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30 October 2005

North Coast Regional Water Quality Control Board
5550 Skylane Blvd.
Santa Rosa, CA

Re: Scott River draft Action Plan Temperature TMDL

Attn: Mr. Ben Zabinsky

Dear Mr. Zabinsky:

I am appalled that the present draft Scott River Temperature Action Plan does not address instream flow as a factor in temperature impairment. The removal from the July draft of the Division of Water Rights' role in restoring instream flows is indefensible. The Scott River, like most other northcoast rivers, is impaired for temperature due to the increased diversions of surface water over the last thirty years. Summer flows have been reduced to the point of dryness.

The extensive record for low summer flows in the Scott River is well documented as in the UC Final Report 9-1999 Bundy, Sommarstrom and Deas: (Attached)

Historically, surface water ditches provided most of the irrigation and stock water needs for crops and livestock. However, during the summer and late fall there is little or no stream flow.

In addition, low surface flows in the fall are identified as a primary Limiting factor to the survival/success of the local fisheries. These fish migrate upstream to spawn and need an adequate amount of water to allow for migration.

And in Scott River CRMC 1999 Merrick, Hoben:

Crop conversions to more profitable but thirsty alfalfa crops took more flow from the river. Levees and permanent bank stabilization ...put the final clutches on the river's flow. These impacts would forever alter the Scott Rivers and its ability to support fish runs.

The stream gauge data alone is convincing. Figure 1.5 of the draft and graphs prepared by Dennis Jackson, attached, show the progression of lower and lower summer flows from 1942 to 2004. It is apparent that the adjudication did not arrest the continued decline of summer instream flows.

The median summer/fall low flow in the 50's was 68 cfs. That has progressively declined down to 14 cfs in the 2000's. In 2001 the low flow declined to just 3 cfs and ran under 5 cfs *for three months*. These low levels in the main stem mean many smaller tributaries must be at or near dryness as indicated in the references above. This draft's limited approach of only attempting to provide shade for the last cup of water would be fruitless.

The subject draft recognizes the importance of instream flows to the problem and to the correction of temperature impairment. It does not however address them. In my earlier commentary on the draft I pointed out the need for the involvement of the State Water Resources Control Board and could not understand why you have proposed implementation measures for all the relevant state and federal agencies without mentioning SWRCB. I now understand your earlier July draft of the proposed Basin Plan Language included the participation of SWRCB and reads as follows:

The regional Water Board requests the State Water Board and its Division of Water Rights study the connection between ground water and surface water, the impacts of groundwater and surface water use on beneficial uses, and the impacts of groundwater levels on the health of riparian vegetation in the Scott River watershed. The Regional Water Board further requests the State Water Board and its Division of Water Rights take the findings of the above study into consideration and act accordingly to protect and restore the instream beneficial uses of the Scott River and its tributaries, with particular focus on those beneficial uses associated with the cold water fishery. A written request shall be sent to the State Water Board by [insert date that is 6 months from the date of U. S. EPS approval].

That language is key and precisely on point for a viable action plan. Its removal is a mystery and a great disservice to science and the Clean Water Act. It must be restored.

That language quoted above has been replaced with a proposed study to be undertaken by the County and its stakeholders "should they be able to commit to conducting the study!" There have been enough studies. the problem of instream flows needs to be addressed now and can only be done with the regulatory authority of the states Division of Water Rights.

The Water Board has many options at their discretion that could result in immediate improvement in water quality.

- They can review existing water rights and establish by-pass conditions for summer withdrawals.
- They can reallocate water rights giving recognition of the preemptive rights of the federal Clean Water Act reestablishing the beneficial use of the fisheries.
- They have recently done over-flight surveys of the Russian and Navarro River watersheds and in both cases disclosed more illegal diversions than legal ones. The continued decline of summer flows since the 1980 adjudication indicates that same potential on the Scott.
- The listed implementation items WA-1 and WA-7 assigned to CDFG to acquire and dedicate existing water rights to instream flows should be handled by the Water Board.
- They can restore funding for the water gauges necessary to document stream conditions. The last read-out from the only reporting USGS gauge on the Scott was September 2004.
- They can review and report Fully Appropriated status of the various reaches of the watershed.

(It would seem to be good practice to obtain all of the above from SWRCB for all TMDL action plans where instream flows are an issue.)

In deleting the inclusion in the July draft of the Water Board's role, we are left with only the slimmest hope for restoration. Judge D.W. Nelson in federal appeal court in a very similar case in the Klamath Basin said:

The agency (NOAA Fisheries) essentially asks that we take its word that the species will be protected if its plans are followed. If this were sufficient (NOAA Fisheries) could simply assert that its decisions were protective and so withstand all scrutiny.

If there is sufficient water to sustain the coho during this period, They will not complete their life cycle, with the consequence that there will be no coho at the end of the eight years.

Is this really where the Regional Water Quality Control Board and staff want to go? I urge you restore the role of the State Water Resources Control Board in protection and restoration of the Scott River instream flows.

Truly yours,

Daniel Myers
For the Mendocino Group of the Sierra Club

Attached: Five Graphs on Low Flow Discharge Scott River, Dennis Jackson
Final Report Sept 1999, Bundy, Sommarstrom and Deas

CC: Regional Water Quality Control Board
Alan Levine
Joseph Brecher
Palma Risler EPA