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STATE WATER RESOURCES
CONTROL BOARD

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DIV OF WATER RIGHTS
SACRAMENTO**Ad Hoc Committee for Clean Water**

P.O. Box 484 Occidental, CA 95465

707 874-3855 phone; 707 874-2493 fax

daniel.schultz@waterboards.ca.gov

staff@OAL.ca.gov

1 of 8

6/23/15

Re: *Emergency Actions due to Insufficient Flow for Coho in Tributaries of the Russian River*

We hereby submit these comments in connection with the Emergency Actions due to Insufficient Flow for Specific Fisheries in Tributaries to the Russian River and the recent submission to OAL.

I, Ann Maurice, chairman and spokesperson for the Ad Hoc Committee for Clean Water, live in the Green Valley Creek Watershed, near the headwaters of Dutch Bill Creek.

We recommend that the State Water Board withdraw, reconsider and revisit this regulation, and the Office of Administrative Law not approve it. As will be discussed below, it is the State Water Board that is in defiance of Governor Brown's Drought Proclamation and Order.

We recommend that the State Water Board withdraw, then we tentatively* recommend they consider the following:

Divide this regulation regarding emergency drought policy into 3 separate resolutions:

1. ***Revise emergency water conservation*** recommendations by applying them to the ***entire*** North Coast Salmonid rearing region under the jurisdiction of the North Coast Region Water Quality Control Board (Regional Board) consistent with the water use restrictions in Governor Brown's Declaration. Revise Subdivision (d) to remove prohibition in (d) (1) on use of "non-potable" (recycled wastewater). Delete (d) (4) regarding the Voluntary Drought Initiative Agreement. Remove threat of \$500 per day fines (d) (6).

2. ***Delete subdivisions (e) and (f)*** regarding information orders, groundwater monitoring, data collection and fines and refer the matter to the ***Regional Board*** for their consideration and discussion ***first in local public workshops*** notifying and inviting County Supervisors, Department of Fish and Wildlife (DFW), the Farm Bureau, rural residents, fishermen, among other interested parties, then discussion at regularly scheduled Regional Board meetings ***throughout the region***.

3. Recommend to the DFW they ***re-write*** the controversial "Voluntary Drought Initiative Agreement" with landowners ***removing the questionable wild coho "rescue" and relocation*** from the Agreement; Recommend to the Regional Board that the terms and applicability of any new DFW Agreement be considered at Regional Board Public Workshops and at their regular meetings inviting and including participants mentioned above.

* "tentatively" because, the Ad Hoc Committee for Clean Water was notified *after* the close of written comment, and a mere 2 days before the Sacramento meeting with very little time to carefully review and consider this complicated regulation being rushed through the decision-making process circumventing State "sunshine" laws.

2 of 8

Summary:

1. ***No evidence of violation of Governor Brown's Proclamation in our Watershed
No justification for new regulation imposing fines for violations alleged without any evidence, specifically targeting and punishing us***
2. ***State Water Board's Restricting use of recycled water ("non-potable") is in conflict with Governor Brown's April 2014 Drought Emergency Proclamation***
3. ***Lack of Noticing and Outreach by DFW and The State Water Board***
4. ***The plight of the coho is on-going for decades and related to de-watering, degraded quality, not just related to the drought***
5. ***Approval of controversial "Take" of coho by DFW and NMFS mandatory for Voluntary Drought Initiative Agreement ; Potential landowner exposure to litigation?***
6. ***Lack of CEQA review***

Having lived in the Green Valley Creek Watershed for 30 years, near the headwaters of Dutch Bill Creek and, as past member of Salmon Unlimited and vigorous advocate for salmonids, we are concerned with this overreaching regulation that goes ill-advisedly beyond our Governor's reasonable emergency declaration regarding water use in California.

