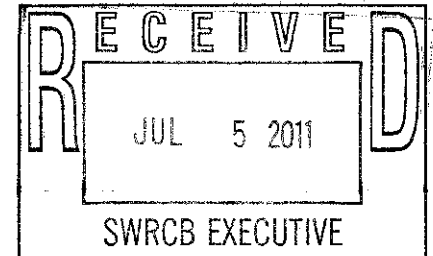


Jeanine Townsend, Clerk of the Board  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100



RE: Comment Letter on the Proposed Russian River Frost Regulation

Dear Board Members,

The proposed Russian River Frost Regulation is concerning for a number of reasons. The proposed regulation would: regulate all water used for frost protection in the Russian River Watershed including pre-1914, riparian, licensed, permitted and groundwater; would declare all diversions for frost protection unreasonable unless and until the water is diverted pursuant to a Board approved water demand management program; is not based on sound science; includes water users that have no detrimental effect on salmonids; provides little consideration for the priority of individual water rights; ignores other water users in the watershed such as domestic or municipal; will require detailed data collection; and will result in significant costs on agricultural operations within the watershed. Even more concerning is the fact that the proposed regulation is based upon an unprecedented and unjustified assertion of the Board's authority under the reasonable use doctrine, ostensibly for purposes of regulatory convenience and in order to avoid the takings clause.

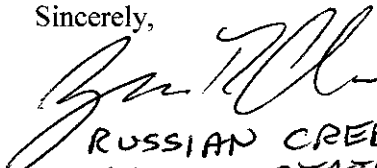
The need for this regulation is based on a letter to the Board dated February 19, 2009 from NOAA Fisheries which referenced two episodes of fish stranding that occurred in the April 2008 and requested the Board to implement emergency regulations related to the use of Russian River water for frost protection. However, after almost three years, there has been little evidence brought forward to support this need. The transparency amongst the agencies to develop collaborative solutions was disheartening and the only information that was able to be obtained to truly understand the overall scope of the issue was found through multiple FOIA requests. This regulation lacks both factual analysis and evidence to support the conclusion that every frost diversion in the Russian River watershed is harming salmonids.

As the related agencies focused on developing regulatory enforcement, the agricultural community voluntarily worked to implement on the ground projects that would actually benefit the fishery. Both stranding episodes referenced in the April 2008 NOAA letter have been fully addressed, millions of dollars of infrastructure have been constructed, numerous meetings have been held and a thorough contingency plan, the Russian River Frost Program, was presented to the Board in 2009. All of this was done in good faith to demonstrate that any problems that existed could be resolved without a regulation, yet the Board has insisted on pursuing a regulatory approach.

As detailed in the comment letters submitted by the Frost Program, the California Farm Bureau Federation and the Mendocino County Farm Bureau, the proposed regulation and supporting documents fail to meet the required legal standards.

As a member of the agricultural community that will be impacted by the proposed regulation, I encourage the Board to reject the proposed regulation and instead support the collaborative, cost effective and productive solution to allow for Russian River water to be used both for farming and the fishery without additional layers of needless regulation.

Sincerely,

  
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