

PROTECTIVE INSTREAM FLOW CRITERIA – REGIONAL AND SITE-SPECIFIC

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On October 22, 2013, the State Water Board adopted the North Coast Instream Flow Policy, which implements Water Code section 1259.4, requiring that the State Water Board adopt principles and guidelines for maintaining instream flows in northern California coastal streams.

The North Coast Instream Flow Policy emphasizes measures designed to help ensure the protection of native fish populations – such as anadromous salmonids – and their habitats in Marin, Sonoma, Mendocino, Humboldt and Napa counties. In the relevant geographic areas, water right registrations, water right petitions and water appropriation applications all come squarely within the policy's ambit.

The policy framework introduces certain fundamental principles that applicants, petitioners, and registrants must implement and with which they must later comply.

Seasonally limited diversion

Water may only be diverted during seasons in which instream flows are high.

Minimum bypass flow

Water may only be diverted when streamflows are greater than the minimum required to support the fish lifecycle.

Maximum cumulative diversion

In a given watershed, the maximum diversion rate cannot alter the flow variability such that fish habitat maintenance and channel maintenance flows are harmfully affected. Further, the cumulative effect of diversions on the instream flows necessary to support fishery resources must be minimized.

Dam restrictions

Onstream dams may prevent the free flow of water, sediment, and fish, and may restrict the normal cycle of fish spawning and rearing due to blockage of upstream access. The construction of new onstream dams is restricted to those dams that will not harmfully affect native fish populations.

Applicants, petitioners, and registrants are permitted to implement the policy principles through either regionally protective or site-specific criteria, with some exceptions. To ensure strict compliance and proper implementation of the policy principles, the counsel of a California natural resources lawyer should be obtained.

Regionally Protective Criteria

Regionally protective criteria govern instream flow standards in a large policy area that contains multiple sites. Regionally protective criteria tend to be more protective of fishery resources than site-specific criteria, as regional criteria must account for a range of sites with varying instream flow needs. As regionally protective criteria are developed to protect area sites with the greatest minimum instream flow needs, this may lead to systemic underestimation of allowable water diversion at numerous sites.

Site-specific Criteria

Site-specific criteria target the adequacy of instream flows at a narrow, defined location, and as such, its implementation is more accurate as to the instream flow needs at a particular site than that of regionally protective criteria.

Site-specific criteria are developed after an initial reconnaissance-level habitat assessment and a proposed site-specific study have been submitted to the Division of Water Rights. Once the site-specific study has been conducted and approved, the site-specific criteria may be implemented.

The State Water Board assumes that, ideally, applicants will perform a regional criteria analysis, and if their proposal would be disqualified for failing to meet certain criteria, or if the criteria would negatively affect the viability of their proposal, then the applicant may propose and conduct a site-specific study. If they so choose, however, applicants are entitled to move forward with a site-specific approach from the start.

Alternative Criteria

The State Water Board recognizes and encourages alternative approaches to implementation of the policy principles.

Petitioning for alternative regional criteria

Applicants may petition the State Water Board to allow for the implementation of alternative regional criteria. These alternative criteria will be considered and potentially accepted on the basis of their consistency with the policy principles, and their being scientifically sound.

A watershed-based approach

So long as the implementation is consistent with the policy principles, applicants may form watershed charter groups to coordinate water diversion management, and may coordinate water right permitting so that one set of technical documents can be utilized by the group.