1. ***No evidence of violation of Governor Brown's Proclamation in our Watershed
No justification for regulation imposing fines for violations***

There is widespread publicity about the advisory limiting lawn watering and car-washing, etc. per the Governor's Proclamation. The State Water Board has provided *no evidence* of any violations in the Green Valley or Dutch Bill watersheds nor any need to threaten and frighten residents with high fines. If the Department of Fish and Wildlife has identified individual violations, in their patrolling the creeks, there are existing policies and procedures for enforcement. ***Identifying the bad actors whether commercial agricultural operations or rural residents per existing law and seeking conformity with the Governor's Proclamation is preferable to threatening the entire community needlessly.***

The tension between agriculture, specifically vineyard watering and winery processing, and rural residential use is well known. The heavy handed *threats* imposed by this new regulation only further exacerbate that tension and have created widespread outrage and disrespect for the State Water Board, the Department of Fish and Game and NMFS and may well result in a backlash of defiance further harming the coho! This regulation inflames rather than assuages; incites division and antagonism rather than cooperation.

Moreover, for the most part, the restrictions imposed by this regulation will *not* produce any net increase in water in the tributaries! Stop non-recycling water fountains? Stop hosing down sidewalks? Stop watering lawns? Where is the evidence and data on fountains and sidewalks in the watershed? I know of no fountains, few sidewalks, and fewer "lawns", and *none* that are watered in contempt of Governor Brown's Proclamation. ***Who was the consultant that recommended fines for defiance of the Governor's orders in our neighborhood? Upon what evidence? Doesn't the Board and the staff of the Board require evidence, not just assertions***

3 of 8

and allegation and allusions based on hearsay? How much staff time was spent determining the need for and the writing of this regulation that regulates *what we believe is non-existing or a minor infraction*? Kindly hold an evidentiary hearing with the public so we can see the State Water Board's justification for this onerous regulation.

As to the assurance that the conservation restrictions of the regulation apply "fairly" to commercial operations as well as residents in the "critical" areas of the watershed, ***we know of no commercial operations in our critical area!?! Please provide evidence of wineries or winery event centers in the areas outlined on your maps of Green Valley and Dutch Bill Creeks, that have lawns, fountains and are hosing down their sidewalks and ornamentals and have staff washing their cars on premises in defiance of Governor Brown's advisory. There are no sidewalks, fountains or ornamental lawns in the thousands of acres of vineyard! But water use for CROP IRRIGATION, which is impacting groundwater and the tributaries, is not limited at all by this regulation!***

I asked State Water Board staff for evidence regarding area wineries and event centers and was told by staff he knew of no such evidence and could not tell me if there was any evidence presented to the Board and could provide me no such information now (personal communication with Daniel Schultz).

Until we know of defiance of Governor Brown's proclamation, whether by wineries or rural residents, we conclude that this regulation is hollow, gives the appearance of working towards immediate (this summer) increase in water conservation but in reality does little to nothing for this summer's coho and ignores the real challenge of reducing ground water extraction and consequent de-watering of tributaries due to the permitting and proliferation of IRRIGATED VINEYARDS.

The State Water Board has procured enormous ill-will and ridicule for itself and the Department of Fish and Wildlife for a meaningless effort and flagrant government waste! The controversial data collection will take years to evaluate. Conclusions will be disputed so there will be no short term gain in water this summer by accumulating more numbers on paper. We conclude that the controversial informational order should not have been part of an "emergency" ruling denying timely noticing, public participation, discussion and debate with a consequent faulty rush to judgment.

2. State Water Board's Restricting use of recycled water in conflict with Governor Brown's April 2014 Drought Emergency Proclamation

*Section (d) (1) restricts use of "non-potable" water. But there is *no definition* for "non-potable" in Section (a)(1). At the hearing, "non potable" was explained *verbally* as "treated wastewater". Therefore, the restriction on use of "non-potable" water in (d)(1) is puzzling because it restricts "recycling" and "re-use" of treated water in the watershed in *direct conflict* with Governor Brown's order to the State Board and to the desire of many in the watershed! ***We think it wisest***

4 of 8

and most desirable to dispose of tertiary-treated, ultra-violet disinfected wastewater, on ornamentals and lawns rather than on edible food crops, in this case premium grapes! Facilitation by the State Water Board of the use of recycled water as a replacement for potable water is ordered in paragraph 10 of Governor Brown's Proclamation! It is the State Water Board that is clearly out of compliance!

