



## Sonoma County Water Coalition

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State Water Resources Control Board  
Division of Water Rights,  
1001 I Street, 2<sup>nd</sup> Floor,  
Sacramento, CA 95814

Attn: Karen Niiya, Senior Engineer

2008 APR 29 PM 1:57  
APR 29 2008

Comment: Draft State Water Resources Control Board Policy for Maintaining Instream Flows in Northern California Coastal Streams

The Sonoma County Water Coalition (SCWC) includes 33 organizations representing more than 25,000 citizens in Sonoma County, California, having a shared concern for the water resources of Sonoma County. SCWC advocates for protection and sustainability of water and biotic resources, including maintaining stream flow levels that will support native fish species. SCWC also is concerned about the multiple and significant sediment, oxygen, and nutrient impairments of Northern California coastal streams, which have lowered their water quality and ability to support native fish species.

### General Concerns

SCWC welcomes the Draft State Water Resources Control Board (SWRCB) Policy for Maintaining Instream Flows in Northern California Coastal Streams (Policy), because it is the first such policy aimed at improving the chances of survival for, and promoting the recovery of steelhead and salmon populations in North Coastal California rivers. The Policy became available for comments at a critical moment; we are currently experiencing both a salmon fishery collapse on all north coast rivers and streams, including the Sacramento and Klamath rivers, where the salmon population has undergone such significant decline as to preclude a 2008 fishing season. Also, a second year of below average rainfall may mean another summer of cutbacks in Russian River water withdrawals to maintain stream flows for salmon.

SCWC is concerned that the native fish populations already may be approaching final stages of decline, and fear that the Policy as written will not elicit higher levels of compliance from water diverters than earlier policies and programs. While the Coalition desires to support stakeholder processes for governing river water uses, it cannot support this draft Policy unless and until it is reformed to require data collection and monitoring for evaluating the progress (or lack of it) toward sustaining and restoring fish populations.

**Members:** \* Atascadero/Green Valley Watershed Council \* Russian River Watershed Protection Committee \* Community Clean Water Institute \* Friends of Mark West Watershed \* O.W.L. Foundation \* SWIG (Sebastopol Water information Group) \* Valley of the Moon Alliance \* Supporting Organizations: Bellevue Township \* Blucher Creek Watershed Council \* Coalition for a Better Sonoma County \* Coast Action Group \* Coastal Forest Alliance \* Community Alliance with Family Farmers (N.Coast Chapter) \* Earth Elders of Sonoma County \* Forest Unlimited \* Forestville Citizens for Sensible Growth \* Friends of the Eel River \* Friends of the Gualala River \* Graton Community Projects \* Laguna Lovers \* Madrone Audubon Society \* Mark West Watershed Alliance \* Occidental Arts and Ecology Center Water Institute \* Petaluma River Council \* Russian River Advocates \* Russian River Chamber of Commerce \* Sierra Club (Sonoma County Group) \* Sonoma County Conservation Action \* Town Hall Coalition \* Western Sonoma County Rural Alliance \*

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SCWC wants the Policy revised to include a valid system for identifying and evaluating the structures and activities that impair river functions supportive of fish populations, and a system for functional improvements with clearly defined measures of success. The system for substantiating compliance through monitoring must be funded primarily by fees for non-compliance, which must be both levied and collected.

### Critical Issues

We have only a very few years to correct the level of summer river flows, with concomitant decrease or elimination of related water quality impairments. Whatever happens in this time frame will affect every person, every population center, and every governmental agency in the area between San Francisco and the Mattole River.

To effectively reverse the precipitous decline of native fish populations, the draft Policy must set standards by which progress (or lack of it) can be judged. We suggest that the best standards to use are critical outcomes - the sizes of returning populations, number of redds, hatchling populations, timely rivermouth openings on smaller streams to let smolts reach the sea, and the like. The Policy also must contain a prioritized set of actions to be implemented if the outcomes fail to show significant improvement within the first two years.

The following includes a number of general suggestions for changing the Policy to a direction more suited to its goal. Many of our member groups will supply detailed comments on these and other specific points.

1. In spite of AB 2121 sections that would allow the SWRCB to evaluate and change conditions for existing water rights permits, the draft Policy focuses solely on new water rights applications and new petitions to allow fish-impacting structures and activities. This ignores the fact that the native fish have been threatened and endangered by the accumulated past abuses. The past problems must be addressed if the species are to survive and recover.
2. Both Coalition member groups and wildlife biologists have pointed out that the draft Policy actually enhances the present system, which allows diverters to easily obtain variances and endlessly challenge fines and other sanctions. Variance processes currently go on for many years, and over past decades have allowed illegal activities and operation of illegal water diversion structures to continue. The 2007-08 near-collapse of fish populations is largely due to the effects of flow impediments allowed by this lax system. To discourage non-compliance, the Policy must cut back on the abundance and types of variances, and limit appeals, so that a diverter's expectation of sanction for non-compliance will be closer to that of a water-rights adjudication process. *Self-reporting or relying on neighborhood reporting cannot be an option.*
3. The draft Policy must include a program to prioritize removal of unauthorized structures, including dams, levees, and other diversion structures, which impede flows

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and thus impede steelhead and salmon migration. The effects of these structures and alterations for water diversions also change streambed shapes and sediment distribution, destroying sites for spawning and hatchling-nurturance. The long-past deadline of July, 2006, for the process to identify and assess the impacts of dams erected in Class I fish streams over the last twenty years or more, which have not been subject to any permitting process, was unreasonable.

