



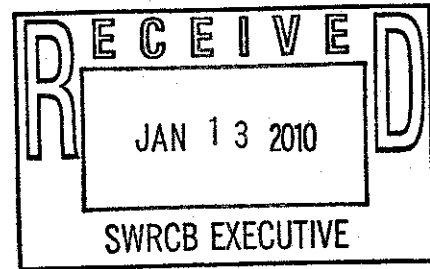
CALIFORNIA FARM BUREAU FEDERATION
NATURAL RESOURCES AND ENVIRONMENTAL DIVISION

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January 13, 2010

Via First-Class Mail & Email
commentletters@waterboards.ca.gov

Charles Hoppin, Chair
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814



Re: 1/19/2010 Board Workshop (Draft Russian River Frost Protection Regulation)

Dear Chair Hoppin and Members of the Board,

The California Farm Bureau Federation ("Farm Bureau") appreciates the Board's consideration of these comments on the draft text of the proposed regulation ("proposed regulation") and respectfully requests the Board decline to use the proposed regulation as a starting point and begin in an entirely new direction that considers the collaborative efforts which have already accomplished so much.

Farm Bureau is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the State of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing over 32,000 farm families and more than 81,000 individual members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

For the past year, Farm Bureau has appreciated the support the Board has provided to the collaborative stakeholder effort to address frost protection issues in the Russian River watershed. This extraordinary effort resulted in the development and implementation of the Russian River Frost Program. While this program continues to be refined and expanded, please recognize that management and infrastructure improvements have already been made that eliminate the impact

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of frost diversions to stream flows associated with the strandings referenced in National Marine Fisheries Service's February 19, 2009 letter ("NMFS letter").

In fact, it is because of the progress of this collaborative effort that the proposed regulation comes as such a surprise. The Russian River Frost Program is focused on developing, implementing, and constructing management and infrastructure improvements in order to reduce instantaneous demand for frost water. However, the proposed regulation seeks to expand regulatory authority to a whole range of diversions for which there is no evidence indicating these diversions are harmful to anadromous salmonids. By so doing, the proposed regulation expands an issue that was about instantaneous demand for frost protection water to become an issue of unjustified regulatory authority over surface and groundwater rights, and also effectively terminates the viability of the Russian River Frost Program. Without delving into whether additional regulatory control of water rights is necessary, it is clear that expanding this issue in such a manner severely hinders making progress on the practical issue of instantaneous demand for frost protection and finding a solution that is good for both fish and farmers.

In addition to detrimental effect on the collaborative process so far, there are several more particular concerns with the proposed regulation. First is the universal declaration that any diversion of water for frost protection is unreasonable and a violation of Water Code section 100. This blanket determination is apparently based solely on the two instances of stranding referenced in the NMFS letter. It is not clear how these allegations can support the conclusion that all diversions, including those from groundwater wells in alluvial soils, are unreasonable.

A second concern is that the proposed regulation applies to all closely connected groundwater, which is defined as water that "is pumped from areas described as subterranean flow or mapped active stream channels and associated alluvial deposits on maps prepared by Stetson Engineers, Inc." The assumption that the hydrologic connection between surface and groundwater can be demonstrated by soil type is not supported by any evidence presented thus far. Furthermore, it is our understanding that parts of the Russian River and its tributaries are losing reaches. Particularly in such regions it is hard to see how the regulation of wells located in alluvial soils is relevant to preventing the "reduction in stream flow that is harmful to anadromous fish."

A third concern is that the water authority required by the proposed regulation is entirely inconsistent with the Russian River Frost Program. By requiring the "individual or governing body" of the "water demand management program" to "be capable of resolving disputes and ensuring that the goals of the program are met," the proposed regulation describes a powerful water authority that resembles a watermaster more than a collaborative program focused on making management and infrastructure improvements. The problem is that as a collaborative stakeholder group focused on making real world improvements, the Russian River Frost Program cannot function as a governing body adjudicating water disputes in the Russian River watershed.

While these particular issues are troubling, the overarching concern is that this proposed regulation severely impedes what has been a remarkable effort by farmers to help fish. If in fact the concern is the sustainability of fish and farms, Farm Bureau does not believe it is appropriate to expand the issue the regulation of diversions and wells with no impact on rapid changes in stream stage. After working hard to cooperate with, convince, and cajole our members into

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working on a collaborative solution to frost issues in the Russian River watershed, largely motivated by a desire to avoid confrontations over onerous regulation, it is disheartening to be confronted with the very regulation we worked so hard to avoid.

Sincerely,



Jack L. Rice
Associate Counsel

JLRmmm

cc: Board Members
Mendocino County Farm Bureau
Sonoma County Farm Bureau