

NORTH COAST STREAM FLOW COALITION

OUR MISSION IS TO RESTORE HEALTHY NORTH COAST STREAM FLOWS

2945 Atlas Peak Rd.
Napa, CA 94558

Tel: (707) 255-7434
www.ourstreamsflow.org

November 18, 2011

State Water Resources Control Board, State Water Board, SWB
Division of Water Rights
P.O. Box 2000, Sacramento, California, 95812 (by mail)
1001 I Street, Sacramento, Ca. 95812
Richard Satkowski
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Re: Public Comments on Guidance for Complying with Water Diversion Measurement Requirements for Statement Holders: this is due to the State Legislature (SB7.8x) modifying the California Water Code to require diverters of water who are required to file Statements of Water Use and Diversion to measure their monthly water diversions beginning in January 2012. Amended California Water Code section 5103 subdivision (e)(1) states the following: “On and after January 1, 2012, each Statement shall include monthly records of water diversions. The measurements of the diversion shall be made using best available technologies and best professional practices. Nothing in this paragraph shall be construed to require the implementation of technologies or practices by a person who provides to the SWB documentation demonstrating that the implementation of those practices is not locally cost effective.”

To: Richard Satkowski

The North Coast Stream Flow Coalition, including 33,000 members' firm position is that the State Water Board shall adopt stream flow monitoring guidelines that include stream flow measuring devices that are high speed internet connected so that the public can monitor and safeguard healthy stream flows year around. According to California Water Code 5103, diverters shall use the best available technology and practices to measure stream flows. Therefore, this Coalition does not support the suggestion that the SWB support 'non-binding guidance' for stream flow monitoring but rather adopts regulations that are in keeping with California Water Code 5103.

The North Coast Stream Flow Coalition, NCSFC, formed in 2010 to improve the health of the North Coast streams due to dewatering of streams from human impacts. North Coast streams provide vast ecosystems values including fishing, swimming and recreation for the public and are part of California's natural heritage. These rivers and streams are national treasures and must be protected to the fullest extent possible by resource agencies as they have been in rapid decline due to pollution and water diversions. Despite grassroots stewardship, advocacy and litigations these mighty rivers are loosing their ecosystems values and native fisheries are vanishing in our generation.

North Coast Stream Flow Coalition Member Organizations

Environmental Protection Information Center * Community Clean Water Institute * Coast Action Group * Friends of the Navarro Watershed * Friends of the Gualala River * Friends of the Eel River * Humboldt Baykeeper * Institute for Conservation Advocacy, Research and Education * Klamath Forest Alliance * Klamath Riverkeeper * Maacama Watershed Alliance * Willets Outlet Creek Watershed Group * Pacific Coast Federation of Fishermen's Associations * Institute for Fisheries Resources * Sonoma County Water Coalition * Living Rivers Council * Earth Defense for the Environment Now * Save Mark West Creek

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Since the 1970's many aquatic species have been listed under the Endangered Species Act. Salmon suffer declining numbers and many North Coast streams have seen rapid decline in salmonid species. Salmon fishing, once a thriving industry has had devastating restrictions on catches due to dwindling fisheries. The North Coast Stream Flow Coalition, NCSFC, has documented and reported to the SWRCB fish kills due to dewatering of streams from human uses of water diversions in the Klamath, Eel, Navarro, Russian and Napa River watersheds for more than 10 years. Additionally, NCSFC members throughout our region have been filing Water Right Protests for over 10 years due to dewatering of streams. Water wars have broken out between riparian, senior and junior water right holders precipitating AB2121.

In the last 5 years alone, Mark West Creek a vital tributary to the Russian River, has experienced complete dewatering of the headwaters due to Cornell Winery pumping riparian groundwater. Riparian landowners are devastated due to complete loss of their public trust rights to swim, fish and recreate. The Napa River main stem, witnessed isolated pools of dying Chinook throughout 2007-2009 where riparian pumps have been seen running in the spring and summer. Frost Protection regulations have begun due to dewatering of Russian River tributaries where hundreds of salmonids fish kills occurred in the last two years.

In 2004 the governor signed AB2121 into law requiring that the State Water Resource Control Board, SWB, establish principals and guidelines for the purpose of administration of applications for water diversions and to protect fish and wildlife.

During the SWB's CEQA review and public comment period to comply with AB2121 their consultant, Stetson Engineering mapped \$1,777 illegal water diversions within the scope of Ab2121's region of Napa, Marin, Sonoma, Mendocino and Humboldt counties. Once this information became public knowledge, the public denounced illegal water use and demanded that the SWRCB assert their jurisdiction and enforce the law to protect stream flows. If water diverters continued to take water at will and ignore water right regulations, streams would continue to be dewatered killing all aquatic life and denying future generations of clean flowing streams.

