

April 17, 2008

2008 APR 21 PM 2:37

STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF WATER RIGHTS  
SACRAMENTO



LAGO de MERLO™  
Vineyards & Winery

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 – AB 2121 Policy**

Dear Ms. Niiya:

Thank you for the opportunity to comment on the Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams (“Policy”). My family-owned vineyard in the Dry Creek Valley in Sonoma County will be directly impacted by the draft Policy. We hold one water right License, five Permits, and one pending Application for the diversion and use of water on over 160 acres of vineyard. In 2001, we filed the Application for diversion of 10.1 acre-feet of water in the winter months for storage in an existing storage reservoir located on a small tributary to Fall Creek, thence Dry Creek (both of which are highly regulated streams under existing water rights). A year earlier, at the suggestion of the State Water Resources Control Board’s licensing staff, we filed petitions for our five Permits variously seeking extensions of time, consolidation of our places of use, and the naming of an existing permitted reservoir as a point of rediversion in order to facilitate flexibility in our management of water. My understanding at the time was that these were fairly routine actions, basically required to conform our existing rights to the manner in which the project was being operated.

We have fully cooperated with staff’s suggested actions and yet we have been in the water right ‘process’ for almost eight years. We have paid over \$23,000 in annual fees to the State Water Board for the pending application and petitions, and we appear to be no closer to approval than at the time of filing.

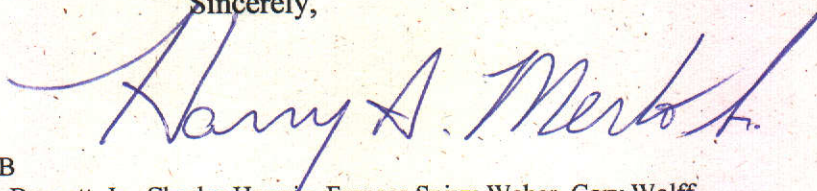
We understand that the State Water Board has a backlog of over 300 applications within the region affected by the Policy, many of which have been in process for over 10 years. We are greatly concerned that stringent bypass flow and diversion rate limitation criteria set forth in the Policy will lead the majority of applicants and petitioners to seek a variance. 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 actions.

We consider ourselves good stewards of the land and support efforts to protect endangered species and their habitat. However, we understand that the compliance measures to be imposed on ours and others’ projects will be severe and costly, and there appears to be no indication in the Policy that these measures will significantly benefit fishery resources.

3495 Skaggs Springs Road  
Geyserville, CA 95441  
Phone 707.473-0146  
Fax 707.473-0147  
[www.lagodimerlo.com](http://www.lagodimerlo.com)

The State Water Resources Control Board should reject the Policy, and focus its resources on developing a policy that balances environmental interests and economic needs, while providing clear guidance to applicants as to how to obtain a water right permit or approval of a petition. I look forward to your full consideration of my concerns.

Sincerely,

A handwritten signature in blue ink that reads "Harry A. Merbit". The signature is written in a cursive style with a large, sweeping initial "H".

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