
State Water Resources Control Board

DEC 9 2011

Mr. John H. Thomas
P.O. Box 478
Ukiah, CA 95482

Dear Mr. Thomas:

WATER DEMAND MANGEMENT PROGRAMS SUBMITTED FOR COMPLIANCE WITH THE RUSSIAN RIVER FROST PROTECTION REGULATION, MENDOCINO COUNTY

The State Water Resources Control Board (State Water Board or Board), Division of Water Rights (Division) commends your diligence towards securing compliance with the new Russian River Frost Protection Regulation (Regulation) adopted by the Board on September 20, 2011. Although the Regulation is still under review by the Office of Administrative Law and therefore not yet in force, the Division appreciates the opportunity to comment on your proposal early. Early submittals such as yours give Division staff the opportunity to provide feedback and comments and best assist with full compliance with the Regulation.

All Division reviews of Water Demand Management Programs (WDMP) will be focused on achieving the purpose of a WDMP, which is to assess the extent to which diversions for frost protection affect stream stage, and manage diversions to prevent cumulative diversions for frost protection from causing a reduction in stream stage that causes stranding mortality. Additionally, all Division reviews of initial WDMPs will assess compliance with the requirements set forth in State Water Board Resolution 2011-0047. Paragraph 14 on page 5 of the Resolutions states "*The State Water Board anticipates the initial Water Demand Management Programs submitted for State Water Board approval will contain the identity of the governing body, a list of the names of the participating diverters, and, for each participating diverter, the sources of water used and the acreage frost protected. They will also include a schedule for completing the frost inventory, developing and implementing a stream stage monitoring program, and conducting a risk assessment.*"

Division staff completed a review of your WDMP proposals that are for diversion of water for frost protection at your Watson, Hopper and Alessi ranches along the Russian River and your Sibbett Ranch near the West Fork Russian River, all in Mendocino County. Your submittals are substantially complete and may be accepted once additional information is provided to the State Water Board. We hope this letter provides you with important guidance in completing the remaining necessary information for an acceptable WDMP. The following information identifies both the current adequacies and deficiencies of your proposal in meeting the Regulation's WDMP requirements:

Identification of Governing Body and Number of WDMPs

Your proposals do not clearly identify an individual or governing body that will administer the WDMP(s). It is also unclear if each proposal is an individual WDMP for each ranch, or if the intent was for each ranch to cumulatively function under one WDMP with you serving as the governing body of the WDMP. The Regulation does allow for a governing body to be an individual provided that person is capable of ensuring the requirements of the program are met. You should clearly identify who the individual or governing body will be. Also, you should clearly identify if each ranch identified is a participant within a single WDMP or a standalone WDMP.

Inventory of Frost Diversion Systems

Your inventory of the frost systems identified for each ranch is fairly complete. The names of the diverters, source of water, and the acreage frost protected have all been adequately identified. However, the diversion capacities of the diversion pumps at your Watson Ranch and Hopper Ranch appear to be different from the capacities identified in the California Department of Fish and Game 1600 permit you submitted as an attachment to your WDMPs. You will need to clarify, three months after our initial approval of the WDMP, which capacity is correct for your diversion facilities. Your proposals give estimates of the hours of operation for each frost event and an estimated range of the volume of water diverted per frost event. However, these components of the inventory should not be estimated. You are required to keep diversion records of each frost event during a frost season and report the actual hours of diversion, rate of diversion, and volume of water diverted. This data should be recorded during the frost season and submitted with the annual report due to the State Water Board on September 1 of each year.

