

STATE WATER RESOURCES
CONTROL BOARD

2008 JAN 30 PM 1:30

OFFICE OF WATER RIGHTS
SACRAMENTO

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January 25, 2008

Ms. Karen Niya
State Water Resources Control Board
1001 I. Street
PO Box 2000
Sacramento, CA 95814

“Comment Letter – AB 2121 Policy”

Dear Ms. Niya:

I appreciate, in advance, you taking your time to review my letter regarding the draft policy AB 2121 of the State Water Board.

I am not sure if you are aware of the significant damage which awaits many Sonoma County farmers should the State Water Resources Board draft policy be made law in its current form.

While I realize that it is a legislative requirement for the Board to adopt a policy, it is beyond imagination that the Board could have come up with its current draft policy. This draft policy is deeply flawed for some of the following reasons:

- There is absolutely no attention to paid to the potential economic costs involved to land owners, many of whom have already spent upwards of \$50,000 to \$100,000 on studies for State Water Board while waiting as much as 10 years to have their water rights processed. In your own draft, the estimated costs are \$100,000 to \$3,000,000 per permit to comply with this policy. As I understand, in Sonoma County alone there are more than 850 “on-stream” reservoirs. Thus, if I take an average cost of \$200,000 per reservoir (which is not unreasonable), it will cost Sonoma County farmers alone \$170 Million dollars by your own estimate. This is an incomprehensible amount of money for farmers who generally do not make that much money.
- Even after spending this amount of money, there will be little benefit to the fish you seek to protect. Many of us farmers with reservoirs live in areas (we are above 2,000ft in the hills) where there are simply no fish or non-fish vertebrates to protect.

Fax copy received Jan. 28, 2008

- Additionally, many of us farmers fill our reservoirs by late January, early February (after today's rain, my reservoir will be full). Thus, after today, any additional water going into my pond simply flows right out the spill-way. What you call my "on-stream" stream dries up by mid-March. Thus, it is hard to understand how the diverted water, my reservoir takes, from the rains December – February harms anything. When you balance this against a potential cost of \$100,000 - \$3,000,000 there is simply no sense of proportion.
- Because of the bureaucracy at the State Water Board, there is simply no one to dialogue with. There is a "one size fits all" policy without looking at the merits of each specific situation, the potential economic damages to the farmer vs the actual amount of water being taken vs the benefits.
- Many farmers who either will have so much water diverted from their reservoirs due to the policy, or who will have to pull out their ponds, have an abundance of wildlife which will die in the process. Your policy will end up killing far more turtles, fish, and bird life than you save.

When one considers the enormous benefit in money, prestige and importance the wine industry brings to California, it is hard to understand how such a policy could get to this stage of possibly being made law.

As you should be well aware, Sonoma County is at the forefront of environmental awareness in preserving an agricultural character. Without the foresight of many in Sonoma County, this beautiful, diverse, and agriculturally important county would be looking like many of the environmentally devastated and over-developed towns in other parts of California. The grape farmer is at the heart of this high quality environmental profile of Sonoma County.

Given the above, and the importance which should be given to both small business and agriculture, it is, again, hard to understand Governor Schwarzenegger allowing this draft policy to get to such a serious stage of discussion. When I think of the stereotypical bureaucratic problems small businesses face in California, there is not a better example than the State Water Board and this new draft policy. Perhaps there may not be adequate sympathy for a farmer having to pay an additional \$100,000, \$300,000 or even \$3,000,000 to comply with the new policy. However, taken as a group, this policy could have a serious financial impact on the Sonoma County wine industry, which currently is one of the bright spots in the California economy.

I care deeply about some of the environmental issues facing California, particularly the problem of water and fish. It is ironic that I begin a workshop next week called "Fish-Friendly Farms". However, when a group of people come up with a policy of "one size fits all" without taking into account some of the specific situations of individual farmers, nor the small impact these farmers have on the issue of water, it clearly demonstrates "bureaucracy run amok" in our great State.

