing through the assumption (p. C-6), "the protection of spawning will also protect juvenile rearing." In geometry, A can be > than B, but that doesn't mean that B=A. Here the requirement for depth of flow end up the same but it is not clear how or why.	The criteria for minimum passage depths identified in appendix C, section C.1.1.2.1.2 were based on a review of similar criteria derived from a variety of published scientific evaluations. The scientific evaluations are discussed in the Scientific Basis Report, Appendix G.

H-10	Peter Kiel, Robert Wagner	[Policy] Section C.1.3 states: "The alternative approach and any proposed site□specific criteria shall be consistent with the principles described in Section 2.1." However, the principles identified in Section 2.1 are without foundation. For example, the second principle states; "Water shall be diverted only when streamflows are higher than the minimum instream flows needed for fish spawning, rearing, and passage." But it has not been established that if the unimpaired streamflow is already inadequate for spawning, rearing and passage, that a small decrease in flow in this range would have any adverse incremental effect on fishery resources. Or for that matter, it has not been established that if the unimpaired streamflow is in the range of flows suitable for spawning, rearing and passage, that a small decrease in flow in that range has a detrimental effect on fishery resources.	According to NMFS implementation and enforcement of a policy with the stated policy principles would minimize the take of listed salmon and steelhead and substantially promote the recovery of these species. NMFS fully supports rules that limit the approval of new appropriate water rights to only periods when flows are naturally high. Without minimum bypass flows water diversions have the potential to dewater streams or otherwise degrade almonid habitats, therefy exposing salmon and steelhead to stranding, desiccation, reduced growth or increased predation. Additionally, DFG agrees with the principles presented in the policy and believes that the proposals are generally protective of resources in anadromous streams. According to DFG, all of these principles and not a subset of these principles must be applied to all projects to ensure that water diversions minimize impacts on instream flow and associated beneficial uses.
H-11	California Farm Bureau	Since the regional criteria will not work because they are too protective to be reasonable, most diverters will likely be required to conduct site specific studies. The problem with the Proposed Policy is that there is no adequately described methodology to allow an applicant to know how to conduct these site specific studies. Furthermore, if everyone is conducting site specific studies, what good are the regional criteria? An even more troubling result of needing to conduct site specific studies because the regional criteria are unreasonably protective is the fact that when assessing these studies, the staff will continue to use the unreasonably protective standards underlying the regional criteria to assess the site specific studies. This will put the applicants into a never ending loop of not being able to use regional criteria because they are unreasonably protective, so they must conduct site specific studies or use a watershed approach, which staff will assess using the same unreasonably protective standards of the regional criteria.	The February 2010 revised policy clarified that site-specific studies may be conducted as an equal alternative to using the regional criteria, and the site-specific study provisions were given more detail and clearly defined expectations. Additionally, the discussion regarding the regional criteria was clarified to explain that the intent of providing regional criteria is to provide water right applicants an avenue for quicker processing of pending applications while still being protective of fishery resources. The regionally protective criteria provide applicants the opportunity to show that operation of their projects will not cause impacts to instream resources using data that would not be expensive to obtain as they assess whether water is available for appropriation. Criteria identified using a site specific approach will be established and implemented in the permit and/ or license for the proposed project, provided the site specific study is acceptable and the criteria as applied to the specific project have been shown to be protective. Assembly Bill 2121 required the State Water Board to adopot guidelines for the protection of fishery resouces. Likewise, the regional and site specific requirements should reflect this requirement. Given the requirements of Assembly Bill 2121, Staff do not feel that identifying standards that are protective of fishery resources is unreasonable.

H-12	Trout Unlimited, California Sportfishing Protection Alliance	Section C.1.2 describes the [site specific] studies to be conducted. The results of the study are reviewed according to section C.1.2.4, which states: "The analysis shall demonstrate the proposed diversion, in combination with senior diversions, will not adversely affect the instream flows needed for fishery resources." The question that Division staff must answer then is: What does it mean to "not adversely affect the instream flows needed for fishery resources"?	Staff is considering modifications to the policy to respond to this concern.
H-13	Trout Unlimited	[Section C.1.2.4] states the bypass flow is supposed to be "protective of all habitat types" but the draft does not define what that means. The TU/Wine recommendations included a possible definition of a spawning and migration flow, and we will adjust that based on the comments received by the SWRCB consultants and suggest it as a specific addition to the Policy.	The methodologies for estimating habitat flow needs that may be used to identify a site specific minimum bypass flow will vary depending on the habitat types that will be evaulated in the site specific study. It is important that the site specific bypass flow evaluated in the cumulative diversion analysis is protective of all salmonid habitat types present in the flow path. The habitat types specifically identified in Appendix C include passage habitat, spawning habitat, and juvenile rearing habitat. Staff are considering inclusion of the commenters recommended definition of spawning and migration flow in Appendix C.
H-14	Trout Unlimited	[The maximum cumulative diversion site specific study] is meant to be a geomorphic test. Section [C].1.2.2 states that the [maximum cumulative diversion site specific] study should show: "how the proposed site specific value does not lead to measurable long term changes in bankfull width and depth, or measurable long term changes to substrate grain size distribution percentiles." The draft Policy does not say how such a study would be evaluated, and we are not sure that there is any accepted scientific framework for making such an evaluation for small projects.	The fact that an accepted scientific framework may not presently be defined does not mean that no opportunity should be provided for applicants to propose site specific studies to address impacts to channel maintenance. The draft Policy allows the use of results of a site-specific study instead of the protective regional criteria to more accurately assess the fishery resources insteam flow needs at a particular location. In addition, Staff are considering incorporating into the policy quantitative thesholds for use in evaluating site specific impacts to peak flows.

H-15	Peter Kiel, Robert Wagner	The Regional Criteria minimum bypass flow (MBF) and maximum cumulative diversion (MCD) are numeric standards that are not directly tied to any biological performance objective that can be studied in the field. Put differently, the Regional Criteria MBF and MCD cannot be used to inform site specific studies. As discussed below, the Regional Criteria are too conservative for the vast majority of projects in the North Coast region, which will require them to conduct site specific studies in lieu of using the Regional Criteria. The Revised Policy does not provide biological objectives to inform site specific studies.	The February 2010 revised policy clarified that site-specific studies may be conducted as an equal alternative to using the regional criteria, and the site-specific study provisions were given more detail and clearly defined expectations. Additionally, the discussion regarding the regional criteria was clarified to explain that the intent of providing regional criteria is to provide water right applicants an avenue for quicker processing of pending applications while still being protective of fishery resources. The regionally protective criteria provide applicants the opportunity to show that operation of their projects will not cause impacts to instream resources using data that would not be expensive to obtain as they assess whether water is available for appropriation. Appendix C describes the data and reporting requirements for the intial reconnaissance level habitat assessment, the development of the study plan from the results of the intial habitat assessment, and the reports documenting the results of a site-specific study. The proposed policy includes specific thresholds for evaluation of minimum bypass flow recommendations and staff are considering incorporating suggestions to identify quantitative thresholds for use in evaluating site specific impacts to peak flows.
H-16	Coastal Action Group	Adverse impacts effecting salmonid habitat are not permissible (must be fully mitigated). If habitat is currently degraded (or of minimum flows necessary are not currently being met), this fact (and other conditions) should be noted in the Site Specific Study (noting that there is little pristine habitat in the geographic range of this policy) - there can be no justification for any reduction of flows and, in fact, current diversions (if they exist) may have to reduce frequency and rate of diversion until instream flow targets are met	This suggestion is noted; however, the State Water Board does not plan to place minimum bypass flow requirements on all existing water rights. The State Water Board already has continuing authority to protect public trust uses and to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water in the state, regardless of basis of right. The State Water Board's exercise of these authorities may require notice and an opportunity for hearing. As written the draft policy does not allow for reduction of flows necessary for protection of salmonids regardless of habitat conditions (pristine or degraded).

H-17	Coastal Action Group	Who determines the validity of site specific conditions and criteria needed to set target minimum levels? Certainly not the study. [The minimum flows necessary to support salmonid survival] should be determined by responsible agenc[ies] - SWRCB, DFG, and NMFS.What agency, with staffing components, will be responsible for verification of site specific information? If the responsibility falls to the SWRCB, will sufficient staffing be in place to assure verification? Perhaps one way to fill the technical review gap is to require peer review of all proposals?	Any proposed site-specific criteria shall be consistent with the principles described in Section 2.1. The State Water Board may consult with DFG and NMFS regarding study plans and study results. This process of consultation and review is already being used to evaluate projects under the 2002 DFG-NMFS draft Guidelines. If applicants choose to identify site specific depth and velocity criteria other than those provided in the draft Policy, the desired values, including scientifically defensible justification that considers the protection of habitat for threatened and endangered fish species, shall be provided in the study plan for State Water Board review and approval. Peer review of all proposals will involve resources and time. However, this option may be a consideration for alternative site specific studies.
H-18	Trout Unlimited	If it is applicant's responsibility to show that any level of cumulative diversions will not cause a measurable change in bankfull width and depth or substrate size distribution, the draft Policy may have established an insurmountable threshold for permitting. If the burden is on the Board or a protester to show that a proposed project will have such an effect, this hurdle would be insurmountable too, we would expect all small projects to pass muster. It is a sign of the draft's ambiguity that stakeholders cannot even agree on the likely affect of its adoption, beyond the fact that we both expect continued delays and disputes over studies. We all agree that the site specific rate of diversion standard cannot be applied directly for decision-making.	The commenter's suggestion that the evaluation of impacts to peak flows may be 'insurmountable' does not mean that no opportunity should be provided for applicants to propose site specific studies to address impacts to channel maintenance. As the science in this particular field of study develops new, and perhaps less onerous methodologies may become scientifically acceptable. The draft Policy allows the use of results of a site-specific study instead of the protective regional criteria to more accurately assess the fishery resources insteam flow needs at a particular location. In addition, Staff are considering incorporating suggestions to identify quantitative thesholds for use in evaluating site specific impacts to peak flows.
H-19	RWQCB 1	Regional Water Board staff supports the language in section 2.2.2 (site specific studies) requiring that fisheries habitat evaluations be conducted by a qualified fisheries biologist. We recommend similar language be added at the end of section 2.2.2 stating hydrologic analyses must be conducted by a qualified hydrologist or civil engineer.	Evaulation of the hydrologic analyses will be completed by qualified staff at the Division and revisions requested as necessary.
H-20	Dept of Fish and Game	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 of Fish and Game 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).	Comment noted. Staff will consider revisions to the policy to address this comment.

H-21	Coastal Action Group	What policy (or interim policy) will prevail if the site specific study is requested, while the site specific study is in process (including scientific and peer review)? Will the SWRCB allow existing conditions (failure to meet a minimum flow standard) to continue while studies and evaluations are going on? The policy indicates interim criteria, but the criteria (except for season of diversion) and application of same during the interim permitting process is unclear. If there is minimum flow criteria presently set by DFG, should it be held as the interim target or should the Regional Criteria be used?	Policy section 8.6 allows the State Water Board to consider what interim operating conditions an unauthorized diverter may be implementing when deciding whether or not to take formal enforcement action.
H-22	Coastal Action Group	What role will other responsible agency (DFG, Regional Boards and TMDLs, NMFS) play in development of site-specific and regional criteria? It is assumed that the development of such criteria, including licensing and permitting, is a CEQA based process - where noticing will be provided to responsible agency and interested parties. Under what framework will this noticing occur?	The regional criteria have been developed and are described in the draft policy. Site specific criteria may be developed on a case by case basis. The development methodology and resulting criteria are subject to review by the State Water Board, Department of Fish and Game, and National Marine Fisheries Service. For projects subject to CEQA, responsible agencies would receive noticing pursuant to the procedures identified in the CEQA guidelines. In general, CEQA documents for water rights projects will fully disclose any proposed mitigation, including minimum bypass flow, maximum rate of diversion, and season of diversion regardless of whether the mitigation is based on the regional criteria or a site specific study.
H-23	Coastal Action Group	[Site specific studies for the diversion season] would have to justify changes based on rainfall data and seasonal hydrology. The numbers related to seasonal rainfall patterns vary over time - where the only long range consistency shows that hydrologic events deliver less water - and possibly deliver it later. Thus, with these variable and inconsistent patterns - justification for changing the season of diversion would probably call for expansion of the Season of Diversion from November 1 to April 31.	The site specific studies for extending the diversion season shall evaluate whether the extended diversion season affects stream temperatures needed for maintaining adequate habitat conditions. As suggested by the commenter, this may involve examination of of seasonal rainfall patterns, however the site specific study will ultimately need to meet the requirements identified in Appendix C of the policy. It is not clear how the commenter estimated an expanded season of diversion form Nobember 1 to April 31. Any variation from the regionally protective season will require site specific justification, therefore what is protective in one location for a specific project may not be protective in another location.

H-24	Coastal Action Group	Site Specific Studies would have to provide sufficient information on how [the] proposed projects will meet minimum flow targets and [the] monitoring and enforcement mechanisms [that will be implemented] to assure compliance with maintaining target flows.	Appendix C, section C.1.2.4 describes the cumulative diversion analysis requirement to evaluate the effects of the proposed diversion, in combination with senior diversions, on instream flows need for fisheries. As described in section 7.0 and appendix F of the policy, applicants as petitioners shall submit a compliance plan for State Water Board review and approval. The compliance plan shall identify how the water diverter will comply with the terms and conditions of permits or licenses, and shall include a schedule for the construction of facilities and the implementation of mitigation plans wehre needed. This requirement applies to applicants and petitions regardless of whether terms and conditions are based on site specific studies or regional criteria.
H-25	Thomas Lippe/Dennis Jackson/Living Rivers Council	The wholesale replacement of regionally protective criteria with criteria to be developed in the future on an application by application basis using site specific studies introduces an unknown, but potentially vast degree of uncertainty into any evaluation of the Policy's effectiveness in protecting at risk resources. The Policy's failure to formulate any substantive guidelines for formulation of site specific minimum bypass flow or maximum cumulative diversions or establish standards of protectiveness that the site specific criteria must meet constitutes abdication of the AB 2121 duty to promulgate such criteria and principles. Moreover, the site specific study option re-introduces the state of affairs that existed before the passage of AB 2121. Thus, the Policy fails to comply with AB2121 because this provision represents a failure to establish "principles and guidelines" as required by this statute.	The February 2010 revised Policy clarified that site-specific studies may be conducted as an equal alternative to using the regional criteria, and the site-specific study provisions were given more detail and clearly defined expectations. Additionally, the discussion regarding the regional criteria was clarified to explain that the intent of providing regional criteria is to provide water right applicants an avenue for quicker processing of pending applications while still being protective of fishery resources. The regionally protective criteria provide applicants the opportunity to show that operation of their projects will not cause impacts to instream resources using data that would not be expensive to obtain as they assess whether water is available for appropriation. Any proposed site specific criteria are required to be consistent with the principles described in Section 2.1 of the proposed policy.
H-26	GD Cousins and DM Miles, Sea Ranch Form Letter	The policy allows the alternative of a scientific study however it has been estimated that this would cost in the order of $1,000,000. Again this seems a prohibitive burden for often small water companies and the communities they serve.	Staff prepared a Direct Cost Analysis report that evaluates the direct costs of reasonably forseeable methods of compliance, such as the costs of preparing permit applications, including required studies and analyses, and implementing fish and habitat protection measures as expressly required by the Policy. The revised report estimates that site specific studies costs are much lower than $1,000,000. (see Revised Direct Cost Analysis Report, Stetson Engineers, January 2010).

Comment Number	Commenters	Comment	Response
I-1	Patrick Higgins/Living Rivers Council/North Coast Streamflow Coalition, Kimberly Burr	AB 2121 and the proposed Policy also remain delimited in the area of application while acute problems needing immediate attention remain unabated in the Eel River (Higgins 2010) and the Klamath River basin, especially the Scott and Shasta rivers (Kier Associates 2010). The SWRCB WRD needs to exert its authority on the Scott and Shasta rivers because lack of flows due to dereliction of enforcement has created a fisheries and water quality crisis. The Scott River is flow depleted because of increased groundwater extraction and low flow levels are unprecedented. In addition, Shasta River flows were critically depleted by illegal water withdrawal from subsurface flows connected to groundwater.	Please see the response to comment 3.1.7 in Responses to Public Comments On the Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams, volume 1, January 2010.
I-2	Coastal Action Group	Why does [the proposed policy] not apply to areas above the Mattole River and south of the San Francisco Bay, where similar flow maintenance issues exist?	Please see the response to comment 3.1.7 in Responses to Public Comments On the Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams, volume 1, January 2010.
I-3	California Fisheries and Water Unlimited	The Flow Policy being considered by the Board is extremely limited to a portion of coastal rivers and streams. This policy should be expanded to include all coastal rivers and streams in California north of the Mattole River to the Oregon border and south of the San Francisco Bay to the Mexican border. Some of the most important rivers where endangered Coho salmon and threatened steelhead have been abused by the Board and the State of California regulatory agencies and the US NOAA Fisheries are: Eel River; Klamath River; Trinity River; Redwood Creek; Russian River; Carmel River; Salinas River, San Lorenzo River; Santa Ynez River; Santa Clara River; Ventura River; Arroyo Grande Creek; and many, many others rivers and streams. For this reason California coastal anadromous fisheries are been ignored by the regulatory agencies of the State of California.	Please see the responses to comment 3.1.7 in Responses to Public Comments On the Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams, volume 1, January 2010.
I-4	North Marin Water District, Coastal Action Group	Extend Policy exemptions to all streams where minimum instream flow requirements have previously been established by the Division of Water Rights or the Department of Fish and Game for the protection of fishery resources.	The commenter is referring to the exemption for flow-regulated mainstem rivers. The flows on a flow-regulated mainstem river are being maintained by scheduled releases of water from an upstream reservoir, and the manner in which such water releases occur are described in the water right permit for the reservoir .

I-5	North Marin Water District	The regionally protected instream flow criteria for season of diversion, minimum bypass flow, maximum cumulative diversion and the cumulative diversion analysis requirements do not apply to water diversions from flow-regulated mainstem rivers. However, diversions from these streams shall comply with the rest of this policy including the policy principles and the regionally protected criteria pertaining to on-stream dams. Lagunitas Creek has been determined to be a flow-regulated mainstem river; Novato Creek is not. Does this mean that the only policy principle which applies to Lagunitas Creek is to maintain channel structure? How can Novato Creek, which has a permit-required release for fisheries (and schedule determined by DFG), be determined to be a flow-regulated mainstem river?	The draft policy defines a flow-regulated mainstem river to be "A river or stream in which scheduled releases from storage are made to meet minimum instream flow requirements established by State Water Board Order or Decision." Lagunitas Creek has existing permits and licenses. Section 8.3 of the Draft Policy indicates existing permittees and licensees who are in compliance with their permit and license terms would not be affected by the policy. Section 3.3.2 of the Draft Policy indicates petitioners who have no plans to modify their projects in a manner that could result in reduced stream flow, and have no plans to move or add onstream storage would not be affected by the provisions of the policy.
I-6	Sonoma County Winegrape Commission, United Winegrowers for Sonoma County	It is not entirely clear how this draft policy will be applied to pending applications and minor changes to existing permits and licenses. On the one hand it is stated, "[t]he regionally protective criteria limit new water diversions" (Section 2.2.1.1, p. 4). Later in the document, Section 3.3.1 (p.13) addresses the procedure for approving applications filed prior to this policy's adoption. Some may track recommendations contained in the DFG-NMFS Draft Guidelines. Other projects, if determined not consistent with the DFG NMFS Guidelines (sic), "then all of the requirements of this policy shall apply." A clarifying chart or matrix would be helpful.	A flowchart for new and pending applications is provided in Appendix L, page L-1. A flowchart for new and pending petitions is provided in Appendix L, page L-2.
I-7	California Cattlemen's Association	The State Water Board currently has numerous water rights applications pending that have been on file for a long period of time and have yet to be addressed. In some cases, water users have been diverting water in accordance with the application on file. These water users should not be subjected to the Proposed Policy because in most cases and in no fault to their own, the applications have been on file with the Water Board for long extended periods of time and no action has been taken. In Section 3.3, the Proposed Policy references that, “This policy applies to applications to appropriate water, small domestic use and livestock stockpond registrations, and water right petitions.” CCA strongly urges the Water Board to revise the applicability language to specifically state that the Proposed Policy will only impact new applications to divert water, not those currently on file or awaiting approval.	Please see the responses to comments 6.0.27 and 12.0.14 in Responses to Public Comments On the Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams, volume 1, January 2010.

I-8	California Cattlemen's Association	CCA also opposes the application of instream flows to current water rights, existing stock pond registrations or pre-1914 adjudicated water rights.	Permitted and licensed diversions that are in compliance with their permits and licenses will not be affected by the policy. However, the State Water Board may impose instream flow requirements on existing water rights pursuant to the Board's authority to protect public trust resources and prevent the unreasonable use of water. The State Water Board's exercise of these authorities will involve a hearing if warranted. The Policy does not apply to diversions under riparian or pre-1914 water rights.
I-9	Marin Municipal Water District	We also note that Section 3.1 states that the draft Policy instream flow criteria were based on the needs of the "largest native fish in the policy area" and then goes on to make the completely unfounded statement that this will "be protective of smaller native fish ... ". This statement was made without a shred of evidence or support and is directly contradictory to the Division of Water Right's findings on Lagunitas Creek that the needs of some of the smaller species in the creek, an endangered shrimp in particular, would have to be met by balancing that need against the opposite requirements of the "larger" fishes in the stream.	The commenter refers to specific findings in State Water Board Order 95-17 for Lagunitas Creek, which, in section 6.3.4 states "The SWRCB concludes that the endangered species status of freshwater shrimp requires that special consideration be given to maintaining flows suitable to that species. Thus, although the summer flows recommended by DFG would be more desirable if providing habitat for salmonids were the only objective, the competing needs of providing suitable flows for freshwater shrimp and providing water for municipal use justify a lower flow." Policy section 3.1 states that "Instream flows that satisfy the needs of anadromous salmonids will also be protective of smaller native fish populations and fish habitat in general." This implies that it is more common that flows that protect salmonids will also protect smaller native fish population, but that there could be exceptions. In the course of developing information for the water right permit, the applicant would need to evaluate other site specific impacts not related to anadromous salmonids. The proposed policy does not change the State Water Board's obligation to comply with applicable law or to consider, when acting on applications to appropriate water, the relative benefit of all beneficial uses of the water concerned. (See Wat. Code, § 1257.)
I-10	Marin Municipal Water District	In Section 3.2 the draft Policy states that it applies to all streams and tributaries draining to the Pacific Ocean from the Mattole River to San Francisco and streams tributary to north San Pablo Bay. However, the impacted streams presented in Appendix K include a number of streams draining to San Rafael and San Francisco Bays and some water bodies that are not streams at all. Examples of the former, all in Marin County, would be Bill Williams Creek, Corte Madera Creek, Arroyo Corte Madera Del Presidio, Fairfax Creek, Larkspur Creek, Novato Creek, Spike Buck Creek, and San Rafael Creek. Examples of the later would be Pacific Ocean, San Francisco Bay, San Pablo Bay and Tomales Bay.	The creeks listed in the comment are North Coast streams located North of San Francisco and per Water Code Section 1259.4 are considered to be in the Policy area. The tributaries immediately above San Pablo Bay and San Rafael Bay are also located north of San Francisco and considered to be in the Policy area. The Policy is designed to protect salmonid fish species. Salmonids enter North Coast streams from the Pacific Ocean through Tomales Bay, San Pablo Bay and San Francisico Bay.

I-11	Casey Caplinger/Stacy Li/NOWWE	"The regionally protective instream flow criteria for season of diversion, minimum bypass flow, maximum cumulative diversion, and cumulative diversion analysis requirements do not apply to water diversions from flow regulated mainstem rivers." This is an unwise decision; it assumes that the reservoir upstream has an inexhaustible supply of water. By relaxing criteria, you accelerate the time when the water supply will be limited.	The flows on a flow-regulated mainstem river are being maintained by scheduled releases of water from an upstream reservoir, and the manner in which such water releases occur are described in the water right permit for the reservoir .

Topic J: Petitions

J-1	Marin Municipal Water District	The draft Policy still seems to be an attempt to use an empirical approach to determining in stream flows when it would seem that a more site specific approach would be required to address the diversity of situations on North Coast streams. As an example, MMWD's current instream flow requirements were set after many years of study, many pages of written and oral comments by interested and affected parties and several weeks of public testimony. Analyzing and balancing the requirements of the various parties and the environment took Division of Water Rights staff several years after all of the data was received. Over the 13 years since that the Decision on these instream flows was finalized, the requirements have done a good job of protecting instream flow values while allowing a continued reliable water supply for MMWD's almost 200,000 customers. As pointed out in our previous comment letter, under the terms of the draft policy none of the District's water supply projects would be permitted. It seems inappropriate that such an empirical policy would yield results so different from the exhaustive site specific studies done and public process completed by District and the Division of Water Rights such a short time ago. This is of concern in that, while the draft policy exempts the terms of current permits and licenses, it states that petitions to modify those permits and licenses must comply with the draft policy. This would place MMWD and others in the position of losing its existing water rights should it decide to petition for a Temporary Urgency Change to its permits or should it petition for a Change in Place of Use of Method of Diversion. We continue to believe that petitions to change existing water rights for community water supply should be exempt from the policy.	As described in sections 3.3.2.1 and 3.2.2.2 of the proposed policy, certain requirements of the proposed policy would apply to change petitions that may result in decreased flow in a stream reach or that involve moving or adding an onstream dam. The commenter appears to assume that, if the proposed policy is adopted, consideration of a change petition necessarily would entail application of the proposed policy to the underlying permit or license as a whole. To the contrary, the proposed policy makes clear that only the incremental impacts of the proposed change would need to be evaluated in accordance with the proposed policy. Similarly, any conditions of approval would be tailored to address the incremental impacts of the proposed change. Staff is considering modifying section 3.3.2.2 to further clarify this issue. Because change petitions, like applications, have the potential to decrease instream flows, change petitions should not be entirely exempt from the proposed policy.

J-2	Marin Municipal Water District	Section 3.3.2.3 implies that the Section 1707 petition process, whereby existing water rights can be dedicated to environmental uses, allows riparian water rights, which traditionally do not allow diversion to storage, to be converted into appropriative storage diversion rights and then compounds this unusual invitation by stating that such applications would be given expedited processing. Since Section 106 states that domestic and irrigation uses are the highest priority it would seem that this extraordinary offer would contradict the Water Code and go against the very reason for this Policy in the first place, the inability of the Division of water Rights to process the large backlog of North Coast water rights applications.	Section 3.3.2.3 recognizes that a riparian water right holder may file an application for an appropriative storage right, together with a petition under section 1707 to dedicate flows under the riparian right to instream beneficial uses. Section 3.3.2.3 is not intended to imply that a riparian right can be converted to an appropriative storage right. In addition, section 3.3.2.3 is consistent with Water Code section 106. First, section 3.3.2.3 does not obligate the Board to expedite petitions and applications that will result in enhanced conditions for fish and wildlife at the expense of applications to appropriate water for domestic or irrigation purposes of use. Section 3.3.2.3 provides only that the Board will expedite the processing of petitions and applications that will enhance conditions for fish and wildlife where feasible. It also merits note that an application for a storage right that accompanies a section 1707 petition may itself be an application to appropriate water for purposes of domestic or irrigation purposes of use. Finally, expediting the processing of an application does not change the priority of the application, which as a general rule is based on the date when the application was filed.
J-3	North Marin Water District	Petitions for change to existing water rights for community water supply should be exempt from the Policy.	The Policy should apply as described in sections 3.3, 3.3.1, and 3.3.2.
J-4	North Marin Water District	Page 14, Section 3.3.2.1 Petitions That Will Not Result in Decrease Flow in the Stream Reach: The policy requirements for diversion season, minimum bypass flow and maximum cumulative diversion do not apply to petitions that do not result in decreased flow in the stream reach. Moving the existing NMWD point of diversion from the Coast Guard Wells to the Gallagher Wells could be argued to decrease flow in the stream reach between Gallagher and the Coast Guard, but Lagunitas Creek is a flow-regulated mainstem river-so what set of criteria from the proposed Policy applies?	As described in Section 3.3.2.1 the Policy does not apply to moving points of diversion that do not alter the instream flow requirements established for a flow regulated maintem river. Lagunitas Creek is considered a flow regulated mainstem river.
J-5	North Marin Water District	Page 14, Section 3.3.2.1 Petitions That Will Not Result in Decreased Flow in the Stream Reach: Petitions that do not result in decreased flow in the stream reach but involve moving or adding an onstream dam shall comply with the permitting requirements for onstream dams contained in Policy Section 2.4. Would increasing Stafford Lake storage capacity with stop logs at the existing spillway flood control slot be considered adding an onstream dam?	A limited review of the water rights for Stafford Lake on Novato Creek indicates there are water right terms and conditions that include instream flow requirements below the dam. Increasing storage capacity will likely require obtaining additonal water rights. The water rights application process for approval of increased storage to an existing onstream dam may not require the removal of the existing onstream dam. The application process will follow the general procedures described in policy section 3.3 et seq.