Stream Stage Monitoring Program

As stated above, the initial WDMP submitted to the State Water Board for approval only needs to contain a schedule for developing and implementing a stream stage monitoring program. You propose to use existing USGS stream gages on the Russian River (Talmage Gage and Hopland Gage). You have adequately identified the number of gages, the type of gage, the location of the gages, and the monitoring and recording intervals for your lower three ranches. For these ranches, you propose to use the minimum instream flow requirements of State Water Board Decision 1610 or the flow specified in your Department of Fish and Game (DFG) 1600 Agreement and the ramping rates identified in Table 3 of the 2008 National Marine Fisheries' (NMFS) Final Biological Opinion (BO) as the required protective levels to prevent stranding mortality of salmonids. Conceptually this is acceptable but you will eventually need to consult with NMFS and DFG to confirm the protective criteria. The schedule for developing and implementing your stream stage monitoring program, which includes the consultation process, will need to be provided in order for this initial WDMP to be deemed complete. You should also note that Decision 1610 and your 1600 Agreements do not specify flow conditions for the new Talmage Gage. Because this gage is closer to some of your diversions than the Hopland Gage, you may want to use it to reduce the number of other growers contributing to any reduction of stream stage.

Risk Assessment

Again as stated above, the initial WDMP only needs to contain a schedule for conducting the risk assessment. The risk assessment contained in your submittal is not the type of risk assessment the Regulation requires. You stated there is no risk with your diversion because

you have installed a fish screen approved by NMFS and DFG. While installation of a fish screen will prevent direct fish mortality due to the operation of your diversion pumps in isolation, it does not address the risk of stranding mortality due to a rapid decrease in stream stage. Your proposal to operate your diversion in compliance with your 1600 agreement and Table 3 of the NMFS's BO does not eliminate the risk of stranding mortality. You should also note that Table 3 of the NMFS's BO is specific to the ramping rates for releases of water from Coyote Valley Dam and Warm Springs Dam and may not necessarily be applicable to the reach of the Russian River where you divert. Any ramping rates incorporated into a stream stage monitoring plan need to be related to the habitat existing within the reach of stream where the diversions are occurring.

The Regulation requires that the risk assessment be based on the diversion inventory and the stream stage monitoring program. Until a stream stage monitoring program is approved and data is collected, a complete risk assessment cannot be conducted. However, to effectively manage your individual diversion and determine the potential risk from cumulative frost diversions in your ranch's vicinity, you will need to, at minimum, exchange your data with other WDMPs in the vicinity to assess the cumulative risk associated with a downstream gage, and then cooperatively agree on corrections actions should such actions be necessary. For the initial WDMP, please provide a schedule for conducting a risk assessment that includes consultation with DFG and NMFS. You should consider working with a group of diverters on the development of a coordinated WDMP to take advantage of everyone's need for coordinating a risk assessment based on the data from multiple diverters. This approach should reduce overall costs since expenses such as the costs for data analysis, can be spread across the group.

Corrective Actions

The corrective actions portion of a WDMP is meant to identify an action plan that will be taken to correct any identified stranding mortality risks to salmonids due to rapid decreases in stream stage. These risks will be identified as part of the risk assessment which will be based on the frost inventory and the stream stage monitoring program. Your proposed corrective action is to operate your diversion in compliance with your DFG 1600 Agreement and Table 3 of the NMFS's BO. You state that you will stop your frost diversions if river flow gets below bypass flows as described in your 1600 Agreement, or drop faster than rates described in Table 3 of the 2008 NMFS's BO. An initial WDMP does not need to include a corrective action plan but you should know that your plan currently is unclear as to whether you are proposing to cease diversions completely when flows reach the specified levels, even if other diverters are contributing to the decreased levels. You should also realize that waiting for stage levels to reach a protective level before taking corrective action, as you propose, may not prevent a stranding mortality. This corrective action plan would likely not be acceptable because Table 3 of the NMFS's BO is specific to the ramping rates for releases of water from Coyote Valley Dam and Warm Springs Dam and may not necessarily be applicable to the reach of the Russian River where you divert. Any ramping rates incorporated into a stream stage monitoring plan must be related to the habitat existing within the reach of stream where the diversions are occurring.

