



State Water Resources Control Board



Linda S. Adams
Secretary for
Environmental Protection

Division of Water Rights
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Arnold Schwarzenegger
Governor

NOTICE OF PUBLIC WORKSHOP

Workshop to Receive Information regarding the Need for and the Effect of Water Diversions for Purposes of Frost Protection in Mendocino and Sonoma Counties

Tuesday, April 7, 2009
Workshop will commence
no earlier than 11 a.m.

following the State Water Resources Control Board's Board Meeting

in the
Coastal Hearing Room
Joe Serna, Jr./Cal-EPA Building
1001 I Street, Second Floor
Sacramento, CA

SUBJECT OF WORKSHOP

The purpose of this workshop is for the State Water Resources Control Board (State Water Board) to receive information regarding the need for and the effect of water diversions for purposes of frost protection of crops. After receiving information on the status of Russian River salmonids, the impact of water diversions, voluntary actions to address impacts, and grower issues related to frost events, the State Water Board may provide direction to staff regarding future activities. Alternative actions may include support for voluntary actions, development of regulations or some other direction.

BACKGROUND

In a letter dated February 19, 2009, and received by the State Water Board on February 27, 2009, the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) requested that the State Water Board take immediate action, such as implementing emergency regulations, to address concerns that water diversions will cause significant salmonid mortality. The letter documents two episodes of fish stranding mortality that occurred in April 2008, one on Felta Creek in Sonoma County, and the second on the mainstem of the Russian River, near Hopland in Mendocino County.

The State Water Board has permitting authority over certain diversions, specified in Water Code sections 1200 and 1201. The State Water Board also has a duty to protect, where feasible, the State's public trust resources, including fisheries. Lastly, the State Water Board has the authority under article X, section 2 of the California Constitution and Water Code section 100 to

California Environmental Protection Agency



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prevent the waste or unreasonable use, unreasonable method of use, or the unreasonable method of diversion of all waters of the State.

In 1974, the State Water Board initiated an action in court to enjoin riparian water users on the Napa River from the direct diversion of water for frost protection of Napa Valley vineyards, charging that the diversions were an unreasonable method of diversion of water because the diversions created a high instantaneous rate of demand which depleted the flow of the river during certain periods of time during the frost season. The Board concluded that the only feasible solution to the problem was (1) to require the winter storage of water for frost protection, and (2) to develop other supplemental sources of water so that no direct pumping of water for frost protection would be necessary. On appeal, the First District Court of Appeal concluded that in order to attain the constitutional mandate that waters be put to reasonable and beneficial use, riparian water users could be required to endure some inconvenience and reasonable expense. (*State Water Resources Control Board v. Forni*, 54 Cal.App.3d 743, 751-752 (1976).) The Court further upheld section 659 of the State Water Board's regulations (subsequently renumbered as California Code of Regulations, title 23, section 735), which in its current form states:

"§ 735. Napa River, Special.

"(a) Budding grape vines and certain other crops in the Napa Valley may be severely damaged by spring frosts. During a frost, the high instantaneous demand for water for frost protection by numerous vineyardists and other water users frequently exceeds the supply in the Napa River stream system. This results in uncoordinated diversions and possible infringements upon other rights. Therefore, all diversions of water from the stream system between March 15 and May 15 determined to be significant by the board or a court of competent jurisdiction shall be considered unreasonably [sic] and a violation of Water Code Section 100 unless controlled by a watermaster administering a board or court approved distribution program. Diversions for frost protection and irrigation during this period shall be restricted to: (1) replenishment of reservoirs filled prior to March 15 under an appropriative water right permit, or (2) diversions permitted by the court.

"(b) The service area of the distribution program may be revised at any time by order of the board or the court. The board will retain jurisdiction to revise terms and conditions of all frost protection permits should future conditions warrant.

"(c) Under this section diversion of water during the spring frost season from March 15 to May 15 to replenish water stored in reservoirs prior to the frost season is "regulation," as defined in Article 2, Section 657: Replenishment diversion must be to reservoirs for which a permit or license authorizing winter storage prior to the frost season has been issued."

On February 27, 2009, Governor Schwarzenegger issued a drought proclamation for the State, including the Russian River watershed. As of March 1, the Department of Water Resources reported that precipitation for the Russian River was at 70 percent of normal. As of March 9, Sonoma County Water Agency (SCWA) reported that the water storage level at Lake Mendocino, on the East Fork Russian River, was at 50,764 acre-feet, which is about 40 percent of capacity and 38 percent below the storage level at this time in 2008.

