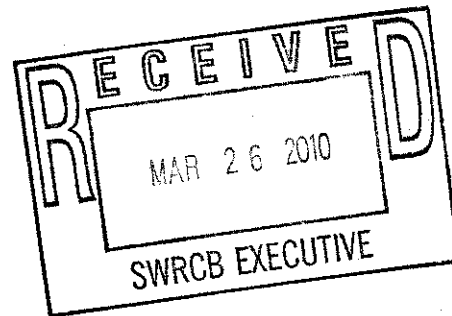
 **UNITED  
WINEGROWERS  
for Sonoma County**

---

March 26, 2010

Jeanine Townsend, Clerk to the Board  
for Charles R. Hoppin, Chair  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814



RE: **Comment Letter AB 2121**

Dear Chairman Hoppin and Members of the Board:

I am writing in support of your Board's efforts to create a North Coast Instream Flow Policy that works and will protect both fishery and farming interests in the watersheds of Sonoma County.

This has been a long process, measured not in weeks or months nor years but decades. We appreciate all parties' efforts to date and hope your board will consider making further refinements to the draft policy in order to achieve a good and lasting outcome.

We have been and remain advocates for a new approach that encourages regional cooperation on a watershed scale. The current process has not worked particularly well up to this point recognizing, that year after year, no action has been taken on dozens of applications.

In watersheds, where virtually all precipitation occurs in the wintertime, we do wonder if the final product will ultimately help facilitate construction of additional storage or not.

**Matrix for pending applications:**

It is not entirely clear how this draft policy will be applied to pending applications and minor changes to existing permits and licenses. On the one hand it is stated, "[t]he regionally protective criteria limit new water diversions" (Section 2.2.1.1, p. 4). Later in the document, Section 3.3.1 (p.13) addresses the procedure for approving applications filed prior to this policy's adoption. Some may track recommendations contained in the DFG-NMFS Draft Guidelines. Other projects, if determined not consistent with the DFG-NMFS Guidelines (sic), "then all of the requirements of this policy shall apply." A clarifying chart or matrix would be helpful.

### **Map new stream designations and watersheds:**

Likewise a detailed map showing the location and extent of streams by Class I, II or III is needed. The policy for Small Domestic Use (Section 3.3.3, p.16) allows one to obtain an appropriated water right by registering the use, however, no water is allowed to be diverted from an onstream dam on a Class I or II stream. For all parties, it would be good to know how each stream is designated.

It would be helpful to have a map showing those areas where the watershed is deemed to be larger than 321 square miles. In an area that is almost equal in size to the state of Connecticut, there are many watersheds, large and small, but it is not entirely obvious why the regional criteria for minimum bypass flows sets the dividing lines at less than 1 square mile and those larger than 321 square miles.

### **Clarify regional criteria:**

The direction is not clear for how one would complete a Daily Flow Study. The descriptions of the requirements appear to say both that regional criteria shall be used and that none exist:

"Regional criteria or site specific criteria shall be used to establish protective streamflows at the POIs at and/or below anadromy. There are no regional criteria for Class II and III streams; however, applicants shall demonstrate, by applying project-selected minimum bypass flows and maximum rates of diversion in this analysis, that project operation will not result in impacts to instream flow needs of fishery resources at the POIs at and/or below anadromy." [B.5.3 Daily Flow Study (p.14)]

An earlier technical report submitted by Bill Trush (McBain & Trush) provides an explanation for selecting a minimum depth to support the healthy passage of fish. A minimum upstream passage depth criteria is set forth in Section C.1.1.2.1.1 (p.C-4). However, no explanation is provided describing why those particular depths are appropriate, their applicability to streams in these watersheds or likelihood and potential that those criteria can be met in typical tributaries throughout this area of Northern California. Additionally, the same minimum depth criteria are being applied to juvenile rearing through the assumption (p. C-6), "the protection of spawning will also protect juvenile rearing." In geometry, A can be > than B, but that doesn't mean that B=A. Here the requirement for depth of flow end up the same but it is not clear how or why.

### **Demonstrate project approvals:**

Attached to the Information Sheet is a list of nine projects comparing acre-feet collected using the new Flow Policy versus DFG-NMFS Draft 2002 Guidelines. It's a start but it is not entirely clear if we can assume these results therefore satisfy the new policy's requirements and conditions and these nine projects could be approved and built using this policy or simply Table 1 is a set of data showing modeled bypass flows. Demonstrating that on-the-ground projects can actually pass the proposed tests and get beyond the roadblocks is critical after years of Draft Guidelines and waiting but no clear path leading to applications being approved or denied.

**Need for reasoned judgment:**

As pointed out by Trout Unlimited's Brian Johnson, there is need for both policy judgments and expert opinion regarding science. If it were simple, this long debate would have been over and done years ago. Guidelines can be written and formulas crafted, however, they must be shown to work not just in theory but also on-the-ground in a watershed. Policy must be a framework for making decisions, not more study.

**Policies apply across regions:**

Reference is made in various sections to working cooperatively with other agencies. This is good. Yet, some references are not complete as the area covers more than one Regional Board.

**Principles:**

Direction was given by the State Legislature to adopt principles and guidelines for maintaining instream flows in coastal streams. The primary goal is to maintain instream flows to protect fishery resources. The policy provides that new applications should be limited seasonally; divert water only when above certain flows needed for spawning, rearing and passage; maintain adequate structure and habitat; consider and minimize cumulative effects and restrict construction of new onstream dams. Those applications, by individuals or watershed groups, who can demonstrate they have met these basic principles should be provided a process that leads to timely and expedited review and decision. We need to leave behind the false starts and failures of the past and get this done.

On behalf of our winery and grower members, thank you for considering UW's comments.

Sincerely,

Louis M. Foppiano  
President

**Need for reasoned judgment:**

As pointed out by Trout Unlimited's Brian Johnson, there is need for both policy judgments and expert opinion regarding science. If it were simple, this long debate would have been over and done years ago. Guidelines can be written and formulas crafted, however, they must be shown to work not just in theory but also on-the-ground in a watershed. Policy must be a framework for making decisions, not more study.

**Policies apply across regions:**

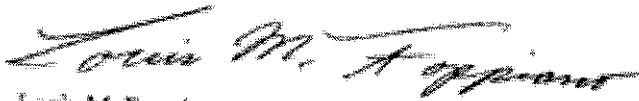
Reference is made in various sections to working cooperatively with other agencies. This is good. Yet, some references are not complete as the area covers more than one Regional Board.

**Principles:**

Direction was given by the State Legislature to adopt principles and guidelines for maintaining instream flows in coastal streams. The primary goal is to maintain instream flows to protect fishery resources. The policy provides that new applications should be limited seasonally; divert water only when above certain flows needed for spawning, rearing and passage; maintain adequate structure and habitat; consider and minimize cumulative effects and restrict construction of new onstream dams. Those applications, by individuals or watershed groups, who can demonstrate they have met these basic principles should be provided a process that leads to timely and expedited review and decision. We need to leave behind the false starts and failures of the past and get this done.

On behalf of our winery and grower members, thank you for considering UW's comments.

Sincerely,



Louis M. Foppiano  
President

P.O. Box 382, Santa Rosa, CA 95402

Phone/fax: (707) 433-7319

P.O. Box 382, Santa Rosa, CA 95402

Phone/fax: (707) 433-7319