Instead of agreeing to cease your diversion without consideration of other frost diverters' contribution to a declining stage, you may want to consider organizing or participating in a WDMP with those other diverters affecting the stream flow and stage measured at the Talmage Gage. Coordination with a group of diverters affecting the same gage will allow for a better assessment of your contribution to the cumulative diversions, and your contribution to any corrective action that may be necessary to prevent a risk to salmonid stranding mortality.

Coordination with NMFS and DFG will eventually help to assure that adequate monitoring plans are developed so that diversions can be coordinated properly.

Annual Report

An initial WDMP does not need to address the requirements for Annual Reporting. Your proposals are adequate in this regard, but please note that the data requirements and analysis need to be submitted to the State Water Board on September 1st of each year.

The following comments are specific to particular ranches:

The Sibbett Ranch

Your submittal for the Sibbett Ranch near the West Fork Russian River is not currently clear. You state that no diversions take place during frost events. Because you identified that this ranch is served by a groundwater well, it is unclear whether you mean no diversion of water occurs at all for frost protection, or no diversion of "surface water" from the Russian River occurs. If no diversion of water for frost protection occurs at all at this ranch, the diversion of water at this ranch for other uses are not subject to the Regulation and a WDMP does not need to be submitted. You need to clarify whether or not the groundwater diverted at this ranch is used for frost protection from March 15 to May 15.

If groundwater is being used for frost protection, the Regulation applies to that diversion. If you are claiming that the groundwater well is not hydraulically connected to the Russian River Stream System, the Regulation provides that the governing body may develop and submit criteria for identifying whether or not groundwater diversions are hydraulically connected to the Russian River stream system. The criteria are subject to the approval of the Deputy Director of the Division and, if approved, the groundwater diverters meeting the criteria may be exempted from the regulation. You have submitted a well log and pump tests with your WDMP. However, you did not provide any criteria for determining if the well is hydraulically connected to the Russian River. Criteria should include additional analysis of the well performance and hydrogeology of the area. If you are serving as an individual administering a WDMP, the State Water Board can consider criteria submitted; but if you are an individual diverter, the Regulation provides that you must participate in a WDMP for three years before individually requesting an exemption. Any revision should clarify whether or not an exemption from the Regulation is being requested and provide the necessary criteria for review.

Alessi Ranch

For the Alessi Ranch, you identify that you are no longer directly diverting water from the Russian River during Frost events. You state that you installed a pond in 2010, and regulate water through the pond. You state that you will only recharge your pond during non-frost events when the flow is in compliance with your 1600 Agreement and the 2008 NMFS's BO.

Based on your statement, you are diverting water for frost protection from the Russian River between March 15 and May 15 of each year. Although your recharges of the pond may not be made during the hours of frost, those recharge diversions are for frost protection purposes. Therefore, the diversion of water at your Alessi Ranch for frost protection is subject to the Regulation. It is likely the cumulative contribution from your described operation to any potential risk of salmonid mortality during the hours of frost may be negligible.

Please take all the comments outlined in this letter under consideration as you decide how to proceed. As stated above it is strongly recommended that you consider working with the group of diverters along the reach of the Russian River where your diversions occur and coordinate to develop a WDMP for the group. This approach provides better assurance that the goals of the Regulation can be met and should reduce overall costs as expenses that may be incurred through the development of a stream stage monitoring program and analysis of data for a risk assessment can be spread across the group. Please submit the additional information to the Division by the February 1, 2012 deadline. Should you have any questions or if you would like to meet with Division staff, please contact Mr. Aaron Miller of my staff at (916) 341-5390 or by email at amiller@waterboards.ca.gov. Written correspondence should be addressed as follows:

State Water Resources Control Board
Russian River Frost Regulation
Attn: John O'Hagan
P.O. Box 2000
Sacramento, CA 95812-2000

Sincerely,



Barbara Evoy, Deputy Director
Division of Water Rights