J-6	North Marin Water District	Page 14, Section 3.3.2.2 Petitions That May Result in Decrease Flow in the Stream Reach: Approval of a petition for change or extension of time may result in an incremental increase in the amount of water diverted as compared to the amount of water that would be diverted if the petition were denied. For permits, the incremental increase is equal to the full face value of the permit minus the amount of water put to beneficial use in compliance with all existing permit conditions. Does this refer to a permit for which a time extension is sought?	This text refers to permits for which any type of change is sought, including time extensions. For example, approval of a petition to extend the deadline to apply water to beneficial use might allow a permittee to use more water than the permittee had used or could use before the deadline in the permit. Similarly, approval of a petition to change the authorized place of use might allow a permittee to use more water than the permittee had used or could use within the original place of use.
J-7	City of Calistoga, City of St. Helena	Previously, we understood that it was the intention of the Board that the Policy was to apply only to new water users or new water rights applications for new or increased water diversions. Calistoga is an existing water user operating under existing water rights (licenses that were perfected decades ago) from the SWRCB for municipal supply. We anticipated that this draft of the Policy would clearly provide that existing permitted and licensed projects, which are operated per the terms of said permits and licenses, would not be not subject to the Policy. However, our preliminary assessment is that the revised Policy might apply to the City if the City petitions for any Board actions, even if such actions are minor and do not result in increased water diversions. If the Policy were applied to the City's existing rights if the City petitions for an extension of time or change, it could be physically infeasible for the City to comply with the new seasons of diversions, diversion caps, and bypass flow requirements set forth in the proposed regionally applicable criteria. These criteria could leave our City with a severely limited water supply for lengthy periods of time. Even if the required infrastructure and operational changes were physically feasible, it could be economically impossible for the City to make them.	The Deputy Director for Water Rights, Victoria Whitney, responded to this comment by letter dated March 25, 2010. As stated in Ms. Whitney's letter, certain requirements of the proposed policy would apply to change petitions that may result in decreased flow in a stream reach or that involve moving or adding an onstream dam (as described in sections 3.3.2.1 and 3.2.2.2 of the proposed policy). The applicability of the proposed policy to these types of change petitions has not changed since the initial draft of the proposed policy was released in December, 2007. Moreover, no basis exists for the commenter's apparent assumption that the proposed policy would be revised to clarify that the policy does not apply to change petitions. The commenter also appears to assume that consideration of a change petition necessarily would entail application of the proposed policy to the underlying permit or license as a whole. To the contrary, the proposed policy makes clear that only the incremental impacts of the proposed change would need to be evaluated in accordance with the proposed policy. Similarly, any conditions of approval would be tailored to address the incremental impacts of the proposed change. Staff propose to edit section 3.3.2.2 to further clarify this issue.

J-8	Martha Lennihan	Your letter of March 25th to The Sea Ranch and the City of St. Helena, and your March 27th e mail to The Sea Ranch, are being read by many to mean that any conditions resulting from application of the policy due to an incremental increase in diversion would apply only to that incremental increase. This is supported by your statement in the March 27 e mail that: "the policy …will only apply to the incremental increases in diversion …" The draft policy itself states that the incremental increase will be evaluated, but goes on to state "The results of the evaluation may be used to develop terms and conditions for amended permits and licenses." (page 14). This reading that the Policy will be the basis for amendment of existing permits and license is buttressed by the draft Policy's recitation of the SWRCB continuing authority to amend existing permits and licenses (Section 8.3) and similar provisions. If the Policy is not intended to impact existing uses, these sections would not be relevant. As presently drafted, the Policy appears to contemplate potentially enormous impacts to existing uses. If the Policy is to be applied differently, as you now represent, that needs to be clearly set forth in the Policy.	See response to comment number J-7.
J-9	Martha Lennihan	Furthermore, where, as here, relatively minor changes are needed to existing water rights to conform the water right documentation to the reality, and the Permittee remains within the volume and rate of water authorized under the permits, the Policy should not apply. It would be very helpful if the Policy reflected this.	See response to comment number J-7. Also, please note that the policy would apply where a permittee "remains within the volume and rate of water authorized under the permits" if the permittee did not divert and use the maximum amount authorized under the permits prior to the deadline to complete application of water to beneficial use. Under these circumstances, the policy would apply to the incremental increase in diversion volume or rate that would be allowed if the Board were to approve a time extension that would allow the permittee to maximize diversion and use under the permits.
J-10	Martha Lennihan	As drafted, the Policy would have significant adverse impacts to existing users, with attendant environmental impacts. We urge that petitions be removed from the purview of the policy. Another approach is to remove municipal users from the policy purview; it appears that they were not considered in its preparation.	See response to comment number J-1. The potential impacts of the proposed policy on municipal water use has been considered. (See Appendix D to the Substitute Environmental Document.) Staff do not believe that a blanket exemption for municipal users is warranted.

J-11	Sea Ranch Water Company	The Draft Policy is complex and difficult to understand. For example, it often refers to 'new applications' and 'new diversions'. If so limited, it would reduce concerns considerably. However, other language indicates that it may apply to the entirety of existing water rights when a change or extension petition is needed (as is common for many reasons, Including very minor changes). If we misunderstand the policy, that would be another reason to re-structure this process. It needs to be comprehensible to the public and the regulated community.	See response to comment number J-1.
J-12	Sea Ranch Water Company	The Policy should be amended to clearly provide that (a) the Policy, and any conditions of approval imposed in connection with change or extension petitions to existing water rights, will apply only to the incremental increase in diversion resulting from the change or extension petition; and (b) the incremental increase in diversion will be accounted for by any diversions which occur in a manner consistent with those conditions of approval (e.g. occurring during a more limited season of diversion, and/or when certain bypass criteria are being met). This is not set forth in the current draft Policy, but is the import of the second to last paragraph of Ms. Whitney's March 25th letter. This is essential to avoid the likelihood that the Policy will cause the untenable impacts described in our March 23, 2010 letter to you. Limiting the Policy to the evaluation of the incremental increase is not sufficient to avoid these impacts. Insert at the end of Section 3.3.2.2: Any conditions of approval imposed in connection with change or extension petitions to existing water rights will apply only to the incremental increase in diversion resulting from the change or extension petition. The incremental increase in diversion will be accounted for by any diversions occurring in compliance with those conditions of approval of a change or extension petition (for example, occurring during a more limited season of diversion, and/or when new or increased bypass criteria are being met).	See response to comment number J-1. The comment that the incremental increase in diversion should be "accounted for by any diversions which occur in a manner consistent with those conditions of approval" is unclear.
J-13	Casey Caplinger/Stacy Li/NOWWE	Petitions that will not result in decreased flow in a stream reach. This is an extremely ill-advised policy. If a project diverts water, it will decrease flow. SWRCB assumes that a large upstream reservoir will compensate for this water withdrawal. However, at some point the reservoir's water supply will be exhausted. Then you will have a permitted project without protective terms and conditions.	This comment confuses water right applications and change petitions. Unlike applications, not all change petitions have the potential to decrease instream flows. For example, changing the authorized point of diversion to a downstream location would not, by itself, decrease instream flows. To the contrary, such a change would increase instream flows in the stream reach between the upstream and downstream points of diversion. The exemption for change petitions that do not involve moving or adding an onstream dam, and will not result in decreased flows, is based on the fact that such change petitions will not adversely affect instream beneficial uses. The exemption is not based on the assumption that large upstream reservoirs will compensate for water withdrawals.

Topic K: Small Domestic Use

K-1		In 1999 we invited the DFG onto our property for advice and permission to repair our much in need, eroded, stream bed. We did the work and complied with all their concerns. We then applied for, and received, a Small Domestic Use registration for the 40 plus year old pond associated with the aforementioned stream. As is current policy we have renewed our registration every five years. My concern is what will happen when we next apply to renew our registration under the new proposed guidelines. I have expressed these concerns in prior correspondence. My wife and I received a letter from Tam M. Doduc addressing our concerns. In the letter Ms. Doduc stated we should not worry as we already had a Small Domestic Registration. The inference was we had complied once and would not be subject to further scrutiny. Please consider 3.0 POLICY APPLICABILITY, including and note 3.3 Water Right Actions Covered by the Policy. "This policy applies to applications to appropriate water, small domestic use and livestock stockpond registrations and water right petitions." We have yet to find verbiage in this document that allows renewal of Small Domestic Pond registrations without applying under the new policy. There is no assurance from one registration period to the next of continuance without great expense and effort. During the first renewal under the revised policy and or subsequent renewals, we will be at risk of DFG imposed studies, permits and resultant construction. This would be an unsustainable burden. Historically there has been good reason Small Domestic ponds were handled differently than other water rights applications. Their small size, and therefore impact, has been recognized as insignificant when compared to other impediments regards instream flow concerns. This is truly still the case. Please assure my wife and I through written policy that our farm is not in jeopardy. There must be a way found to unencumber small landowners from the potential disastrous reach of this revised policy.	Staff is considering revising the policy to indicate that it would not apply to existing small domestic use registrations/livestock stockpond registrations that have contacted and received a certification from the designated representative of the Department of Fish and Game. Typically if the initial registration received terms and conditions for approval from the Department of Fish and Game the policy may not apply.

Topic L: Water Availability Analysis

L-1	NMFS	A sound policy to protect fishery resources should also seek to protect all life stages of salmonids. In the policy area, flow and potential water supply is relatively abundant only during winter months. The current draft policy provides for exceptional protection of flows that facilitate spawning and migration of salmonids in small (Board of Forestry defined) "class I" streams. However, some minimal cumulative loss of opportunity for spawning or migration due to winter water diversions should be preferable to significant loss of summer rearing habitat due to summer diversions or significant fish mortality due to stream flow reductions during springtime diversions for frost protection. Minimal cumulative loss of spawning opportunity would conserve spawning opportunity for fishes migrating at diverse times (e .g., late running as well as early running fishes). For example, the number of salmonid spawning and passage days probably should not be reduced from estimated unimpaired conditions by more than about 10% during any given month. The SWRCB's draft policy provides reasonable criteria for establishing what constitutes a salmonid spawning or passage day. Any additional reduction (e.g., 15% within a given month) should only be allowable if there is clear and substantial reduction of impacts from recent historic water diversions during the non-diversion season of April 1 to December 14.	Comment noted.
L-2	North Coast Stream Flow Coalition	When a Watermaster is involved water users must consult with the Watermaster to determine if water is available for use in a stream segment that has been adjudicated. If the Watermaster informs the applicant for water use that there is no water available, then the applicant will know up front that there is no water available for diversion. Shall the Division of Water Rights implement a screening process whereby all applicants must first be screened to see if there is a Watermaster involved, so that the public and the SWRCB does not have to use resources necessary for an application process for a water right permit?	The Division already does this. The State Water Board is aware of all of the adjudicated watersheds throughout California. All new applications are screened by Division staff before acceptance. Any new application for water from an adjudicated watershed is denied.

L-3	Rudy Light	To sum up, the Minimum Bypass Flow requirement is a project killer to small diversions. As I wrote for the August 5, 2008 workshop, "If this policy is adopted, especially with the Minimum Bypass Flow and Maximum Cumulative Diversion requirements, there will never ever be another pond built on a small drainage." As mentioned in the previous paragraph, I provided a table and graph which showed the number of actual permissive days of diversion for a variety of watershed areas and annual stream flow rates, and I concluded, "Unless your drainage area is at least 6,400 acres or 10 square miles, you'll never be able to build a pond." I still stand by these words, the possibility of exemption from Minimum Bypass Flow requirements for projects above the Upper Limit of Anadromy notwithstanding. The exemption criteria for projects above the Upper Level of Anadromy are discussed in Appendix A.1.8.1 and A.1.8.2. The three criteria plus the analyses required in Appendix B Sections B.3.5.4, B.3.5.5 and B.3.5.6 do not appear to be viable except for a very small number of projects. Moreover, it is doubtful that the Case by Case exceptions found in Section 9 would be allowed except under very rare circumstances.	Comment noted. However, the commenter did not submit the analysis supporting these conclusions, therefore staff is unable to determine if the commenter applied the Policy correctly. Staff has completed its own analysis of various projects within the Policy area and finds that ponds with a drainage areas much less than 6400 acres are viable projects under the Policy.
L-4	Peter Kiel, Robert Wagner	No project under application was evaluated in the December 2007 Scientific Basis to observe effects of proposed diversion restrictions on flows important for fishery resources or on diversion project yields. At the February 2008 workshop, four applications were presented as examples, illustrating the required bypass rate and impact on average project yield. No information was provided about the effect of diversion restrictions on fishery resources at those locations. In the February 2010 production of documents, the only evaluation of projects under application was provided in "Table 1 – Summary of Modeling Results" (attached to the Information Sheet) purporting to show how nine current applications would fare under the Revised Draft Policy. Only two sentences were used to describe or discuss this table. Table 1 shows the required bypass and the average project diversion yield associated with the Revised Draft Policy. Table 1 does not disclose the effect on fishery resources at these locations other than to assess whether these projects meet some of the regional screening criteria.	Comment noted. Staff is confident the regional criteria are protective of instream resources. Therefore if the project meets the regional criteria at the points evaluated, this can be equated to a determination that the project does not cause an effect to fishery resources at that location.

L-5	Peter Kiel, Robert Wagner	Table 1 shows a bypass of zero for five of the nine projects. This suggests that those projects would meet the requirements outlined in Section A.1.8.1 of the Revised Draft Policy which allows zero bypass for projects located on Class III streams so long as three measures of downstream flow conditions remain unchanged. However, this conclusion is misleading. Wagner & Bonsignore obtained from Water Board Staff the electronic spreadsheets from which the information in Table 1 was derived. Review of these spreadsheets revealed (a) not all of the flow tests set forth in the Revised Policy were performed, (b) flow tests were applied farther downstream than appropriate, thus muting the flow impact, and (c) the tests performed showed the projects violated an impacts test, but those impacts were deemed insignificant and ignored.	Wagner and Bonsignore were provided the spreadsheets prepared by Water Board staff, in an attempt to be transparent with the decisions and thinking behind the development of the Revised Policy. Staff at Wagner and Bonsignore were forewarned prior to receipt of the spreadsheets that they were internal working documents and that were used to inform Water Board staff of the affects the Revised Policy may have on pending projects. Because they were working documents not all results and conclusions reached by staff would be easily attainable. This was explained to the staff at Wagner and Bonsignore. Staff at Wagner and Bonsignore were encouraged to call with any questions they may have when reviewing the spreadsheets. Water Board staff received no such phone calls during Wagner and Bonsignore's review. Therefore it can only be concluded that staff at Wagner and Bonsignore may not have had a full understanding in how Division staff used the working documents to review the effects of the Revised Policy. To respond directly to Wagner and Bonsignore's comments, (a) all flow tests set forth in the Revised Policy were performed or a conclusion was drawn based on the experience and proffessional judgement of the Water Board staff, (b) flow tests were applied at appropriate locations based information available in Division files and proffessional judgement, thus the flow impacts of the evaluation are reasonable, and (c) the project evaluations that did not pass impacts tests, only failed due to very very minor changes in flow and thus it was very logical to deem them insignificant. All results and or conclusions based on proffesional judgement were discussed with experienced Division staff with a high level of knowledge regarding the issues within the North Coast. Results and assumptions were appropriate.
L-6	Sonoma County Winegrape Commission, United Winegrowers for Sonoma County	Attached to the Information Sheet is a list of nine projects comparing acre-feet collected using the new Flow Policy versus DFG-NMFS Draft 2002 Guidelines. It's a start but it is not entirely clear if we can assume these results therefore meet all the new policy's requirements and conditions and these nine projects could be approved and built using this policy or simply Table 1 is a set of data showing modeled bypass flows. Demonstrating that on-the-ground projects can actually pass the proposed tests and get beyond the roadblocks is critical after years of Draft Guidelines and waiting but no clear path leading to applications being approved or denied.	Water Board staff is confident the projects compared in Table 1 can pass the Revised Policy's proposed tests. The yield shown in Table 1 is the approximated yield for the project based on operation of the project under the parameters laid out by the Revised Policy. The projects shown in Table 1 should be able to demonstrate that water is available for their project.

L-7	Napa County Farm Bureau, Mendocino County Farm Bureau, Swanson Vineyards and Winery, David Garden	The proposed Policy does not explain how these new requirements would affect real world projects named in pending water right applications and petitions in the North Coast. This effort will require many hours of hydrologic modeling by water resource engineers to understand how it will affect a specific pending project. It is our understanding that most reservoir projects will fail the regional criteria analysis and thus require site specific analyses, for which no clear indication is given as to how a pending project would be permitted.	Comment noted. It should be noted that most of the real world projects named in pending applications are for existing facilities that were built prior to receiving an approval from the State Water Board and are therefore unauthorized. Unbuilt reservoir projects should have a much easier time meeting the policy criteria during the design phase. Unbuilt reservoir projects can attempt to design a project that meets the policy criteria and still gets the applicant a sufficient yield. Staff's analysis of some pending water rights projects shows that the regional criteria can be met. Adoption of the Policy should not be held up while water resource consultants attempt to determine how the Policy will affect unauthorized diverters.
L-8	Trout Unlimited	The draft Policy does not adequately define a standard for evaluating the cumulative effects of numerous small diversions within the policy area. The analysis in Appendix B.5.3.4 does not evaluate cumulative effects using the change from unimpaired conditions, rather the evaluation allows any level of cumulative effects, so long as the new project does not change things very much. The Administrative Record does not contain any information to demonstrate that the existing conditions in each stream within the policy area are sufficient to maintain instream flows for the protection of salmonids and other natural resources. There is also no information in the record that could support a finding to the effect that no additional impairment greater than a loss of one day of average daily flows in any stream within the policy area is tolerable. Existing conditions within streams in the policy area vary a great deal. As worded, Appendix B.5.3.4 could allow an endless number of small incremental effects. The Board could close this "loophole" and make the Policy function as the Response to Comments says it does by amending sections B.5.3.4 and B.5.3.6 to require a comparison of impaired conditions at the time of Policy adoption with impaired conditions including the project and all other projects that have been permitted since Policy adoption.	Comment noted. Based on comments received on this issue, staff is considering making a change to the analysis that would take into account an allowable percent change in days from unimpaired to impaired conditions. This would be applied to the analysis of water availability using the regional criteria. Failure to pass the test would suggest further site specific studies are needed before a decision could be made on cumulative effects and water availability.
L-9	Trout Unlimited	But the basic flaw - all existing conditions are considered equal - would remain. Rather than "preserve the condition that existed at the time of Policy adoption," we would amend the Policy to set a meaningful cumulative effects standard. Put differently, the orientation of the Policy should not be to preserve existing conditions, but to promote good conditions.	Comment noted. Based on comments received on this issue, staff are considering making a change to the analysis that would take into account an allowable percent change in days from unimpaired to impaired conditions. This would be applied to the analysis of water availability using the regional criteria. Failure to pass the test would suggest further site specific studies are needed before a decision could be made on cumulative effects and water availability.

L-10	Russian Riverkeeper	In some streams on the Russian River notably the Maacama Creek watershed as detailed in the reports by Kondolf et al show that flows can bottom out at zero during spring frost control periods. In such a stream it is not clear how the Policy would ensure the effects of a new diversion be minimized and whether that would meet the Policy and AB2121 mandates. The Policy does not seem to address existing impairments for flow and directs applicants to perform incremental effects but not total cumulative effects with the effects threshold being a minimum bypass flow that meets requirements for all life stages of salmonids. In the Daily Flow Studies and Site Specific Studies sections of the Policy an incremental effects test is applied but not an adequate cumulative effects test, if this flaw is not addressed the Policy would seem to violate CEQA provisions for addressing and mitigating cumulative effects of a project in combination with all other projects. With no clear definition or analysis of what level of cumulative effects would be tolerable or acceptable under this Policy, the mandate of AB2121 to ensure the protection of all life stages cannot be achieved.	Comment noted. Based on comments received on this issue Staff are considering making a change to the analysis that would take into account an allowable percent change in days from unimpaired to impaired conditions. This would be applied to the analysis of water availability using the regional criteria. Failure to pass the test would suggest further site specific studies are needed before a decision could be made on cumulative effects and water availability.
L-11	Russian Riverkeeper	It is not clear to us that the Water Availability Analysis (WAA) will reflect all diversions and produce an adequate environmental baseline as required under CEQA section 15130 1-(A) which reads; "(A) A list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency" (emphasis added). This requires that the WAA reflect all diversions and would require possible multi-seasonal analysis of existing flows as some illegal diverters might take more or less water in a given water year. Additionally illegal diversions might be taking water outside the Policy's Dec 15 to March 15 primary diversion period so analyzing year-round flows is necessary to adequately describe the existing conditions/environmental baseline to ensure new permits do not create violations of flow minimums.	The purpose of the water availability analysis is to allow the State Water Board to make a decision about the availability of water under Water Code section 1375. The finding is made regarding the pending application being reviewed and all senior rights of record with consideration for instream beneficial uses during the applied for season, which in most cases will be December 15 to March 31. Water rights are based on first in time first in right. Therefore the water availability determination only needs to account for senior diverters and the proposed project. If the diverter is not proposing to divert beyond March 31, the effects of that diversion cannot have an effect on summer time diversions as the commenter suggests. If the diverter will not be diverting in the summer there is no need to determine if water is available for the diverter to divert during that time period. This is a basic fundamental of water rights administration. The CEQA analysis regarding all known and foreseable projects is a requirement of CEQA and will be considered during the seperate CEQA review for each project. Again the CEQA review will be based on the effects of the proposed project during the time of year they are proposing to divert. If conditions outside the proposed diversion season are being affected by illegal diverters, that is an enforcement issue and should not be addressed in a proper water availability analysis. This Policy describes the requirements for making a water availablity determination. CEQA analyses are a seperate issue and will be addressed on a case by case basis.

L-12	North Marin Water District	Page 7. Section 2.3 Assessment of the cumulative effects of water diversion on instream flows: Appendix A, Sections A.1.B.1 and A.1 .B.2 specify exemption criteria for projects above anadromy. The exemption criteria are only for Class 2 or Class 3 streams. Why is there not such an exemption for Class 1 streams?	The purpose of the Policy is to maintain instream flows for the purposes of protecting fishery resources. Fish are not present in Class 2 and Class 3 streams. Therefore, if a project on a Class 2 or 3 stream can demonstrate they do not cause an effect to locations where fish are present they are exempt from certain aspects of the Policy, not the entire Policy. Fish are present in Class 1 streams. Diverters on Class 1 streams must abide by a minimum bypass flow and a maximum rate of diversion or effects to fishery resources are likely to occur. Therefore diverters on Class 1 streams cannot be exempt from the Policy. The case by case exception described in Policy section 9.0 is an option for any diverter. However, the State Water Board must be able to determine the criteria set forth in section 9.0 are met before allowing an exemption.
L-13	Coastal Action Group	We notice that the policy applies to only water rights applications. We assume in calculations for diversion limits that will maintain minimum flows in streams, that existing water rights will be considered in the calculation (this would include licensed and unlicensed diversions from subsurface flows that are hydrologically connected). In the case, if it is determined that the exiting water rights have reached the upper limit (or beyond) of acceptable diversion, does that mean no new water rights can be approved?	If the analysis for the pending project cannot demonstrate that operation of the project in combination with senior diverters will not effect instream fishery resources, then water is not available for diversion and a permit cannot be issued.
L-14	Coastal Action Group	Within the policy language, the basis of all these questions and applicable CEQA review of this policy, inclusive of all subsequent applications down the road (site specific plans, exceptions, stream blocking structures, etc.), there seems to be a fundamental absence of enforceable standards. That is there is no clear line of standards for making determinations of how much total diversion is allowable - or - to put is another way, what are the absolute limitations of Cumulative Impacts from diversion that are allowable on any particular stream? Questions regarding enforceable standards are aggravated by a lack of monitoring and reporting controls. Will the policy allow an infinite number of small impacts that cumulatively add up to more than is acceptable if our goal if fish survival?	Comment noted. Based on comments received on this issue Staff are considering making a change to the analysis that would take into account an allowable percent change in days from unimpaired to impaired conditions. This would be applied to the analysis of water availability using the regional criteria. Failure to pass the test would suggest further site specific studies are needed before a decision could be made on cumulative effects and water availability. The site specific studies for the maximum cumulative rate of diversion are being adjusted to consider the flow management objective for diversions above spawning flows presented in the TU/WB/ESH Joint Recommendations.

