

March 24, 2010

VIA FACSIMILE & EMAIL

Re: Proposed Policy for Maintaining Instream Flows in Northern California Coastal Streams (per AB2121); February 2010

TO: State Water Resources Control Board (SWRCB)
Jeanine Townsend, Clerk to the Board

Dr. Stacy Li, at NOWWE's request, prepared the attached comments and questions regarding the referenced document. His observations are organized by page number and topic within the proposed policy. We have no comments on the attachments at this time.

Please include this letter and the attached document in the public record on this matter.

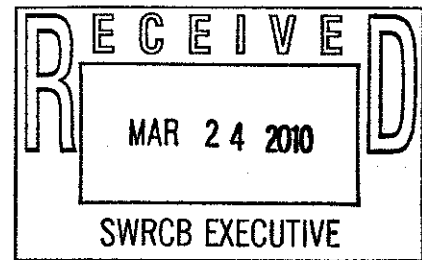
Our previous comments and concerns on the implementation of AB2121 are also a matter of public record.

Thank you,

Casey Caplinger

Casey Caplinger, Chief Administrative Officer

Attachment



NOWWE
7768 St. Helena Road
Santa Rosa, CA 95404
<http://www.nowwe.org>

These comments and questions were prepared for NOWWE by: Dr. Stacy K. Li, Ph.D., Principal – Aquatic Systems Research, Santa Rosa; stacy_li@sbcglobal.net.

Page 2: Principles for Maintaining Instream Flows

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?

Page 4: Season of Diversion

Good Section; consistent with the present guidelines; implementation will reduce potential for conflict.

Page 5: Minimum bypass flow

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.

Page 6: Maximum cumulative diversion

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.

Page 8: Onstream dams

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
- Bedload transport, which includes spawning gravel supply.

Any permitted dams must totally mitigate against effects on ALL these necessary stream functions.

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.

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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.**

Page 10: Exemption from instream flow policy

"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.

Page 14: 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.

Page 16: Watershed Approach

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.

Page 21: Enforcement

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.