4. SWRCB funding levels are at least partly responsible for the poor record of applying sanctions and fine levels, which could better compel compliance, but we see no change to this situation in the draft Policy. New funding structures, including higher permit fees, and higher fines more reliably collected (as in point 1, above), must be imposed and enforced.

5. We disagree with the Policy's proposal to allow diversions of river waters as early as October, when infiltration of early rains rarely produces soil saturation, and when both stream and groundwater levels generally remain low. Allowing early diversions would simply reduce the flows that smolts need for reaching the sea. We urge that the diversion season be limited to the interval from December 15 to March 30 as previously recommended by California Dept of Fish & Game and the National Marine Fisheries Service.

#### Reforming the Watershed Approach

The Policy's proposed watershed approach to evaluating and governing water extractions provides an opportunity to begin changing bad past practices. However, many parts of the draft Policy must be altered before SCWC can support the concept or its implementation. We urge the following changes to both the draft Policy and its application, to create a measurable and verifiable watershed-based program for protecting the threatened and endangered species, with the participation of all stakeholders including every water-dependent person.

The watershed approach must be considered only an interim management policy, which has yet to be proved effective. Like an AB 3030 groundwater management plan (specified by CA Department of Water Resources), the watershed approach must be considered a work in progress, open to improvements as data show progress or lack of it.

1. The Interim Policy's implementation must be based on known and ongoing pilot projects, which have collected significant data for salmon-supporting streams in the local area. Such data include: locally-recorded rainfall levels throughout the year; river and stream gauge records throughout the year, collected by USGS and(or) watershed/Ecology Center/academic research groups; total volume and locations of river diversions; positions and extents of river barriers; groundwater levels measured in monitoring wells; and estimates of groundwater pumping levels. Also important are all data obtained by any agency of the Federal, State, or County government, or by academic programs, on the proportion and distribution of different land uses; the proportion of soil types and their

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erosion potentials (based on degree of slopes); and the proportion of undisturbed natural lands in each watershed. Other data types may be added.

2. All the data described above must record collection dates and locations so that diversion and river levels can be related, for example, and compared with salmon population and life cycle data. The data shall be used to calculate a water budget for each watershed, and also to improve calculated model parameters, such as bypass flows, minimum base flow (MBF), and maximum cumulative diversion (MCD) - as long as those concepts continue to be relied upon in determining stream flow levels.

3. The success of the watershed approach must be constantly monitored and evaluated, using as criteria the number of redds for critical stream reaches, population sizes of steelhead-salmon smolts reaching the sea, the populations of returning fish, timing of opening for rivermouth bars on smaller streams to let smolts enter the sea, and the like.

4. For the purpose of determining which activities impact stream flows for the fish, the relations between groundwater and surface waters for any watershed must rely on scientific studies and not solely on legal doctrines.

5. Similar monitoring and data collection must accompany implementation of the interim draft Policy, to allow for continuous evaluation and adjustment of Policy standards and criteria.

6. All the data must be publicly available so that analyses can be reviewed and re-analyzed by members of the public.

7. All decisions on new dams and diversion permits, plus other proposed activities, must be considered provisional until and unless monitoring results show no negative impact to the recovery parameters (outcomes).

8. The watershed approach must include all stakeholders, not just diverters. All water users must be considered as watershed stakeholders, including all watershed residents and the fish. Policy governance thus must include standing (or future) citizen-based Watershed Councils, and well-users. Environmental evaluations for new diversions and permit applications, as well as periodic evaluations of monitoring data must be noticed to all residents of the relevant watershed.

9. The watershed approach must comply with all provisions of the Federal Endangered Species Act and all other Federal and State water quality laws.

### Conclusion

SCWC feels that the change in outlook for the draft Policy, suggested in the foregoing, is the only means for providing a broad stakeholder process, which the whole community can view as having validity. It could foster a more flexible system for evaluating new diversion proposals and encouraging trade-offs that would improve river flow as a whole

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(for instance, allowing a new diversion of fish-friendly design, in exchange for eliminating an older barrier, whether legal or illegal).

Other than adjudication, we believe that only such a broadly-based, well monitored program could successfully sustain and restore fish populations and the prized west coast Salmon fishery. The reformed approach also has the potential to mute calls for harsher regulatory systems, including adjudication.

Sincerely,

A handwritten signature in cursive script that reads "Jane E. Nielson". The signature is written in black ink and has a long, sweeping tail that extends to the right.

Jane E. Nielson, PhD  
Sonoma County Water Coalition