L-15	Dept of Fish and Game	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 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 an 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. DFG provides suggested changes to section B.5.3.4 and B.5.3.6.	Staff recognize the concerns of many commenters regarding a limitation to the amount of cumulative change allowed by senior diverters. For this reason staff is proposing changes to the analysis that would take into account an allowable percent change in days from unimpaired to impaired conditions. This would be applied to the analysis of water availability using the regional criteria. Failure to pass the test would suggest further site specific studies are needed before a decision could be made on cumulative effects and water availability. The site specific studies for the maximum cumulative rate of diversion are being adjusted to consider the flow management objective for diversions above spawning flows presented in the TU/WB/ESH Joint Recommendations.
L-16	NMFS	Section B.5.3.4 outlines a process that would determine if the proposed project reduces the number of days providing flow that supports spawning or migration as compared to a hydrograph that is already impaired by senior diverters, rather than comparing the cumulative impacts to the stream's estimated unimpaired hydrograph. Through that proposed process, several new projects, each causing an incremental decrease of a half day of spawning opportunity, will eventually result in a significant reduction in the number of days that support spawning. Therefore, to avoid true cumulative loss of flow supporting spawning and migration, the policy should evaluate impacts to spawning and migration flows relative to conditions provided by the estimated unimpaired hydrograph.	The analysis outlined in Appendix B is based on the use of average daily flow data to estimate the effects of senior diverters and the proposed project. A change in half a day is not possible in the analysis used because the data is used in daily increments. Additionally the analysis is a simple math exercise where all daily diversion is subtracted from unimpaired flow. The analysis also does not show the diversion for only a half day. If they do indeed divert for only a half day on a particular day, the impairment is counted for the entire day. The analysis also does not show the diverters for only a half day. If they do indeed divert for only a half day on a particular day, the impairment is counted for the entire day. Because the daily flow is impaired on a daily basis by all diverters of record, at some point, no matter how small the diverted amount is, it will cause the impaired flow to drop below the MBF therfore causing a day of change. The daily data is the best readily available data for use at this time. The analysis is to be used to give staff an idea of the estimated impairment so that a decision can be made about water availability. The analysis will not predict real time physical conditions where a half days change is possible. Until an abundance of flow data in smaller watersheds in increments of less than a day becomes readily available, the proposed analysis is the best avenue for decision making. All that considered, staff

			has reviewed the concerns regarding a limitations on the amount of change from the unimpaired to the impaired condition. For this reason staff is proposing changes to the analysis that would take into account an allowable percent change in days from unimpaired to impaired conditions. This would be applied to the analysis of water availability using the regional criteria. Failure to pass the test would suggest further site specific studies are needed before a decision could be made on cumulative effects and water availability. The site specific studies for the maximum cumulative rate of diversion are being adjusted to consider the flow management objective for diversions above spawning flows presented in the TU/WB/ESH Joint Recommendations.
L-17	Trout Unlimited	The existing 5% of the 1.5 year return flow standard will be impossible for many small "fill and spill" projects to achieve. At any POI above which more than 5% of the watershed is behind a fill and spill reservoir, the calculation will show an impairment of above 5% of the 1.5 year return flow. However, not all of these locations will actually cause a reduction of 5% of flows during a 1.5 year flood event, because in a bankfull storm many ponds would be filled and spilling. In addition, it is effectively impossible for many of these projects to be retrofitted to adopt a fixed rate of diversion limitation, unless the stream can be routed around the pond and converted into an offstream reservoir. This is a major reason why the TU/wine industry recommendations focused on developing recommendations that could use a dynamic rate of diversion limitation. The other reason, of course, is that it makes sense from a scientific standpoint.	Commenter is incorrect regarding how the calculation of the cumulative effects on the MCD will be determined. Fill and spill reservoirs can operate and not cause more than a 5% change to the 1.5 year return flow. Just because more than 5% of the watershed of a POI is behind fill and spill reservoirs does not mean that the analysis will show greater than a 5% change to the 1.5 year return flow. The evaluation of the cumulative effects to the 1.5 year return flow are based on a statistical analysis of the effects to peak flows. If a fill and spill reservoir fills early in the season as the commenter suggests, the peak flows later in the season are not effected by the diversion. Therefore the statistical analysis of the unimpaired and impaired peak flows which determine the unimpaired and impaired 1.5 year return flow may show minimal change because the peaks selected for the anlaysis were only slightly impaired based on which diverters were diverting during the peak storm events.

L-18	Trout Unlimited	In truth, it is not possible to answer whether the TU/Wine Industry proposal is more or less protective than the draft Policy. The draft Policy, as it stands now, measures only incremental effects, without determining whether the level of existing impairment is acceptable. (The lone exception is the 5% of the 1.5 year return flow rate of diversion limitation, which is paired with a process to conduct a site specific study to assess geomorphic effects and is not implementable.) [The TU/Wine Industry proposal] attempted to define a level of acceptable cumulative impairment. Hopefully, the Board will agree that amendments to establish a meaningful cumulative effects standard are necessary. We promise to work with the Wine Industry to recommend specific and concrete amendments that can be made to the Policy so that it can be adopted an implemented. Those amendments will be based on our prior recommendations, but we will review those recommendations in light of the February draft Policy and your consultants' evaluation of our suggestions, and modify them as necessary so that they can coexist with the draft.	Comment noted. Commenter is referred to prior comment responses to the TU/WB/ESH Joint Recommendations. Both the Policy and Joint Recommendations were evaluated at a site specific level based on the available information, and it was shown that the Joint Recommendations, as proposed, are not as protective as the Policy. However, staff is considering the potential for using the upper tier of the Flow Management Objectives as a way to evaluate cumulative effects as this option appears to be as protective as the Policy when used in combination with a proper minimum bypass flow.
L-19	Trout Unlimited	We understand that the Water Code allocates water rights on a basis of first in time, first in right, and that CEQA is a separate statute. However, the Board must comply with both the Water Code and CEQA to process an application. Unless the Board modifies the analyses contained in sections B.5.3.4 to include an additional step that evaluates the cumulative effects of all existing and reasonably foreseeable diversions, and not just senior diversions, the analysis prepared pursuant to the Policy will violate CEQA. The Board should continue to process applications on a seniority basis, but it must also disclose cumulative effects as defined by CEQA.	Each pending application is different and those subject to CEQA will be required to do a proper CEQA analysis. This is a decision to be made on an individual basis while applications are being processed. Staff is fully aware of the CEQA statutes and will require analyses beyond the scope of water availability if necessary for completion of the CEQA process. However the CEQA process does not need to be discussed in the Policy itself as it is a seperate matter that is addressed individually for each project. This Policy should not define CEQA requirements.
L-20	Patrick Higgins/Living Rivers Council/North Coast Streamflow Coalition	The current proposed Policy does not take a comprehensive approach to analysis of cumulative effects that are already well advanced and clearly in evidence and will instead allow additional uses on a case by case basis.	Comment noted. Based on comments received on this issue Staff are considering making a change to the analysis that would take into account an allowable percent change in days from unimpaired to impaired conditions. This would be applied to the analysis of water availability using the regional criteria. Failure to pass the test would suggest further site specific studies are needed before a decision could be made on cumulative effects and water availability. The site specific studies for the maximum cumulative rate of diversion are being adjusted to consider the flow management objective for diversions above spawning flows presented in the TU/WB/ESH Joint Recommendations.

L-21	Coastal Action Group	Cumulative effects analysis, as outlined, is appropriate and justified. Are conditions required under § 1375, subd. (d) equivalent to a water budget?	A water availability determination is made based on all relavant information with respect to whether or not there is unappropriated water available to supply the applicant. If unappropriated water is needed to remain instream for the protection of instream beneficial uses, then it is not available to supply the applicant.
L-22	Coastal Action Group	It is claimed in the policy assumptions for the Regional Criteria (and assumed to apply to projects that proceed as Site Specific application analysis) that there is sufficient margin of safety in the criteria and methodology to establish minimum flows in streams with insufficient stream gauge data and/or insufficient rainfall data. The proposed methodology proposes to use data surrogate or reference streams near to the stream in question. It is not clear how the use of such surrogate or reference stream data will provide the necessary data to extrapolate protective flows with the necessary margin of safety. Given differences in watershed size, average slope, rainfall (and rainfall data), vegetative cover, soils, and geology, it is not clear how these method of using reference streams will provide accurate information on which to base flow prescriptions. In part the methodology includes the need to include all diversions in analysis - for making determinations (we agree with and support this - but find it problematic). How is it possible to have accurate knowledge of all diversions (especially when there are fair numbers of unlicensed diversions)? When using a reference watershed, are all diverters taken into account in that watershed? If you were completing this process on a project on the mainstem Russian River, there are some stream gauges to and rainfall measurements to give you some degree of accuracy, but considering all diversions, legal and illegal, in developing a flow target. It seems very unlikely you can get real numbers on amounts diverted. Without that degree of accuracy - is the proposed policy over protective or under protective?	The use of reference stream gage data is the best available data for most of the watersheds in question. The anlaysis outlined in the Policy is meant for making a water availabillity determination based on the best available data. The analysis is meant to inform staff with an estimate of potential effects absent acurate site specific information. The analysis will not predict the on the ground physical aspects of diversion. Until better more accurate information is available on the small ungaged streams reference data is the best way for staff to make an informed decision. It is not necessary to have all information on unauthorized diverters for a water availability analysis. Unauthorized diverters do not have a right to water and if they do not get into the water rights system before it is fully appropriated then the diversion will have to cease to exist. Water availability considers authorized diverters of record which the Division has a fairly accurate record of in its ewrims system.

L-23	Peter Kiel, Robert Wagner	[The language in Section A.1.8.1 that starts with "There is error associated with the estimation of daily flows. . ."] is puzzling because these analyses are conducted with mathematical models that compare estimated flows with the project to estimated flows without the project. The difference in flows is due solely to the project. It is true that the mathematical/hydrological models used for these analyses are approximations. If that is the reason for the above language that seems to allow "minor change" in the number of days of flow at a specified level, then the language needs to be more definitive. Another reason to allow "minor change" in the number of days of flow at a specified level would be recognition that fishery protection and irrigation are both valued in society and deserve balancing. If that is the reason for the above language, then it should be stated.	Comment noted. Staff is considering modifications to the policy to provide clarification.
L-24	Paul "Skip" Spaulding, Farella Braun + Martel LLP/Golden Vineyards	The Proposed Policy, as currently drafted, will be applied retroactively to water rights applications that have been on file for years (some for over a decade) and the July 19, 2006 cutoff date for acceptance of onstream dams has no rational basis. For all of the reasons set forth on page 5 of Exhibit "A," which are specifically incorporated herein, these provisions are illegal and unfair. The Proposed Policy should be applied to applications filed after the date of its adoption unless the applicant affirmatively chooses to have its application considered under the new Proposed Policy.	Comment noted. Policy section 4.1 states the July 19, 2006 date was selected because it was the date of the Notice of Preparation for the policy. See also the response to comment 6.0.63 in Responses to Public Comments On the Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams, volume 1, January 2010.
L-25	North Marin Water District	The direction is not clear for how one would complete a Daily Flow Study. The descriptions of the requirements appear to say both that regional criteria shall be used and that none exist: "Regional criteria or site specific criteria shall be used to establish protective stream flows at the POIs at and/or below anadromy. There are no regional criteria for Class II and III streams; however, applicants shall demonstrate, by applying project-selected minimum bypass flows and maximum rates of diversion in this analysis, that project operation will not result in impacts to instream flow needs of fishery resources at the POIs at and/or below anadromy." [B.5.3 Daily Flow Study (p.14)]	One has the choice on how to complete a Daily Flow Study. They may either complete it with the regional criteria outlined in the Policy, or with site specific criteria developed from site specific studies. The purpose of the Policy is to maintain instream flows for the protection of fishery resources. Fish exist in Class 1 streams, not Class 2 or 3 streams. Therefore projects above anadromy need to demonstrate that they do not effect instream flows needed for fishery resources at locations where fish are present (Class 1 streams).

L-26	Patrick Higgins/Living Rivers Council/North Coast Streamflow Coalition	[A]ll legal and illegal diversions and groundwater use must also be included. Baseline flow data collected prior to disturbance are available for some basins, so regional changes in the rainfall to runoff ratio could be estimated. The proposed Policy use of data from the last decade as a preference means that flows are likely to considerably depart from pre-disturbance conditions with which salmon and steelhead co-evolved. Since intensive land use has been pervasive since about 1950, flow data from before that time would be optimal.	All water availability analysis submitted by applicants will be reviewed by Division of Water Rights staff. If a gage from the last decade is proposed for use in the analysis and it is obvious that gage has recorded highly impaired flows, it is likely staff will reject the analysis because the data being used is not representative of potential unimpaired flows. The same goes for any gage proposed for use in the analysis. If the recorded gage data is highly impaired Division staff likely will not accept the analysis.
L-27	Patrick Higgins/Living Rivers Council/North Coast Streamflow Coalition	Dennis Jackson (2010) notes that geographically adjacent paired watersheds used for modeling flow may have very different rainfall to runoff ratios due to differences in geology, slope, soil types and depth, vegetation, impervious area, and existing water use. A partial solution for improved modeling would be to use watershed pairs that had similar rainfall to runoff ratios, instead of just using adjacent watersheds for comparison (Jackson 2010). However, the fragmentary nature of regional flow data means that most analyses will be based on synthetic data where model assumptions may be difficult to check and results hard to verify. Dunne et al. (2001) point out that models used for land use decisions are often run by a consultant to the land manager, or water extractor in this case. This means that the public has to hire a consultant too, if they want to check results and decisions to make sure they are protective. One solution to that problem is to have an objective third party running models influencing resource management decisions that effect public trust (Dunne et al. 2001). Optimally decisions would be based on flow data collected within the watershed and results would be more accurate and easier for the public to understand.	Please see appendix section A.1.1.1 of the Policy. The policy requires that the analyses submitted by the applicant's be completed using standard hydrological practices and methods; and that all calculations be transparent. The Division does not accept proprietary numerical solutions. Qualified Division staff review every water availability analysis that is submitted by the applicants. If errors are found, the Division does not accept the analysis and requires the applicant or the applicant's agent to revise the analysis and resubmit it. Division staff then review the subsequent resubmittal to make sure all errors have been fixed before acceptance of the analysis.
L-28	Thomas Lippe/Dennis Jackson/Living Rivers Council	The Regionally Protective Criteria do not meet their objective of always erring on the side of resource protection the SWRCB. The Regionally Protective Criteria should be modified so that a reference stream gauge is selected on the basis of watershed characteristic such as geology, soils, topography, vegetation and land use including the amount of diversion and other modifications of runoff processes. Simply choosing the closest reference stream gauge can not guarantee flow estimates that will err on the side of resource protection. If a screening procedure based on watershed characteristics is adopted it must be thoroughly tested to ensure that it always selects reference stream gauges that will allow the Scaling Method to provide flow estimates that are always protective of the resource. I recommend that the State Board undertake a study to relate the runoff efficiency of the watershed (Eq-4) above a large sample of gauging stations to watershed characteristics such as geology, soils, topography, vegetation type, and land use including the volume of diversion. The result of this type of study should allow selection of an appropriate	Staff will consider this comment when making revisions to the policy.

		reference stream gauge based upon the similarity watershed characteristics upstream of the reference gauge to the watershed characteristics upstream of a given POD or POI. [The commenter provided example analysis demonstrating the issues.]	
L-29	Thomas Lippe/Dennis Jackson/Living Rivers Council	To always err on the side of resource protection requires an estimation procedure that can systematically over-estimate the unimpaired mean annual flow and simultaneously under-estimate the unimpaired average seasonal flow. The Policy procedures to estimate the unimpaired mean annual flow and the unimpaired seasonal average flow will result in erring against the resource for one of these two parameters and erring in favor of the resource on the other parameter.	Please see the response to comment L-28.
L-30	Thomas Lippe/Dennis Jackson/Living Rivers Council	It is true that there is error associated with the estimate of daily flows. Once the daily flow record is estimated, for a given POI, the calculated February median flow will be the only estimate of the February median flow for that POI. The State Water Board will have no independent way of determining if the estimated February median flow is greater than (less than) the true February median flow for the POI. The State Water Board has no objective basis to determine if "a minor change in the number of days the February median (flow) is exceeded" is from a, "slight variability in the estimation of flow". Furthermore, no quantitative measure of "minor change" or "slight variation" is provided in the Policy. Arbitrarily modifying the results of the calculation of the number of days the February median flow is exceeded with or without the project at the various POIs will diminish the Policy's ability to protect fishery resources.	The Commenter referred to the "true February Median Flow" in their comment. The February Median Flow used in the Policy is a statistical parameter. In addition, please see the response to comment L-28.

L-31	Thomas Lippe/Dennis Jackson/Living Rivers Council	Section A.1.8.1-2 requires that, "The project will not change the existing number of days the flow needed for spawning, rearing, or passage occurs at the POIs located at and below anadromy". This is equivalent to requiring that the project not change the number of days that the MBF is exceeded. Therefore, a clearer phrasing of Section A.1.8.1-2 would be, "The project will not change the existing number of days on which the flow exceeded the MBF at the POIs located at and below anadromy." The analysis is to be done according to B.5.3.4 which requires that the daily flows be estimated at the POIs at and below anadromy and the number of days that the MBF was exceeded with and without the project are calculated.	Comment noted. The commenter is correct that the minimum bypass flow is the same flow that protects spawning, passage, and rearing.
L-32	Thomas Lippe/Dennis Jackson/Living Rivers Council	Once the daily flow record is estimated, for a given POI, the calculated MBF will be the only estimate of the MBF for that POI. The State Water Board will have no independent way of determining if the estimated MBF is greater than (less than) the true MBF for the POI. The State Water Board has no objective basis to determine if a minor change in the number of days the MBF is exceeded is from a, "slight variability in the estimation of flow". Furthermore, no quantitative measure of "minor change" or "slight variation" is provided in the Policy. Arbitrarily modifying the results of the calculation of the number of days the MBF is exceeded with or without the project at the various POIs will diminish the Policy's ability to protect fishery resources.	Please see appendix section A.1.1.1 of the Policy. The policy requires that the analyses submitted by the applicant's be completed using standard hydrological practices and methods; and that all calculations be transparent. The Division does not accept proprietary numerical solutions. Qualified Division staff review every water availability analysis that is submitted by the applicants. If errors are found, the Division does not accept the analysis and requires the applicant or the applicant's agent to revise the analysis and resubmit it. Division staff then review the subsequent resubmittal to make sure all errors have been fixed before acceptance of the analysis.
L-33	Thomas Lippe/Dennis Jackson/Living Rivers Council	Section A.1.8.1-3-a and A.1.8.1-3-b allow that, "Upon approval by the State Water Board, the applicant may use a site specific criterion in lieu of the 1.5-year return flow criterion" without specifically requiring that the applicant conduct a site-specific study to justify the criterion used in lieu of the 1.5-year return flow.	Staff anticipate that it will not be possible to develop a criterion without site specific studies.

L-34	Thomas Lippe/Dennis Jackson/Living Rivers Council	The procedure described in Section B.5.3.5 does not make hydrologic sense. The procedures in Section B.5.3.5 are aimed at evaluating whether a project will impact the natural flow variability. Section B.5.3.5-1 directs the applicant to use the procedures of Section B.5.2.3, which describes how to calculate the 1.5-year instantaneous flow and defines the Regional Criteria for the MCD as 5% of the 1.5-year instantaneous flow. Section B.5.3.5-1 then directs the applicant to generate the three daily flow sequences described in each of the following Sections; Section B.5.3.1 (daily unimpaired flow at POIs at and below the ULA); Section B.5.3.2 (daily flow impaired by senior diverts but without the project); and Section B.5.3.3 (daily flows impaired by senior diverters and the project). Nothing in the Policy describes how a daily flow sequence can be used to impair the 1.5-year instantaneous flow. The spreadsheet called Attachment 2 of the sample calculation uses daily average flows to calculate the 1.5-year flow which clearly is not the 1.5-year instantaneous flow. The Policy needs to recognize that the calculation procedures obtain the 1.5-year daily average discharge and its impaired value rather than the 1.5-year instantaneous flow and its impaired value. The 1.5-year daily average discharge will always be significantly lower than the 1.5-year instantaneous discharge. Using the 1.5-year daily average discharge to calculate the MCD errs on the side of resource protection since it is a much lower value than the 1.5- year instantaneous flow.	Staff recognize your comment that the data that will most likely be used for the requested analyses will come from USGS stream flow gages that report daily average flows. At this time that is the shortest time step data available to the public. Impaired flows are estimated by subtracting diversion amounts from upstream users on a daily bases.
L-35	Thomas Lippe/Dennis Jackson/Living Rivers Council	Section B.5.3.1 gives three methods of estimating the flow at an ungauged site. I have already demonstrated that the Adjustment of Streamflow Records (Scaling Method) can not guarantee conservative estimates (err on side of resource protection). Precipitation-based models are also allowed but the Policy does not have any objective criteria for selecting which of the many Precipitation-Based Models has the least error. The Policy also allows method (C) Another Method Acceptable to the State Water Board to estimate flow at an ungauged site. Method (C) is completely arbitrary.	Please see the response to comment L-28.
L-36	Thomas Lippe/Dennis Jackson/Living Rivers Council	All methods to estimate flow at an ungauged site will produce estimates that differ from the true flow. The Policy must set objective criteria for deciding if a proposed method to estimate streamflow has sufficient accuracy in estimating the flow at an ungauged site.	Please see the response to comment L-28.

L-37	Thomas Lippe/Dennis Jackson/Living Rivers Council	The Policy exempts diversions on Class III streams from a setting a MBF and MCD if the diversion meets all three requirements of Section A.1.8.1. A qualifying diversion on a Class III stream is also exempted from the onstream dam provisions contained in Policy Section 2.4.3. The Policy has not demonstrated that the Class III exemption will adequately protect the fisheries resource. Class III streams are an important source of spawning gravel. Allowing diversions on Class III streams to operate without a maximum diversion rate will interfere with the sediment transport process. Class III streams have small watersheds and bankfull flow, estimated by the 1.5-year instantaneous discharge, tends to be on the order of a few tens of cubic feet per second. Any significant decrease in the 1.5-year instantaneous discharge will reduce the caliber of the bedload transported by the impaired discharge and will also reduce recruitment of large woody debris. A reduction in the 1.5-year instantaneous discharge on a Class III stream will tend to result in a higher proportion of fine material being transported down to Class II and Class I streams. Fine sediment is detrimental to aquatic habitat.	The policy intends to only exempt diversions on Class III watercourses where it is demonstrated that the project will not cause an impact to flows necesssary downstream to maintain fisheries resources, as described by the requirements of Section A.1.8.1.
L-38	North Marin Water District	Page A-10, Section A.1.7.3 PODs on Class 1 Streams. A POD location at or below anadromy at which the proposed project's demand is less than 1% of the remaining unappropriated supply will be considered a location at which the proposed project could not adversely affect instream flows. For Lagunitas Creek, the flow would have to be 67 cubic feet per second to result in the District's existence license right to divert .67cfs. This is not reasonable.	Commenter has misunderstood the referenced section of the Policy. The POD location being refered to for the analysis is the location of a senior POD downstream of the proposed project. The purpose of the described analysis is to determine locations downstream of a proposed project where the influence of the diversion is most likely minimal and POI selection can stop. Based on the commenter's comment, it appears that an analysis of any proposed project or petition affecting instream flows at the commenter's licensed POD would not be a location where selection of POI's could stop.
L-39	North Coast Stream Flow Coalition, Northern California River Watch	The baseline from which the MBF and MCD methodology is constructed may not be reliable and may not protect fish. The PD 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 PD recognizes that many streams do not have stream gauges so the PD recommends that water users determine MBF by using the next closest stream gauge. Yet, not all watershed basins are equal in geology, soils, vegetation types, topography and land use.	Comment noted. Until better, more reliable information on flows in ungaged small watersheds is avaiable, the proposed method in the Policy makes use of the best available data in order to make an informed decision about water availabiltiy and any potential effects to fishery resources.

L-40	Sea Ranch Water Company, Sea Ranch Form Letter, GD Cousins and DM Miles	The draft Policy's regional criteria do not take into account the type of diversion we have, the character of the river at and below our diversion, the real problems for fisheries at this location (such as siltation), the nature and magnitude of flows, and other factors. They are inconsistent with the existing water diversion, storage and delivery system designed to comply with the existing permits. Sea Ranch asked Brown and Caldwell to analyze water availability based on the proposed regional criteria. Two dry years and an average rainfall year were simulated. The analysis showed that: (1) All three scenarios failed to meet TSRWC's water demand at 65 percent year-round occupancy level. (2) With the current year-round occupancy level (about 43 percent), during dry years, the reservoir would be empty between 22 to 96 percent of the time, and between 15% to 25% year-round occupancy could be served with water without letting the reservoir run dry. (3) During an average year scenario, the reservoir would be empty about seven percent of the time and 35 percent year-round occupancy level could be served with water without letting the reservoir run empty. (4) For both dry and average years, the policy also would not allow diversions by TSRWC during periods when the modeling predicts that the reservoir would be dry. Hence, no water would be available.	The commenter appears to have tried to apply the Policy to their existing authorized diversion. The Policy does not apply to existing permits and licenses. Additionally the Brown and Caldwell analysis was not submitted for review and staff does not know if Brown and Caldwell applied the Policy correctly. Staff would like to point out one flaw with the Brown and Caldwell analysis based on a review of the submitted report. The 1976-1977 water year was one of three water years used to come up with estimated effects to the commenter's operation if the Policy did apply (which it does not). The 1976-1977 water year is the driest ever recorded. It does not reflect the conditions of most dry water years because a dry year of the magnitude of 1976-1977 has not occurred in any of the other water years on record. A more accurate representation of the estimated effects could have been achieved had a different dry year been selected. Regardless, the results described in the comment are irrelevant because the Policy would not apply to the commenter's existing operation because it does not apply to existing permits and licenses.
L-41	Sea Ranch Form Letter	The proposal is to limit the diversion season to December 15 to March 31. For years, The Sea Ranch Water Company has met the water needs of The Sea Ranch under a set of permits allowing the diversion of water from the aquifer underlying the South Fork Gualala River. The wells may operate year-round provided there are specified minimum surface flows bypassed. The Sea Ranch rigorously adheres to those bypass requirements. Typically the flow is adequate for the wells to operate from December until July, although in the 2008-2009 drought, pumping didn't begin until February 2009. The proposed policy will mandate huge volumetric river flows (commonly referred to as bypass flows, or river water flows that go past the well's location) in the Gualala River before we can operate the wells. We estimate that the bypass flows would have to be about 10 times greater than the state's current permitted policy for The Sea Ranch. The combined effect would be to deprive The Sea Ranch of adequate water supply to sustain the community's viability even in normal rainfall years. The Sea Ranch water rights and facilities were developed and conditioned to meet both fish protection and municipal water service needs based upon assumptions far different from those reflected in the proposed policy. The policy appears to be designed as if unimpaired conditions are the starting point and without any consideration of municipal water service needs.	The commenter appears to have tried to apply the Policy to their existing authorized diversion. The Policy does not apply to existing permits and licenses. Therefore the analysis of the effects of the Policy on the commenter's operation does not apply.

L-42	GD Cousins and DM Miles	There are a number of sections in the policy that, it appears, could require existing users to adopt the new standards including Section 3.3.1 item 2, Section 3.3.2.2, and Section 8.3. Because the new requirements are so much higher than the existing even a small incremental increase in existing use would have a profound effect. Based on the Sea Ranch calculations a 10% increase in demand would require a 120% increase in flow requirements. It appears that all exising communities could be affected. The Sea Ranch study has shown that a community would either be saddled with enormous costs or be deprived of water for drinking, sanitation and fire protection. It seems unreasonable that they should bear the financial burden for mitigating the effects of all the other things that affect water flow in our rivers such as mining, logging, agriculture, etc. If this risk exists it will have an immediate economic effect. To avoid these hardships we request that either the calculations should be revised or that there should be a cap on the increases to minimum bypass flows applied to existing users.	The commenter refers to an analysis prepared by Brown and Caldwell for the Sea Ranch Water Company. Staff has not reviewed the analysis prepared by Brown and Caldwell because it was not submitted with the comments. Staff has only had a chance to review the submitted report. Without reviewing the actual analysis Brown and Caldwell completed to generate its results, staff cannot comment on the results until it is determined whether or not the Policy criteria were properly applied to the Sea Ranch operation. Staff has determined that the Brown and Caldwell analysis did not take into account the fact that the Policy does not apply to the existing permits held by Sea Ranch. The Policy does not apply to any existing permits or licenses. Additionally if Sea Ranch's current minimum bypass flow was developed with consideration for instream fishery resources it is likely it could be used to mitigate for any proposed changes to Sea Ranch's operation which would affect instream flows.
L-43	GD Cousins and DM Miles	The analysis of the proposals by the Sea Ranch Water Company show that if the new policy was applied to this community it would require a 1200% increase in the minimum bypass flow. This seems unreasonable to jump from the existing standards and we question if it was the intention of the legislation to require increases of this magnitude.	The commenter refers to an analysis prepared by Brown and Caldwell for the Sea Ranch Water Company. Staff has not reviewed the analysis prepared by Brown and Caldwell because it was not submitted with the comments. Staff has only had a chance to review the submitted report. Without reviewing the actual analysis Brown and Caldwell completed to generate its results, staff cannot comment on the results until it is determined whether or not the Policy criteria were properly applied to the Sea Ranch operation. Staff has determined that the Brown and Caldwell analysis did not take into account the fact that the Policy does not apply to the existing permits held by Sea Ranch. The Policy does not apply to any existing permits or licenses. Additionally if Sea Ranch's current minimum bypass flow was developed with consideration for instream fishery resources it is likely it could be used to mitigate for any proposed changes to Sea Ranch's operation which would affect instream flows.
L-44	Michael Dunn	Do not impose restrictions on small diversions in upper watersheds.	See the response to comment D-11.

