

STATE WATER RESOURCES CONTROL BOARD
PROPOSED REGULATIONS

DRAFT Text of Proposed Regulations

Amendment to Division 3 of Title 23 of the California Code of Regulations

Add the following section:

§ 862 Russian River, Special.

Budding grape vines and certain other crops in the Russian River watershed may be severely damaged by spring frosts. Frost protection of crops is a beneficial use of water under section 671 of this chapter. During a frost, however, the high instantaneous demand for water for frost protection by numerous vineyardists and other water users may ~~reduce the supply cause a rapid decrease in the Russian River stream system to a level stage that is harmful to~~ results in the mortality of salmonids. ~~Harm to salmonids due to stranding. Stranding mortality~~ can be avoided by coordinating or otherwise managing diversions to reduce instantaneous demand. A diversion of water for frost protection that ~~is harmful to salmonids causes stranding mortality~~ is an unreasonable use of water if the diversion could have been managed to ~~avoid the harm prevent stranding mortality.~~

(a) After March 14, 2012, any diversion of water from the Russian River stream system, including the pumping of hydraulically connected groundwater, for purposes of frost protection from March 15 through May 15 shall be unreasonable and a violation of Water Code section 100, unless the water is diverted in accordance with a board approved water demand management program (WDMP), or the water is diverted upstream of Warm Springs Dam in Sonoma County or Coyote Dam in Mendocino County.

(b) The WDMP shall ensure that ~~the cumulative diversion rate~~ diversions for frost protection ~~do~~es not result in a reduction in stream stage that ~~is harmful to~~

~~salmonids-causes stranding mortality.~~ The WDMP, and any revisions ~~thereof~~hereto, shall be administered by an individual or governing body (governing body) capable of ensuring that the requirements of the program are met. Any WDMP developed pursuant to this section shall be submitted to the board by February 1 prior to the frost season.

(c) At a minimum, the WDMP shall include (1) an inventory of the frost diversion systems within the area subject to the WDMP, (2) a stream stage monitoring program, (3) an ~~annual~~ assessment of the potential risk of ~~harm to salmonids~~stranding mortality due to frost diversions, (4) the identification and implementation of any corrective actions necessary to ~~avoid harm to salmonids~~prevent stranding mortality, and (5) annual reporting of program data, activities, and results. In addition, the WDMP shall identify the diverters ~~who have agreed to participate~~participating in the program and ~~any known diverters within the area subject to the WDMP who declined to participate.~~ The WDMP also shall include a schedule for conducting the frost inventory, ~~developing and~~ implementing the stream stage monitoring program, and conducting the risk assessment.

(1) Inventory of frost diversion systems: The governing body shall establish an inventory of all frost diversions included in the WDMP. ~~The inventory, except for diversion data, shall be completed within three months after board approval of a WDMP.~~ The inventory shall be updated annually with any changes to the inventory and with frost diversion data. The inventory shall include for each frost diversion:

- (A) Name of the diverter~~;~~
- (B) Source of water used and location of diversion~~;~~
- (C) A description of the diversion system and its capacity~~;~~
- (D) Acreage served~~;~~ and

(E) The rate of diversion, hours of operation, and volume of water diverted during each frost event for the year.

(2) Stream stage monitoring program: The governing body shall develop a stream stage monitoring program in consultation with National Marine Fisheries Service (NMFS) and California Department of Fish and Game (DFG). ~~For the purposes of this section, consultation involves an open exchange of information for the purposes of obtaining recommendations.~~ The stream stage monitoring program shall include the following:

(A) A determination of the number, type, and location of stream gages necessary for the WDMP ~~to ensure that frost diversions do not cause stranding mortality;~~

(B) A determination of the stream stage that ~~is protective of salmonids~~ ~~for~~ should be maintained at each gage to prevent stranding mortality;

(C) Provisions for the installation, calibration, and maintenance of stream gages and

(D) Monitoring and recording of stream stage at intervals not to exceed 15 minutes.

(3) Risk assessment: Based on the inventory and stream stage information described above, and information regarding the presence of habitat for salmonids, the governing body shall conduct a risk assessment that evaluates the potential for frost diversions to ~~reduce the stream stage below protective levels~~ ~~cause stranding mortality.~~ The risk assessment shall be ~~based on sound science and shall be~~ conducted in consultation with NMFS and DFG. The risk assessment shall be evaluated and updated annually.

(4) Corrective Actions: If the governing body determines that diversions for purposes of frost protection have the potential to ~~harm salmonids~~cause stranding mortality, the governing body shall notify the diverter(s) of the potential risk. The ~~diverters~~governing body, in consultation with the ~~governing body, diverters,~~ shall ~~identify and implement~~develop a corrective ~~actions~~action plan that will ~~result in stream stage conditions that are protective of salmonids during the frost season~~prevent stranding mortality. Corrective actions may include alternative methods for frost protection, best management practices, better coordination of diversions, construction of offstream storage facilities, real-time stream gage and diversion monitoring, or other alternative methods of diversion. Corrective actions also may include revisions to the number, location and type of stream stage monitoring gages, or to the stream stages considered ~~protective of salmonids~~necessary to prevent stranding mortality. In developing the corrective action plan, the governing body shall consider the relative water right priorities of the diverters and any time delay between groundwater diversions and a reduction in stream stage. The corrective action plan shall include a schedule of implementation. To the extent feasible, the corrective action plan shall include interim corrective actions if long-term corrective actions are anticipated to take over three years to fully implement. The diverters shall implement corrective actions in accordance with the corrective action plan, or cease diverting water for frost protection.

(5) Annual Reporting: The governing body shall submit a publically available annual report of program operations, risk assessment, and corrective actions by September 1 following the frost season that is the subject of the report. The report shall include:

(A) The frost inventory, including diversion data.

(B) Stream stage monitoring data.

(C) The risk assessment and its results, identification of the need for any additional data or analysis, and a schedule for obtaining the data or completing the analysis.

(D) ~~Any~~ A description of any corrective action plan that has been developed, any corrective actions ~~identified and~~ implemented to date, and a schedule for implementing any additional corrective actions.

(E) Any instances of noncompliance with the WDMP or with a corrective action plan, including the failure to implement identified corrective actions.

The report shall document consultations with DFG and NMFS regarding the stream stage monitoring program and risk assessment and shall explain any deviations from recommendations made by DFG or NMFS during the consultation process. In addition, the annual report shall evaluate ~~whether the requirements of the WDMP were met during the preceding frost season, evaluate~~ the effectiveness of the WDMP, and recommend any necessary changes to the WDMP. Any recommendations for revisions to the WDMP shall include a program implementation plan and schedule. The board may require changes to the WDMP, including but not limited to the risk assessment, corrective ~~actions~~ action plan, and schedule of implementation, at any time.

(d) For purposes of this section, groundwater pumped within the Russian River watershed is considered hydraulically connected to the Russian River stream system unless the diverter can demonstrate to the satisfaction of the board that the groundwater

being diverted is not hydraulically connected to any surface stream within the Russian River watershed.

(e) Compliance with this section shall constitute a condition of all water right permits and licenses that authorize the diversion of water from the Russian River stream system for purposes of frost protection. The diversion of water in violation of this regulation, including the failure to implement the corrective actions included in any corrective action plan developed by the governing body, is subject to enforcement by the board. The board has continuing authority to revise terms and conditions of all permits that authorize the diversion of water for purposes of frost protection should future conditions warrant.

NOTE: Authority cited: Section 1058, Water Code.

Reference: Section 2, Article X, California Constitution; and Sections 100, 275 and 1051.5, Water Code.