The SCWA operates Lake Mendocino for water supply purposes in accordance with State Water Board Decision 1610, which set instream flow requirements for the mainstem Russian River below Lake Mendocino. SCWA, the Mendocino County Russian River Flood Control and Water Conservation Improvement District, as well as the Redwood Valley County Water District hold water rights to Lake Mendocino for various uses, including municipal and irrigation uses in Mendocino and Sonoma Counties. Other public and private entities hold water right permits, licenses, or registrations to divert from the Russian River and its tributaries or claim pre-1914 or

riparian rights. In total there are about 1,750 water rights, water right claims, and pending water right applications in the Russian River watershed. The State Water Board has also identified approximately 800 reservoirs for which it has no record of a water right or water right claim.

MATTERS FOR DISCUSSION IN THE WORKSHOP

The State Water Board is principally interested in receiving information regarding the current hydrology of the Russian River watershed, the status and life history of Russian River salmonids, issues associated with frost control and particularly with water diversions for frost control, the impact or potential impact of water diversions on Russian River salmonids, ongoing cooperative voluntary actions that are being taken to address these issues, and the need for further regulatory action by the State Water Board. In addition, the State Water Board is seeking information on the effectiveness of section 735 of the State Water Board's regulations in alleviating issues associated with diversions for frost protection on the Napa River.

WORKSHOP AGENDA

1. Introduction of Russian River Frost Protection Task Force

Invited Speakers: Derek Roy, NOAA Office of Enforcement

Description of why the task force was formed, its purpose, its participants, and its efforts to date

2. Frost Protection

Invited Speaker: Glenn McGourty, University of California Cooperative Extension, Division of Agriculture and Natural Resources

3. Russian River Salmonids--Overview, Current Status, and Potential Impacts associated with Frost Protection Practices

Invited Speakers: Rick Macedo, California Department of Fish and Game (CDFG); and David Hines, NMFS

4. Other Regulatory Roles

Invited Speakers: Rick Macedo and Tracie Nelson, CDFG

5. Water Project Operational Issues

Invited Speakers: Pam Jeane, Sonoma County Water Agency; and Sean White, Mendocino County Russian River Flood Control and Water Conservation Improvement District

Water operations on the Russian River: available supply in Lake Mendocino and prospective uses, transit time from Lake Mendocino dam to the impacted area, tributary issues.

6. Napa Watermaster Perspectives and Experience

Invited Speakers: Kevin Taylor, Department of Water Resources; and Drew Aspegren, Napa Valley Vineyard Engineering

7. Grower Comments, Concerns, and Perspectives

Invited Speaker: David Koball, Fetzer Vineyards

8. **Comments from Environmental Organizations**
Invited Speaker: Laurel Marcus, Fish Friendly Farming
9. **Public Comment**
10. **State Water Board discussion**

PROCEDURAL MATTERS

Written comments regarding this workshop **must be received by 12:00 noon, April 2, 2009, in order to be considered by the Board prior to the workshop.** Comment letters are to be sent via email to the Clerk to the Board at commentletters@waterboards.ca.gov. Please indicate in the subject line, "**4/7/09 Russian River Frost Protection Workshop.**" If you intend to submit a powerpoint presentation, please contact Jean McCue for further information before April 1, 2009.

Documents related to this workshop will be available electronically at: http://www.waterrights.ca.gov/hearings/russian_river_frost. Video broadcast of this workshop will be available at: <http://www.calepa.ca.gov/Broadcast/>.

To ensure a productive and efficient workshop, and to ensure that all participants have an opportunity to participate, **oral presentations from any interested person who is not listed above as a speaker will be limited to three minutes, or otherwise at the discretion of the Board Chair.** The workshop will be informal and no action will be taken by the Board. There will be no sworn testimony or cross-examination of participants, but the State Water Board and its staff may ask clarifying questions.

INFORMATION REGARDING WORKSHOP


Questions concerning this notice may be directed to Jean McCue, Water Resource Control Engineer, at (916) 341-5351 or jmccue@waterboards.ca.gov, or Dana Heinrich, Senior Staff Counsel, at (916) 341-5188 or dheinrich@waterboards.ca.gov.