Topic M: Small Project Exemption

M-1	Trout Unlimited	[The TU/Wine Industry] proposed cumulative effects framework (including specifically the Flow Management Objectives) allowed for some diversions below the minimum required for salmon spawning and migration, but we would limit those diversions much more severely than diversions that occur when greater flows are in the river. The TU/Wine Flow Management Objectives would allow some diversions to take place that reduce the frequency of flows at the MBF threshold, SWRCB's consultants noted that our recommendations were theoretically was less protective than the Regional Criteria developed in the Scientific Basis report. Staff at the agency then developed its own procedure for small projects that also departs from the criteria developed in the Scientific Basis. If staff had asked R2 and Stetson to evaluate that small projects rule (they did not), they would have received the same response.	Appendix E, page E-20 of the Scientific Basis indicates that the minimum bypass flow in non-anadromous habitat should be limited to the flow that meets the MBF requirement for a stream at its upstream point of anadromy. The December 2007 Draft Policy applied this science with the use of a prorated bypass flow based on the drainage area at the upper limit of anadromy. Public comments on the December 2007 draft asked for a reconsideration of this method of implementation. Staff developed the approach presented in the February 2010 Draft Policy, which continues to provide the minimum bypass flow needs of anadromous fish at points of anadromy (the commenter refers to this as the "small projects rule"), and allows more water for diversion than the previous draft. Stetson Engineers and R2 Resource Consultants reviewed the "small projects rule" and concluded it was likely to be protective.
M-2	Coastal Action Group	Exemptions for areas above anadromy will be difficult to justify. Projects claiming exemption are subject to qualify such exemption under CEQA – with noticing, project description, and cumulative effects analysis. This should be made clear in the policy.	The exemption criteria described in Appendix A, Sections A.1.8.1 and A.1.8.2 for a project above anadromy involves analysis to determine whether the proposed project, in combination with senior rights, affects instream flows needed for fishery resources. Environmental review is part of the water right permitting process. Proposed permits are required to be noticed to the State Clearinghouse.

Topic N: Upper Limit of Anadromy

N-1	Thomas Lippe/Dennis Jackson/Living Rivers Council	Section A.1.4-1, quoted above, does not set a minimum standard for, "A study, previously accepted by the State Water Board, NMFS, or DFG, that identifies the location of the upper limit of anadromy…" If a previously accepted study was not protective of the resource it could still be used to set the ULA.	If a previously accepted study was not protective of the resources, the State Water Board may not be able to find that the study supports the applicant's request to use a different location for the upper limit of anadromy. In the absence of acceptable information, the applicant would proceed with the assumption that the POD is within the range of anadromy.
N-2	Thomas Lippe/Dennis Jackson/Living Rivers Council	For a project stream reach between the POD and Pacific Ocean Section A.1.4-2 defines the UAL as the downstream end of a stream reach with a continuous longitudinal slope greater than or equal to 12% over a distance of at least 330 feet. The Policy gives no guidance on how the continuous longitudinal gradient will be determined. There are several ways that the channel gradient can be estimated. The Policy should designate a field method with sufficient accuracy to ensure resource protection.	Policy section A.1.4.2 does not require a field method. The estimation may be performed using digital elevation models, per the citation technically justifying the approach. (R2 Resource Consultants, SWRCB Instream Flow Policy: GIS-Analysis Criteria for Upstream Distribution Limit of Steelhead, July 9, 2007.)

N-3	Thomas Lippe/Dennis Jackson/Living Rivers Council	Section A.1.4.3-c does not specify how to conduct a "Habitat-based stream survey that delineates the upper limit of anadromy based on quantifiable stream conditions." Or what quantifiable stream conditions can be used to set the upper limit of anadromy.	Habitat conditions may be present in the stream system that clearly do not support fish (eg class II streams).
N-4	North Marin Water District, Thomas Lippe/Dennis Jackson/Living Rivers Council	Page 81-A-5, Section A.1.4 Determination of the Upper Limit of Anadromy 3.b: Identification of an impassable human-caused barrier. The applicant may choose to demonstrate that the upper limit of anadromy is located below a human-caused barrier such as a dam, culvert or bridge. This policy assumes that all human-caused barriers are passable or can be made passable unless the applicant provides information satisfactory to the State Water Board that a man-made barrier is impassable and will never be made passable. What is an example of satisfactory information?	The Division presently requires environmental consultants hired to prepare the environmental documentation for a specific application and or petition to consult with the Department of Fish and Game and the National Marine Fisheries Service to determine the upper historic limit of anadromy. The consultation includes a review of all available records of both agencies, a literature search and a field survey by a qualified fisheries biologist. The consultants submit a report to the State Water Board documenting the upper limitation of anadromy and other key locations that may be limiting to the fishery.
N-5	North Marin Water District	Page A-6, Section A.1.4 Determination of the Upper Limit of Anadromy. If the applicant conducts site-specific studies to document the upper limit of anadromy, the State Water Board shall provide study results to DFG for review and comment. DFG shall be provided a reasonable period of time (not less than 30 days) to review and comment on the studies before the State Water Board makes a finding. NMWD's experience is that DFG can't do anything in 30 days.	Comment noted. The policy allows the State Water Board to move forward if DFG is unable to comment within 30 days.

Topic O: Stream Classification System

O-1	Dept of Fish and Game	The revised Policy continues to narrowly define fish as finfish. Fishery resources covered by the Policy should include a broader definition of fish. 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.	Division staff are considering updating the glossary to reflect the Department of Fish and Game Code section 45 definition of fish. Finfish will continued to be used as a defining characteristic for stream classification purposes.
O-2	Sonoma County Winegrape Commission, United Winegrowers for Sonoma County	A detailed map showing the location and extent of streams by Class I, II or III is needed. The policy for Small Domestic Use (Section 3.3.3, p.16) allows one to obtain an appropriated water right by registering the use, however, no water is allowed to be diverted from an onstream dam on a Class I or II stream. For all parties, it would be good to know how each stream is designated.	The policy provides methods for determining stream classification because stream characteristics need to be evaluated on-site. On-line databases currently lack adequate information to provide such details.

O-3	Mendocino County Water Agency	As previously noted, the proposed Instream Flow Policy lacks specificity in key areas. One example is the stated definitions of Class II and Class III streams. Class II streams are defined as streams where fish are not present, but aquatic non-fish vertebrates and/or aquatic benthic macroinvertebrates exist, Class III streams are defined as streams that do not support aquatic life. While these definitions may appear reasonably specific - they are not. For example, the aquatic life stage of some benthic macro invertebrates, such as the mosquito, is very brief, typically two weeks or less. Is an intermittent stream that flows during rainfall events and then recedes to isolated standing pools for two weeks before drying up -just long enough to be colonized by mosquitoes - a Class II stream? Similarly, are bacteria or other single-cell organisms such as protozoans considered aquatic life? If so, very few if any streams would meet the Class III stream criterion. The distinction between Class II and Class III streams is critically important. If implemented as presently crafted, the proposed policy would typically require substantially more mitigation for projects proposed on Class II versus Class III streams. In some instances, particularly small diversions for rural residential use, the feasibility of the proposed water diversion/storage facility could easily hinge on whether the stream in question is considered Class II or Class III.	The commenter appears to have mis-read the definitions of class II and class III stream. The definitions as stated in Appendix A, section A.1.6 are as follows: Class II: Seasonal or year-round habiat exists for aquatic non-fish vertebrates and/or aquatic benthic macroinvertebrates. Class III: An intermittent or ephemeral stream exists that has a defined channel with a defined bank (slope break) that shows evidence of periodic scour and sediment transport. The policy does require additional mitigation measures for projects on class II streams as compared to class III streams. Additional information regarding possible mitigation is discussed in section 2.4 with respect to onstream dams, and Appendices A, B, and D.
O-4	Paul "Skip" Spaulding, Farella Braun + Martel LLP/Golden Vineyards	The policy drafters have made no changes whatsoever from the prior draft regarding the stream classification system requirements in the Proposed Policy. Thus, all of the deficiencies we identified on pages 7-8 of Exhibit "A," which text is specifically incorporated herein, still remain.	Please see staff's responses to comments 4.1.78, 8.0.13, and 8.0.15 in Response to Public Comments on the Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams, Volume 1, January 2010. In addition, staff is considering modifications to the stream classification section based on comments received on the February 2010 revision to the policy.
O-5	Thomas Lippe/Dennis Jackson/Living Rivers Council	The above definitions of stream class are not clear. The Stream Classification is based on the presence or absence of fish and fish habitat but the term fish is not defined.The Policy “focuses on measures that protect native fish populations”. Does the Stream Classification system mean the current or historical presence of any fish whether it is a non-native fish, native fish or an anadromous salmonid be used to determine a Class I stream?	Division staff are considering updating the glossary to reflect the Department of Fish and Game Code section 45 definition of fish. Finfish will continued to be used as a defining characteristic for stream classification purposes.

O-6	Thomas Lippe/Dennis Jackson/Living Rivers Council	The above Stream Class definitions do not specify whether they apply to perennial, intermittent or ephemeral streams (see Appendix I Glossary of Terms for definition of these terms). Section A.1.6.1, quoted below, makes reference to seasonal presence/absence of water in a stream reach (perennial, intermittent or ephemeral streams). To be comprehensible to diversion applicants and the public, the definition of a Stream Class should be clearly stated and not scattered over different portions of the Policy document.	Comment noted. Division staff will consider this suggestion when making revisions to the draft policy.
O-7	Thomas Lippe/Dennis Jackson/Living Rivers Council	The historic presence of fish is part of the definition of a Class I stream but no guidance is given on what constitutes acceptable historical evidence. What documentation of historic presence of fish in a particular stream reach is required in the absence of a historic stream survey from DFG clearly stating the presence of fish at a particular location? A given land owner may have recently purchased the property and may not be aware that twenty years ago a creek on his/her property support fish but no longer does. Does a statement regarding the presence/absence of fish from a neighbor constitute acceptable historic evidence that fish had inhabited a stream reach in past? The Policy provides no standard for historical evidence of the presence of fish in a stream reach.	Historical evidence of presence needs to be coupled with appropriate habitat to sustain fish. Isolated anecdotal evidence will be considered on a case-by-case basis, however in general habitat information (such as that from an intrinstic potential model) may be needed to corroborte an anecodotal instance of historical fish presence.
O-8	Thomas Lippe/Dennis Jackson/Living Rivers Council	The above Policy definition a Class II stream relies on the presence of non-fish aquatic habitat but does not define non-fish aquatic habitat nor does it reference a definition of the term in another part of the Policy. The above Policy definition a Class II stream relies on whether habitat for aquatic non-fish vertebrates and/or aquatic benthic macroinvertebrates currently exists and does not appear to allow for consideration for the historic presence of such habitat. This approach will tend to reduce the possibility that a degraded stream reach could be restored to Class I or Class II status.	Comment noted. Division staff will consider this comment when making revisions to the policy.
O-9	Thomas Lippe/Dennis Jackson/Living Rivers Council	The above Policy definition a Class III stream is not clear about whether a Class III streams has aquatic habitat. According to Section A.1.6.1 a Class III stream lacks aquatic habitat, both currently and historically. To be comprehensible to diversion applicants and the public, the definition of a Stream Class should be clearly stated and not scattered over different portions of the Policy document.	Comment noted. Division staff will consider this comment when making revisions to the policy

O-10	Thomas Lippe/Dennis Jackson/Living Rivers Council	Over what distance in the stream channel will the State Water Board make their determination of Stream Class? Will the State Water Board use the same methodology as described in Section A.1.6.2 in making their determination of Stream Class? How will the State Board make a determination that fish were historically presence in the affected stream reach? Will the State Board make a search of DFG's files for each diversion application? Will the State Board interview neighbors? If the applicant challenges the State Water Boards Stream Classification they may elect to makes their own Stream Class determination by conducting a stream survey as described below in Section 1.6.2. If the State Water Board's Stream Classification of the project reach is done in a rigorous manner according to a standard methodology how, will the applicant be able to come to a different Stream Class determination? The Policy does not appear to have a mechanism for deciding which of the two competing Stream Classification for the project reach should prevail.	Staff will consider including language in the policy to clarify the stream classification process.
O-11	Thomas Lippe/Dennis Jackson/Living Rivers Council	Section A.1.6.2-1 requires that the Stream Classification stream survey be done over a reach that is 50 bankfull widths long. The bankfull width is a fluvial geomorpholgical parameter. The qualifications for a Fisheries Biologist, in Section A.1.5, do not guarantee that fisheries biologist with minimal acceptable experience would have sufficient training in determining the bankfull width. The Policy gives no guidance in how to determine the bankfull width in the field. The Stream Classification stream survey is to be 50 bankfull widths long. Will an applicant have legal access to the 50 bankfull channel widths of stream channel? Jackson (1999) did a statistical analysis of 50 bankfull widths measured by DFG stream survey crews or determined at USGS stream gauges in the Russian River watershed. According to a formula developed by Jackson, the bankfull width for a 1.0 sq-mile watershed would be approximately 13.1 feet or less and a 50 bankfull width length would be up to 655 feet. At many project sites a stream survey 655 feet long would require access would from multiple landowners. The Policy does not give guidance on how to proceed with the required field stream assessment work when access is blocked by a neighboring landowner.	Staff will consider including language in the policy to clarify the stream classification process. If an applicant is unable to gain legal access, the State Water Board's determination of stream class may be used.
O-12	Thomas Lippe/Dennis Jackson/Living Rivers Council	Section A.1.6.2-4-A does not consider historical presence of fish in determining if a reach is a Class I stream. The habitat that supported fish historically could have been destroyed by channel changes.	Habitat indicators for supporting fish will remain even if channel changes have occurred. in addition, Division staff expect that historical information and channel changes will be disclosed in a complete stream survey. The State Water Board and DFG have opportunity to review and comment on whether a survey is acceptable. Surveys that do not consider the effect of channel changes on habitat will likely not be considered complete.

O-13	Thomas Lippe/Dennis Jackson/Living Rivers Council	Sections A.1.6.2-4-A-2 and B-2 rely on "…habitat suitability criteria provided by the qualified fisheries biologist" instead of requiring that habitat suitability criteria be set by the Policy. Section A.1.6.2-4-C, which designates Class III streams, does not specify who establishes the habitat suitability criteria.	The State Water Board and DFG have opportunity to review and comment on whether a survey is acceptable. Surveys that do not provide adequate support for the habitat suitability criteria used will likely not be considered complete.

Topic P: Onstream Dams Permitting Requirements

P-1	Coastal Action Group	[Policy Principle No. 5] implies no new onstream dams. What will occur with recently built onstream dams [above the] limit [of] anadromy that were built without permitting and licensing requirements? Are they just going to be ignored?	Policy section 2.4 contains permitting provisions for onstream dams above anadromy that will ensure those dams will operate in conformance this principle. The section further states that the State Water Board will not approve water right permits for onstream dams built on or after July 19, 2006. In addition, please see the response to comment P-3.
P-2	Coastal Action Group	Policy requirements for onstream dams are appropriate - but do not consider the full range of issue and actions that might be necessary to protect the resource. In addition, meeting these requirements requires CEQA review.	Please see the response to comment number 19.1.3 in Responses to Public Comments On the Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams, volume 2, January 2010.
P-3	Coastal Action Group	The SWRCB should have a policy of removal of [onstream dams] that have impacts that can not be mitigated. This CEQA responsibility applies to all - Class I, II, and III streams.	All water right applications and petitions are subject to CEQA compliance. Small domestic use registrations and livestock stockponds are ministeral actions and are CEQA exempt. The State Water Board is the Lead Agency pursuant to CEQA for many of the pending water right applications and petitions. Lead agencies are required as part of the approval process to condition the approval to mitigate significant impacts to less than significance. If it is shown that a project's impacts cannot be mitigated to less than significant levels they may not approve the project or approve the project adopting a state of overrriding considerations. Existing onstream dam(s) that were constructed prior to the begining of the environmental review by the Lead Agency are CEQA exempt.
P-4	Coastal Action Group	Onstream dams built in recent history must meet CEQA compliance standards regardless of the arbitrary July 19, 2006 noted in the policy document. Maintenance by any individual, or agency, of a structure that modifies habitat in a adverse manor (sic) and that can cause "TAKE" of listed species, or habitat, is in violation of, both, the State and federal ESA.	All water right applications and petitions are subject to CEQA compliance. Small domestic use registrations and livestock stockponds are minsteral actions and are CEQA exempt. Onstream dams built on Class I and II streams after the July 19, 2006 date would not be considered for a water right permit, and may be subject to enforcement action if unauthorized water diversion occurred.

P-5	North Marin Water District	Page 8, Section 2.4.1 On-stream Dams On Class 1 Streams: Compliance with this list would likely preclude any modification to NMWD's existing permits on Novato Creek, even if site-specific scientific data indicates that some elements of the list are not necessary or appropriate under the facts. Why is there no provision for site-specific adaptation of the elements of the list in some circumstances?	Permitted and licensed diversions that are in compliance with their permits and licenses will not be affected by the policy. Policy section 9.0 describes the process for obtaining case-by-case exceptions to policy provisions.
P-6	Paul "Skip" Spaulding, Farella Braun + Martel LLP/Golden Vineyards	The litany of legal, scientific, policy and financial deficiencies in the onstream dam provisions identified in pages 9-10 of Exhibit "A" have not be corrected in the Proposed Policy. Accordingly, Golden Vineyards specifically reasserts these comments herein. The Proposed Policy's attempt to apply these expensive provisions retroactively to water rights permit applications filed prior to adoption of the policy is illegal and unfair to applicants like Golden Vineyards who have diligently pursued their applications for many years and have been thwarted by constant State Board delays in processing the permit applications.	Comment noted. Staff responded to these concerns in the responses to comment numbers 10.0.54, 10.0.55, 10.0.56, and 24.0.74 in Responses to Public Comments On the Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams, volume 2, January 2010.
P-7	Casey Caplinger/Stacy Li/NOWWE	Off stream reservoirs are superior to onstream dams because they avoid most of the adverse effects of onstream dams. A statement of encouragement of off stream reservoirs by SWRCB would be appreciated in this policy document. SWRCB should recognize that ANY onstream dam interrupts vital ecological stream processes including: fish movement, habitat continuity, energy flow, and bedload transport, which includes spawning gravel supply. Any permitted dams must totally mitigate against effects on ALL these necessary stream functions.	Comment noted.

P-8	Casey Caplinger/Stacy Li/NOWWE	Onstream dams on class I, II, III streams - The only reason why an applicant must prove their onstream dam was built prior to July 19, 2006 is related to unauthorized onstream dams. Is SWRCB forgiving ALL the unauthorized dams built prior to July 19, 2006? How is SWRCB dealing with the many unauthorized projects in the State? There are projects that have not applied for the appropriate water right permit; and there are projects that have been ordered to come into compliance. At a minimum these unauthorized and existing projects should comply with current standards for seasons of diversion, minimum bypass flow, maximum cumulative diversion rate and monitoring requirements. They have been built, after all, without a water right permit, and they exist and operate without terms or conditions.	Policy section 2.4 does not forgive all unauthorized dams built prior to July 19, 2006. These provisions allow permit consideration of an unauthorized dams built prior to July 19, 2006 as long as it is modified in accordance with the applicable Policy provisions. that it is modified in accordance with the applicable Policy provisions. Policy section 9.6 provides that the State Water Board will consider additional factors when deciding whether or not to take formal enforcement action to address an unauthorized diversion that is the subject of a pending water right application. In addition to considering listed factors when establishing monetary penalties, the State Water Board will consider the applicant's diligence in submitting the information necessary to process the pending application, and whether the applicant (1) complies with interim operating conditions consistent with section 2.2.1 of the policy, including at a minimum the season of diversion regional criterion; (2) monitors and reports diversion amounts on-line; and (3) submits a Statement of Water Diversion and Use and supplemental statements.

Topic Q: Mitigation Plans

Q-1	Coastal Action Group	Criteria enumerated in Appendix D [Guidance for Developing Mitigation Plans] - must include CEQA analysis - not just for water right license - in the permitting and continued existence of any onstream structure.	Please see the response to comment number 19.1.3 in Responses to Public Comments On the Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams, volume 2, January 2010
Q-2	Patrick Higgins/Living Rivers Council/North Coast Streamflow Coalition	While there are vague statements about mitigation to prevent proliferation of invasive species, there is no guidance provided or specific actions required.	Policy sections 2.4.1, 2.4.2, and 2.4.3 state that guidance for developing mitigation plans is provided in Appendix D.

Topic R: Passive Bypass Systems

R-1	RWQCB 1	Regional Water Board staff requests the policy be modified to condition approval of bypass systems so that the systems do not cause water quality objective exceedences downstream. We recognize the Draft Policy requires the preparation and implementation of plans to mitigate the effects of impoundments on sediment loads, woody debris supply, riparian habitat, and predation by non-native species. These requirements are appropriate and will mitigate many of the negative effects of dams on aquatic resources if properly implemented. However, by themselves the requirements will not prevent other water quality impacts of impoundments such as alteration of temperature, dissolved oxygen, and pH conditions. One major remaining concern is how onstream reservoirs relate to bypass systems. In the case of a bypass system that routes flow around the reservoir, water quality would change very little between the upstream and downstream limits of the affected reach, as long as the water is not impounded for any significant amount of time. Such a system would be expected to protect water quality. However, in the case of a bypass system that simply matches the rate of inflow and outflow, significant changes in water quality may occur between the upstream and downstream extent of the affected reach. For instance, water entering a reservoir may have a temperature that is quite different than the top layer of a reservoir. A 5° temperature increase through the affected reach, a gross exceedence of the water quality objective for temperature, is not hard to imagine. Similarly, water drawn from the bottom of a stratified reservoir may have significantly degraded water quality conditions relative to the water entering the reservoir. Active bypass systems that address water quality factors such as those described above can be reasonably and feasibly designed. Design features that adequately protect water quality need to be incorporated into the permitting requirements. In addition, we request that permits involving active bypass systems include requirements to monitor and report upstream and downstream temperatures.	Comment noted. These types of concerns are dependent on the site specifics for a pending project. Staff will take these comments under consideration and potentially incorporate them into implementation of the Policy when reviewing individual projects that propose the active bypass system. Staff is considering modifications to section 5.2 to require monitoring of applicable water quality monitoring requirements as recommended by the appropriate Regional Water Quality Control Board.
R-2	Coastal Action Group	Passive system requirements may work in some instances – but not all. For instance if you have licensed and unlicensed diversion from subsurface flows, with or without the combination of surface water diverters, passive make work only for the surface water diverters. It is not clear how “passive” can work [for] diverters [who pump] from subsurface flows.	A diversion from subsurface flows would need to be properly designed by a qualified professional. The Division has already approved passive bypass systems for diversions from stream underflow. A proper passive system for a well diverting from subsurface flow should be based on setting up the pump system so that it does not turn on until surface flow levels in the stream are appropriate to meet minimum bypass flows. It takes careful monitoring of the streamflow and making sure that the water level in the well casing is at the same level as the minimum bypass flow level in the stream. Essentially the pump on the well casing should be designed to turn on after the water level in the well casing rises to the appropriate level.

Topic S: Bypass Flow Monitoring

S-1	Coastal Action Group	[The provisions of section 5.2] should be incorporated into policy for all diverters surface and subsurface cumulative diversion, [not just for automated computer-controlled bypass systems].	Passive bypass structures that are correctly designed should provide bypass flows that comply with permit terms without the need for monitoring. The Draft Policy requires minimum bypass flows be met on an instantaneous basis, which is why it requires passive bypass systems unless physical site conditions prevent the construction of a passive bypass system. In those situations, the Draft Policy states automated computer-controlled bypass systems shall be used.
S-2	Rudy Light	An automated computer-controlled bypass is excessively complex and has enormous cost. To automatically measure, record and change the bypass flow rate will require electronic sensors to measure pond volume for any given pond depth, and a sensor to measure the actual bypass flow rate just below the dam. But in addition to the sensors, there must be a switching system that activates a diesel engine or an electric pump to pump the water out of the pond at the desired rate, and not too much nor too little a rate. Pumps and valves must be automatically turned on and off and while pumping, must be adjusted to provide the exact required flow automatically by electro mechanical means. So there must be sensors and a negative feedback system at the pump to obtain the correct rate of bypass. It would require purchasing a power source, e.g., a diesel engine or bringing in electricity. Then, one would have to buy a pump capable of pumping hundreds or even thousands of gallons per minute. Finally, there would have to be a complete control system of computers, valves, switches and much more. This is a difficult and costly problem that only a licensed engineer can attempt to solve. It is hard to give a cost estimate, but based on my own experiences I would suggest that for any individual pond of, say, 20 acre feet capacity, this kind of system will cost at minimum $50,000 and more likely $80,000 or more. It's simply too complicated and too expensive to implement. Of course, for larger ponds, the cost will be more.	Comment noted. Automated bypass systems are only suggested where a passive systems is not physically possible. Table 3-3 in the Revised Direct Cost Analysis Report (Chambers Group and Stetson Engineers, January 2010) estimates the costs for automated bypass systems at $10,000 plus $1,200 annually for two monitoring points.
S-3	Rudy Light, North Marin Water District	With an automated computer-controlled bypass, Water Board staff will be overwhelmed by all the hourly recorded data it receives, even if only on the forms and spreadsheets reporting water use. Of course, if data must be submitted to the Water Board in real time, the problem is even worse. Consider the amount of data from only 100 ponds employing this system, taking readings once per hour. There are 24 hours in a day and 365 days per year, so each pond annually delivers 8,760 data points. With 100 ponds, there are 876,000 individual data points each year, a huge amount of uninterpretable data containing very little valid and useful information.	Staff is considering adding policy provisions that would require real-time monitoring and reporting of diversions and streamflows. The program would be implemented if and when resources become available.

S-4	Rudy Light	Instead of computer-controlled automatic bypass systems, the correct solution, as I have pointed out before, is to establish a number of USGS stream gauges at selected places on streams of interest. In this manner, valuable information may be gleaned.	This comment pertains to the installation of additional USGS stream gages. The State Water Board does not have the authority to install USGS stream gages.

