

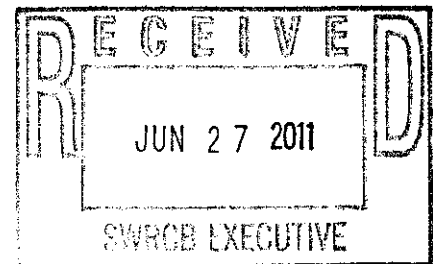
*Mendocino County*

***Russian River Flood Control & Water Conservation Improvement District***

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June 15, 2011

Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board,  
P.O. Box 100, Sacramento, CA 95812-2000



RE: COMMENTS ON PROPOSED DRAFT RUSSIAN RIVER FROST REGULATION  
AND RUSSIAN RIVER FROST REGULATION DRAFT EIR

Board Members:

The Mendocino County Russian River Flood Control and Water Conservation District (District) has reviewed both the Proposed Draft Russian River Frost Regulation and the Russian River Frost Regulation Draft EIR. The District has prepared both general and specific comments for your consideration.

In general, the District remains disappointed in the SWRCB's stubborn insistence on the "need" for a regulation. The District believes that there are already sufficient regulations in place to protect the special status fisheries of the Russian River. Special status salmonids are already protected by the Federal ESA, the most comprehensive and powerful environmental regulation ever adopted in the United States. Flows are already dictated by D-1610 and AB2121. Habitat is already protected by the ESA, the Clean Water Act, the Porter Cologne Act, and the Fish and Game Code.

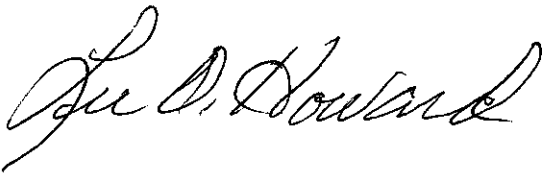
Immediately after the incidents of 2008 were brought to the attention of the District, we have worked tirelessly to solve this issue. Since 2008 numerous, substantive projects have been completed. Those projects, combined with additional USGS gaging, improved coordination with Sonoma County Water Agency, and better forecasting have *solved* frost-related issues where they have been documented in Mendocino County. These accomplishments were executed entirely through volunteer efforts back-stopped by *existing* regulations.

The District is also concerned about much of the information on which the "need" for a regulation has been predicated. After exhaustive research and numerous FOIA requests it has become obvious that items ranging from frequently cited NMFS February 19<sup>th</sup> letter, to the magnitude of the Hopland fish kill have been exaggerated, manipulated, and/or fabricated in an insincere and unethical effort to bolster the need for a regulation in the absence of corroborating data.

The District is also frustrated that the SWRCB and the NMFS have emphasized monitoring and enforcement instead promoting the development of infrastructure that would eliminate the need for direct diversions for frost protection. This same infrastructure would also facilitate the SWRCB in meeting its goals under AB2121. In these fiscally constrained times, the District believes it would be much more effective to focus state, federal, and private money in the development of permanent solution instead of mandating perpetual expenditures on unnecessary analysis and reporting.

The District is hopeful that there is still an opportunity for the development of a cost-effective, cooperative, and effective solution to this issue without additional regulation. Please feel free to contact me regarding this important issue if you have any questions or comments. Our specific/technical comments are provided in the attachment.

Sincerely,

A handwritten signature in cursive script that reads "Lee O. Howard". The signature is written in dark ink and is positioned to the left of the typed name.

Lee O. Howard  
President

*President*  
Lee Howard

*Vice President*  
Judy Hatch

*Treasurer*  
Alfred White

*Trustee*  
Paul Zellman

*Trustee*  
Richard Shoemaker

**ATTACHMENT**  
MCRRFC&WCID Comments on the

***Proposed Draft Russian River Frost Regulation  
and the Russian River Frost Regulation Draft EIR***

**Proposed Draft Russian River Frost Regulation**

(3) Risk Assessment – The removal of the phrase “based on sound science” underscores the “never mind the data” tenor of the entire Frost Regulation process. If the regulation and its supporting processes are to have any credibility, the District believes that the language needs to be returned to its original form.

**Russian River Frost Regulation Draft EIR**

Summary, Consideration of Alternatives (page i)- Objective (b) is described “provide transparency of diversion and stream monitoring data” which implies that this is not the current condition.

