State Water Resources Control Board

NOTICE OF FILING

To: Any Interested Person

From: State Water Resources Control Board
Division of Water Rights

Name of Board: State Water Resources Control Board

Project Title: Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams

Contact Person: Division of Water Rights

Telephone Number: (916) 327-2414

Project Location: Coastal streams from the Mattole River to San Francisco and coastal streams entering San Pablo Bay in Marin, Sonoma, and portions of Napa, Mendocino, and Humboldt counties

Project Description: Water Code section 1259.4, which was added by Assembly Bill 2121 (Stats. 2004, ch. 943, § 3), requires the State Water Resources Control Board (State Water Board) to adopt principles and guidelines for maintaining instream flows in northern California coastal streams for the purposes of water right administration. The State Water Board adopted the Policy for Maintaining Instream Flows in Northern California Coastal Streams (Policy) in 2010 in order to comply with Water Code section 1259.4. As discussed below, the State Water Board has vacated the Policy as a result of litigation, and will consider re-adoption of the Policy at a future date. The Policy will apply to applications to appropriate water, registrations, and water right petitions. The Policy will establish principles and guidelines for maintaining instream flows for the protection of fishery resources. It will prescribe protective measures regarding the season of diversion, minimum bypass flows, and maximum cumulative diversion. The Policy contains guidelines for evaluating whether a proposed water diversion, in combination with existing diversions in a watershed, may affect instream flows needed for the protection of fishery resources.

This is to advise that the State Water Board is proposing to adopt the Policy in accordance with a regulatory program exempt under Section 21080.5 of the Public Resources Code from the requirement to prepare an environmental impact report (EIR) under the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) (CEQA). In order to comply with CEQA, the State Water Board prepared a substitute environmental document (SED) in lieu of an EIR in connection with the Board's adoption of the Policy in 2010.

In *Living Rivers Council v. State Water Resources Control Board* (Sup. Ct. Alameda County, 2012, No. RG10-5435923), a case challenging the 2010 Policy pursuant to CEQA, the superior court held that the analysis of mitigation measures contained in the SED was inadequate in two respects, which are described below. The court issued a writ of mandate to the State Water Board, directing the State Water Board to set aside Resolution No. 2010-0021, thereby vacating the State Water Board's adoption of the Policy and certification that the SED had been completed in compliance with CEQA. The State Water Board complied with this directive on October 16, 2012. (State Water Board Resolution No. 2012-0058.)

The writ of mandate also directed the State Water Board to 1) evaluate certain subterranean stream delineations as a potentially feasible mitigation measure for the anticipated increased use of percolating groundwater attributable to the Policy and; 2) present sufficient information to enable decision makers and the public to understand and consider meaningfully the limited legal options facing the State Water Board to mitigate the expected increase in the use of percolating groundwater and implications for the effectiveness of the Policy. The State Water Board has revised sections 6.2, 6.9, and 7 of the 2008 SED, prepared a new Supplement to Appendix D of the 2008 SED, and revised portions of the 2010 Response to Public Comments, Volumes 1 and 2. The primary purpose of these revisions is to satisfy the court's requirements. The revisions also clarify the impact analysis to reflect the fact that the potential switch from surface water diversions to groundwater pumping due to the Policy is unlikely to cause a significant reduction in surface water flows, and update section 7 to incorporate responses to comments developed for the 2008 SED. Revisions are shown using red font for additions and strikethrough for deletions.

The State Water Board will accept written comments on the adequacy of the substantive revisions to sections 6.2, 6.9, and 7 of the 2008 SED, the Supplement to Appendix D of the 2008 SED, and the substantive revisions to portions of the 2010 Response to Public Comments, Volumes 1 and 2 as set forth in this notice. Documents are available electronically at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/instream_flows/. Written comments must be received by **12:00 noon on April 8, 2013**, and shall be submitted to:

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95814-0100

Write **"Comment Letter - Revised Sections of the SED"** in the subject line. Comment letters may also be submitted by email at commentletters@waterboards.ca.gov, by fax at (916) 341-5620, or by hand delivery to the following location:

Jeanine Townsend, Clerk to the Board
Executive Office
State Water Resources Control Board
Cal/EPA Headquarters
1001 "I" Street, 24th Floor
Sacramento, CA 95814

Couriers delivering comment letters must check in with lobby security and have them contact the Executive Office on the 24th floor at (916) 341-5600. Hand delivered submittals that do not have a timely date and time stamp will be considered late and may not be accepted for inclusion in the record of this proceeding. Electronic submission of comments and any supporting material is preferred.

A public hearing for the receipt of oral comments on the adequacy of the substantive revisions to sections 6.2, 6.9, and 7 of the 2008 SED, the Supplement to Appendix D of the 2008 SED, and the substantive revisions to portions of the 2010 Response to Public Comments, Volumes 1 and 2 will be held during the regularly scheduled State Water Board meeting on April 23, 2013. The Board is not required to consider any oral comment regarding the adequacy of the draft SED that is received after the public hearing. Although a quorum of the Board may be present at the hearing, the Board will not consider approval of the CEQA documentation or adoption of the Policy at the hearing. The Board will consider approval of the CEQA documentation, with revisions, and re-adoption of the Policy at a future Board meeting on a date to be determined. Details concerning participation in the public hearing for receipt of oral comments on the adequacy of the substantive revisions to the SED will be contained in the notice and agenda for the April 23, 2013 Board meeting, which will be issued in advance of the Board meeting. The notice and agenda for this Board meeting as well as the future Board meeting to consider approval of the CEQA documentation and re-adoption of the Policy will be sent electronically to the State Water Board's email subscription mailing list for disseminating information regarding the Policy. To subscribe to this email list, go to the State Water Board's website at: http://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.shtml and choose "AB 2121 Instream Flow Guidelines for Northern California Coastal Streams".

Questions about this notice may be directed to Division staff at the following email AB2121Policy@waterboards.ca.gov or by calling: (916) 327-2414.

February 22, 2013
Date

Jeanine Townsend
Clerk to the Board