Topic T: Monitoring and Reporting of Diversions and Streamflow

T-1	Trout Unlimited, California Sportfishing Protection Alliance, Assemblymembers Noreen Evans, Wesley Chesbro, and Jared Huffman; Senators Mark Leno and Patricia Wiggins	Staff did not respond to the TU/Wine Industry recommendations for monitoring and reporting of diversions (section 8.0, Joint Recommendations). Reference to this recommendation could not be found in the Responses to Comment. Instead, the responses appear to have focused on related suggestions to develop a real-time reporting system for diversion and streamflow data, and state that the agency has no budget to implement such a thing. Even if that is true, a requirement that water rights holders monitor and report diversions can still be adopted. The joint TU/Wine Industry recommendations suggested that reporting occur as follows. "Diversion data shall be reported with next Progress Report By Permittee or Report of Licensee, or whenever requested by the State Water Board. Permits shall include a term stating that the State Water Board intends to develop and implement a basin-wide program for real-time electronic monitoring and reporting in a standardized format, and that such reporting will be required upon a showing by the State Water Board that the infrastructure is in place to accept real-time electronic reports. It shall not be necessary to amend the permit at that time." We will suggest a specific amendment to the Policy to incorporate adequate monitoring and reporting of diversions.	Staff is considering adding policy provisions that would implement a regional stream flow monitoring program. The program would be implemented if and when resources become available.
T-2	NMFS	We disagree with the monitoring and reporting requirements described in Section 5.0 through 5.2 of the new draft policy. The policy's provision for monitoring and reporting varies depending on whether the diversion is passive or automated. If the diversion is passive, the policy simply requires diverters to provide the SWRCB with an annual certification that verifies the diversion structure has not changed from the design the SWRCB had originally permitted. If the diversion is an automated-computer controlled bypass system, the policy requires the applicant to monitor and report stream flow on an hourly basis using automated flow measuring devices. We believe the new draft policy should require instantaneous monitoring and reporting of stream flow and water use for all types of diversions for the following reasons: (1) Without stream flow and diversion monitoring reports submitted by diverters, the SWRCB has no ability to evaluate the compliance with not only the terms and conditions of the permit or license; but also effectiveness of the policy itself. (2) Section 4.5 of the Watershed Approach described in the policy requires "special terms designed to assess the effectiveness of the watershed management plan in meeting the requirements of this	Please see the response to comment S-3.

		policy," which are terms that would require watershed participants to monitor and report stream flow and water use. Since the new draft policy does not require effectiveness monitoring of individual permits, it could be a disincentive for a group of diverters to collaborate with the SWRCB on the Watershed Approach. (3) In order to evaluate the effects of diverters that have acute but significant effects on stream flow (e.g., frost protection), SWRCB staff need to analyze stream flow and water use data that is collected on relatively frequent intervals (i.e., less than one hour intervals).	
T-3	Kimberly Burr, Russian Riverkeeper	One of the most effective means of enforcement and which needs to be included in this regulation is real time monitoring posted to an accessible website. Not only does this approach encourage significant voluntary compliance, it provide a means to deter acts – that is avoid the harm all together, it allows any one including resource agencies to track usage, respond to problems in a meaningful time frame, and it provides important information to biologists. Due to limitations on public agency resources and recognizing the public plays a critical role in reporting violations of any laws including water rights law making the databases available and usable to the public would allow them to identify whether known diversions are properly reported in the database. This would not only protect the fishery resources covered by the Policy but also protect lawful diverters from being harmed by illegal diversions and allow the public to be more effective stewards of our waterways and fish populations.	Please see the response to S-3.

T-4	California Sportfishing Protection Alliance	[In the response to] CSPA comment 25.0.64, . . . the Board, effectively, proposes an annual timestep for monitoring and reporting. [An annual timestep] will not allow the Board, resource agencies or the public to evaluate whether public trust resources are being protected. [T]he timestep of both the reporting and the monitoring of diversions needs to be improved. This would provide important information about the availability of water for permitting purposes in a given stream or river. . . In recent Board discussions and draft proposals on frost control, the Board proposes to require real-time monitoring and reporting of streamflows and diversions in the Russian River in watershed, though only in the frost control season. As the Board has understood in the limited context of frost control, cumulative impacts most frequently do not take place on an annual timestep. . . If Russian River frost control diverters can organize real-time, web based reporting of diversions for about three months out of the year, it should not be too burdensome to ask Policy-affected diverters, or indeed all diverters in the Policy area, to be able to do the same.	Please see the response to S-3.
T-5	California Sportfishing Protection Alliance	The Final Draft Policy does not require existing permits in the project area to monitor and report diversions. Nor does it improve stream gauging on a watershed-wide basis. It is impossible to evaluate the cumulative effects of any new diversion if existing diversions are not accounted for. A section should be added to provide a road map and a timeline for correcting these deficiencies as well. The Policy should set forth a plan to make such reporting both economically feasible and obligatory in a defined period of years. If necessary, the Board should consider a legislative request for funding to specifically support technical equipment that will be needed by the new Board enforcement personnel authorized by Senate Bill X7 8.	Please see the response to S-3 and T-1 .
T-6	California Sportfishing Protection Alliance	In the meantime, the Policy should also set forth interim measures that can begin to address the problems that inadequate gauging and reporting pose for addressing cumulative effects on fisheries. For example, hourly gauge data loggers could be required for each new diversion. All existing diversions should be catalogued, and hourly gauge data logger should be required for each previously existing diversion within a certain number of years. Stream gauges at critical points could be analyzed and, where absent, installed. Finally, a team of auditor/hydrologists could be hired to review the combined data after the fact and identify problem areas.	Please see the response to T-5

T-7	Coastal Action Group	How will diversion be monitored for compliance and controlled when minimum bypass requirements are not being met? Will responsible agency and interested parities have access (current information) on flow status? If so, how will this work? The criteria for establishing the minimum bypass flow necessary for survival of salmonids in all life stages may be appropriate. The problem is enforcing this standard in a timely way with verifiable monitoring. Information (flow data) has to be available, in real time, to responsible agency and the public.	Please see the response to S-3

Topic U: Stream Gauge Installation/Regional Stream Gauging Program

U-1	Trout Unlimited, California Sportfishing Protection Alliance, Assemblymembers Noreen Evans, Wesley Chesbro, and Jared Huffman; Senators Mark Leno and Patricia Wiggins	[The TU/Wine Industry] recommended that the Policy require gauging by one of two means: permit and license holders could install their own stream gauges or contribute toward a regional stream gauging program. (See Final Responses to Joint Recommendations, Section 8.3) The draft Frost Protection reasonable use rule recognizes the importance of stream gauging information, and requires continuous monitoring and reporting of streamflow information during the frost season, and display of that information on the internet at not less than hourly intervals. Unfortunately, the draft Policy does not include the TU/Wine Industry recommendation for gauging, or something similar. The Responses to Comment do not explain why this is so, other than to reiterate that the agency believes it does not have the funding to implement the gauging program itself or to develop a program for electronic reporting and display of the gauging information. That should not prevent the Board from requiring it of diverters. We will recommend a specific amendment to the draft Policy to implement our suggestion	Please see the response to T-1
U-2	North Coast Stream Flow Coalition, Northern California River Watch	The priority of the policy should be to establish reliable data in order to protect fish. The SWRCB should 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. Watersheds should be compared according to similar watershed characteristics.	Please see the response to T-1.

Topic V: Compliance Plans

V-1	Coastal Action Group	The approval process for Compliance Plans shall be reviewed under CEQA mandates.	To the extent that permit terms and conditions constitute CEQA mitigation measures, the requirement that a permittee submit a compliance plan for the State Water Board's review and approval is consistent with the Board's responsibility under CEQA to adopt a mitigation monitoring and reporting program to ensure that any CEQA mitigation measures required by the Board are implemented. (See Cal. Code Regs., tit. 14, section 15097.)

Topic W: Policy Effectiveness Monitoring

W-1	Trout Unlimited, California Sportfishing Protection Alliance, North Coast Stream Flow Coalition, Northern California River Watch, Assemblymembers Noreen Evans, Wesley Chesbro, and Jared Huffman; Senators Mark Leno and Patricia Wiggins	Unfortunately, the draft Policy does not include provisions for Policy Effectiveness Review or adaptive management, although it appears that staff and Board Members seriously considered including it in some form. The reason for this is probably that staff felt that they could not ensure that the resources would be available for the task. We understand that this is the case. However, we strongly believe that it is possible and wise for the Board to state that it is your policy to carry out that program, even if you must also state that your ability to carry it out depends in part on having sufficient resources. This is true of other Policy provisions too. Given the strong stakeholder support for adaptive management and the critical role it plays in supporting the scientific rationale for the policy, we believe that there will also be widespread support for making sure that you have the resources to accomplish the task. Trout Unlimited will propose specific text amendments for your consideration that reflect this recommendation.	Staff is considering revisions to the policy to include an effectiveness monitoring program that would be implement when resources become available.
W-2	Dept of Fish and Game	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 in stream flows needed for fishery resources ... " Section C.1.2.4.	Staff is considering revisions to the policy to include an effectiveness monitoring program that would be implement when resources become available.

Topic X: Enforcement - General

X-1	Coastal Action Group, North Coast Stream Flow Coalition, Northern California River Watch	Additional clarification is needed to demonstrate how enforcement of flow maintenance targets will be met. We noticed peer review for the numeric system for establishing necessary flow levels only. There appears to be a lack of peer review and analysis of the policy in general. Was the enforcement policy peer reviewed for effectiveness potential?	Peer review is required for the scientific basis of the proposed policy. The enforcement provisions are non-scientific in nature and do not require peer review.
X-2	Coastal Action Group, North Coast Stream Flow Coalition, Northern California River Watch	[Enforcement] can not be effective if all diversions [are] not considered. Implementation of this policy will be limited if only applicants (and not all diverters including those with license) are considered in conditioning and mitigating the effects of diversion. Enforcement [cannot] occur unless real time monitoring devices are in place.	Although the scope of this policy is limited to applicants and petitioners, the State Water Board's enforcement authority is not. The State Water Board plans to expand its enforcement actitivies against all diversion types in the policy area, as well as other areas depending on enforcement priorities.
X-3	Coastal Action Group	If there are not enough resources dedicated to this policy to attain desired results in the permitting and project review tasks, how will there be sufficient resource dedicated to enforcement? What are the cumulative impacts of letting numerous smaller violations pass without enforcement action (this might be one of the other factors)? Is it not that one of the largest factors leading to impacts from low flows as a result over use is that the over use is a result of numerous small impacts that add up to one big problem? We do realize that assessment and prioritization may be necessary due to an issue of limited resources. [Enforcement] needs dedicated support in staff availability and resources if desired intent is to be achieved.	By enactment of Senate Bill 7x-8, the State Water Board is recruiting additional resources for enforcement. Five State Water Board emplyees will be headquartered in Santa Rosa to work specifically on enforcement in the AB2121 area.
X-4	Coastal Action Group	Terms and conditions, under permitting guidelines, must have sufficient standards to assure, not only compliance, but that compliance will achieve the desired goals in terms of stream flows that will support salmonids on all live stages.	Comment noted.

X-5	California Sportfishing Protection Alliance	The enforcement plan (8.0) is little more than a statement of good intentions. A system to audit those diversions that are reported is not defined; it is not even included as part of the Policy. The Policy should describe with greater specificity how it plans to make use of the new enforcement personnel that were added to the Board under Senate Bill X7 8. It should also describe the tools that enforcement personnel will need to effectively bring willing parties into compliance, deter parties from not complying, and shut down the intransigent parties who refuse to comply.	The State Water Board believes such an audit under the policy is unnecessary and can limit enforcement flexibility. To monitor diversions, the State Water Board has developed an automated online reporting system by which all reports of licensees, progress reports by permittees, supplemental statements of water diversion and use, and groundwater recordations are tracked. The online system requires water users to report monthly diversion and use amounts. The Division has access to Summary Reports that idenfy diverters that fail to file and those diverters that report uses in excess of their rights. Also, as stated above, an enforcement unit will be headquartered in Santa Rosa to investigate illegal diversions and violations throughout the policy area. This field presence will deter non-compliance.
X-6	Patrick Higgins/Living Rivers Council/North Coast Streamflow Coalition	My previous testimony and attachments provided here demonstrate that North Coast rivers are in severe crisis with the primary cause of the imminent loss of their salmon resources resulting directly from loss of flow and inaction by the State Water Resources Control Board and its Water Rights Division. This proposed Policy has no defined enforcement action to abate existing problems and time lines for reversing problems in a meaningful time frame as required by law.	Comment noted.
X-7	Patrick Higgins/Living Rivers Council/North Coast Streamflow Coalition, Andy Johnston	Another significant problem with cumulative effects is the 1771 illegal reservoirs estimated by Stetson Engineers (2007) in the Policy area and their interaction with other legal and illegal diversions. Since the Policy deals only with new applications for water rights and winter flows, there is no prospect that problems will be dealt with let alone resolved (see Enforcement).	These facilites, if diverting water, are now required by law to file a Statement of Water Diversion and Use by July 1, 2010. Failure to file will be subject to a $1,000 penalty and an additional $250 per day for each day in which a statement is not filed after being contacted by the State Water Board. The new Enforcement resources discussed above will implement this follow-up activity.
X-8	Sierra Club Redwood Chapter	Weak enforcement is also the cause of the massive backlog of applications that have been submitted after the fact for dams built on stream blocking fish passage and which are not capable of being retrofitted. We have pointed out the role of the design consultants in this failure of enforcement, as has DFG. The design consultant, rather than writing the regulations, should be a regulated party. SWRCB should consider evaluating the feasibility of a certification program for consultants and professionals to ensure they have the necessary training to design and construct projects that avoid or minimize impacts to instream flows.	The California Board for Professional Engineers already has the authority to investigate complaints of violations of the Professional Engineers Act, such as fraud, deceit, misrepresentation, negligence, incompetence, breach of contract, violating the Codes of Professional Conduct, and practicing without a license. The State Water Board does not need to duplicate this authority.

X-9	California Coastkeeper Alliance	As the Board testified at the March 2009 Senate Natural Resources and Water Committee hearing on water rights, California currently cannot report across the state on how much water is actually being used, where it is being used, where it is being diverted to, how much is being diverted, or how many diversions are illegal. The Board testified further that where it does have such data, it is estimated that the number of illegal diversions is over 40% of the number of active permits and licenses. The Policy cannot achieve success in safeguarding the public trust unless it brings all diversions, particularly non-filers, into the region's overall assessment, implementation and enforcement effort. We urge the Board to develop and incorporate into the Policy a specific enforcement strategy to identify and act on such illegal diversions, an effort that is critical to the Board's achievement of its statutory mandate of "maintaining instream flows." We noted in our May 2008 joint letter that the Policy fails to discuss the actual removal of the thousands of known illegal diversions and dams that already exist. At a minimum, the Policy should commit the State Water Board to assess and post on its website its proposed workplan for addressing these illegal diversions and dams within a set time frame, and to provide a calculation of the resources required for these tasks so that funding can be properly planned for and allocated.	With the authority provided by Senate Bill 7x-8 and the new capability of the eWRIMS online reporting system, the State Water Board can identify and enforce against non-filers. With additional resources, the State Water Board can have a greater field presence to identify and take action against non-filers.
X-10	Lompico Watershed Conservancy	From experience with our Regional Board's, lax enforcement actions, lack of field presence, and lack of an internal agency determination to carry out the law, we consider matters of staffing and enforcement to be the two most important issues that this 2121 policy needs to address effectively.	Comment note. Lack of resources has been addressed in other responses.
X-11	Casey Caplinger/Stacy Li/NOWWE	Please provide the number of water rights complaints or violations discovered, the number of cease and desist orders issued for these complaints or violations, the number of water rights permits or licenses revoked, the amount of penalty assessed for trespass of waters of California and the maximum amount of penalty that could have been assessed.	The numbers of formal enforcement actions, ie ACLs, CDOs, and Revocations are available from the State Water Board's website. For each ACL complaint, the maximum liability possible is stated on the complaint shown on the website. The number of complaints and status is also posted.

X-12	North Coast Stream Flow Coalition	It is clear throughout the PD, and reaffirmed in the 'California Water Right Newsletters' that all illegal water use may become legal by : 1) filing a simple 'statement' of use 2) filing a water right application. The enforcement department of the DWR may pursue enforcement actions at their discretion. In the PD geographic area, there are 1,777 potentially illegal water diversions. The fact remains that not all illegal water users will file a statement or application. Therefore, there will be numerous continued illegal water diversion making it impossible for applicants applying for water use to be able to determine water availability. Unless, the DWR gets serious about all illegal water use, water right protests will continue because the public will not be able to trust that water availability according to the methodology set out by the DWR is an accurate baseline from which to determine MBF and MCD.	It first should be noted that an illegal diversion cannot become legal by filing a statement or application. An applicant may eventually become legal if a permit is issued. The 1,700 facilities cited in this comment are required to file a statement if diverting water. The failure to file a statement is subject to a $1,000 penalty after July 1, 2010. The State Water Board knows of these diversions but agrees that its newly authorized resources will be needed to identify and enforce against other unknown illegal diversions.

Topic Y: Enforcement – Prioritization of Enforcement

Y-1	Kimberly Burr	The injury or harm that carries the most weight should be defined as potential harm to listed species or their habitat. Activities that pose actual or potential threats to listed species or their habitat must, strictly speaking, be a violation of the regulation.	Comment noted.
Y-2	Sierra Club Redwood Chapter	Priority of Enforcement Section 8.2. This section actually describes how violations of the policies will not be enforced. The earlier draft acknowledged that every violation deserves an appropriate enforcement response and then goes on to state that enforcement will in fact be limited, due to a lack of resources. The revised draft below restates the obligation for enforcement and then simply strikes out the acknowledgement of limited resources. "Every violation deserves an appropriate enforcement response. ~~Because resources may be limited, however,~~ the State Water Board will balance its need to complete its non-enforcement tasks with the need to address violations. It must also balance the importance or impact of each potential enforcement action with the cost of that action." The draft is now a document that makes it clear that this policy will not be enforced. This is unacceptable. This continues the same attitude that has led to the 1771 illegal dams in the limited area of AB 2121.	The State Water Board disagrees with the responder's conclusion. The State Water Board is obtaining new enforcement resources and has expanded enforcement authority provided by Senate Bill 7x-8. The State Water Board is committing some of these resources to enforcement in the policy area. This dedication of resources clearly demonstrates the State Water Board's intent to enforce this policy.

Y-3	California Coastkeeper Alliance	Ensure that the enforcement database referenced in Section 8.2 is posted online in a user-friendly fashion, so that the public can track progress towards identifying and addressing violations. Licensed and permitted diversions should similarly be posted online in a user-friendly fashion, so that the public can identify whether local, known diversions properly appear in that database. In this way the public can be more effective stewards of local waterways, and ensure that those properly using the waters of the state are not penalized by the actions of illegal diverters.	The State Water Board strives to provide useful information to the public. All formal water right enforcementr actions that are initiated by the Division are immediately posted on the website. Additionally, all reports of diversion and use submitted online by permittees and licensees are available to Division staff and will soon be available for public viewing. However, some enforcement information being tracked are not currently available for posting due to program limitations and confidentiality of information.
Y-4	North Marin Water District	Page 22, Section 8.2, Prioritization of Enforcement. Violations meeting more than one of the criteria should receive a higher priority ranking. State Water Board will assign a relative priority for enforcement for each violation. Nowhere is it defined how or by whom this relative priority will be established.	Enforcement priorities are set be Enforcement Section supervisors and managers.
Y-4	North Marin Water District	Page G-1, Section G.6.0 Large Consumptive Use Project Receiving Economic Benefit From a Violation or An Unauthorized Diversion. A large project for this proposed Policy means a project that (1) directly diverts one cfs; (2) collects more than 50 acre feet per annum, or stores water via a dam within the jurisdiction of the Department of Water Resources for dam safety, as defined in Water Code Sections 6002 and 6003; or (3) involves one entity that uses numerous diversions that cumulatively satisfy conditions (1) or (2). This is inconsistent with Water Code Section 1704.4 which defines a minor petition as less than 3 cfs or 200 acre feet per annum storage.	Comment noted, but the policy is consistent with section 717, Title 23, Calif. Code of Regulations. Additionally, the definitions in the policy are not limited by other definitions in the Water Code. Within the policy area, most projects on the State Water Board records are small projects.

Topic Z: Enforcement – Continuing Authority to Amend Permits and Licenses

Z-1	Coastal Action Group	It is not clear how [policy section 8.3] would be applied. Will it apply to cumulative diversion issues where minimum by pass flows are not being met? What is the trigger for such application? [Coastal Action Group's other] comments suggest that existing licensed diversion should participate in [the] flow maintenance policy. The language provided does not indicate commitment of policy or program actions that will or can realize the desired results of maintaining flows. Please clarify this language.	Policy section 8.3 will apply in the complaint process in which sufficient evidence is received to support actions against waster or unreasonable use or impacts to public trust resources.
Z-2	GD Cousins and DM Miles	Section 8.3 gives authority to the SWRCB to review any existing license. There appear to be no stated performance criteria that companies can work to guarantee that they will not run into problems other than a subjective requirement for "reasonable use".	The State Water Board already has this authority and the policy cannot give that authority. Rather, the policy is identifying that the State Water Board will exercise this authority in the policy area.

Z-3	Rudy Light	Section 8.3 of the Revised Draft Policy, changed the rules completely, using Water Code Sections 100 and 275, and it is clear the present intention differs from what the original Draft Policy contained and from what the Introduction and Section 3.3 of the Revised Draft Policy both state. It is manifest that the Revised Draft Policy now intends to apply to existing water rights, and with obvious intent to modify existing licenses. This is contrary to what staff has been saying for more than two years. These Water Code Sections actually apply to the entire state and therefore should not appear in the Policy which is limited to this area. Unless, of course, it becomes the intention of the Water Board and staff to open up and modify existing water rights only in the region covered by the Policy. At the least, this topic must be clarified, but I think it is better that this section should be deleted completely.	The State Water Board believes that there has been no change in the policy. In the previous draft Policy, section 11.1.5 identified that the State Water Board would consider the policy when analyzing complaints alleging waste or unreasonable use and impacts to public trust resourcs. The citatation provided in Section 8.3 does not change this original intent since complaints are filed against permit and license holders.
Z-4	Patrick Higgins/Living Rivers Council/North Coast Streamflow Coalition	The proposed Policy language in Section 8.3 states that " the State Water Board may modify existing permits or licenses if the State Water Board determines that such modification is necessary to meet water quality objectives contained in water quality control plans established or modified pursuant to Division 7 (commencing with section 13000) of the Water Code." This indicates that the Policy must meet Basin Plan standards, when in fact legal and illegal water diversion are currently greatly reducing flow and contributing to pollution. The relationship between depleted flows and water quality problems, such as increased stream temperature and nutrient pollution promoted by stagnation, are well recognized in the region but ignored in the proposed Policy. For details on this line of argument, please see Higgins (2008a).	In a complaint proceeding or petition for change, when sufficient and compelling information is provided or available to make findings to open an existing permit or license to require more restrictive terms and conditions, the State Water Board will initiate such actions.

Topic AA: Enforcement – Prohibition Against Waste and Unreasonable Use

AA-1	Kimberly Burr	In several important instances in the draft policy, the state opts for discretionary language where none is warranted and in fact if were adopted would contradict the affirmative duty that, the draft policy properly acknowledges, lies with the state.Section 8.4 states that, "[i]f after investigation, the State Water Board determines that a water diversion is wasteful or constitutes an unreasonable use, unreasonable method of use, or unreasonable method of diversion of water, the State Water Board may order a party who diverts and uses water to comply with requirements to abate the waste or ensure the reasonable use of water, method of use, and method of diversion." The word "may" needs to be replaced with the word "will".	Comment noted, but the State Water Board's enforcement authority is discretionary. Additionally, actions recommended by staff may have different outcomes when brought before the Board at a hearing. Therefore, the policy must reflect this discretion on a case-by-case basis.

AA-2	O'Laughlin and Paris, LLP	Section 8.3 reiterates the authority of the SWRCB to amend or modify existing water right permits and licenses to protect the public trust, ensure waste is abated, or ensure diversion and use of water is reasonable. In addition, Section 8.4 states that the SWRCB has an affirmative duty to protect public trust uses, including fisheries, from the effects of water diversion and use. In exercising that duty, it states that the SWRCB may order a party diverting and using water to comply with requirements necessary to ensure protection of public trust resources if there is evidence that the diversion or use of water impacts such resources. Such actions would only occur, however, after notice to the parties and an opportunity for a hearing has been provided. The AB 2121 Policy must qualify such statements with the rule of water right priority. Under the rule of priority, riparian rights take precedence over rights of appropriation, so that in times of shortage riparians are entitled to fulfill their needs to the extent natural flow is available for diversion before appropriators are entitled to any use of the natural flow. Although the rule of priority is not absolute and the SWRCB has authority to act contrary to the rule, it may do so only in appropriate circumstances, such as when a competing principle or interest justifies action inconsistent with strict application of the rule of priority. (Id. At 965.) When the SWRCB seeks to ensure that minimum flow standards and water quality objectives are met in order to enforce the rule against unreasonable use and the public trust doctrine, it still must attempt to preserve water right priorities to the extent those priorities do not lead to unreasonable use or violation of public trust values. (Id. At 967.)	The State Water Board concurs that during times of insufficient flow, the allocation of a limited water supply would be based on the priorities of the water right holders. However, consideration of the priority of a water right is not necessary when sufficient evidence is availabe to show a particular diverter in the watershed has caused or contributes to a public trust impact. Such actions can be initiated on a case-by-case basis.

Topic BB: Enforcement – Protection of Public Trust Resources

BB-1	Coastal Action Group	[The] policy must have language sufficient to deliver on the protection of public trust values [policy section 8.5] and responsibility to maintain those values and protect fisheries. At this point policy language needs improvement on the enforceability side of these issues.	Comment noted.

BB-2	Kimberly Burr	In Section 8.5, the draft policy states that, "[t] he State Water Board has an affirmative duty to protect public trust uses, including fisheries, from the effects of water diversion and use." It goes on to say that, [i]n the exercise of that duty, the State Water Board may order a party who diverts and uses water to comply with requirements to ensure protection of public trust resources if there is evidence that the diversion or use of water is impacting those resources." (emphasis added). The word "may" in the second sentence introduces a measure of discretion that does not otherwise exist within the state's duty especially where there is evidence that a diversion is impacting public trust resources. Section 8.5 should properly state that, "the State Water Board will order a party who diverts and uses water to comply with requirements to ensure the protection of public trust resources if there is evidence that the diversion or use of water is impacting those resources. This change adds consistency to the principle that the state has an affirmative duty to protect public trust resources. The order referred to in this section would presumably be published in permits and licenses and any time there is evidence that diversion or use is impacting public trust resources.	Comment noted.
BB-3	California Coastkeeper Alliance	We also support the Board's assertion of its authority to amend permits and licenses to address Water Code Section 275 ("waste and unreasonable use"), and its acknowledgement of its affirmative responsibility to protect public trust uses of waters. With respect to the latter, the Board has a range of tools available to address violations of the common law public trust doctrine, in addition to the statutory enforcement tools referenced in the Policy. We ask that the Policy further explore the range of actions that the Board can and will take to implement and enforce the public trust doctrine in light of existing case law.	The State Water Board believes that the policy clearly states the Board's authority and does not need to further explore other ranges of actions that the Board can take to implement and enforce the public trust doctrine.

Topic CC: Enforcement When Water Right Application Is Pending

CC-1	Coastal Action Group	Section 2.2.1 does not adequately clarify what the interim policy is during the application permitting phase. In addition, what policy (or interim policy) will prevail if the site specific study is requested, while the site specific study is in process (including scientific and peer review)? Will the SWRCB allow existing conditions (failure to meet a minimum flow standard) to continue while studies and evaluations are going on? The policy indicates interim criteria, but the criteria (except for season of diversion) and application of same during the interim permitting process is unclear. The interim policy for use during project development phase must be made clear. In the case where historic DFG indicated minimum flow requirements exist, it is suggested that they be used for projects requiring interim guidelines.	Section 8.6 of the proposed policy allows the State Water Board to consider what interim operating conditions an unauthorized diverter may be implementing when deciding whether or not to take formal enforcement action. If enforcement is necessary, an enforcement action could also dictate interim criteria.

Topic DD: Enforcement – Effect on Existing Permits and Licenses

DD-1	Coastal Action Group	[Will] historic permits and licenses for diversion [be required to] address cumulative diversion standards needed for salmonid survival? [The policy implies] that all diverters may be subject to regulatory control in efforts to meet stream flow targets. This issue is not clearly laid out as policy and how it will be implemented. If this policy is to be effective and maximum cumulative diversion is to be considered in a way that minimum by pass flows are to be maintained, then all diverters must be considered and adjusted to meet the requirements necessary to maintain sufficient minimum bypass flows necessary to support salmonid survival in all life stages.	The policy does not identify that the State Water Board will analyze all existing permits and licenses for their cumulative impacts. Rather, the policy identifies that the State Water Board will consider the policy when reviewing any petitions for change filed for permits and licenses and when analyzing complaints.

