

# AB2121Policy - Oppose Policy

**From:** "Mark" <mde@ncrm.com>  
**To:** <AB2121policy@waterboards.ca.gov>  
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**Subject:** Oppose Policy

Mark D. Edwards  
 North Coast Resource Management  
 P.O. Box 435  
 Calpella, CA 95418  
 (707) 485-7211 x 21

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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

2008 MAY -1 PM 4:00  
 DIVISION OF WATER RIGHTS  
 SACRAMENTO  
 STATE WATER RESOURCES CONTROL BOARD

Re: Comment Letter – AB 2121 Policy

- I represent four Landowners in Mendocino County and the proposed policy will directly impact the viability and long-term sustainability of these on-going farming operations. Combined, these Landowners own over 500 acres of vineyard that divert water from the Russian River and its tributaries for irrigation and frost protection purposes.
- These Landowners have filed Applications or Petitions for change; some were filed up to ten years ago, and these Landowners are still working their way through the regulatory process. Most are well along in their CEQA studies, many have completed necessary CFII and WAA studies or will do so shortly; they are in the process of preparing the necessary CEQA documentation (Draft Initial Study). They are all attempting to complete the required regulatory process. The January 1, 2008 “cut off”, requiring that they submit the CFII and WAA studies prior to this date, and that they comply substantially with the Policy requirements ignores the fact that these Landowners have been working towards the completion of their project for many years, at great expense. In certain instances, these Landowners have been effectively prohibited from completing the necessary studies due to the fact that State Agencies have not fulfilled their responsibility to provide necessary feed-back or information. For example the California Department of Fish and Game has failed to provide POI information in a timely manner – thus delaying or eliminating the possibility of proceeding (and passing through the process before the deadline to do so). Placing the cut off for these projects mid-stream in the process (after they have spent years and great sums of money on the project) is unfair – a more equitable solution would be to trigger the new policy

only for projects for which the Application or Petition were filed after the regulation enactment date.

- Many projects (with associated petitions and applications) currently under review by the Division of Water Rights involve projects that were constructed by Landowners many years ago. Landowners have submitted applications or petitions to change these projects, in a “good faith” effort to bring projects into conformity with current law. The Draft Policy does not appropriately differentiate between those landowners who are in the system, and those who have never entered the system (and hence have not expended any effort or funds to reach compliance). As such, the January 1, 2008 cut off that does not recognize the good faith efforts of these landowners is punitive and discriminatory to these landowners. Again , I recommend that any new policies adopted only apply to those projects for whom no application or petition has been filed.
- For existing reservoirs, particularly those on Class III watercourses, the sediment bypass requirements and passive system requirements are unrealistic; the environmental impact of constructing the bypass, and the cost of said construction will make these projects infeasible.
- Implementation of the Policy will result in further delays in water right processing because the majority of applicants and petitioners will need to seek a variance due to the stringent bypass and diversion rate limitations in the Policy. The variance criteria are not clearly defined in the Policy; therefore, we believe that processing of numerous variance requests will exacerbate the already back-logged workload of the State Water Board staff, and further delay approval of our pending action(s).
- The Policy does not provide a balance to the competing needs for water as it fails to weigh the many benefits derived from the agricultural, domestic and industrial uses of water.
- I am concerned that the severe and costly compliance measures imposed on my project will result in drastically reduced water yields and possibly loss of my productive farmland. There is no indication in the Policy that the fishery resources would actually benefit from my implementation of such measures.
- The State Water Board should concentrate on fixing the water right process. Applicants deserve clear and effective guidance as to how to obtain a water right permit. The Draft Policy should be rejected and replaced with one that balances economic interests and environmental protection.

Sincerely, Mark D. Edwards