

May 1, 2008

State Water Resources Control Board
Post Office Box 2000
1011 I Street, 14th Floor
Sacramento, CA 95814
Attention: Karen Niiya

Re: Comment Letter – AB 2121 Policy

Dear Ms. Niiya:

These comments on the Draft North Coast Instream Flow Policy are being submitted by the law firms of Kronick, Moskovitz, Tiedemann & Girard, P.C. and Ellison, Schneider & Harris, LLC, the hydrologic engineering firm of Wagner & Bonsignore Consulting Civil Engineers, all of whom regularly advise the water-using segment of California's economy, and on behalf of a diverse group of individuals and entities interested in the beneficial use of the water resources of the State: Wine Institute, California Farm Bureau Federation, Mendocino County Farm Bureau, Napa County Farm Bureau, Sonoma County Farm Bureau, City of Napa, Family Winemakers of California, California Association of Winegrape Growers, Western Growers Association and individual water right applicants including William and Janet Pauli, Mary Elke, Richard Savoy, Donnelly Creek Vineyards and Creekside Homes, Inc. ("Commenters").¹ The comment letter consists of five parts: this summary overview letter and four attached Memoranda commenting on Technical Issues, Biological Issues, Legal and Policy Issues, and Recommendations for an alternative approach to addressing the intertwined issues of environmental protection and water right administration.

In AB 2121 the California Legislature directed the State Water Resources Control Board ("Water Board") to "*develop principles and guidelines for maintaining instream flows in [north] coastal streams . . . for the purposes of water right administration.*" In response to this mandate, on December 28, 2007, the Water Board published a Draft North Coast Instream Flow Policy ("Draft Policy") that would impose new bypass flow requirements, water use limits and other restrictions on water right applications and petitions in coastal streams in Marin, Sonoma, Napa, Mendocino and Humboldt counties. Commenters appreciate the tremendous amount of effort that went into developing the Draft Policy. Unfortunately, this effort did not produce a functional Policy that satisfies the AB 2121 mandate: the Draft Policy will not improve the instream flow conditions needed by coho salmon and steelhead fisheries, nor will it improve the administration of water rights.

The Draft Policy fails because it attempts to develop a flow-habitat model that will prescribe the biologically appropriate bypass flow for every diversion in a five-county region without consideration of the challenges facing the region's fisheries or the disparate conditions prevailing at individual diversion sites. Our analyses show that the Draft Policy's one-size-fits-all approach does not work in the real world because the biological resources and water demands differ in every watershed, and no amount of modification of the Draft Policy will yield conditions that are fair and accurate in most circumstances. We present new principles and guidelines for a "watershed approach" that will produce a transparent, fair and timely water right process that supports scientifically sound decision-making and actually improves instream flows.

¹ / Commenters are described at the end of this letter.

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