

State of California

Before the State Water Resources Control Board

Notice of Preparation of an Environmental Impact Report and Notice of Scoping Meeting Regarding Russian River Frost Protection Regulation for Mendocino and Sonoma Counties, California

Russian River Watershed thence Pacific Ocean

Scoping Comments by the California Fisheries and Water Unlimited

I have reviewed the notice of October 27, 2010 in the above shown matter. The use of the people's water is highly controversial in the Russian River watershed because of the adverse direct and cumulative effects to endangered Coho Salmon and threatened Steelhead, and also the use of water for frost protection and other uses. The State Water Board has not balanced the uses of the people's water of the Russian River watershed even though this writer filed a formal complaint with the State Water Board against all water users in the 1990s requesting the public trust anadromous fisheries are protected from damage and harm. The State Water Board decided to not balance the uses of water in the Russian River Watershed, disregarded the formal complaint, and disregard the effects to the people's trust anadromous fisheries assets in favor of growing grapes in contravention of the federal and state endangered species acts.

The State Water Board and its staff cannot develop a meaningful policy and seriously regulate the use of the people's water for frost protection without full knowledge of the all of the authorized and unauthorized uses of the Russian River Watershed.

The following are the scoping comments of the California Fisheries and Water Unlimited:

Protection of Public Trust Assets

The Board alleges in the public notice that the Board has a duty to protect public trust assets when feasible. The Board and its staff need to read the Mono Lake Decision and understanding their duties and responsibilities under the Public Trust Doctrine pursuant to the ruling of the court. It is not a matter of protecting the people's trust assets when feasible, it is a mandatory condition shown in the Mono Lake Decision by the courts. Delete "when feasible" from further discussion.

Federal Endangered Species Act

The State Water Board has a duty and responsibility to comply with the provisions of the federal Endangered Species Act when making water right decisions affecting endangered and threatened anadromous fish species and their habitat. However the State Water Board has not complied with the provisions of the federal Endangered Species Act when making water right decisions affecting endangered and threatened anadromous species and their habitat. I reference the water right records.

Page Two

The State Water Board receives federal funding from the federal government. Failure to comply with the federal Endangered Species and other federal statutes may result in the loss of federal funding to the State Water Board. I reference all federal funding activities in which the State Water Board receives federal funding.

The draft EIR must disclose the legal authority that shows the reasons why the State Water Board and its staff do not have to comply with the provisions of the federal Endangered Species Act when making water right decisions and also making a decision in this matter. I reference the provisions of the federal Endangered Species Act and the federal Clean Water Act.

Unauthorized Diversions – Russian River Watershed

There is a significant amount of unauthorized diversions in the Russian River watershed. There is a lack of enforcement of unauthorized diversions by the State Water Board and its staff.

Many of the unauthorized diversions could be diverting water for frost protection.

How will the State Water Board and its staff disclose, evaluate, and mitigate the adverse effects to the trust assets of the Russian River watershed resulting from all unauthorized diversions when developing the frost protection policy?

The draft EIR must disclose, evaluate, and mitigate the cumulative effects to daily flows in all tributary streams and the main stem Russian River affected by the unauthorized diversions.

The draft EIR must disclose, evaluate, and mitigate the cumulative effects to endangered and threatened anadromous species and their habitat in all streams affected by the unauthorized diversions.

Without full knowledge of all of the unauthorized diversion, the proposed Frost Protection Policy would be meaningless.

Provide the names of the diverters, the amounts of water diverted illegally, and the stream locations where unauthorized diversions have been found to date in the draft EIR. CEQA requires full disclosure.

Riparian Diversions – Russian River Watershed

There may be a significant amount of riparian diversions diverting water from the Russian River watershed for frost protection. Some riparian diversions may be legal and some riparian diversion may be illegal.

Without full knowledge of all of the riparian diversions, the proposed Frost Protection Policy would be meaningless.

The draft EIR must disclose, evaluate, and mitigate the cumulative effects to endangered and threatened anadromous species and their habitat in all streams and the Russian River watershed affected by the riparian diversions when said diversions are used for frost protection.

Page Three

The draft EIR must disclose, evaluate, and mitigate the cumulative effects to daily flows in all tributaries and the main stem Russian River affected by the legal and illegal riparian diversions when said diversions are used for frost protection.

Page Three

Underflow Diversions

There most likely is a significant amount of water pumped from the underflow of tributaries to the Russian Water watershed and also the main stem Russian River. The pumping of water from the underflow requires a water right permit. The pumping of water from the underflow without a water right permit is the unauthorized diversion of the state's water.

The draft EIR must disclose, evaluate, and mitigate the cumulative effects to endangered and threatened anadromous species and their habitat in all streams and the main stem Russian River affected by authorized and unauthorized underflow diversions when said diversions are used for frost protection.