To put this policy into something more concrete, I would like to highlight my specific example: I purchased a rural property in the northern part of Sonoma County about five years ago. This property had an existing reservoir on it which was built 25 years earlier. This property is high up in the hills at above 2,000 ft and has some small temporary streams on it which run, in some cases, only a few weeks or months a year (during very heavy rains). As an example, even after the significant rain we had during the past couple of weeks, these so-called "streams or swales" (The State Water Board's definition, not mine) were not even running until this week. Because the reservoir was built on one of these very tiny swales, the reservoir is deemed to be "on-stream". As a result of this, the previous owner of my property had to file for a water-right permit due to this small diversion of water into the reservoir for a few rainy months per year. This permit was filed in 1999. In the meantime, the expenses incurred for a number of studies which had to be done (Biological study, Engineering study, Water-availability analysis, anthropological study) in addition, to consulting fees needed to interact with the State Water Resources Board, have added up to more than \$75,000.

Further to the above points, in my specific situation, my reservoir fills up, by the latest, in mid-February. Usually, in early March the "on-stream" water stops running. Thus, in the worst case, my reservoir would be restricting water only during December-February (when the hard rains fall). This obviously does not cause any harm to the Russian River System. One can even make the case that during this time of year, the reservoirs actually help to prevent further flooding of low-lying areas.

Many of us farmers incurred these over-the-top expenses because we were lead to believe at the end of the road, we would get a water right for our reservoirs, many which were built many owners ago, even before we were born. We put up with this bureaucracy, which saw only a very small number of water rights permits acted upon during the past 9 years. If the draft policy is made law, many of us farmers will either have to incur significant additional expenses in additional engineering and construction fees to have a significant portion of the water, flowing from these small streams into our reservoirs, bypass our reservoirs. In addition, we will need to incur the expense of monitoring systems. We are the lucky ones. Some farmers, who have reservoirs built on more important streams/tributaries, will need to remove their reservoirs. The estimated cost of this is as much as \$3,000,000 (this is your estimate not mine). This amount will obviously put many farmers into bankruptcy or risk losing their farms.

In summary, I spent a significant amount of money purchasing a rural property and have become a grape farmer. When I purchased the property, I did a significant amount of due diligence on the property, including the various issues related to the reservoir. I spoke with many experts in the area. All said that after spending a lot of time and some money (for the various studies mentioned above), I would surely get the permit the previous owner had applied for. During the past 5 years I have complied with every request to continue processing my permit although I knew that the State Water Board was hardly processing any permits. Now the State Water Board has come out with a policy which is significantly more onerous than anyone has envisioned which will necessitate significant

additional expense, without providing any service or any value. In short, I see this as a punitive policy for a property owner like me.

One often hears of the bureaucracy of doing business in California and the nightmare many small business owners face. This is a very perfect example. I hope you are able to think through this policy clearly and help stop it, in its current form, from being implemented. In the very least case, each reservoir should be looked at on a case-by-case basis to judge the merits of each specific situation.

As I mentioned, many farmers care deeply about habitat restoration, water conservation and fish. I do not understand why the State Water Board cannot get a bi-partisan group together to help draft a policy, including Water Right specialists (engineers, consultants, and lawyers) together with State Water Board personnel, farmers, the Sierra Club and relevant organizations (Sonoma County Agricultural Commission, Sonoma County Farm Bureau). This would surely lead to something more balanced than simply a small, closed group of people drafting policies that can very realistically cause great economic hardship to the real lives of farmers for very little benefit to the State.

Finally, if you simply review a few of the specific cases and take a step back and think about the real benefit of implementing the policy against the economic cost to the farmer, I am convinced you will come to the obvious conclusion that this is not a balanced policy and completely out of proportion and sense of fairness. I am sure you live in a nice home. Please think how you would react if some agency came along and said you needed to spend between 15% to 100% of the value of your home for some impossible to understand benefit. Please think this through.

Sincerely,

Barry Hoffner

A handwritten signature in black ink, appearing to be 'Barry Hoffner', written in a cursive style with a long horizontal stroke extending to the right.