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DIV. OF WATER RIGHTS  
SACRAMENTO

Ms. Karen Niiya, Senior Engineer  
Division of Water Rights  
State Water Resources Control Board  
1001 I Street, 2<sup>nd</sup> Floor  
P.O. Box 2000  
Sacramento, CA 95814

**Re: Comment Letter - A.B. 2121 Policy**

As a family owned business and landowner in California's North Coast region, we are greatly troubled by the Board's proposed Policy for Maintaining Instream flows in Northern California Coastal Streams (the "Proposed Policy"). If the Proposed Policy is adopted in its current form, it will have a direct and negative impact upon our properties, farming interests and the many families that depend upon us for their livelihoods. We urge you not to adopt the Proposed Policy, or any modified policy based upon the Proposed Policy, without first carefully re-thinking many of its basic premises.

We support and incorporate by reference into these comments the joint legal and technical comments on the Proposed Policy separately submitted by Ellison, Schneider & Harris LLP, Kronick, Moskovitz, Tiedemann & Girard, P.C. and Wagner & Bonsignore Consulting Civil Engineers. Those comments clearly set forth the numerous substantive, procedural and legal defects of the Proposed Policy. We also agree with and support the separate comments of the Sonoma County Salmonid Coalition (on which our affiliate, Jackson Family Wines, Inc., is a co-signatory), which propose the adoption of a watershed alternative to protect salmonids in the Alexander Valley, Dry Creek and Knights Valleys of Sonoma County in lieu of the Proposed Policy. By this separate comment letter, we would like briefly to emphasize and expand upon several points made in those referenced comments.

The Proposed Policy fails to achieve its intended goals for many reasons, but not least because it violates California and federal law. The Proposed Policy fails to balance the competing needs for water, as required under the California Constitution. It does not weigh the benefits derived from agricultural, domestic and industrial uses of water, nor does it consider the environmental benefits derived from existing ponds, which provide habitat to a number of endangered species other than salmon. Adopting a policy that fails to consider these other interests would violate Article X, Section 2 of the California Constitution, the California Water Code and the California Environmental Quality Act. In addition to this basic substantive legal defect, procedural defects, including insufficient notice and explanation, have compromised our ability to comment meaningfully on the Proposed Policy and, thus, violated our guarantees of

procedural due process under the U.S. and California Constitutions as well as the California Administrative Procedures Act.

The Proposed Policy also fails because it does not fulfill one of its core legislative mandates, which was to improve the fundamentally broken water rights process. The Proposed Policy does nothing to improve the system, nor does it even acknowledge that the system is broken. There is, and has long been, an unreasonable backlog in the processing of water rights applications in the North Coast. Implementation of the Proposed Policy will do nothing to remedy this broken system and, in fact, will only add additional expense and delay. The Proposed Policy would impose rigid, one-size-fits-all diversion restrictions on applicants and petitioners without giving any consideration to the separate, and often significantly different, water issues arising in different watersheds. The implementation of such a rigid policy would force the majority of applicants and petitioners to seek a variance from the Proposed Policy's one-size-fits-all limitations. While the Proposed Policy purports to provide for such a variance mechanism, the criteria for obtaining such a variance are ill-defined. Processing so many variance requests will only worsen the already unreasonable delays in the processing of pending applications and will likely lead to years of unnecessary litigation.

The fundamental problems in the water right system must be fixed in order to have an effective instream flows policy that results in measurable environmental benefits. Furthermore, a truly effective instream flows policy should also, at a minimum:

- Encourage and incentivize collective, watershed-based approaches to instream flow management similar to the watershed approach detailed in the comment letter from the Sonoma County Salmonid Coalition;
- Provide positive incentives for resource stewardship by, for example, encouraging winter off-stream storage projects to reduce water diversions during the dry season, by expediting processing of such applications and by exempting from the bypass and mitigation requirements of the policy modifications to any time of diversion restrictions in existing licenses and permits where such a modifications would result in a shift in diversion from drier to wetter periods of the season;
- Apply best available science applicable to the particular watershed by, among other things, better defining the point of anadromy based on documented, existing barriers to fish rather than a non-scientific, and overly conservative, assumption based on elevation change over a given distance; and, finally,
- Consistent with the research of professionals such as Dr. Adina Merenlender, recognize that the actual, biological impact on fish and their habitat during peak flow seasons depends, to a large part, on the location of a given proposed point of diversion in the watershed, with diversions higher in the watershed above any realistic point of anadromy having substantially less overall impact and, thus, obviating the need for minimum bypass flow requirements for such diversions.

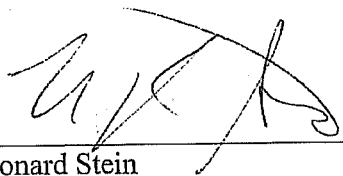
The Proposed Policy is fundamentally flawed in that it fails to accomplish or incorporate each of the items delineated above.

Rather than adopt a one-size-fits-all approach that violates California law, fails to fulfill the Board's legislative mandate and, not least, fails to protect fish, the Board must concentrate on fixing the dysfunctional water right process. Water users and applicants deserve clear and effective guidance as to how to obtain a water right permit, and should expect to receive a decision on a permit within a reasonable period of time. The Proposed Policy must be rejected and replaced with principles and guidelines that appropriately balance economic interests and environmental protection. Only if the Board undertakes such a balanced approach can the Board rightly say it has fulfilled its legal and legislative mandates, produced meaningful, innovative and workable solutions for water management and achieved necessary reforms to the administration of water rights in the California North Coast region.

Sincerely,

JACKSON FAMILY INVESTMENTS, LLC

By: \_\_\_\_\_

  
Leonard Stein  
Vice President & Secretary

cc: Tam Doduc, Chair, SWRCB  
Gary Wolff, Vice-Chair, SWRCB  
Arthur Baggett, Jr., Member, SWRCB  
Charles Hoppin, Member, SWRCB  
Frances Spivy-Weber, Member, SWRCB