Past, current, and future frost diversions monitoring in Mendocino County has been accomplished using long-standing USGS gages including the West Fork of the Russian River (USGS 11461000 ) and the mainstem at Hopland (USGS 11462500 ).

In order to improve data resolution and river management during frost events, the District partnered with Redwood Valley CWD and the Sonoma County Water Agency to install the USGS gage at Talmage (USGS 11462080). All of the high-quality, real-time data from these gages is publicly available online.

In addition, the District is in the process of updating all District PODs to state of the art data logging, telemetry-equipped meters. The District spent over \$50,000.00 in upgrades in 2010, and has budgeted an additional \$40,000.00 for FY2011-2012.

Summary, Analysis of Alternatives (page iii)- This section states that the No-Project alternative and the Local Stakeholder alternative are the top two environmentally superior alternatives. However both alternatives are dismissed by stating “alternatives that are less restrictive on diversions of water for frost protection use are less likely to meet the project objective...”.

There is no evidence to support this dismissal, and there is substantive evidence to the contrary. Since 2008 water users in Mendocino County have developed 90.6 cfs of off-stream storage, installed new USGS gages, successfully implemented coordinated reservoir releases and improved frost forecasting. In combination, these measures have reduced the magnitude and duration of flow reductions during frost events as much as 75%. Despite lower flows in 2009 than in 2008, no additional strandings were found.

3.1 Need for the regulation (page 9)- Analysis of emails obtained through the FOIA and PRA requests filed by the California Farm Bureau Federation show that the February 19<sup>th</sup> letter from NMFS does not justify the need for a regulation. The letter was not sent to the SWRCB out of need, but instead at the suggestion of SWRCB staff. In addition, the language suggesting the “need for a regulation” was in fact inserted into the letter by Victoria Whitney of the SWRCB. Using this letter as “justification” is an entirely false premise.

3.1 Need for the regulation (page 10)- There is no reference listed as NOAA 2009b in the bibliography.

3.1 Need for the regulation (page 10)- In paragraph 3 it states: “Scientific research indicates that the two episodes of stream dewatering documented by NOAA Fisheries were not isolated incidents...”. The supporting citation of Dietch et al. 2009 has no biological, ecological, or general relevance to the circumstances of the regulated mainstem where stranding was observed near Hopland.

3.1 Background (page 11)- This section references the regulatory context of D1610 but fails to mention that this existing regulatory mechanism was violated on multiple days during the events of 2008 and the SWRCB did nothing to enforce this existing regulation. If the SWRCB is not utilizing its current regulatory authority, it is difficult to understand the “need” for additional regulatory authority.

3.1 Demand management (page 13)- The DEIR does not examine the impacts to climate change that would result from implementing the suggested alternatives including (3) wind machines; (4) cold air drains; (5) heaters.

3.1 Demand management (page 13)- (8) There are no varietals that do not require frost protection in Mendocino County.

5.1 No-project alternative (page 48)- This section states that under the No-Project alternative: “diverters would be unlikely to curtail their diversions to address the cumulative impacts of their diversions unless the Board takes steps to enforce the reasonable use doctrine or takes some sort of enforcement action against them.”

However, a cursory examination of the volunteer actions taken by the agricultural community of Mendocino County shows that this conclusion is entirely false. Since 2008, diverters in the District have built more offstream storage (90.6 cfs) than the magnitude of the greatest flow deviation observed in 2008 (83 cfs).

The SWRCB’s continual refusal to acknowledge these efforts in accordance with their scale and effect will not foster future partnerships. The District strongly believes that if the SWRCB had sincerely pursued a cooperative program this issue would be entirely resolved and relationships and compliance would be at an all-time high. Instead, “the all stick and no carrot” approach pursued by the SWRCB has elevated animosity and distrust higher than any period in the past.

5.2 Local stakeholder voluntary programs (page 51)- The DEIR states that both the URSA and MRSA programs “exclude a collaborative process with public agencies”. This statement is not accurate. Both URSA and MRSA have participated in the Frost Protection Taskforce and worked consistently with regulators to implement their programs. The only URSA/MRSA process in which regulators are disallowed is participation in the Science Advisory Group (SAG). It is critical to note that URSA/MRSA members are also disallowed from the participating in the SAG since the entire intent of the SAG is to develop a science-based, non-biased, peer review panel. Characterizing this process as exclusionary misrepresents the core function of the SAG.