Topic EE: Enforcement – Timely and Appropriate Enforcement Actions

EE-1	Patrick Higgins/Living Rivers Council/North Coast Streamflow Coalition	The SWRCB response to comments (18.3.7) states that it has taken 35 formal enforcement actions in the AB 2121 area. Since the AB 2121 process has been on-going for six years and there are 1771 illegal ponds and diversions noted in the area, if the pace of enforcement does not accelerate then all actions will be completed in approximately 295 years. Section 1055 of the State Water Code allows administrative civil liability fines of $500 and the 1771 illegal ponds could generate could generate $885,000 daily for the SWRCB WRD and fund all the positions needed. It would also send a clear message that illegal water users have to dismantle their dams or face major financial consequences. The claim of the SWRCB that funding is a constraint rings hollow when their civil liability authority is considered.	With the authority to increase water right enforcement resources by an additional 25 staff, the number of water right enforcement actions will increase. Field presence in the policy area will now be increased and the potential 1771 illegal ponds are a priority for inspection. Although a maximum penalty of $500 per day can be assessed and payments are deposited in the Water Right Fund, continued assessment of the maximum liability would be an abuse of the enforcement considerations required by Water Code section 1055.3.
EE-2	Kimberly Burr	In several important instances in the draft policy, the state opts for discretionary language where none is warranted and in fact if were adopted would contradict the affirmative duty that, the draft policy properly acknowledges, lies with the state. Section H.2.3 states that, [t]he State Water Board may revoke a permit or license pursuant to Water Code sections 1410 or 1675, respectively. The State Water Board may revoke a permit to appropriate water if work is not commenced, prosecuted with due diligence, and completed or the water applied to beneficial use in accordance with the permit and applicable statutes or regulations. A license may be revoked if the State Water Board finds that the licensee has not put water to a useful or beneficial use, has ceased to put water to such use, or has failed to observe any of the terms and conditions in the license. The word "may" needs to be replaced with the word "will".	Comment noted but the word "may" is in the Water Code.
EE-3	Kimberly Burr	In the context of legalizing illegal activities, introducing discretion in almost every phase of the enforcement program is a serious problem and will NOT discourage bad acts. Generally speaking, a deterrent must be backed up. One approach is to establish strong mandatory minimums. Again, leaving the penalties up to the discretion of the majority of the Board is a failed model and must be changed if recovery efforts are to succeed. Deterrence can be an effective tool and must not be emasculated and essentially left out the state's tool bag by rendering it subject to discretion. In fact, such discretion sends the wrong message that in fact alleged violators will ultimately be able to seek leniency.	Section 1052, subd. (b) of the Water Code provides for the assessment of a maximum liability not to exceed $500 per day for an unauthorized diversion or use of water. New Legislation would be required to allow for a mandatory minimum penalty to be assessed.

EE-4	North Marin Water District	Page H-1, Section H.1.0 Informal Enforcement Actions for Lower Priority Violations. For low priority violations, State Water Board staff may recommend an informal enforcement action. Where are "low priority violations" defined? What is "an informal enforcement action" and what kinds of penalties can result?	Informal enforcement actions can be letters, emails or telephone calls providing a time to correct a minor violation. Low priority violations are determined based on priority ranking by Enforcement Section supervisors and managers. Penalties are not assessed in an informal action but a failure to correct the violation may result in formal enforcement.

Topic FF: Enforcment – Compliance Assurance

FF-1	Coastal Action Group	The likelihood of adequately conditioning a project and assuring compliance to said conditions is very slim – unless: 1) projects get full environmental review and assessment by responsible agency and the public (be consistent with CEQA; 2) There is a staffing support administrative infrastructure to provide adequate project review and compliance monitoring. Enforcement capability and any claims of capability are precluded without demonstration of effective mechanisms (including staffing review and enforcement functions) are in place.	As stated above, new enforcement resources have been authorized and will be dedicated to enforcement activities.
FF-2	Coastal Action Group	Self-Monitoring reports are not consistent with CEQA mandates – or – any reasonable assurance of compliance.	Comment Noted
FF-3	Coastal Action Group	Real time stream flow monitoring accessible to responsible agency and the public is necessary to monitor compliance.	Comment Noted, but Section 5.2 of the Policy provides that bypass flow monitoring hourly data can be submitted electronically in a speadsheet format with permittee or licensee reports, or whenever requested by the State Water Board. Such records will be availabe to the public upon request. Failure to submit records and violations of bypass will be enforced and bypass compliance will be monitored by random compliance inspections.
FF-4	California Coastkeeper Alliance	The Policy states in Appendix F that the Board "will monitor for compliance by requiring self-monitoring reports." This begs the question of how the Board will track compliance of those diverters who not only fail to file self-monitoring reports, but also fail to file even for licenses for their diversions.	The new online reporting system and new authority provided by Senate Bill 7x-8 will provide the State Water Board with this tracking and enforcement capability.

FF-5	California Coastkeeper Alliance	We particularly welcome the reference in Appendix F to working cooperatively with other agencies, especially the Department of Fish and Game (DFG), whose wardens have unique enforcement and inspection authority that will leverage the Board's enforcement activities significantly. Further attention should be given in the Policy to lessons learned from past efforts to develop pilot, coordinated enforcement strategies with DFG, and more description provided as to how the wardens can become more integrated partners in this effort. For example, the Los Angeles Regional Water Board is initiating a pilot enforcement effort working in association with Department of Fish and Game (DFG) law enforcement (wardens). This pilot program is intended to improve surveillance and enforcement of water quality in cases where DFG wardens in the field detect violations.	Comment noted.

Topic GG: Watershed Approach - General

GG-1	Dept of Fish and Game	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).	Policy section 4.3, part 2 already states "The watershed group shall work with regulatory agencies, as necessary, including NOAA Fisheries, the US Army Corps of Engineers, DFG, the State Water Board, and the North Coast Regional Water Quality Control Board to obtain regulatory approvals, assurances and/or permits under the ESA and CESA and state and federal water quality laws and regulations. CEQA and other environmental reviews of pending applications in the watershed group shall be coordinated to the extent possible."
GG-2	Coastal Action Group	Will acceptable standards be established in assessing cumulative impacts? Will there be robust, real time, monitoring of implementation and flow/stage of the watercourse in question? Will the State Board enforce all CEQA, Government Code, and ESA requirements?	Regarding assessment of cumulative impacts, policy section 4.3, part 1 requires site specific studies be completed in accordance with policy appendix C, which requires a cumulative diversion analysis. Regarding monitoring, please see response II-4. Regarding enforcement of CEQA, Government Code, and ESA requirements, please see the response to comment number 19.1.3 in Responses to Public Comments On the Draft

			Policy for Maintaining Instream Flows in Northern California Coastal Streams, volume 2, January 2010.
GG-3	Coastal Action Group	What will occur in the interim, while the Watershed Approach project is in process? The State Board must consider interim guidelines that will protect the resource and assure or encourage the process to move forward and not linger forever - as it has been.	Policy section 8.6 describes enforcement actions where water right applications are pending.
GG-4	Coastal Action Group	It is not clear what you mean by "Coordinated Water Right Permitting". Each diverter must have its own individual water right - with conditions (or coordinating conditions) that assure compliance with any plan that is developed - and - with monitoring that will measure the performance and outcomes (including real-time stream flow monitoring).	Policy section 4.0 states that coordinated water right permitting allows the use of one package of technical documents for all pending applications within the watershed group. It also states that individual water right permits will be issued for any approved applications that are part of a watershed group, provided that individual applicants accept permit conditions.
GG-5	Sierra Club Redwood Chapter	This Watershed Approach element with the site-specific optional approach would add a major degree of complexity for non-existent staff to administer and enforce and will add to the anarchy of the current environment. We find this extensive muddling of the Draft Guidelines with the Watershed Approach to be an unacceptable response to AB 2121. The Guidelines need to be implemented now and not tied to an untried and unenforceable Watershed Approach within an agency of "limited resources." There is nothing in AB 2121 that would require the Watershed Approach to be included with this policy. The specific language in AB 2121 allows the Board to simply adopt the 2002 Draft Gridlines, which we believe would be a better alternative than the adoption of this seriously flawed document.	The commenter is correct that Water Code 1259.4 does not require the State Water Board to adopt a watershed approach. As stated in policy section 4.0, "The State Water Board recognizes that a watershed approach for determining water availability and evaluating environmental impacts of multiple water diversions in a watershed may be an alternative to evaluating individual projects using the regionally protective criteria set forth in this policy. Accordingly, flexibility should be provided to groups of diverters who endeavor to work together to allow for cost sharing, real-time operation of water diversions, and implementation of mitigation measures, as long as the proposed approaches are consistent with the principles for maintaining instream flows provided in section 2.1." Regarding use of the NMFS-DFG Draft Guidelines, the NMFS-DFG Draft Guidelines itself states on page 7 that the February median bypass flow is only partially protective of instream flows needed for fish habitat in the policy area. The Scientific Basis Report for the Draft Policy corroborated this, and recommended different criteria that it concluded are protective throughout the policy area.

Topic HH: Watershed Approach – Project Charter

HH-1	Coastal Action Group	These watershed based planned diversion projects should be no larger than it is feasible for the SWRCB to control and monitor the project. It is recommended that the there be a size limitation based on size of a planning reach or established hydrologic unit – keeping in mind there must be disclosure and availability of information to managing agencies and the public.	Policy section 4.2 states the number of participants and the size of the watershed involved in each watershed group shall be subject to State Water Board review and approval.

Topic II: Watershed Approach – Required Technical Documents

II-1	Coastal Action Group	It should be clear that the SWRCB, and other managing agencies are overseeing and in control of the project process. . . The groups will not make decisions on weather and how to approve the pending water right – or – diversion management plans. That is the job of the SWRCB.	Policy section 4.3, part 2 indicates the State Water Board will make the determination of the impacts of the proposed projects based on the information provided by the watershed group.
II-2	Coastal Action Group, North Coast Stream Flow Coalition	All environmental documents shall be made available to responsible agency and the public. Provision should be made to provide such documentation in reasonable proximity to the project (not only in Sacramento).	Please see the response to comment number 19.1.3 in Responses to Public Comments On the Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams, volume 2, January 2010
II-3	Casey Caplinger/Stacy Li/NOWWE	It must be made clear that individual projects within a watershed approach must still be assessed based on their location within the watershed. A project near the headwaters of a stream has less surface runoff than a similar size project near the mouth of that same stream. This is because of the size of the drainage area.	Policy section 4.3, part 2 requires submittal of environmental documents describing, among other things, the significance of the potential impacts of the proposed projects caused by reductions in streamflows, and an evaluation of impacts to the public trust.
II-4	North Coast Stream Flow Coalition	While a Watershed Group approach to obtaining a water right permit could expedite the application process for water users in a watershed to obtain their individual permits, it is not clear how the public will know that the Group is within their permitted allowance of water use unless each member of the group has real time flow meters showing electronically what their water use is. Will this be made available on the World Wide Web for public access? Will the Division of Water Rights, DWR, guarantee that the public will have easy access to monitoring data?	Policy section 4.5 states that individual permits and licenses would be developed for pending applications that are part of an approved watershed group. Individual permits usually include monitoring requirements for the individual diverter that are self-reported. In 2010, the State Water Board will begin requiring that all annual progress reports of permittees and licensees be submitted electronically. These reports will be posted and made available for public review on the Division of Water Rights' electronic water right information system posted on the Division's web page.
II-5	Save Our Seashore	Save Our Seashore believes that self-monitoring can work with watershed groups composed of diverters balanced with other organizations with a strong interest in controlling diversions. However, the watershed groups composed only of diverters, there is no balance of interests and thus there must be independent monitoring. Consequently, we propose that the Draft Policy should be amended: 1) To allow self monitoring such as described in 4.3 (3) for watershed groups (defined as watershed "councils") that contain regulatory agencies, conservation groups, community groups, and other stakeholders and 2) To require independent monitoring (policy to be developed) for watershed groups (defined as "watershed diverter groups") that contain only diverters/applicants.	Policy section 4.3 (3) describes the information that watershed groups shall provide to the State Water Board that will be taken into consideration when Board staff develop permit conditions for the individual permits involved in the watershed group. Individual permits usually include monitoring requirements for the individual diverter that are self-reported.

Topic JJ: Watershed Approach – Retraction of SWRCB Approvals

JJ-1	Kimberly Burr	In several important instances in the draft policy, the state opts for discretionary language where none is warranted and in fact if were adopted would contradict the affirmative duty that, the draft policy properly acknowledges, lies with the state. Section 4.6 states "The State Water Board may retract its approval of a watershed group, project charter, and/or diversion management plan, or direct watershed group participants to comply with a time schedule, if the watershed group does not perform its obligations as specified in the project charter or diversion management plan in a timely manner. " The word "may" needs to be replaced the word "will".	The discretionary language is preferred in this instance because it allows the consideration of other factors when making the determination whether or not to retract an approval. Comment noted.

Topic KK: Case by Case Exceptions

KK-1	California Coastkeeper Alliance	We have concerns with regard to the "case-by-case exception" proposal in Section 9.0 of the Policy. In regulating water rights in California, the Board has a duty to protect public trust resources, ensure reasonable use of water, maintain necessary stream flow levels, and assess the availability of water for appropriation. The Board must necessarily carry out these tasks on a watershed basis due to the dynamic nature of hydrologic systems. A watershed's hydrologic table is the sum of its parts, and aggregate diversions have a tremendous effect on public trust resources throughout a particular stream system. The exception process in Section 9.0 focuses on the applicant's proposed diversion, without clear attention to the larger impacts of the request. Accordingly, the Policy should specifically require that applicants present detailed information on the watershed-wide impacts of their proposals, including a consideration of illegal diversions in the area, to ensure that the cumulative impacts of such proposals receive appropriate attention.	The last paragraph of Policy section 9.0 includes a sentence that states "If the case-by-case exception involves potential environmental impacts, it shall be considered under CEQA and the State Water Board's public trust authority." The purpose of the public trust doctrine is to protect navigation, fishing, recreation, environmental values, and fish and wildlife habitat. (National Audubon Society v. Superior Court (1983) 33 Cal.3d 419, 434-435 [189 Cal.Rptr. 346].) Under the public trust doctrine, the State retains supervisory control over the navigable waters of the state and the lands underlying those waters. (Id. at p. 445.) The State Water Board may exercise its authority under the doctrines of reasonable use and the public trust to address reduced instream flows in the policy area and adverse effects to fish, wildlife, or other instream beneficial uses due to existing diversions.
KK-2	Sea Ranch Water Company	Section 9.0 subsection 1 could be read to render the exception provision moot, and should be amended to avoid this consequence. Section 9.0 should be amended as follows: Eliminate #1, because the public interest identified in #2 includes but is not limited to instream flow considerations.	The policy was developed for the purposes of maintaining instream flows. Subsection 1 identifies that the purpose of the policy needs to be demonstrated by anyone requesting a case-by-case exception. Since site specific criteria in lieu of regional criteria can be accepted under conditions described in the proposed policy, they would not be categorized as case-by-case exceptions.

Topic LL: CEQA – General Compliance

LL-1	Trout Unlimited, Russian Riverkeeper	The draft [policy] and SED also fail to adequately characterize the baseline condition that existed at the time of Policy adoption. . . Unfortunately, the draft does not attempt to quantify existing diversions or streamflows, or to assess existing conditions. It does not determine whether existing conditions are good. It does not compare existing conditions to the Policy "Principles" or the Regional Criteria. If the agency has concluded that existing conditions are sufficient "for maintaining instream flows" as part of state policy for water quality control, it does not disclose how it reached that conclusion. (See Stats. 2004, ch. 943, § 3 codified as Water Code § 1259.4(a)(1).) . . . Because the baseline condition has not been adequately characterized and the draft Policy focuses almost exclusively on new permit applications, implementation of the Policy would lead to undisclosed and unmitigated cumulative effects. Lacking adequate information about existing diversions, the analyses required by the Policy will understate cumulative effects.	This comment is substantially the same as a comment that the commenter made on the draft SED and earlier versions of the proposed policy. See response to comment number 23.6.10 at page 134 in volume 2 of the response to public comments document dated January, 2010. See also response to comment number 22.2.10 at pages 93-94 in volume 2 of the response to public comments document dated January, 2010 [explaining why the description of the environmental setting is the draft SED is adequate for purposes of CEQA].
LL-2	Coastal Action Group	Until it is outlined how the organizational issues, including staffing and funding to support application reviews are going to be dealt with, there is little utility to the policy at all. The policy simply can not be implemented without a processing structure and dedicated resources. This issue must be addressed in your CEQA document. Issues that are readily and reasonably noted to occur (and in this case compromise policy implementation) must be considered in the environmental review process. In addition, as this project is a Water Quality Control Plan, provisions of this policy must comply with section 13242 of the Water Code.	The purpose of the SED is to evaluate the potential indirect environmental impacts of implementing the proposed policy. This comment concerns the adequacy of the State Water Board's resources to implement the proposed policy, and has no bearing on the adequacy of the SED. If adopted, the proposed policy will be a state policy for water quality control, not a water quality control plan. Article 3 (commencing with section 13140) of chapter 3 of division 7 of the Water Code governs adoption of state policy for water quality control. Water Code section 13242 is not contained in article 3, and is not applicable to the proposed policy. That section concerns the program of implementation required to be included in regional water quality control plans.

LL-3	Paul "Skip" Spaulding, Farella Braun + Martel LLP/Golden Vineyards	State Board staff prepared a Substitute Environmental Document in connection with the Draft Policy issued to the public for comment in 2008. The State Board received an avalanche of comments from Golden Vineyards and many other stakeholders identifying the legal deficiencies in this document. The comments of Golden Vineyards on the SED are set forth on pages 11-15 of Exhibit "A," and these comments are specifically incorporated herein. Although State Board staff has issued responses to some of the comments of Golden Vineyards, it has made no meaningful changes in the SED to address these comments. Thus, our original comments retain their full vitality and the SED remains deficient in many key respects. Golden Vineyards requests that the State Board decline to adopt the Proposed Policy and refuse to certify the accompanying SED. Among other things, the Proposed Policy fails to meet the legal requirements of AB 2121, fails to balance protection of all beneficial uses (including agricultural supply), will have a drastic and unfairly disproportionate adverse impact on vineyard diverters, is based on flawed and uncertain science and is accompanied by a legally deficient Substitute Environmental Document. Unfortunately, the February 2010 revisions to the earlier versions of the Proposed Policy do not correct the legal, scientific and policy deficiencies in it. Accordingly, the Proposed Policy should be rejected by the State Board in its entirety.	The commenter did not submit any new comments in support of the allegation that the SED is legally deficient. Instead, the commenter attached the comments that the commenter made on the draft SED. State Water Board staff responded to those comments in volume 2 of the response to public comments document dated January, 2010. In response to comment number 23.4.38, Board staff stated that the Final SED would address the potential impacts of erosion and sedimentation on nearby watercourses resulting from vineyards choosing not to plant cover crops. The Board has decided, however, that preparation of a Final SED is unnecessary. Instead, the Draft SED and responses to comments constitute the Final SED. Accordingly, this issue is addressed in this response. The indirect environmental impacts on nearby creeks attributable to increased erosion and sedimentation due to a lack of cover crops are potentially significant, depending upon the characteristics of the specific actions taken. Erosion and sedimentation can increase turbidity, clog fish gills, reduce spawning habitat, lower the survival rates of young aquatic organisms, smother bottom dwelling organisms, and suppress aquatic vegetation growth. Erosion also can result in discharges of fertilizers, pesticides or herbicides to surface waters. The Basin Plans for the North Coast Regional Water Quality Control Board and the San Francisco Bay Regional Water Quality Control Board contain numeric and narrative water quality objectives designed to protect the beneficial uses of surface waters. Dischargers of pollutants must file a report of waste discharge with the appropriate Regional Water Quality Control Board and obtain a waste discharge requirement (WDR). (Wat. Code, § 13260.) The WDR must implement the applicable Basin Plan and protect the beneficial uses of the receiving waters. The implementation policy of the North Coast Regional Water Quality Control Board's Sediment TMDL states that Regional Water Board staff shall control sediment pollution by using existing permitting and enforcement tools, including individual NPDES permits and coverage under the general construction stormwater permit. The goals of the TMDL Implementation Policy are to control sediment waste discharges to impaired water bodies so that the TMDLs are met, sediment water quality objectives are attained, and beneficial uses are no longer adversely affected by sediment. The five counties in the policy area also may mitigate the potential impacts of erosion and sedimentation through regulation or best management practices. Napa County's Conservation Regulations (Napa County Code Chapter 18.108) are intended to ensure the continued long-term viability of county agricultural resources by protecting county lands from excessive soil loss. The regulations minimize soil erosion caused by human modifications to the natural terrain and maintain and improve, to

			the extent feasible, existing water quality by regulating the quantity and quality of runoff entering local watercourses. The regulations require the submission of Agricultural Erosion Control Plans and prohibit the continued existence of a condition on any site that is causing substantial erosion due to human-induced alteration of the vegetation, land surface, topography or runoff pattern. Sonoma County's Ordinance No. 5819 includes provisions regarding grading, drainage, and vineyard and orchard site development. One of the requirements of this ordinance is compliance with best management practice guidelines. Sonoma County has developed best management practices specific to agricultural practices in Sonoma County for Sonoma County soil types and weather conditions. They provide the minimum requirements to control water quality impacts from accelerated erosion due to agricultural activities in Sonoma County. Marin County has policies on grading, winter grading, development on steep slopes, and road maintenance that are applicable only to activities conducted by Marin County or county agencies. Erosion control plans, or codes and ordinances regulating erosion from vineyards could not be found for Humboldt or Mendocino Counties. The regulatory requirements discussed above are likely to reduce many of the potential impacts to water quality due to increased erosion that may occur as a result of the policy, but all of the potential impacts to water quality will not necessarily be mitigated to less than significant levels. In response to comment 23.4.42, State Water Board staff stated that the California tiger salamander, which was inadvertently omitted from the list of special status animals that exist in the policy area, would be added to the list contained in Appendix C of the Final SED. Because the Board will not be preparing a separate Final SED, Appendix C of the Draft SED should be considered to have been amended to include the California tiger salamander (*Ambystoma californiense*).

LL-4	Association of California Water Agencies	The bypass flow criteria presume that every watercourse within the North Coast region is a uniform textbook stream that can be protected via a series of equations. The policy bypass flow criteria are over-protective by design so that the policy can be described as "protective". Instead of ensuring a reasonable balance amongst the various beneficial uses as AB 2121 intended, these requirements overstate and prioritize instream flows to the detriment of other beneficial uses of water, regardless whether such constraints are warranted. This State-endorsed reallocation of water could cause waste and unreasonable use in the many instances where there are competing beneficial uses of water.	This comment is substantially the same as a number of comments on earlier versions of the proposed policy. See response to comment number 24.0.35 at page 168 and response to comment number 24.0.51 at pages 172-173 in volume 2 of the response to public comments document dated January, 2010.
LL-5	O'Laughlin and Paris, LLP	In its water quality control planning role, the SWRCB has a duty to adopt objectives for fish and wildlife beneficial uses, but in so doing it has a duty to consider all other beneficial uses of water as well, among them municipal, industrial, and agricultural uses. (St. Water Resources Control Bd. Cases (2006) 136 Cal.App.4th 674, 778.) The SWRCB, in its discretion and judgment, must balance all such competing interests in adopting water quality objectives and formulating a program of implementation to achieve those objectives.	Staff agree with the comment that the State Water Board must consider all other beneficial uses in adopting water quality objectives and formulating a program of implementation to achieve those objectives. Staff note that water quality objectives and the associated program of implementation are components of water quality control plans, which are formulated and adopted in accordance with article 3 (commencing with section 13240) of chapter 4 of division 7 of the Water Code. If adopted, the proposed policy will be a state policy for water quality control, not a water quality control plan. State policies for water quality control are formulated and adopted in accordance with article 3 (commencing with section 13140) of chapter 3 of division 7 of the Water Code. Nonetheless, the State Water Board considered competing beneficial uses in formulating the proposed policy. See response to comment number 24.0.35 at page 168 in volume 2 of the response to public comments document dated January, 2010.

LL-6	Thomas Lippe/Dennis Jackson/Living Rivers Council	Adoption of this proposed policy would represent a violation of the Board's responsibilities to protect listed salmonids and their habitat under the public trust doctrine, section 275 of the Water Code (providing that the Board "shall take all appropriate proceedings or actions before executive, legislative, or judicial agencies to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water in this state") and Article X, Section 2 of the California Constitution (declaring "that the waste or unreasonable use or unreasonable method of use of water be prevented"). The following reasons were cited: (1) The proposed Policy does not apply to existing water appropriation permits and licenses. (2) The regionally protective criteria do not err on the side of resource protection. The Policy's reliance on "nearby" reference streams to provide data for calculating regionally protective criteria is not scientifically valid. (3) The Policy represents a decision by the Board to accept an extraordinary degree of uncertainty as to whether application of the Policy will protect at-risk resources. (4) The Substitute Environmental Document for the Policy fails to comply with CEQA for many reasons. The Policy includes such a vast degree of uncertainty, as described above, regarding the nature of the criteria that will ultimately be applied to permit applications.	Under the public trust doctrine, the State Water Board must consider the effects of water diversions on public trust resources, and protect public trust resources whenever it is feasible and in the public interest. (National Audubon Society v. Superior Court (1983) 33 Cal.3d 419, 446-447.) The public trust doctrine does not require the Board to protect public trust resources when doing so would be infeasible or contrary to the public interest. (Ibid.) Similarly, article X, section 2 of the California Constitution calls for a balancing of competing interests, including the benefits of a given diverter's water use and the impacts of the diversion on public trust resources. Consistent with the public trust doctrine and article X, section 2 of the California Constitution, the Board has balanced competing considerations in developing the proposed policy. The Board's goal was to develop a policy that provides an adequate level of protection for fishery resources, while minimizing the water supply impacts of the policy on other beneficial uses, including municipal and agricultural uses. Contrary to the commenter's assertion, the regionally protective criteria do err on the side of resources protection, but even if that were not the case, the failure to err on the side of resource protection would not necessarily constitute a violation of the Board's responsibilities under the public trust doctrine and article X, section 2 of the California Constitution. Although the public trust doctrine and article X, section 2 of the California Constitution apply to existing water rights, and the Board may reconsider past allocation decisions under those authorities, it does not follow that the Board was required to develop a policy that applies to existing permits and licenses. The Board does not have a mandatory or nondiscretionary duty to reconsider all past allocation decisions in the policy area. Rather, the decision whether to reconsider past allocation decisions lies soundly within the Board's prosecutorial discretion. (See Fox v. County of Fresno (1985) 170 Cal.App.3d 1238, 1242-1244; see also Citizens for a Better Environment-Cal. V. Union Oil Co. of Cal. (9th Cir. 1996) 83 F.3d 1111, 1119-1120.) The Board has limited resources and must be allowed to set priorities. The proposed policy and the regionally protective criteria are the culmination of a lengthy process to determine how to address the potential impacts of new appropriations on anadromous salmonids. The regionally protective criteria were not designed to apply to existing permits and licenses, and the application of the regionally protective criteria to existing permits and licenses would not necessarily be appropriate. As set forth in the proposed policy, the Board will consider on a case-by-case basis whether to modify existing permits and licenses pursuant to the public trust doctrine or article X section 2 of the California Constitution, after providing the permittee or licensee with notice and an opportunity for a hearing.