The regulation in question also flies in the face of the North Coast Regional Water Quality Control Board's Basin Plan. Our Regional Board *allows* use of treated water, in accordance with appropriate agronomic rates (the rate to be used by ornamentals and grasses so that the treated water does not seep into wells and the aquifer or flow into creeks and streams illegally). Staff of the *Regional* Board has been rigorous in making residents aware of such issues, and has attended numerous well-attended meetings in Occidental with the Sonoma County Water Agency and our Fifth District Supervisor, so that our community is well-aware of caveats and restrictions on watering even with the highest quality treated wastewater.

Occidental is now searching for willing landowners to accept tertiary-treated water from our pending new treatment plant, so we are alarmed by the State Water Board's limiting the re-cycling and re-use of treated wastewater by residents while allowing it only on land used for commercial agriculture! Grey water from bathroom sinks, tubs and washers is allowed on residential acreage, but *not* wastewater from any "treatment" system?

That makes no sense! (a) there is potentially far more bacteria, ammonia and detergents to be in "grey" water than in "treated" wastewater whose bacteria, ammonia and chlorinated hydrocarbons are mostly removed and strictly monitored; (b) The dominant commercial agriculture in our watershed is vineyard. Putting "treated" wastewater on grapes is *highly controversial even within the industry*. Many vintners believe in *dry-farming* and that irrigation of vines is ill-advised let alone with *treated wastewater*. Also, adverse perception by the public could de-value the crop. Do we want the Green Valley Appellation to be "proudly irrigated with wastewater from the Occidental treatment plant"?

Wastewater irrigation has not been universally embraced by vineyard managers and brokers! Grapes may be mingled with grapes from other vineyards, and not all growers want their grapes mixed in with wastewater irrigated grapes. Some are concerned about possible equipment failure at the treatment plant resulting in contamination of a commercial reservoir, or finding some unanticipated contamination after the grapes are sold.

Premium wines are sold to a discriminating public. To irrigate commercial vineyard with treated wastewater is *not* an easy decision for investors. So, to remove the option of irrigating grass or ornamentals on rural residential, non-commercial land could destroy our chances for a viable new plant in Occidental because the State Water Board eliminated non-commercial options for use of recycled water!

5 of 8

Furthermore, if there is a failure of the tertiary filters and the treatment plant produces secondary water, it is acceptable to use secondary treated water on ornamentals, grass, landscaping and plants that are *not* food crops or lawn used for human contact recreation. On the other hand, if there is a tertiary filter failure at the plant, and secondary water goes to a reservoir for *a vineyard*, it could contaminate the reservoir, and possibly the edible crop, which is contrary to public health requirements and cause a tremendous financial loss for the grower.

And last, but not least, grapes use *very little water* compared to ornamental grass or lawns, as you may not know. We estimate from interviews and discussion with grape growers that we would need about **250 acres of vines** to accommodate Occidental's 20,000 gallon per day dry-season flow. And *double* that if the Regional Board requires an equivalent expansion area. By contrast, grass -- ornamental *turf* would require *under 10 acres* or 20 acres including expansion.

Where is the analysis of this issue and the science-based argument for prohibiting recycled tertiary treated, ultra-violet disinfected wastewater on residential properties in opposition to Governor Brown's decree? I see no such discussion, data or facts to back up this ill-advised defiance. Rather than enhancing Dutch Bill Creek, it will serve only to leave Dutch Bill in the deplorable state it is currently in: with secondary treated wastewater from a continually malfunctioning, worn out treatment plant currently facing tens of thousands in fines, under a cease and desist order, contaminating Dutch Bill Creek, a perennial stream with critical habitat for more decades to come!

