



COAST ACTION GROUP P.O. BOX 215 POINT ARENA, CA 95468

November 26, 2010

Attention: Bill Cowen
State Water Resources Control Board
Division of Water Quality
P.O. Box 2000
Sacramento, CA 95812-2000

Comment: EIR - Proposed RR Frost Regulation EIR (Consistency with State Board Policy to Maintain Flows in Northern California Coastal Streams).

Coast Action Group has previously submitted comments on Frost Protection and Flow Maintenance issues - Comments, November 6, 2009, and November 20, 2009. We trust that these comments are being considered in your review and rule making process and related EIR.

In addition, We would like to point out that the structure of any policy and rule making for diversion of water for frost protection should fall under State Water Resources Control Board Policy for Maintaining Flows in Northern California Streams. Diversion for frost protection, and issues related to such diversion, logically should fall under the general stream flow maintenance policy. Specific rules for controlling water use for frost protection may be appropriate. Coast Action Group is re-submitting comments on flows policy (by attaching previous comments on flow maintenance policy - Comment: Instream Flow Policy - Northern California Streams, April 15, 2008) for your consideration in the rule making process. The EIR process should consider these documents and related discussion in the rule making process.

Additional Thoughts and Considerations to be included in the EIR process are included - below:

Impaired Water Body Status

The waterbodies (Russian River, Navarro River, and other north coast rivers listed on the States 303 (d) of Water Quality Limited Segments) are noted to be listed as impaired by sediment, temperature, and other pollutants. These water bodies are also flow impaired. Flow is not a pollutant. However, there is a relationship with the pollutants sediment, temperature, and nutrient concentrations with flow issues. Thus, the CEQA document being prepared must

consider how current diversion practice may affect impaired status and how rule making will address controls for water use for frost protection, and general flow issues, in regards to desired outcomes from such rule making and legal responsibilities to protect all beneficial uses (including the cold water fishery) and move towards attainment of Water Quality Standards.

In the case of the pollutant sediment: Excessive sediment loads, and aggradation, beyond normal background levels effect stream function (habitat availability - pool depth, pool riffle complex, embeddedness, etc.). Excessive sediment loads also limit available surface water flows (a greater percentage of the flow is subsurface). Excessive sediment loads effect on surface flows can influence stream temperature (mostly during low flow periods), and water temperature in pools (lack of depth and temperature stratification). Thus, sediment loading contributes to issues in stream flow and habitat alteration. Conversely, lower stream flows from over use (too much diversion) contribute to the inability of the stream flow hydrograph to move sediment and aggregate through and eventually out of the system. Disturbance of the hydrograph, from diversion, limits stream function from creating holes (hole depth) and an appropriate pool riffle complex sufficient to provide the habitat values that are needed for salmonid survival.

Environmental review of the proposed rulemaking must consider these factors - diversion effects on impaired status.

Stream Flow Objectives: The SWRCB has failed in setting Stream Flow Objectives on north coast streams. Stream flow objectives are necessary for managing the SWRCB Policy to Maintain Flows in Northern California Streams and also to effectively manage diversion of water for frost protection. This failure is one aspect of how SWRCB, as responsible agency, has not meet the flow management obligations that are responsible for "Take" under the Federal Endangered Species Act.

Isolated Instance: It has been argued that this rule making is not needed as fish stranding is an isolated and infrequent occurrence - and - that it took a perfect storm of low rain years and extended periods of frost to create a situation where "Take" of endangered fish occurred. This argument is misleading. There are, and have been, numerous instances of "Take" - though not all documented by NMFS. It is true that in years where there is plentiful rain (depending on what summer and fall flows were), there may be less chance of a "Take" occurrence. This fact does not address the issue that many rain years are low and/or the timing of rain and frost occurrences - where the timing of such occurrences degrade flow and habitat conditions and may aggravate the possibility of "TAKE".

The Case of Local Rule Making: The EIR should consider how the SWRCB will deal with situations where local rulemaking occurs - and how local rule making might be considered by the SWRCB. For example; Sonoma County was considering local rule making in the form of a Frost Protection Ordinance. The proposed ordinance was to include rules (BMPs) for water use for frost protection and proposed monitoring and reporting. Legal standards caused the County to rethink the proposed ordinance language. Thus Currently, There may no issue in the most recent iteration of the Sonoma County Frost Protection Ordinance that may be considered a violation of State Public Resources Code. The Ordinance, plain language, says that all vineyards using water

for frost protection must register with the County Ag Commissioner and participate in a comprehensive monitoring program. The issue is that what such a "Comprehensive" Program may look like? There is no definition or description of what is to occur in a "Comprehensive" monitoring program.

I would suggest that NMFS, DFG, and the SWRCB work towards a definition of what such a "Comprehensive" monitoring program might look like - while making sure that such a program uses protocol that will provide useful results and that all monitoring data be available to responsible agency and the public on a real time basis. Validation of such a "Comprehensive" Monitoring Program must assure consistency with State Water Resources Control Board Policy for Maintaining Flows In Northern California Streams. Such process and consistency considerations should be considered by the EIR process

Rule Making Should Include:

Need for diverters to have a valid Water Right - before diverting for frost protection or storage for same or irrigation.

Allow only coordinated diversion - sequenced to protect minimum flows necessary to protect fish.

Allow for storage filled by diversion during high flow periods only.

Precondition to diversion - there should be real time flow stage monitoring and pump timing monitoring with public and agency access to the data. Any monitoring plans submitted by growers, groups of growers, or any County or Agency should be assessed as to its effectiveness and transparency.

Period of allowable diversion should meet with standards set in SWRCB Stream Flow Maintenance Policy.

Encourage other solutions for controlling frost damage - without the need to use water.

Diverter compliance with such rulemaking by the SWRCB will not set unreasonable or extraordinarily costly standards for those growers subject to and threatened by frost occurrences. Reasonable compliance efforts should be able to attain the standards set by this rulemaking.

Sincerely,

For Coast Action Group