LL-7	Thomas Lippe/Dennis Jackson/Living Rivers Council	The Substitute Environmental Document for the Policy fails to comply with CEQA for many reasons. The Policy includes such a vast degree of uncertainty, as described above, regarding the nature of the criteria that will ultimately be applied to permit applications, that the "Substitute Environmental Document" cannot even provide a complete or certain project description. As a result, from a process standpoint the public is effectively barred from any meaningful review and comment on the environmental effects of the program. The Substitute Environmental Document contains less than one page of text, at page 72, assessing the potentially significant impacts of implementing the Policy. None of that text qualifies as a fact-based assessment of the Project's environmental effects. Instead, the document blithely offers up the following conclusory assertion: "The proposed Policy establishes criteria for diversion season, minimum bypass flow, and maximum cumulative diversion. Complying with these criteria will not have direct significant adverse impacts on the environment and, in fact, will benefit aquatic life by protecting the natural hydrology." (Page 72.) The project description is so uncertain that it is impossible at this time to evaluate the effects of permit approvals based on the purported "criteria" established by the Policy. Further, the environmental document simply ignores the fact that, as compared to the existing baseline environmental setting, this Project will lead to further reductions in stream flow. As Mr Jackson carefully documents, implementation of the Policy will lead to approvals that further degrade at-risk resources. The environmental document entirely fails to discuss these mechanisms of impact on at-risk resources.	This comment concerns the potential impacts of surface water diversions under new permits that may be approved pursuant to the proposed policy. In essence, the commenter's concern is that the proposed policy is not sufficiently protective of instream flows because the nature of the criteria that will be applied to individual water right applications is uncertain, and the policy will, according to the commenter, lead to reductions in stream flow relative to baseline conditions. For purposes of CEQA, however, the project analyzed in the SED is the adoption of the proposed policy, not approval of individual water development projects, and adoption of the policy will operate to limit the effects of surface water diversions on instream flows. Accordingly, this comment has no bearing on the validity of the SED.
LL-8	Patrick Higgins/Living Rivers Council/North Coast Streamflow Coalition	Since Basin Plan implementation is subject to §13242, the proposed Policy should meet those standards. The requirements are listed below with comments following noting problems with compliance. "The program of implementation for achieving water quality objectives shall include, but not be limited to: a) "A description of the nature of the actions which are necessary to achieve the objectives, including recommendation for appropriate action by any entity, public or private." Since illegal water use is a substantial contributor to the problem, restoring flows sufficient to attain Basin Plan standards would require speedy enforcement action as part of the solution. There is no strategy or schedule for increased enforcement in the proposed Policy, only a statement that there are more enforcement personnel being hired State wide. B) "A time schedule for actions to be taken." In 1998 the SWRCB turned down the Friends of the Navarro Watershed petition based on public trust and refused to use enforcement to reverse problems of dewatering, despite identifying 121 reservoirs without any apparent water rights. The Navarro is under the AB 2121 jurisdiction. When will it be back on the surface in	Article 3 (commencing with section 13140) of chapter 3 of division 7 of the Water Code governs adoption of state policy for water quality control, including the proposed policy. Water Code section 13242 is not contained in article 3, and is not applicable to the proposed policy. That section concerns the program of implementation required to be included in regional water quality control plans.

		summer in compliance with §1243 and; therefore, also be meeting Basin Plan standards for water quality? The proposed Policy would need to define a rate of expected recovery and a date for compliance to conform to §13242. Additionally, the proposed Policy should have acknowledged climate change and the possibility that less productive ocean cycles and dry climatic regime is expected to recur sometime between 2020 and 2025 and set its schedule for enforcement and compliance accordingly. Lack of prompt action is likely to lead to irretrievable and irreversible Pacific salmon stock losses. C) "A description of surveillance to be undertaken to determine compliance with objectives." There is no explicit monitoring plan offered in the proposed Policy other than permit terms requiring monitoring and reporting. A workable plan to meet §13242 requirements would include monitoring of larger tributaries and mainstem rivers with real time data gages that could be viewed by the public over the Internet similar to those operated by the Yurok Tribe.	

Topic MM: CEQA – Alternatives to the Proposed Policy

MM-1	Trout Unlimited	The Draft does not include an adequate range of alternatives, or provide a rational basis to explain its focus on new applications. A.B. 2121 does not merely state that its mandate is to develop guidelines for processing new water right permits or petitions. The carefully crafted language of the statute did not stop there. Instead, Water Code § 1259.4 requires a policy for "water right administration" sufficient "for maintaining instream flows." (Id. § 3; Water Code § 1259.4(a)(1).) . . . Neither the draft Policy nor the SED explain the decision to focus exclusively on new permits and petitions, or how that decision will result in water rights administration sufficient "for maintaining instream flows." This is particularly troublesome because existing diversions during the dry season months are perhaps the biggest threat to salmon and steelhead. Even without reopening all existing permits, there are other actions that the Policy could take to improve summer flows and help the State Water Board fulfill its statutory mandate. We suggested a number of them in our original comments. They included an increased emphasis on watershed-based management, incentives for voluntary stewardship, and a work plan to bring "non-filers" into the fold. (See Recommendations on Sections 4, 11, and 12.) Some of those suggestions made it in modified form into the draft Policy. But the draft does not yet explain whether and how the agency has determined that these measures will be sufficient to maintain instream flows. The State Water Board may have reasoned that conditioning pending and yet-to-be-filed permits for existing but unauthorized diversions is sufficient to fulfill the A.B. 2121 mandate and protect the public trust. The agency may also be planning	The legislative findings for AB 2121 made clear that the Legislature intended for the State Water Board to develop guidelines to ensure that new water right permits include appropriate fish measures that are protective of anadromous salmonid and related aquatic resources. The proposed policy is consistent with that intent. The proposed policy recognizes the importance of timely and appropriate enforcement to ensure the successful implementation of the policy and the maintenance of instream flows. The State Water Board does not have unlimited resources, however, and must balance the need to complete its non-enforcement tasks with the need to address violations. The proposed policy satisfies the statutory mandate to adopt principles and guidelines for maintaining instream flows for the purposes of water right administration. Staff recognize that additional measures, such as reopening existing permits, may be necessary in order to protect public trust resources, but adoption of the proposed policy is an important first step.

		additional action, unstated in the Policy, to bring "non-filers" into the water right system. If either of these paths reflects the State Water Board's reasoning, the agency should say so, and explain how it reached its conclusions.	
MM-2	Coastal Action Group	No comparison made with the potential implementation of the Joint NMFS/DFG (2002) policy – in terms of implementation effectiveness. It is claimed the aspects of the Joint NMFS/DFG Guidelines have been incorporated into this policy. No analysis has been provided comparing the Joint Guidelines language and implementation policy with the policy presented by the SWRCB. CEQA demands that the full range of alternatives must be considered, with analysis and findings based on analysis to demonstrate the deliberation process leading to conclusions. Thus, analysis should be forthcoming on how the proposed policy is consistent with, or diverges from the NMFS/DFG Joint Guidelines and who these differences apply to implementation of standards and desired outcomes.	Contrary to this comment, the State Water Board did compare both the benefits and the environmental impacts of the proposed policy and the policy alternatives, including the DFG-NMFS Guidelines. A detailed comparison of the protectiveness of the proposed policy and policy alternatives is contained in the report prepared for the State Water Board by R2 Resource Consultants and Stetson Engineers entitled North Coast Instream Flow Policy: Scientific Basis and Development of Alternatives for the Protection of Anadromous Salmonids, dated August 6, 2007, and updated March 14, 2008. A comparison of the water cost of the policy and policy alternatives is summarized at pages 73-81 of the draft SED. Finally, a discussion of the relative restrictiveness of the proposed policy and policy alternatives, and the concomitant environmental impacts, is located at pages 82-83 of the draft SED.

MM-3	Coastal Action Group	Is it not the case that those parties taking water without permit and license are actually stealing a commodity of significant value that is rightfully owned by the public or those with prior or superior water rights? Is this not theft or conversion under State Criminal Statute, and punishable under the criminal and civil codes of this State? As a viable and reasonable Project Alternative the SWRCB should consider enforcement actions, including use of criminal code for theft or conversion, to protect the Public Trust and prior or superior water right holders. This would include pursuing violations of Cal Water Code, CEQA, State Fish and Game Code (where flow and illegal operations are present), and incorporating actions from the Attorney Generals office (this is permissible under State Water Code and other State Code).	Water Code section 1052 prohibits the unauthorized diversion or use of water. The unauthorized diversion or use of water is a trespass against the State, but violation of Water Code section 1052 is a civil violation, not a criminal violation. The proposed policy includes an enforcement element, which includes a description of the actions that the State Water Board may take in response to a violation of Water Code section 1052, and a list of criteria that State Water Board staff will use in setting enforcement priorities.
MM-4	Coastal Action Group	The CEQA document related to this policy must consider the full range of alternatives. An alternative recommendation being made here is that the SWRCB consider a way of financially supporting the structure and mechanism needed to make sure this policy is viable and enforceable. Included in those considerations regarding funding should be a permitting fee mechanism and schedule to recover costs for project review. Reasonable fees to cover costs are justified economically. Reasonable fees will discourage the filing of substandard, incomplete, and misleading applications.	The activities of the Division of Water Rights are already supported, in large part, by water right fees, including annual water right permit and license fees, and water right application filing fees. (See Wat. Code, § 1525; Cal. Code Regs, tit. 23, §§ 1065, 1066.) The State Water Board does not have the authority, however, to simply raise fees to the extent necessary to fully fund its programs. The revenue collected through water right fees must conform to the revenue levels set forth in the annual Budget Act. (Wat. Code, § 1525, subd. (d)(3).) Staff concur that reasonable application filing fees may discourage the filing of unsupported or incomplete applications, but application filing fees should so high that voluntary filings are discouraged, thus increasing the Division's enforcement burden.

MM-5	North Coast Stream Flow Coalition	CEQA demands that a full range of alternatives must be considered. The Policy Document fails to discuss the full range of alternatives to the current draft PD. The SWRCB/DWR should prepare an Alternative PD that uses the NMFS/DFG Joint Guidelines to establish MBF and MCD. In this way the public has the opportunity to understand the issues whereby the SWRCB/DWR selected a NEW methodology over the Joint Guidelines and why the SWRCB/DWR chose the preferred project PD. The NCSFC offers this alternative: 1) The PD applies above anadromy 2) Maintains consistency throughout the PD that diversions only occur during the December 15-March 31st as the season of diversion 3) The February mean is established using 50 years of historical stream gauge data (or the most protective stream gauge data available) as a baseline for establishing the MBF and the MCD. 4.) All projects past and present must provide reliable monitoring and make the results easily accessible to the public 5) Enforcement of the PD applies to past and present water rights 6) No instream dams are allowed on Class I, II, or III streams for new applications. 7) The most reliable methodology for determining protective instream flows for fish and wildlife is established by gauging all streams and or using gauging data where 'watershed characteristics' are closely related. 8) All terms and conditions of current and new water right permits and licenses limit water diversions during drought conditions and account for climate change.	Staff disagree with the comment that a full range of alternatives was not considered. The draft SED considered three comprehensive alternatives, including the CDFG-NMFS Draft Guidelines Alternative. In addition, the draft SED considered a number of alternatives to certain elements of the Policy, including diversion season alternatives, minimum bypass flow alternatives, maximum cumulative diversion alternatives, and alternatives in permitting onstream dams. A detailed evaluation of the protectiveness of the proposed policy and these alternatives is contained in the report prepared for the State Water Board by R2 Resource Consultants and Stetson Engineers entitled North Coast Instream Flow Policy: Scientific Basis and Development of Alternatives for the Protection of Anadromous Salmonids, dated August 6, 2007, and updated March 14, 2008.

Topic NN: CEQA – Assessment of Environmental Impacts

NN-1	Peter Kiel, Robert Wagner	The Substitute Environmental Document ("SED") impermissibly defers all analysis of indirect environmental and economic effects associated with the policy, particularly regarding the effects associated with the reduction of water supply resulting from application of the policy criteria and denial of water right approvals. We commented on the Draft Policy that most of the pending projects cannot meet the Regional Criteria. This problem does not materially change with the Revised Policy Principles and Regional Criteria. We also commented that the SED and other policy documents do not disclose the additional indirect environmental and economic impacts that would result when water right approvals are denied under the policy. The Revised Policy still defers analysis of indirect economic impacts associated with the cost of compliance with the policy by suggesting that site specific studies will be available for projects that do not conform to the Regional Criteria and the ultimate manner of compliance is too speculative to analyze. This is an improper analysis; at a minimum the Water Board must conduct a program-level analysis of indirect environmental impacts and economic costs that assumes that all pending projects not meeting the Regional Criteria would be denied water right approvals. When the Board conducts this analysis it will find many significant impacts were not	The comment that the SED impermissibly defers all analysis of the indirect environmental effects of the proposed policy is substantially the same as a comment that the commenter made on the draft SED. See response to comment number 23.4.9 at page 112 of volume 2 of the response to public comments document dated January, 2010. Contrary to the commenter's assertion, the State Water Board was not required to perform a project-level analysis of the indirect economic impacts of the proposed policy on every pending water right application. To the extent that the proposed policy constitutes an agricultural water quality control program, the Board was required to estimate the total cost of the program and identify potential sources of financing. The direct cost analysis report prepared by staff satisfies this requirement.

		disclosed in the Draft Policy and Revised Policy analyses.	
NN-2	California Cattlemen's Association	CCA believes that the economic analysis did not accurately measure the cost associated with implementing the Proposed Policy. The Proposed Policy will have both far reaching direct and indirect costs – primarily attributed to a forced reduction in farm or ranch productivity due to restrictions in water use. CCA urges the Water Board to conduct a more comprehensive economic analysis, thoroughly reviewing both direct and indirect costs, in order to more confidently adopt instream flow policies and guidelines that can actually be achieved without jeopardizing food production in the North Coast.	To the extent that the proposed policy constitutes an agricultural water quality control program, the State Water Board was required to estimate the total cost of the program and identify potential sources of financing. The direct cost analysis report prepared by staff satisfies this requirement. The Board was not required to analyze indirect costs.
NN-3	Swanson Vineyards and Winery, David Garden	The policy does not appear to evaluate the secondary environmental and economic impacts that will result from the denial of permits for pending projects unable to meet the new criteria of the proposed Policy.	The potential indirect environmental impacts of the proposed policy are evaluated in the SED. The SED included an evaluation of the indirect environmental impacts that could occur if water is not available for appropriation as a result of the proposed policy. (See Appendix D of the Draft SED.) The State Water Board was not required to evaluate the secondary economic impacts of the proposed policy. See response to comment NN-2, above.

NN-4	Association of California Water Agencies	While the Substitute Environmental Document ("SED") does discuss some of the direct costs associated with AB 2121, the indirect economic impacts are given inadequate consideration. The indirect costs may, in fact, have a greater impact on the regional economy than the direct costs. For example, the proposed policy, specifically the "minimum bypass flow" and "maximum cumulative diversion rate", will most likely preclude or seriously restrict water development in the smallest drainages by restricting the opportunity to divert water to only portions of extremely wet but comparatively infrequent rainfall events. The result is lost diversion opportunities that would not have adversely impacted instream resources. Project development in small upslope drainages should be encouraged due to the limited potential for impact on flow. Restricting project development and diversion opportunity will significantly increase project costs. This could have significant adverse economic consequences for portions of the North Coast, a concern that was raised by several of ACWA's members but not given serious consideration in the proposed policy.	The State Water Board was not required to evaluate indirect economic impacts. See response to comment NN-2, above. The Board's goal is to develop a policy that provides an adequate level of protection for fishery resources, while minimizing the water supply impacts of the policy on other beneficial uses. Consistent with this goal, the proposed policy has been revised to include a small project exemption for projects located above the upper limit of anadromy that will not adversely affect instream flows needed to protect fishery resources.
NN-5	Association of California Water Agencies	The economic impacts of the policy to municipal users are enormous. For most or all municipal users, the Regional Criteria – even as guidance – are orders of magnitude distant from what could be reasonably accomplished. For example, very significant environmental and economic impacts would ensue if entire municipal areas are dewatered, or existing reservoirs are required to be reconstructed to bypass flows they are currently unable to achieve. In many instances these municipal diversions are already subject to bypass flows and other fish protection measures. We encourage the Board to instruct its staff to complete a more extensive assessment of the potential economic impacts associated with this or any subsequent policy proposal for instream flows for the North Coast. This is absolutely essential if the Board truly wants a complete analysis of the potential impacts associated with any policy proposal it considers.	To the extent that the proposed policy constitutes an agricultural water quality control program, the State Water Board was required to estimate the total cost of the program and identify potential sources of financing. The direct cost analysis report prepared by staff satisfies this requirement. The Board was not required to conduct a more extensive assessment of potential economic impacts. The proposed policy does not apply to existing rights, except the extent that a change is sought, and the change could adversely affect instream flows or fish passage. Accordingly, there is no basis for the assumption that entire municipal areas could be dewatered. Similarly, existing reservoirs would not be required to be reconstructed to bypass flows unless the reservoirs are unauthorized.

NN-6	Mendocino County Water Agency	While CEQA may not require a review of social or economic impacts, as asserted in the State Board's response to Comment 23.4.32-Volume 2, and despite the assurances that the Substitute Environmental Impact Document adequately addresses potentially significant indirect environmental impacts on land use (see State Board's response to Comment 23.4.32-Volume 2), we remain concerned that implementation of the proposed policy will in fact have significant land use impacts in Mendocino County and in turn, potentially significant economic and social impacts. As discussed in our April 30, 2008 comment letter (copy attached), the proposed policy, as presently written, will hinder if not preclude rural residential development and/or irrigated agricultural activities in a large portion of Mendocino County. The elimination of these activities has property tax revenue implications-a probable decrease in property tax revenue-which will most likely further decrease the County's ability to provide essential health and safety, and other public services. We understand the State Board staff's desire to formulate an instream flow policy that is highly protective of anadromous salmonids, and note the State Board staffs' reference to the use of the Precautionary Principle (see State Board response to Comment 1.9.5, Volume 1) as justification for the resulting proposed Regionally Protective Criteria, but would like to remind the State Board staff that to be consistent with the proper application of the Precautionary Principle, they are obligated to fully consider all impacts of their action – in this case the potential land use, social and economic impacts of policy implementation.	Comment noted. The State Water Board's goal is to develop a policy that provides an adequate level of protection for fishery resources, while minimizing the water supply impacts of the policy on other beneficial uses. Although the regionally protective criteria are conservative by design, they are not the only option available to water right applicants, who may perform site-specific studies instead.
NN-7	Patrick Higgins/Living Rivers Council/North Coast Streamflow Coalition	To be CEQA compliant the proposed Policy needs to require an analysis of changes in land use that have related hydrologic impacts, such as timber harvest, road building, development, vineyards and agricultural and calculate changes in water yield. Similarly, channel changes need to be acknowledged and effects on gaining or losing flow related to aggradation factored in to water allocation. Additionally, all legal and illegal diversions and groundwater use must also be included.	This comment concerns the potential cumulative impacts of surface water diversions under new permits together with other diversions, legal and illegal, groundwater use, and other factors, including changes in land use. The project that must be analyzed pursuant to CEQA, however, is the adoption of policy for water quality control, not approval of individual water development projects, and adoption of the proposed policy will operate to limit the effects of cumulative surface water diversions on instream flows. In essence, the commenter's concern is that the proposed policy may not be sufficiently protective of instream flows because the policy may not require water right applicants to prepare an adequate cumulative impacts analysis. This concern has no bearing on the validity of the SED prepared in connection with the proposed policy. The adequacy of the cumulatives impacts analysis prepared in connection with water right applications will be determined on a case-by-case basis by the lead agency responsible for carrying out or approving those projects.

OO-1	Peter Kiel, Robert Wagner	No trade-off analysis was conducted. Protection of fishery resources and beneficial use of water are both societal values supported by law. The Scientific Basis and Staff Responses to Comments make clear that "more than adequate flows will be provided by regionally protective criteria." But is that a fair balancing of values? Indeed, there was no balancing of values performed-the benefit to fishery resources was not quantified, nor, except in the few cases presented in Table 1-Summary of Modeling Results, was the loss of water to diversion projects evaluated. The Responses to Comments 4.0.29 and 4.0.31 claim the Substitute Environmental Document (SED) "adequately assess, at a programmatic level, the potential indirect environmental impacts of the Policy, on agricultural resources." Response to Comment 24.0.28 claims the "water cost analysis described in the SED . . . in conjunction with the comparisons of protectiveness provided in the Scientific Basis . . . can be used as a type of "trade-off" analysis." However, Response to Comment 23.5.7 admits "the water cost analysis presented in the SED was not intended to provide a measure of the reduction in water supplies that will results (sic) from the Policy." This is understandable since the "water cost analysis" assumes diversions at the maximum rate allowed by the MBF and MCD parameters throughout the entire permitted season. This is completely unrealistic because there are no projects proposed at drainage area sizes represented by the Validation Sites that would divert anywhere near those volumes of water. Projects under application are primarily on much smaller watersheds. Those on larger watersheds generally are offstream diversions at limited rates. Most projects do not divert through the entire winter season in an average year. The June 2009 Sensitivity Study is based on the same fundamentally flawed representation of water diversion.	Please see the response to comment OO-10.
OO-2	California Farm Bureau, Sea Ranch Form Letter	As a result of using an unreasonably protective standard, the Proposed Policy fails to balance the needs of water uses. Instead, the Proposed Policy ensures that one use, in this case fisheries, trumps all others. Not only is this inconsistent with Constitutional and statutory mandates, but it is contrary to the expressed goal of many conservation organizations; namely to encourage water users to take water during the wet season and forego dry season diversions. The Proposed Policy, with its unreasonably restrictive standards, will not allow for such progress because no one will be able to divert water during the wet season. The Board should direct staff to work on a policy that balances the needs of all uses and does not ignore meaningful impacts.	As stated in the response to comment 23.1.12 in Responses to Public Comments On the Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams, Volume 2, January 2010, contrary to this comment, agricultural, domestic and industrial beneficial uses were considered in developing the draft Policy. In fact, the draft SED concluded that the Maximum Protectiveness Alternative was infeasible because a policy that favored the protection of fishery resources above all other beneficial uses did not meet the project goal of minimizing water supply impacts resulting from the Policy. (Draft SED, pp. 42-43.) In addition, the draft SED discloses the potential loss of habitat, and associated impacts to special-status species, such as the western pond turtle and red-legged frog, if onstream dams are removed as a result of the Policy. (Draft SED, pp. 62-63, 67-68, Appendix E, pp. 18-21.) To the extent that the Policy limits future appropriations in order to protect fishery resources, such limitations are appropriate in light of the fact that anadromous fish species in the Policy area have been listed as threatened or endangered species, due in part to existing water diversions. (Draft SED, pp. 32-33.)

OO-3	California Fisheries and Water Unlimited	The State Water Resources Control Board (Board) and its staff (Division of Water Rights) have been absent from enforcing the State of California Endangered Species Act and the California Fish and Game Code 5937 in ordering mandatory daily flows below dams and diversion in coastal streams in all water right permits, licenses, and petitions to protect endangered Coho salmon species, threatened steelhead trout species, and also endangered Tidewater Goby species (coastal lagoons). For this reason California coastal anadromous fisheries are been ignored by the regulatory agencies of the State of California.	Notwithstanding that the Policy applies only to applications to appropriate water and, as such, does not directly apply to existing water rights, the State Water Board encourages holders of valid water rights to proactively engage in activities that maintain adequate instream flows that are protective of native fish habitat. In this regard, by providing clear guidelines for the State Water Board to follow for purposes of water rights administration, the State Water Board intends that the Policy will help improve and streamline the processing of pending and future water rights change petitions. In this context, the Policy may encourage holders of valid water rights to proactively petition to modify their existing water rights in a manner that helps maintain adequate instream flows as well as encourage "non-filers" to file applications. The Policy contains provisions for identifying and investigating instances of noncompliance with the Policy, including "non-filers", prioritization of enforcement cases, and timely and appropriate enforcement actions.
OO-4	California Fisheries and Water Unlimited	California coastal Coho salmon species are near extinction because of the abuse of California and federal regulatory agencies for failing to protect these species. California threatened steelhead have also been abused by the California and federal regulatory agencies.	Policy section 1.0 describes the decline of anadromous salmonid population decline. The draft policy allows applicants to use a set of criteria that are conservatively protective throughout the policy area that staff believes will maintain instream flow conditions for anadromous fish, or to use site specific criteria that are consistent with the principles described in policy section 2.1.
OO-5	Sea Ranch Form Letter	[As stated elsewhere in this comment letter,] the combined effect [of the proposed policy] would be to deprive The Sea Ranch of adequate water supply to sustain the community's viability even in normal rainfall years. If the proposed policy is put into effect, property values at Sea Ranch will drop precipitously, causing loss of jobs and decreased property tax revenues in the region. Our area already suffers from chronic unemployment and would suffer more.	As stated in the March 25, 2010 letter from Victoria Whitney to the City of St. Helena and the Sea Ranch Water Company, "Both the City of St. Helena and The Sea Ranch Water Company appear to assume that if the proposed Policy is adopted, consideration of a change petition would necessarily entail application of the proposed Policy to the underlying permit or license as a whole. On the contrary, the proposed Policy states that only the incremental impacts of the proposed change would need to be evaluated in accordance with the proposed Policy. Similarly, any conditions of approval would be tailored to address the incremental impacts of the proposed change."

OO-6	Peter Kiel, Robert Wagner	The Response to Comment 24.0.28 perpetuates the false conclusion that "The SED concludes that Policy criteria are protective, yet are among the least restrictive of the protective alternatives analyzed in terms of limiting diversion." This is contradicted by the Response to Comment 23.5.5 which pointed out that "as the drainage area decreases, the Draft Policy becomes dramatically more restrictive to diversions as compared to the Draft Guidelines," and the Response was "the restrictiveness of the Draft Policy in small drainage areas is noted. Staff is reevaluating the flow related criteria."	Page iii of the March 2008 revised Draft SED states, "However, in watersheds less than 10 square miles, the proposed Policy allows a smaller average percentage of mean annual flow to be diverted, even though it allows a greater average volume to be diverted. Page 82 states, "However, a comparison of Figures 6-5 and 6-6 shows that the proposed Policy alternative allows a smaller average percentage of mean annual flow to be diverted in watersheds less than 10 square miles, even though it allows a greater average volume. This is because the average percentage calculation equally weights every validation site, whereas the average volume calculation is influenced by the validation sites with large flow volumes." Figure 6-5 shows that, for smaller watersheds, the draft policy would provide more water for diversion than the DFG-NMFS Draft Guidelines and the Maximum Protection Alternative. The February 2010 revisions to the draft policy would allow more water for diversion in smaller watersheds.
OO-7	Peter Kiel, Robert Wagner	Comment 24.0.31 pointed out that "Wagner and Bonsignore's comment letter presents yield analyses for 21 pending projects in the Policy area. The reduction in yield among the 21 projects ranges from 2 percent to 98 percent, and averages 62 percent on a project-by-project basis. The reduction in yield will greatly impact project viability." The Staff Response did not refute these findings. Instead the Response refers to the "water cost analysis" which does not represent any actual project but instead assumes maximum permitted diversions by unrealistic projects at the large Validation Sites. The only analysis by Staff of projects under application is the flawed Table 1 Summary of Modeling Results. It is not apparent that the Scientific Basis, SED, or Response to Comments evaluates the benefit or detriment to fishery resources attributable to imposition of any proposed diversion policy to an actual project under application.	Staff asked the commenter to provide the analysis that was the basis for comment 24.0.31; however the commenter asked for payment prior to release of the information, which the State Water Board was unable to provide. The commenter did not provide the analysis; therefore, comment 24.0.31 remains unsupported. Staff disagrees that Table 1, Summary of Modeling Results is flawed. Evaluation of projects under application is the role of the applicant's consultants.