Area residents found a viable and affordable tertiary treatment option for Occidental and will not stand idly by while the State Water Board, and Department of Fish and Wildlife, obviously unfamiliar with our illegal local wastewater disposal or, worse yet, ignoring it, create a regulation that could keep on violating, polluting and illegally contaminating Dutch Bill Creek -- *ironically* under the pretense of "conservation" and "protection of the coho" ***while regulating instead imaginary decorative fountains!***

* To allow tertiary treated water on commercial crops and *not* on ornamentals or turf is clearly ***political and not based on science!*** Does grass know whether it's "ornamental" or "commercial"? Does watering for a "non-economic" purpose harm the watershed, but for "economic" purposes it does not? We wonder what *political* benefit could accrue from such regulation other than to make our new treatment plant in Occidental non-viable if too little vineyard acreage will accept the wastewater. ***We don't want this camel to stick its nasty nose in our wastewater tent. The argument that this regulation will only hurt for a little while has no traction. A new treatment plant will save the coho in Dutch Bill Creek, not this dysfunctional, ill-conceived law!***

* What other sources of "treated" water are there that the State Water Board defiantly seeks to outlaw? Many grape processors, small and large, treat the "wastewater" created by processing on their properties. Are there any such operations *in our watershed*? If there *is* such treatment, what is the science for *prohibiting* disposal of that "treated wastewater" on landscaping, ornamentals and turf? We see no rationale for this prohibition.

6 of 8

* There are home treatment units, National Sanitary Foundation (NSF) approved, on the market for home-owners. This is an important new development in the wastewater industry. Technologies available for municipalities have been adapted for residential, single-family homes. Such units can replace failing septic tanks. This regulation usurps that opportunity for recycling the effluent from such units in our watershed. We see no science-based discussion of this matter just a limiting of further exploration of applicability, research and development. To summarily outlaw irrigation with such new technology without discussion, explanation or justification defies reason.

3. Lack of Noticing and Outreach by DFW and The State Water Board

According to Daniel Schultz, there was an agreement between DFW and the State Water Board that seeking voluntary agreement with landowners regarding water conservation would be the reasonable "first phase" for conservation of ground water. Then, if there were too few interested in *voluntary* measures, the State Water Board would move to the next phase which is mandatory emergency regulations *with penalties*. Hence the rationale behind the May 28 letter by Charlton Bonham to Thomas Howard of the State Water Board.

Water Board and DFW assertions notwithstanding, *in reality*, we know of *no* outreach, *no* VDI, *no* requests for heightened conservation in our neighborhood, *nothing* of the alleged 10,000 letters to "every" property owner in the affected area. Few neighbors knew what I was talking about when I spoke of the letter of notice Monday June 15th! Why? *They had received nothing at all!* Some neighbors received notice of the June 17 meeting on June 15th *after the written comment period ended*, and others received it the afternoon of June 17th *after the vote was taken and the meeting was over!*

We were *totally in the dark* and knew nothing of any attempts by either State Agency regarding our watershed or the drought or special interest in the coho above the historic background level of *inattention* to the health of the tributaries. *We question the reality of the alleged DFW and State Water Board mailings, never saw notices on any telephone poles (as they claimed) about VDIs or potential emergency regulations. No discussion or alerts regarding coho and the creeks and groundwater other than Governor Brown's Proclamation.*

We have testified to DFW, NMFS, the Pacific Fisheries Management Commission, the Fish and Game Commission, the Flood Control Board, the Sonoma County Water Agency, the Regional Water Quality Control Board, and to State and Federal elected Representatives *for decades* regarding dewatering and pollution of the tributaries and impacts on coho (steelhead and chinook) all to no avail. Without question, we would have responded enthusiastically to *genuine* efforts to increase flows and to *competent* attempts to enhance the fishery. So to hear our neighborhood, which has a long-standing *culture of conservation*, depicted as non-responsive or un-caring and not taking seriously the plight of the salmonids was insulting, outrageous and inflammatory.