Without full knowledge of all of the authorized and unauthorized underflow diversions, the proposed Frost Protection Policy would be meaningless.

The draft EIR must disclose, evaluate, and mitigate the cumulative effects to daily flows in all tributaries and the main stem Russian River affected by the legal and illegal riparian diversions when used for frost protection.

Frost Protection Measures

The draft EIR must disclose, evaluate, and mitigate the cumulative effects to daily flows in all tributaries and the main stem Russian River resulting from authorized water right permits that allow frost protection measures. Include in this analysis how much water is being diverted daily from authorized permitted permits for frost protection.

Hydrology

There must be an up to date hydrology analysis of the Russian River watershed that shows all water diverted for all uses. The hydrology analysis must include an up to date hydrology analysis of all authorized and unauthorized diversions for frost control. The State Water Board and its staff must have full knowledge of the hydrology of the Russian River watershed in order to develop a meaningful frost protection policy.

Weather Analysis

There must be a weather analysis in the draft EIR that describes air temperatures throughout the Russian River Watershed area. The State Water Board and its staff must have full knowledge of the occurrence of frost in the Russian River watershed in order to develop a meaningful frost protection policy.

Endangered Coho Salmon

Disclose in the draft EIR the number of endangered Coho salmon species that have historically and annually migrated and used the stream tributaries and the main stem Russian River for spawning, rearing, and migration flows, for upstream adult and downstream juvenile Coho salmon migration flows. Note: Coho salmon juvenile fish may remain in a stream for one year and must be protected during that period and consequently could be harmed during periods when water is used for frost protection..

Disclose, evaluate and mitigate in the draft EIR the cumulative effects to Coho Salmon species and their habitat in streams tributaries and the main stem Russian River for the purpose of spawning, rearing, and migration flows in conjunction with authorized and unauthorized diversions for frost protection..

Disclose in the draft EIR the number of ‘take permits’ issued against authorized diversions and unauthorized diversions in stream tributaries and the main stem Russian River by the US NOAA Fisheries. Cite the names of the diverters and the waterway location of the “take permits”.

Develop a daily flow plan for each stream tributary and also the main stem Russian River that provides adequate water and adequate habitat that must improve endangered Coho salmon species and their habitat (spawning, rearing, and mitigation flows) during the period of frost protection. Include in said plan a water quality element that provide cold water and habitat for Coho Salmon species in the stream tributary and the main stem Russian River during periods of the Frost Protection Policy in low water years. i.e. spawning and rearing.

Threatened Steelhead

Disclose in the draft EIR the number of threatened steelhead species that have historically and annually migrated and used the stream tributaries and the main stem Russian River for spawning, rearing, and migration flows, for upstream adult and downstream juvenile steelhead migration flows.

Disclose, evaluate and mitigate in the draft EIR the cumulative effects to steelhead species and their habitat in streams tributaries and the main stem Russian River for the purpose of spawning, rearing, and migration flows in conjunction with authorized and unauthorized diversions for the period of frost protection.

Disclose in the draft EIR the number of ‘take permits’ issued against authorized diversions and unauthorized diversions in stream tributaries and the main stem Russian River by the US NOAA Fisheries. Cite the names of the diverters and the waterway location of the “take permits”.

Develop a daily flow plan for each stream tributary and also the main stem Russian River that provides adequate water and adequate habitat that must improve threatened steelhead species and their habitat (spawning, rearing, and mitigation flows). Include in said plan a water quality element that provide cold water and habitat for steelhead species in the stream tributary and the main stem Russian River during periods of the Frost Protection Policy.

Page Five

Russian River Lagoon

Disclose, evaluate, and mitigate in the draft EIR the effects to fresh water flowing into the Russian River Lagoon and the resulting effects to endangered Coho salmon; threatened steelhead and non listed fall-run Chinook salmon in the Russian River Lagoon as a result of authorized and unauthorized diversions during the period of frost protection.

Monitoring

Develop a daily flow monitoring plan for the Russian River watershed for the frost protection policy that include daily flow monitoring sites that can be used to determine compliance with the frost protection policy. Disclose and evaluate this plan in the draft EIR.

Reporting

Develop a daily flow monitoring plan that includes a report element so the public can review flow data for compliance purposes.

State and Federal Statutes

The proposed Frost Protection Policy must be in full compliance with all federal and state statutes.

Of course place my name on the mailing list for all submittal regarding this matter. I request all communications forwarded to me electronically.

Please forward a copy of the draft EIR to me for my review. Thank you.

Acknowledge receiving my comments and post the comments into the records and post them on SWRCB website.

Sincerely

Signed by Robert J. Baiocchi

Robert J. Baiocchi, President
California Fisheries and Water Unlimited
California Non-Profit Corporation

Dated: November 8, 2010