PARKING AND ACCESSIBILITY AND SECURITY

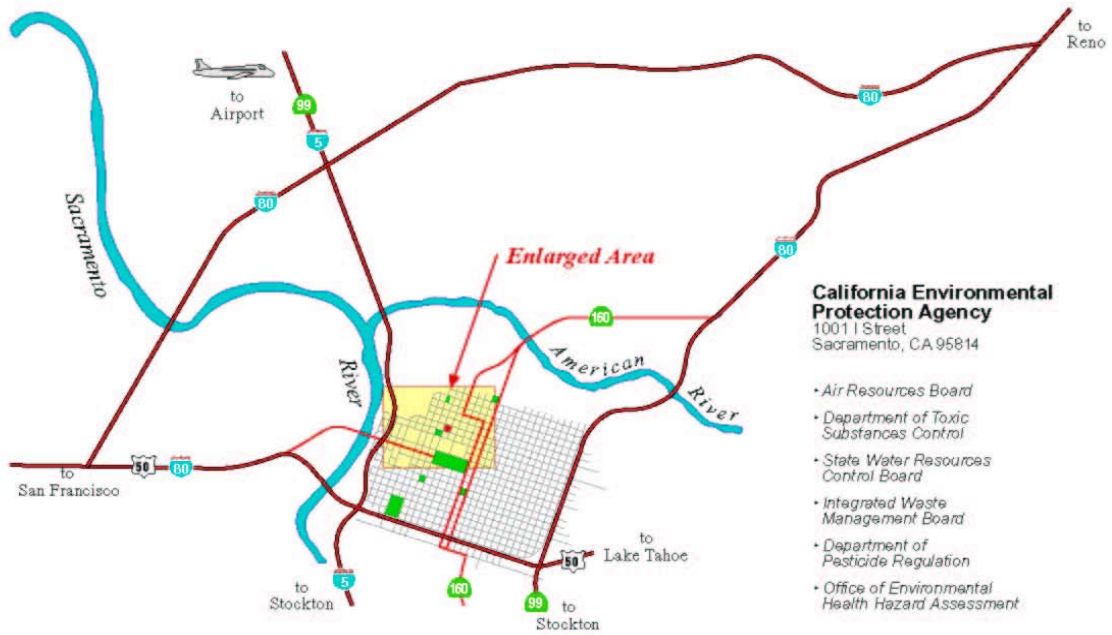
The attached maps show the location and parking for the Joe Serna Jr./Cal-EPA Building in Sacramento. The Joe Serna Jr./Cal-EPA Building is accessible to people with disabilities. Individuals who require special accommodations at the Joe Serna Jr./Cal-EPA Building are requested to contact Catherine Foreman, Office of Employee Assistance, at (916) 341-5881.

Due to enhanced security precautions at the Cal-EPA Headquarters Building, all visitors are required to register with security staff prior to attending any meeting. To sign in and receive a visitor's badge, visitors must go to the Visitor and Environmental Services Center, located just inside and to the left of the building's public entrance. Depending on their destination and the building's security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver's license, military identification card, or state or federal identification card. Depending on the size and number of meetings scheduled on any given day, the security check-in could take up to fifteen minutes. Please allow adequate time to sign in before being directed to the workshop.

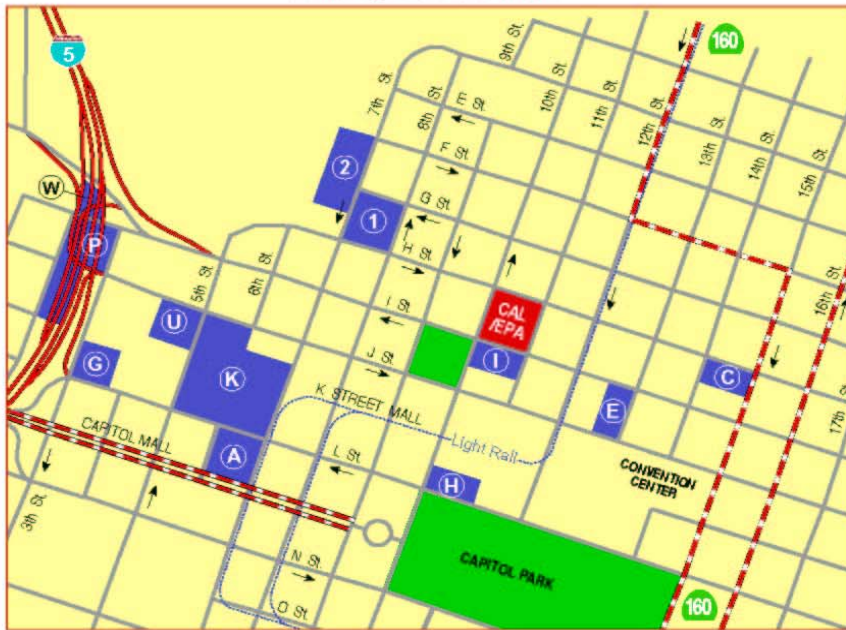
March 23, 2009
Date


Jeanine Townsend
Clerk to the Board

Attachment



Parking Lot Locations



Parking Lot Locations

- Lot 1 (7th & G St.)
- Lot 2 (7th & G St.)
- Lot A (7th & Capitol)
- Lot C (14th & H St.)
- Lot G (3rd & L)
- Lot H (10th & L)
- Lot I (10th & I, 11th & I)
- Lot K (6th & J/L, 7th & K)
- Lot P (2nd & I)
- Lot U (5th & J)
- Lot W (2nd & I St.)