OO-8	Patrick Higgins/Living Rivers Council/North Coast Streamflow Coalition	Higgins (2008a) and other appendices attached build an irrefutable case that the North Coast coho salmon are on a slide to extinction and that other species like spring Chinook and even fall Chinook stocks may follow the same fate, if radical reform of water use is not implemented rapidly. While the SWRCB WRD considers cracking down on illegal water users to be "controversial", they seem positively blasé about the on-going wave of salmon and steelhead decimation and extirpation. The bias of the SWRCB staff is apparent in the responses to the following comments on the previous draft: 31.0.9, 1.7.4, and 21.0.6. There seems to be no bureaucratic incentive for staff protection of public trust and strong disincentive for stopping criminal behavior within the SWRCB WRD. One can only surmise that political influence exerted by wealthy land owners is preventing enforcement and shielding law breakers who are greatly enriched by using stolen water while at the same time depriving the public of its right to fish, swim and get a clean drink of water. It is outrageous that SWRCB WRD staff is paid by the people of the State, not just irrigators, but turns a blind eye as North Coast salmon and steelhead go extinct.	Please see staff's responses to comments 18.4.10, 18.6.1, and 25.0.63 in Response to Public Comments on the Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams, Volume 2, January 2010.
OO-9	Paul "Skip" Spaulding, Farella Braun + Martel LLP/Golden Vineyards	The Proposed Policy, like its predecessor drafts, avoids any analysis of its huge, disproportionate and unfair water availability and financial impacts on small agricultural diverters, including most of the vineyard diverters in the covered area. The vibrant and growing wine grape industry in Mendocino, Sonoma and Napa Counties, comprised of many small and medium sized vineyard owners and wineries, is particularly and unfairly targeted. These legal deficiencies are explained in pages 6-7 of Exhibit "A," which text is specifically incorporated herein.	Please see staff's response to comment number 24.0.66 in Response to Public Comments on the Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams, Volume 2, January 2010.
OO-10	Paul "Skip" Spaulding, Farella Braun + Martel LLP/Golden Vineyards, Association of California Water Agencies	The proposed policy is still legally inconsistent with the nature and scope of the State Board mandate under AB 2121. For all of the reasons set forth on pages 3-4 of Exhibit "A," which are specifically incorporated herein, the Proposed Policy has at least two major deficiencies: (1) it fails the legal requirement that it constitute a balanced instream flow policy which evaluates and addresses protection of all beneficial uses, including agricultural supply; and (2) it completely ignores the Legislature's stated concern for expediting approval of appropriative water rights applications. The latest version of the Proposed Policy fails to address these deficiencies and they remain outstanding.	Water Code section 1259.2 requires the State Water Board to adopt a water quality control policy for maintaining instream flows. Contrary to the commenter's contention, nothing in section 1259.2 (or in the Water Code sections governing the adoption of state policy for water quality control) requires the Board to balance competing beneficial uses in any particular way (with the exception of Water Code section 13142, which requires state policies for water quality control to be consistent with the state goal of providing a decent home and suitable living environment for every Californian). Moreover, staff disagree with the assertion that the proposed policy is not balanced. See response to comment number 24.0.72 in volume 2 of the responses to public comments document dated January, 2010. The proposed policy should serve to improve the water right application process by establishing principles and guidelines for the evaluation of the potential impacts of water development projects on instream flows needed to protect fishery resources. In addition, the regionally protective criteria contained in the proposed policy should serve to expedite the application process by providing applicants with a

			mechanism for evaluating the potential impacts of their projects without the need for more time-consuming and expensive site-specific studies.
OO-11	City of St. Helena	If applicable, the AB 2121 policy should not cause severe (some would say catastrophic) impacts to the residents and businesses the City serves. The statute requiring this policy provides the Board with broad discretion, which we ask that you exercise to adopt a balanced approach.	As stated in the response to comment 23.1.12 in Responses to Public Comments On the Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams, Volume 2, January 2010, agricultural, domestic and industrial beneficial uses were considered in developing the draft Policy. In fact, the draft SED concluded that the Maximum Protectiveness Alternative was infeasible because a policy that favored the protection of fishery resources above all other beneficial uses did not meet the project goal of minimizing water supply impacts resulting from the Policy. (Draft SED, pp. 42-43.) In addition, the draft SED discloses the potential loss of habitat, and associated impacts to special-status species, such as the western pond turtle and red-legged frog, if onstream dams are removed as a result of the Policy. (Draft SED, pp. 62-63, 67-68, Appendix E, pp. 18-21.) To the extent that the Policy limits future appropriations in order to protect fishery resources, such limitations are appropriate in light of the fact that anadromous fish species in the Policy area have been listed as threatened or endangered species, due in part to existing water diversions. (Draft SED, pp. 32-33.)

OO-12	Kimberly Burr	Rivers and streams are already over appropriated and addressing the unpermitted, unlicensed, and otherwise illegal water usurping activities must not involve preferential treatment. It must be based upon science and fairness. Streamlining a permitting process that favors the wealthy who can afford consultants to do the paper work, engineers, and lawyers over the long-time residents and hard working Californians, with legal, and reasonable riparian uses is to hand over the river and tributaries to the influence of agri-business that has little regard for fish recovery if such might mean leaving otherwise valuable water in a watercourse.	The scientific basis for the Draft Policy has undergone an external peer review pursuant to the requirements of Health and Safety Code section 57004. The policy does not affect riparian uses.

Topic PP: Water Right Administration

PP-1	California Farm Bureau, Trout Unlimited, Assemblymembers Noreen Evans, Wesley Chesbro, and Jared Huffman; Senators Mark Leno and Patricia Wiggins	From the very beginning of the instream flows policy development process, stakeholders have recognized that in order for the instream flows policy to be effective, there needed to be improvements to the water rights administration process. But such changes are absent from the Proposed Policy. Staff's explanation can be found in their response to section 4 of the Joint Recommendations where they state that "changes to the water rights administration process … [are] outside the context of establishing a policy for maintaining instream flows." Farm Bureau disagrees with this assertion. Water Code §1259.4(a)(1) provides that the State Water Board is to "develop principles and guidelines for maintaining instream flows in coastal streams . . . for the purposes of water right administration." The purpose is water rights administration; it is within the Board's authority to change the water rights administration process; and combining the two efforts is the only thing that will achieve the objectives of AB 2121 – a working water rights system that processes applications and protects fish.	Staff will consider this comment and the recommendations of the joint stakeholder group when making revisions to the policy.
PP-2	Peter Kiel, Robert Wagner	Adopt the Joint Recommendations criteria for reforming water right processing.	The reasons for this comment are found in the commenter's other comments, which are responded to elsewhere in this document.
PP-3	RWQCB 1	Regional Water Board staff recognizes that the Division's authority to amend permits to ensure compliance with water quality objectives. We respectfully request that the Division work with Regional Water Board staff to address water quality impairments identified in water quality investigations, including the Russian River TMDLs, if needed.	Staff will consider this comment when making revisions to the policy. The policy will improve the water rights process for the purposes of determining the measures needed to protect instream flow. Determination of the water needed to protect the fishery is only one element of the water right process. The process includes resolution of protests, protection of

			prior water rights holders, compliance with CEQA, and determination there is unappropriated water available for appropriation.
PP-4	Coastal Action Group	One of the primary objectives is to prioritize sensitive and potential fish producing streams and go to work on them (I think this is already in process). One high priority should be barrier removal. Responsible managing agency should identify such existing barriers that are blocking fish habitat and get moving on a process of barrier removal. There is the additional problem of whether CEQA review is necessary in remediation of barriers and illegal ponds that must go. There should be a finding made by the AG on this subject.	Remediation of barriers to fish migration may or may not be involved in the water rights process. The State Water Board consults with DFG on each water right, and if requested by DFG, will include in the water right permit the requirement that the owner or operator install fish passage facilities consistent with DFG requirements.
PP-5	California Cattlemen's Association	CCA is concerned that applying the Proposed Policy to water rights applications or petitions will further complicate and slow the administrative process. The Water Board should look to enact instream flow policies and guidelines that more effectively and efficiently administer water rights applications and petitions, and CCA firmly believes that the Proposed Policy will not achieve that goal.	The Draft Policy's regional criteria provide the applicant an avenue for quicker processing of pending applications while still being protective of fishery resources. They provide the applicant the opportunity to show that operation of their project will not cause impacts to instream resources without the need for conducting expensive site specific fishery studies. The February 2010 revised draft better addresses diversions in different watersheds and allows more water for diversion. The revised draft includes detailed site specific study provisions to minimize delays in processing pending applications.
PP-6	North Coast Stream Flow Coalition	The PD should make it clear that any water right project where the environment is altered and the impacts are significant, anyone commenting on the water right may demand an EIR which is consistent with a water right application process through the DWR.	All water right applications and petitions are subject to compliance with CEQA. The policy provides procedures for the environmental review of water right (see section 3.4.3).

Topic QQ: Existing Water Rights

QQ-1	RWQCB 1	Given the extent and magnitude of existing diversions, the temperature and sediment impairments of many policy area streams, and the precarious condition of salmonid populations in the Policy area, Regional Water Board staff suggests revisiting existing water right permits to ensure that they are not contributing to violations of the Basin Plan or the Policy. At a minimum, Regional Water Board staff recommends that the Division include in the Policy a monitoring element designed to track compliance with existing water rights, and efficacy of the protections provided in the Policy.	Staff recognize that additional measures, such as reopening existing permits, may be necessary in order to achieve compliance with water quality objectives and protect salmonids, but adoption of the proposed policy is an important first step. The State Water Board is considering whether to amend the policy to provide for regional monitoring and periodic review of policy effectiveness.

QQ-2	California Sportfishing Protection Alliance	A number of water users and their representatives argued in comments on the previous draft of the Policy that the Policy should not be extended to current permits or licenses. They suggested that unfair potential economic hardship might arise, and that previous planning and development was based on existing permits and licenses. Existing permits and licenses are not license to violate the public trust. As a policy, it makes more sense to have a comprehensive, objective standard, for levels and rates of diversion, and for reservoirs and diversion works, than it does to address individual water rights one license (or one lawsuit) at a time. The Board should consider ways in which it might use or adapt the Policy to improve conditions for anadromous fish as these conditions are affected by existing water rights.	Although the public trust doctrine applies to existing water rights, and the State Water Board may reconsider past allocation decisions under the public trust doctrine, it does not necessarily follow that the Board should have developed a policy that applies to existing permits and licenses. The proposed policy and the regionally protective criteria are the culmination of a lengthy process to determine how to address the potential impacts of new appropriations on anadromous salmonids. The regionally protective criteria were not designed to apply to existing permits and licenses, and the application of the regionally protective criteria to existing permits and licenses would not necessarily be appropriate. Staff recognize that additional measures, such as reopening existing permits, may be necessary in order to protect anadromous fish, but adoption of the proposed policy is an important first step.
QQ-3	Thomas Lippe/Dennis Jackson/Living Rivers Council	The Board's failure to either (1) reopen existing permits and licenses to add appropriate resource protective flow criteria as permit conditions; or (2) enforce water code permit requirements against illegal diverters, or to include such programs in the proposed Policy means that Board policies are leading directly to "take" of salmonid species listed under the federal or California endangered species acts in violation of these laws, and will continue to do so if and when the proposed Policy is adopted.	See response to comment number LL-6. Both the decision whether to reopen existing permits and licenses and the decision whether to take enforcement action against illegal diverters are discretionary. The State Water Board does not have unlimited resources, and must balance the need to reconsider past allocation decisions and address violations against the need to complete its other responsibilities. Staff disagree with the contention that the Board is liable under the federal or California endangered species acts for the activities of third parties that may result in the take of a listed species.
QQ-4	Coastal Action Group	While it will be easier to address the issues related to unlicensed diversion, where are the expert and trained staff going to come from to make changes in existing water rights that are needed to maintain flows? I suggest teamwork between the managing responsible agencies, SWRCB, DFG, and NMFS, to work together to make determinations on flow levels needed to support salmon survival and possible adjustment of water rights.	Comment noted.

Topic RR: Groundwater

RR-1	Patrick Higgins/Living Rivers Council/North Coast Streamflow Coalition	The proposed Policy fails to deal with groundwater withdrawal that can in and of itself cause loss of stream flow in some basins. Peer reviewers Band (2008), Gearheart (2008) and McMahon (2008) point out that no real water budget can be calculated without knowing the influence of ground water withdrawal. Since the proposed Policy lacks any substance with regard to groundwater and its effect on surface flow, its water budget calculations and any of those seeking permits will lack any scientific validity. This is a very clear and direct cumulative effect of the Policy since it makes acquiring a new water right very rigorous, agricultural operations will switch more and more to ground water extraction. Consequently, this another major deficiency with regard to CEQA compliance. The SWRCB WRD can no longer claim ignorance of these connections because of your SWRCB (2000) finding and the recognition within the proposed Policy that: "Groundwater is the primary source of water for streamflow" (p109 of 128). Consequently, the proposed Policy must be amended to include groundwater and lay out a §13242 compliant course of action and time line.	Staff recognize that groundwater extraction has the potential to impact surface water flows. The water supply reports and cumulative diversion analyses prepared by water right applicants in accordance with the proposed policy will take into account the impacts of groundwater extractions on surface flows to the extent that those impacts are reflected in the gage data that is used in preparing those reports and analyses. The SED evaluated the potential indirect environmental impacts that may result if third parties extract more groundwater as a result of the restrictions contained in the proposed policy. Water Code section 13242 does not apply to state policy for water quality control, such as the proposed policy.
RR-2	Kimberly Burr	As properly defined in the draft policy, groundwater is the primary source for perennial streams. Yet it receives no treatment in this draft policy. Closely connected ground water needs to be factored into the calculations including the cumulative effects analysis. Intermittent streams also rely on groundwater, and both stream types are critical to recovery of the listed species. Offset wells, the cumulative impacts of many smaller wells, and large capacity wells must be factored into all the equations that purport to provide for adequate instream flows. Please see the works of Deitch, Kondolf, and Merenlender in the Russian River basin. Such an approach will require monitoring and reporting especially in the dry months of the year. Applicants should develop accurate water budgets, and these should receive independent peer review.	See response to comment number RR-1. Staff agree that applicants should develop accurate analyses of the amount of water available for appropriation, taking into consideration the amount of water needed to remain instream to protect fishery resources, but disagree that such analyses should be subject to independent peer review.
RR-3	County of Napa	From a big picture perspective, the County is concerned that changes in how water is diverted and used will result in increased reliance on groundwater, which currently supports a $9 billion agricultural industry and rural residential land uses. Given the complexity of the proposed policy and the uncertainty now facing water diverters, it is unclear what local impacts will result (e.g., diverters switching to groundwater resources adjacent to surface waters and the potential for dewatering). The proposed policy has yet to fully consider the present need and use of surface water, groundwater, and the effect additional groundwater pumping will have, particularly in areas already identified as "groundwater limited/deficient" (i.e. those areas in overdraft).	The potential indirect impacts of increased groundwater pumping as a result of the proposed policy, and the adequacy of groundwater as an alternative supply, are evaluated in section 6.2 and Appendix D of the Draft SED.

RR-4	California Coastkeeper Alliance	The connections between ground and surface water also need to be addressed in the Policy's enforcement provisions. Pumping of ground water can adversely affect river flows, creating de facto diversions. The Policy should specifically include enforcement strategies that address instream flows impacted by groundwater pumping, in order to ensure that AB 2121's goal of maintaining instream flows is fully achieved.	Sections 8.4 and 8.5 of the proposed policy describe the State Water Board's authority under the reasonable use doctrine and the public trust doctrine. The Board may exercise its authority under these doctrines to address the impacts of groundwater pumping on instream flows. See response to comment number 23.4.1 in volume 2 of the response to public comments document dated January, 2010.
RR-5	North Coast Stream Flow Coalition	The PD is almost void of the interconnectivity of groundwater and riparian flows with the exception of 'subterranean nexus' between surface flows and riparian aquifers where the DWR has determined that there is a defined channel and bank. For example, when groundwater depletion is ignored critical habitats such as seeps and springs can dry up and destroy habitats for red legged frogs. The SWRCB ignores the interconnectivity of groundwater to streams and allows the relentless pumping of groundwater with reckless abandonment. To continue to ignore that the health of our streams depends on healthy groundwater reserves destines our watersheds to continued degradation and a hopeless extinction vortex for species.	Although the proposed policy applies to applications to appropriate surface water, and water flowing in subterranean streams, the proposed policy does not ignore the interconnectivity of groundwater and surface water flows. See response to comment numbers RR-1 and RR-4.
RR-6	North Coast Stream Flow Coalition, Northern California River Watch	Will the DWR make groundwater monitoring available to the public for easy access where the DWR has asserted its jurisdiction?	Records of groundwater monitoring data maintained by the State Water Board should be available to the public. Pleae note, however, that well reports submitted to the Department of Water Resources pursuant to Water Code section 13751 are not available to the public. (Wat. Code, § 13752.)

Topic SS: Miscellaneous

SS-1	Peter Kiel, Robert Wagner	Commenters urge that the Revised Policy, as proposed by the Water Board staff, be rejected.	The reasons for this comment are found in the commenter's other comments, which are responded to elsewhere in this document.
SS-2	North Marin Water District	Institute the Policy on a temporary trial basis and make Policy adjustments thereafter.	Water Code section 13143 states the State Water Board is required to conduct periodic review of adopted policies. During the periodic review, monitoring data may be reviewed to assess whether the policy would need revising.

SS-3	North Coast Stream Flow Coalition, Northern California River Watch	The PD does not require performance standards for water diversions. Why not?	Water right permits include permit terms addressing the operation of the diversion, including monitoring and reporting of diversion amounts. Once a water right applicant receives a water right permit, they would need to submit regular monitoring data to show they are meeting the terms of the permit.
SS-4	Patrick Higgins/Living Rivers Council/North Coast Streamflow Coalition	I hereby incorporate by reference my previous comments (Higgins 2008a) on the earlier draft of this Policy that I produced for the Redwood Chapter Sierra Club in April 2008. My questions were not sufficiently answered in the response to comments documents produced by the SWRCB; therefore, many still stand as unresolved issues.	State Water Board staff responded to the commenter's previous comments (Higgins 2008a) in Responses to Public Comments On the Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams, volumes 1 and 2, January 2010.
SS-5	Patrick Higgins/Living Rivers Council/North Coast Streamflow Coalition	It also ignores peer review comments from Band (2008), McMahon (2008), Gearhart (2008) and Lang (2008) that point out that the Policy cannot be implemented without flow data in each basin being collected.	Staff believes responses were provided to all peer review comments. Policy section 2.3, Appendix A, and Appendix B describe how flow data in each watershed is used to implement the policy.
SS-6	Patrick Higgins/Living Rivers Council/North Coast Streamflow Coalition	My previous testimony and attachments provided here demonstrate that North Coast rivers are in severe crisis with the primary cause of the imminent loss of their salmon resources resulting directly from loss of flow and inaction by the State Water Resources Control Board and its Water Rights Division. This proposed Policy has no defined enforcement action to abate existing problems and time lines for reversing problems in a meaningful time frame as required by law.	Enforcement provisions can be found in Section 8 and Appendices F, G, and H of the February 2010 proposed policy.
SS-7	Mendocino County Water Agency, Association of California Water Agencies, Mendocino County Farm Bureau, Sea Ranch Water Company, Napa County Resource Conservation District, City of Calistoga, California Cattlemen's Association, Napa County Farm Bureau, David	Delay policy adoption, provide a 90-day extension of the public comment period, hold one or more technical workshops in the Policy region so that Board technical staff can provide the public with additional information related to the implications of Policy implementation and provide more specific guidance related to compliance through site-specific studies or the watershed approach, and continue to work with stakeholders to develop a truly practical and workable policy.	Comment noted. Please see the March 25, 2010 letter from Victoria Whitney to the Mendocino Farm Bureau and ACWA, which responded to these issues.

	Garden, Rudy Light, City of St. Helena, North Marin Water District, Sea Ranch Form Letter, Swanson Vineyards and Winery		
SS-8	County of Napa	Because of the complexity of the proposed policy and the extent of potential impacts it could have on use of surface and groundwater within Napa County, the County Board of Supervisors would like to provide more detailed comments. However we will not have had sufficient opportunity to review and consider the proposed policy, its extensive supporting materials, and the technical merit of the complex compliance measures proposed by the April 27th hearing date. As a result, we are requesting a 60-day extension of time.	Comment noted. Please see the March 25, 2010 letter from Victoria Whitney to the Mendocino Farm Bureau and ACWA, which responds to similar concerns.
SS-9	Assemblymembers Noreen Evans, Wesley Chesbro, and Jared Huffman; Senators Mark Leno and Patricia Wiggins	Reject the proposed Draft Policy and direct Board staff to actively engage with Stakeholders to amend the Policy consistent with the amendments recommended by the stakeholder group. Given the diverse array of stakeholders that have rallied around these amendments, we believe time is of the essence and now is the time to finally complete work on this important Policy.	Comment noted. Please see the response to comment B-2.
SS-10	Jack Walton	I respectfully request that (1) the SWRCB extend to September 1, 2010 the comment period on the AB 2121 proposed policy; and (2) SWRCB schedule local coastal meetings/workshops on the AB 2121 proposed policy.	Comment noted. Please see the March 25, 2010 letter from Victoria Whitney to the Mendocino Farm Bureau and ACWA, which responds to similar concerns.

SS-11	Thomas Lippe/Dennis Jackson/Living Rivers Council, North Coast Stream Flow Coalition	Section B.2.1.4 item 2 states the diversion season on October 1. This presumed typographical error must be changed.	Comment noted. Staff will consider this comment when making revisions to the policy.
SS-12	Sonoma County Winegrape Commission, United Winegrowers for Sonoma County	Reference is made in various sections to working cooperatively with other agencies. This is good. Yet, some references are not complete as the area covers more than one Regional Board.	As the commenter pointed out, governmental agencies can have regionalized office locations. In addition to the Regional Water Quality Control Boards, the policy area is covered by more than one Department of Fish and Game office. There may be others. This information is available on individual agency's internet websites.
SS-13	Dept of Fish and Game	Suggested revision to definitions 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.	The definitions of bankfull flow and width do not reference the 1.5 year discharge event. The glossary defintions appear to be very similar to the defintions suggested by the commenter.
SS-14	Dept of Fish and Game	Suggested revision to definitions in Appendix I: Canopy - The woody branches and leaves of streamside vegetation are typically the canopy intended to be measured. Berries and nonwoody 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.	Comment noted. Staff will consider these recommendations and determine whether to make revisions to the policy.

SS-15	Dept of Fish and Game	Suggested revisions to definitions in Appendix I: Active bar -In a stream channel, regions of distinct deposits of sand, gravel, or cobble that are not yet colonized by older, well-established riparian vegetation, and which may be mobilized durfng high flow; includes mid-channel island deposits and point bars.	Comment noted. Staff will consider these recommendations and determine whether to make revisions to the policy.
SS-16	Dept of Fish and Game	Suggested revisions to definitions in Appendix I: Coarse ~~gravel, coarse~~ sediment - particle sizes ~~Stones of~~ 1/4-inch ~~size~~ or larger, including particles derived from debris flows, that either contribute directly to spawning gravel, or that reduce ~~comminute~~ to a smaller usable size, or influence stream channel morphology by forming a substrate framework.	Comment noted. Staff will consider these recommendations and determine whether to make revisions to the policy. In addition to Appendix I, the term coarse gravel appears in section A.1.6.1 as an example of a habitat indicator which may be considered when evaluating steam class determinations. Staff will consider replacing the term coarse gravel in section A.1.6.1 with the DFG recommended term, coarse sediment.
SS-17	Dept of Fish and Game	Suggested revisions to definitions in Appendix I: Nature [of coarse sediment and large wood] - Characteristics other than size, such as type of wood, ~~or rock~~, or angularity~~,~~ and roundness of rock.	Comment noted. Staff will consider there recommendations and determine whether to make revisions to the policy.
SS-18	Dept of Fish and Game	Suggested revisions to definitions in Appendix I: Substrate - The materials (e.g., ~~dirt, rocks,~~ sand, gravel, cobbles, boulders, bedrock, and combinations thereof) that form~~s~~ the bed of a stream.	Comment noted. Staff will consider these recommendations and determine whether to make revisions to the policy.
SS-19	Patrick Higgins/Living Rivers Council/North Coast Streamflow Coalition	The North Coast Stream Flow Coalition stands ready to mobilize volunteers to help collect data, observe streams and to work essentially as an extension of SWRCB WRD staff. The WRD currently treats water users as its clients and seems reluctant to partner with interests that seek improvement in stream conditions that support public trust values. We may be more able to expand the capacity of the SWRCB WRD with regard to monitoring than water users because of lower overhead and would not have the same conflict of interest as water extractors.	Comment noted.
SS-20	Richard Johnson	Although farming is important to the State and takes priority in my view to commercial and residential development, the environment of California is as important, if not more so than my business interest. Protection of the environment should be of highest priority. Please consider the rights of those of us who work hard and pay to have these natural resources protected.	Comment noted.
SS-21	Coastal Action Group	Coast Action Group submitted comments on the original iteration of this policy. Those comments are still relevant to this proposed policy and must be considered and responded to.	Comment noted. Responses to the Coastal Action Group's previous comments are available in "Response to Public Comments, volumes 1 and 2" that were made available for download on the State Water Board's webpage.

SS-22	Patrick Higgins/Living Rivers Council/North Coast Streamflow Coalition	Because it is outside the AB 2121 area and due to time constraints, the Eel River flow and salmon crisis is not broached here-in. However, that river is suffering flow depletion from illegal diversion related to marijuana growing and coho salmon counts basin-wide are often in the dozens and fall Chinook in the low hundreds (Appendix C). The resolution to this dispersed water use throughout the basin may take time to resolve, which is why Friends of the Eel River is requesting the SWRCB to order higher releases from the Potter Valley Project immediately.	Comment noted.
SS-23	Andy Johnston	We have had water rights on our ranch in Mendocino County for 60+ years. We now have to pay a fee for these rights. The proposed new policies for water diversions just installs another layer of rules on the only people who are "already" conforming to state law.	Permitted and licensed diversions that are in compliance with their permits and licenses will not be affected by the policy. However, the State Water Board may impose instream flow requirements on existing water rights pursuant to the Board's authority to protect public trust resources and prevent the unreasonable use of water. The State Water Board's exercise of these authorities will involve a hearing if warranted.
SS-24	Jesse Noell and Stephanie Bennett	Commenter has a domestic use diversion downstream of a cattle operation subsidized by a Williamson Act contract. Commenter states the cattle operation has reduced dissolved oxygen concentrations in the South Fork of the Elk River, contributing to disappearance of coho salmon. Commenter states neither DFG or the Regional Board took any action.	The State Board regulates water quality impacts through the Division of Water Quality and the Regional Water Quality Control Boards, not through the water rights process. This comment is beyond the scope of AB 2121.
SS-25	Kristi Wrigley	The North Coast Regional Water Quality Control Board has allowed timber harvesting and cattle operations to impact domestic water supply in upper Elk River Valley. The Board needs to pay special attention to the application of maintaining stream flow such that they do not displace the long time residents nor destroy the river [that did not historically flood] to farm on.	The State Board does not regulate timber harvest impacts through the water rights process, this comment is beyond the scope of AB 2121.
SS-26	Richard Gates	Commenter would like information sent to him regarding how the policy would affect his water rights.	Comment noted.
SS-27	Larry and Marsha Robinson	Illegal marijuana operations are diverting water without basis of right. Focus on these unauthorized diverters rather than landowners trying to comply with the overabundance of regulations. Make Lake Mendocino deeper to help fish.	Comment noted.