7 of 8

4. The Plight of the coho is on-going for decades and related to de-watering, degraded quality, not just related to the drought

DFW has spent \$94 million over the last 10 years in a controversial program to take endangered, listed wild CC coho from natural spawning streams and breed them in captivity at the Warm Springs Hatchery. This multi-million dollar effort has borne little fruit.

Most important is that according to DFW's own June 17 power point presentation, on the Broodstock Program, Bargraph: "Decline of Coho..." and the other, "Juvenile Releases and...Returns", coho were in decline from the mid 1990s. Between 2000 and 2010 their numbers were pathetically single-digit. "Drought" conditions began, according to the Governor, only 3 years ago! ***Therefore, the drought emergency has not been the cause of the decline!!!***

Yes, of course, no water no fish. But no *food* no fish! *Toxins* no fish! There were no power points on decline of arthropods and insects! What about insecticide and fungicide runoff into creeks and streams? To dump thousands of juveniles raised at a hatchery *above the carrying capacity* of the creek is as foolish as trying to triple the yield of your garden by throwing down three times the number of seeds! In 2012 - 2013 there were only 100 returns of hatchery raised coho counted in the Russian River Basin for 180,000 juveniles released. Is the solution to *release more fish* as the levels of water drop or as water quality and food source decline? That is apparently what DFW has been doing! Even as the number of returns plummeted, DFW released tens of thousands more! If there is a lack of food, salmon will eat each other!

5. Approval of controversial "Take" of coho by DFW and NMFS mandatory for Voluntary Drought Initiative Agreement ; Potential landowner exposure to litigation?

Given the questionable track record of DFW's coho captive breeding program, to require access for capturing more wild coho to "rescue" them and take them to parts unknown or to the hatchery is highly questionable to say the least, ***and a policy I would oppose. The Voluntary Drought initiative includes allowing access to DFW and NMFS staff onto one's property for purposes of the "take" of wild coho!*** I would not sign such an agreement if asked, because I believe the degradation of the water quality and quantity throughout the full length of the creeks and rivers to the ocean are issues that must be solved simultaneously!

It is useless to add juveniles and increase flows in the "critical" upper reaches while doing little about the rest of their route out to the Pacific. Degradation from pollution and lack of oxygen, predators and dewatering of the lower reaches of Green Valley and Dutch Bill Creek and the Russian River will kill them when they decide to leave freshwater rendering efforts in the upper reaches futile!

In the 90s, there was a coho breeding program at the Warm Springs Hatchery. ***That program was stopped because all coho suffered from whirling disease and it made no sense to release***

8 of 8

diseased fish into the wild population! Are there disease problems in today's \$94 million "captive breeding" program? Have they reports on their operation? I found none! I did find information on *Iron Gate Hatchery on the Klamath* And Iron Gate has multiple unresolved problems, including ***kidney disease, with appropriate standards "NOT MET"***. Until we see an audit of the Warm Springs Captive Breeding Program by an independent party, we see no reason to continue multi-millions for failure, the "take", capture and relocation of wild coho by DFW and certainly not the inclusion of such a "take" of an endangered species in an alleged "water conservation" agreement!

If some organization decides to sue DFW over continued "take" of wild coho for a failing captive breeding program, will the property owner who signed the agreement permitting access be included as a Defendant in the litigation?

6. CEQA

Since the matter of collecting data will not put more water in the tributaries in our region this summer we believe it does not qualify as an emergency measure and therefore this regulation should be subject to CEQA. Time does not permit a lengthier response. It is the refusal by State and local authorities to subject well permits of large vineyard and winery commercial operations to CEQA review that is causing the problem in our watershed and the Russian River. Therefore this is certainly not the time to suspend it by emergency decree.

Sincerely

Ann Maurice