



Mendocino Group, Redwood Chapter P.O.Box2330 Fort Bragg 95437-2330
8 April 2006

State Water Resources Control Board
P. O. Box 100
Sacramento, CA 95812-0100

Re: Comment Letter-Sediment and Temperature TMDL Scott River
Watershed

Dear Board Members:

The proposed implementation actions submitted by the Regional Water Quality Control Board for temperature impairment are either inadequate or missing, removed as a result of public pressure. This Basin Plan amendment does not meet the requirements of the law. The State board must return this amendment to the regional board to be revised to include protection of public trust instream flows.

Like most other northcoast rivers, the Scott River 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 declining summer flows in the Scott River are well documented. (See Dennis Jackson graphs attached) 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 was just 3 cfs and, for *three consecutive months* ran under 5 cfs.

The subject Basin Plan amendment recognizes instream flows as the problem and its importance in the correction of temperature impairment, but fails to address it. The earlier July draft of the proposed Basin Plan Language included measures to address instream flow with the participation of SWRCB. It 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 highlighted above was removed and replaced with a proposed study to be undertaken by the County and its stakeholders "*should they be able to commit to conducting the study.*"

In the public comment section of the report it states "*a large number*" of responders questioned "*the lack of specific actions*" and the "effects of reduced surface water flows on water temperature." (Page G9-10) The response of staff to these questions was that there is "*a process to develop the information to understand the interaction of water use and ground water inflows to the river.*" That is the stakeholder study, again "*should they be able*" to do it.

That original language of the July draft was on point for a viable action plan. The removal of SWRCB's involvement is not a mystery. I was advised by staff that the decision to remove the language addressing the flow problem was due "to a firestorm of political protest" from the local community. It is my understanding that this decision to back off from consideration of instream flows *came from the regional board*. An example of the "firestorm" is an attached article from the local Pioneer Press. The author finds it alarming that the "*staff (NCRWQCB) analysis concludes that ground water pumping and surface diversions have increased temperatures in the river.*" and that their "*recommendation concerns water use rights.*" The author was also alarmed that "*the recommendation discusses authority by the State Water Board to seek modifications to the Scott River Adjudication and cites duties to consider Public Trust values..*" The author and her reader's concerns were assuaged when these technical positions were deleted from the Basin Plan's Action Plan. (Page 14, 7-19-05 TAG Draft attached)

SHASTA RIVER TMDL The Shasta temperature TMDL, which will come before the board soon, is similar to the Scott TMDL. It recognizes the importance of instream flow and quantifies the improvement in temperature for a fixed increase in flow. Notwithstanding this recognition, the Shasta implementation plan does not provide any specific actions to increase the instream flow. In the required peer review, Dr. Charles Coutant's stated:

I was somewhat disappointed with the bottom line for temperature for it included mostly action to increase shade while just assuming that warm inputs can be eliminated by edict, which seem impractical. Relying on shade will be a very long-term remediation, one that the salmonoid populations may not live to see.

The Scott implementation plan relies wholly upon shade. Dr. Coutant's opinion, I am sure, would be the same as it was for the Shasta TMDL. Improvement in instream flows produces immediate temperature relief. Planting trees does nothing for five years and very little for ten.

TU/Audubon Petition The broad issue of the SWRCB to better regulate water rights and protect public trust flows is the central point of the Trout Unlimited Audubon Petition that is presently under consideration. While that outcome will not provide guidance in the immediate future, it should serve as notice of the past failure to provide instream protections with its resulting temperature impairment of our rivers and loss of our fisheries. That petition draws its legal strength from these temperature impaired rivers which have been drained of their rightful vitality. The regional staff's recognition of this relationship in the original Scott July draft implementation plan was a significant step forward that needs to be restored into the Basin Plan language. The SWRCB is the only agency that can do this. They must be a participant in the details of protecting instream flows for this or any other temperature implementation plan to be successful.

The Water Board has the authority and many options at their discretion that could result in immediate improvement in instream flow.

- Re-examine and enforce the long-standing bypass conditions on the Scott's adjudicated and other water rights.

- Reallocate water rights as necessary giving recognition of the rights of the federal Clean Water Act reestablishing the beneficial use of the fisheries.
- Perform over-flight surveys. The Russian and Navarro River watersheds have 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.
- Reassign the listed implementation items WA-1 and WA-7 to the State Water Board, presently assigned to CDFG to acquire and dedicate existing water rights to instream flows.
- Restore funding for the water gauges necessary to document stream conditions.
- Review and update Fully Appropriated status of the various reaches of the watershed.

Like the Pacific Lumber decision, this is another case where the regional board is setting aside clear legal responsibilities mandated by state law and the Clean Water Act in favor of local political considerations. The State Water Resources Control Board must send this issue back to the regional board with direction to restore and protect public trust instream flows.

Very truly yours,

Daniel Myers
For the Mendocino Group of the Sierra Club

Attachments

CC: North Coast Regional Water Quality Control Board
Alan Levine
Joseph Brecher
Brian Johnson
David Smith EPA
Tim McKay
Felice Pace