California Water Code has required that a Statement of Water Diversion and Use be filed with the SWB since the SWB was formed in 1914. However, this regulation has been largely ignored by most diverters (only 200 diverters in the Delta filed Statements and 1,777 illegal water diversions on the North Coast). In May 2010 the SWB approved the new regional policy of *Maintaining Instream Flows for Northern California Coastal Streams*. By January 2011 the SWB hired 25 new enforcement officers to help stop the culture of stealing water from streams (trespass against the State). The SWB ordered that all water diverters not filed with the SWB must file a State of Diversion and Use by August 1, 2011 or face stiff fines of \$1,000 and \$500 per day per violation

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of California Water Codes. **Additionally, the California Water Code was revised to include monthly monitoring requirements starting January 2012 using the best available technology and practices.**

Maintaining Instream Flows for Northern California Coastal Streams Policy Document directs diverters to report: 1.) Season of diversion 2) rate of which water is being diverted 3) amount of water diverted 4) must have bypass flows at diversion for instream dams. This requires monitoring and reporting of timing and quantity of water actually diverted from the streams and suggests that electronic inline flow meter capable of recording the amount diverted and instantaneous rate of diversion. Additionally, instream reservoirs shall have monitoring level releases from the reservoir to stream channel and withdrawals from the reservoir and requires that bypass flows systems have hourly data logging.

By January 2012 Water Code 5103 (E) will be revised such that the Statement of Use and Diversion must include maximum rate of diversion achieved at anytime during each month of the year and monthly reporting requirements. This includes requiring all diverters such as water right permittees, water right licensees and all riparian users to report their maximum rate of diversion achieved during each month.

If diverters can demonstrate that such meters are not locally cost effective, the diverter may be able to use alternative monthly measuring methodology and reporting.

The SWRCB is now asking these questions:

- **'should the Water Board adopt regulations or provide non-binding guidance?'**
- **'should a list of acceptable devices/methods be allowed as an alternative?'**

NCSFC Comments and Recommendations:

The SWB should add real time high speed internet capable flow meters to the list of possible metering devices.
Rationale:

- Many water diverters are notorious for taking more than their share of permitted water.
- Diverters continue to divert when the stream is low due to draught conditions not caring about aquatic needs
- All stream and groundwater flows must be healthy at all times or fish and other wildlife will die.
- Water quality plummets as stream flows become low and or stop.
- There is a culture of taking water at will for self interests and prosperity and a denial that water must be available downstream for public trust values such as swimming, fishing and recreation.

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- Due to lack of resources and State Legislative priority, enforcement is scant at best . John O’Hagan, Enforcement Director, for the SWB states, ‘his office investigates possible illegal water diversion but proving that an illegal action has taken place is difficult’. John further informed the NCSFC in September 2011 that his office investigates ‘sensitive watersheds’ as a priority. Yet dewatering is pervasive throughout the North Coast. It is not far reaching to say that these watershed conditions are probably pervasive throughout California.
- Dewatering threatens groundwater recharge
- Dewatering of streams threatens groundwater storage stream and river reaches from gaining to losing groundwater areas, thereby threatening groundwater resources for the Public Trust.
- Therefore, the public must be a partner in maintaining healthy instream flows and we can ‘keep the diverters honest’ by monitoring stream flows from our computers.
- All the devices that are listed on the SWB’s website for this public comment period inform the Water Board monthly if the SWB is checking the device records. Periods of dewatering may go largely unnoticed by the WB and the diverter may ignore their own records and continue to divert despite harm.
- Diverters may and have complained that high speed internet connected stream flow gauges are too expensive but the price of preventing aquatic ecosystems death is priceless.
- Unless a stream is over-appropriated or has been adjudicated, water diversions promise to increase creating more and more opportunities for streams to be depleted or dewatered.
- In a recent publication by National Geographic, volume III # 1, Weather Gone Wild, “ by 2050, scientists project a loss of 25-50 percent of the Sierra snowpack. This loss means less water for Californians to use. More variable weather patterns throughout California, in short, can lead to longer and more severe droughts. From all indications, the impact of climate change on water resources management will be significant, as extreme weather events, increased droughts and floods, and water scarcity in some parts of the state will stretch supply to meet future needs. Changes in snowpack, sea level and river flows are expected to continue, and more precipitation in the state will likely fall as rain instead of snowpack.

The future health of streams and rivers is bleak unless the SWB takes a firm and decisive position to regulate water diversions to the fullest allowed by the Water Code 5103 and NOT adopt ‘non-binding guidance’. Since SB7.8x state wide over 6,000 (and the SWB is still counting new Statements being filed) new Statements of Use and Diversions have been filed with the SWB where only 200 had filed in the Delta alone. Throughout the North Coast region, 1,777 diverters have been stealing water. Given this track record and the fact that salmonids are barely surviving in their fresh water environments the WB must take a firm position to regulate stream monitoring with the best available technology and practices required by State Water Code. Again, this Coalition

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firmly supports adding stream gauge measurement devices with real time high speed internet connection so the public may be an active partner in protecting stream flows promised in the Public Trust Doctrine.

There is nothing in the history of water rights that would suggest that water diverters can be trusted to properly comply with Water Codes 5103 to file Statements of Water Use and Diversion and measure their monthly water diversions, therefore, the Water Board must follow the California State Water Code fullest spirit and intent to develop regulations that require the best available technology and practices. We must always keep in mind that aquatic animals die silently as pool flows dwindle and stop. The only way to protect these precious resources is to engage the public for all eyes in our watersheds.

Chris Malan
North Coast Stream Flow Coalition
Chair

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