



Brian J. Johnson
Director, California Water Project
Staff Attorney

April 30, 2010

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



Re: Comments on the North Coast Instream Flow Policy (April 27 Redline)

Dear Mr. Hoppin and Members of the Board:

On behalf of Trout Unlimited (TU), I submit the following comments for the Policy for Maintaining Instream Flows in Northern California Coastal Streams (Policy).

We support adoption of the Policy if it includes the most recent redline changes and the highlighted text in Appendix C.1.3. The policy with the highlighted text would be supported by an incredibly broad range of conservation and agricultural stakeholders, and this support is key to making the program a success.

On Wednesday, we met at length with your staff and consultants. After clearing up a few misconceptions about the meaning of both the recent redline changes and our proposed section C.1.3, your consultants stated that they could support Dr. Trush's change in stage based site specific study amendment (C.1.3.a) with a couple of refinements. Most importantly, they recommended a more robust definition of the "winter low flow." TU supports that recommendation. Your consultants also recommended language to make it clear that people using C.1.3.a should use a site specific study for winter low flow, and that the February Median not serve as a proxy for winter low flow. Again we support that change. Finally, your consultants and TU agreed to state that C.1.3.a is intended for use in streams smaller than 10 square miles.

Attached as Exhibit 1 are proposed edits to the policy to reflect these changes. A new definition of "winter low flow" appears in section 2.2 of the policy and in the Glossary. This proposed definition follows the form of the definition for "minimum bypass flow" and contains the same level of detail. Section C.1.3.a refers to and uses this definition. The definition no longer defines the February Median Flow as a regional criterion for winter low flow. The proposed edits also insert a sentence to section 10.4, Policy Effectiveness Review, which provides that the program will include a review of the effectiveness of the site specific studies guidance in Appendix C, specifically including C.1.3.a. Ellison, Schneider and Harris and Wagner & Bonsignore Engineers support these edits.

Trout Unlimited: America's Leading Coldwater Fisheries Conservation Organization

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At Steve Herrera's suggestion, I am also attempting to contact your fisheries consultant to discuss this language. Since I have not yet reached him, I am also submitting it now so it can be reviewed within the comment deadline.

At Wednesday's meeting, staff also requested additional backup about sections C.1.3.b and C.1.3.b. Wagner & Bonsignore is submitting that information today.

The Board is in an enviable position Tuesday. After years of disagreement and dispute, the Board can adopt a policy that will have the support of the most influential players among the regulated community, and the support of conservation groups such as Trout Unlimited, California Trout, the California Sportfishing Protection Alliance, Coast Action Group, and Russian RiverKeeper. It would also have the support of the State Assemblymembers and Senators who represent the policy area.

I urge you to adopt the policy, including the highlighted text with the enclosed refinements. Thank you for your leadership through this period.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian J. Johnson", with a stylized flourish at the end.

Brian J. Johnson

2.2 Protective Instream Flow Criteria

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Definitions

The minimum bypass flow is the minimum instantaneous flow rate of water that is important for managing the protection of steelhead and salmon life history needs, such as: (1) maintaining natural abundance and availability of spawning habitat; (2) minimizing unnatural adult exposure, stress, vulnerability, and delay during adult spawning migration; and (3) sustaining high quality and abundant juvenile salmonid winter rearing habitat.

The winter low flow is a streamflow threshold that inundates riffles and is important to managing several steelhead and salmon life history needs in small North Coast California streams by: (1) protecting high quality benthic macroinvertebrate (BMI) habitat in riffles to foster high stream productivity, (2) preventing redd desiccation and maintaining hyporeic subsurface flows, (3) sustaining high quality and abundant juvenile salmonid winter rearing habitat, and (4) facilitating smolt out-migration.

Deleted: The winter low flow is a streamflow threshold important to maintaining good habitat in Class II streams for protection of aquatic non-fish vertebrates, aquatic benthic macroinvertebrates, aquatic plant, and hydric soils. The regionally protective criterion for the winter low flow is the February median flow.

C.1.3 Alternative Site Specific Approaches

a. Method for Determining Cumulative Effects Based On Changes in Stage

The following flow management objectives are approved for use as guidance for site specific studies in streams smaller than 10 square miles. The objectives define acceptable cumulative changes in stage when daily average flows are at different levels.

- When daily average flows exceed the minimum bypass flow defined in section 2.2, diversions shall cumulatively cause no more than 0.1 foot change in riffle stage.
- When daily average flows are between the minimum bypass flow and the winter low flow defined in section 2.2, diversions shall cumulatively cause no more than 0.05 foot change in riffle stage.
- When daily average flows are below winter low flows, diversions are not allowed except as defined in section 2.2 and Appendix A sections A.1.8.1 and A.1.8.2.

...

[Note: The remainder of section C.1.3 is unchanged from the highlighted text, although I am under the impression that staff may propose moving C.1.3.b and C.1.3.c to Appendix A (regional criteria) and is considering one typographical edit.]

10.4. Regional Monitoring and Policy Effectiveness Review

It is the intent of the State Water Board to develop a Regional Monitoring and Policy Effectiveness Review program once resources become available.

The purpose of the program would be to develop data through field monitoring and, based on the data, evaluate (1) the effectiveness of whether the standards for maintaining instream flows are protective of anadromous salmonids and their habitat over the medium term, in the range of a 10 to 20 year time horizon, as well as over the long term, and (2) whether the policy may need to be modified in order to support recovery of listed species and otherwise protect beneficial uses. The program would focus on evaluating the effectiveness of the standards for diversion season, minimum bypass flow, maximum cumulative diversion, and onstream dam mitigation measures, as well as other aspects of the policy.

The program would include a review of the effectiveness of the site specific standards set forth in Appendix C, including but not limited to the Method for Determining Cumulative Effects Based On Changes in Stage (section C.1.3).

The program would develop data through monitoring of stream hydrology, geomorphology, and anadromous salmonid habitat conditions in selected representative streams throughout the policy area.

Five years from the effective date of the policy, and periodically thereafter, the State Water Board will review the policy and determine whether it should be revised. The program may coordinate with and utilize and incorporate data from other ongoing monitoring programs carried out by other state, federal, and local agencies, to the fullest extent practicable.

If implemented, the program may be coordinated with any monitoring programs developed pursuant to the Russian River Frost Protection program, if it is adopted. The funding and institutional mechanism for the program may be modeled on the S.F. Bay Area Regional Board's Regional Monitoring Program or the Southern California Coastal Water Research Project.

The State Water Board will consider the recommendations contained in Chapter 10 and Appendix K of R2 Resource Consultants (2007a) when implementing this program.

Conforming amendments:

1. Final definition of winter low flow in section 2.2 above also replaces the existing definition of winter low flow in the Glossary (Appendix I).

2. All references to flow requirements for Class II streams of "winter low flow" should refer instead to "February Median Flow."