

LATE COMMENT

STATE WATER RESOURCES CONTROL BOARD PROPOSED REGULATION

DRAFT Text of Proposed Regulation

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



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 ~~cause~~ contribute to a rapid decrease in stream stage that results in the mortality of 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 causes stranding mortality is an unreasonable use of water and a violation of Water Code section 100 if the diversion could have been managed to 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 in accordance with ~~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 unless exempted from participation in accordance with paragraph (7) of subdivision (d).~~

(b) The purpose of the WDMP is to assess the extent to which diversions for frost protection affect stream stage and manage diversions to prevent ~~shall ensure that~~ cumulative diversions for frost protection do not result in from causing a reduction in stream stage that causes stranding mortality. The WDMP, and any revisions thereto, shall be administered by an individual or governing body (governing body) capable of ensuring that the requirements of the program are met.

1 (1) Any WDMP developed pursuant to this section shall be submitted to the board by
2 February 1 prior to the frost season. A WDMP shall be deemed approved for the current
3 frost season if the board does not take formal action on the WDMP by March 14 of the
4 current frost season.

5
6 (2) For the 2012 frost season, compliance with the Sonoma County Frost Protection
7 Ordinance or participation in the Upper Russian River Stewardship Alliance in
8 Mendocino County shall be deemed in compliance with this section if a WDMP does not
9 exist in which a diverter may participate.

10
11 (c) At a minimum, and subject to the implementation schedules below, the WDMP shall
12 include (1) an inventory of the frost diversion systems within the area subject to the WDMP, (2)
13 a stream stage monitoring program, (3) development of water diversion and stream stage
14 criteria, ~~(4)~~ an assessment of the potential risk of stranding mortality due to frost diversions,
15 ~~(5)~~ the identification and timelines for implementation of any corrective actions necessary to
16 prevent stranding mortality caused by frost diversions, and ~~(6)~~ annual reporting of program
17 data, activities, and results. In addition, the WDMP shall identify the diverters participating in the
18 program and any known diverters within the area subject to the WDMP who declined to
19 participate. ~~The WDMP also shall include a schedule for conducting the frost inventory,~~
20 ~~developing and implementing the stream stage monitoring program, and conducting the risk~~
21 ~~assessment.~~

22
23 (1) Inventory of frost diversion systems: Commencing in 2012, ~~T~~the governing body shall
24 establish an inventory of all frost diversions included in the WDMP. The inventory,
25 except for diversion data, shall be completed within three months after board approval of
26 a WDMP. The inventory shall be updated annually with any changes to the inventory
27 and with frost diversion data. The inventory shall include for each frost diversion:

28 (A) Name of the diverter;

29 (B) Source of water used and location of diversion;

30 (C) A description of the diversion system and its capacity;

31 (D) Acreage ~~served~~ frost protected and acres frost protected by means other than
32 water diverted from the Russian River stream system; and

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

1
2 (2) Stream stage monitoring program: Commencing in 2012, tThe governing body and
3 an independent science review panel shall develop a stream stage monitoring program
4 in consultation with the Board, National Marine Fisheries Service (NMFS) and California
5 Department of Fish and Game (DFG). For the purposes of this section, consultation
6 involves an open exchange of information for the purposes of obtaining
7 recommendations. The stream stage monitoring program shall include the following:

- 8
9 (A) A determination of the number, type, and location of stream gages necessary
10 for the WDMP to ~~ensure that~~assess the extent to which frost diversions ~~de~~
11 ~~not~~may affect stream stage and cause stranding mortality;
12 (B) A ~~determination of the stream stage that should be maintained at each gage~~
13 study plan for determining where stream stage criteria must be developed to
14 prevent stranding mortality;
15 (C) Provisions for the installation, calibration, and maintenance of stream gages;
16 (D) Data quality assurance/quality control protocols; and
17 (E) Monitoring and recording of stream stage at intervals not to exceed 15
18 minutes.

19
20 (3) Water diversion and stream stage criteria. Commencing in 2013 and concluding in
21 2014, the governing body and an independent science review panel shall develop water
22 diversion and stream stage criteria to minimize the risk of stranding mortality caused by
23 frost protection including, but not limited to, criteria regarding maximum allowable rate of
24 stage change for given stream types and salmonid life stages, in consultation with the
25 Board, NMFS and DFG.

26
27 ~~(4)~~ Risk assessment: Commencing in 2014, bBased on the inventory and water
28 diversion and stream stage information described above, and information regarding the
29 presence of habitat for salmonids, the governing body shall conduct a risk assessment
30 that evaluates the potential for frost diversions to cause stranding mortality. The risk
31 assessment shall be conducted in consultation with the Board, NMFS and DFG. The risk
32 assessment shall be evaluated and updated annually.
33

1 (54) Corrective Actions: Commencing in 2012, if the governing body determines that
2 diversions for purposes of frost protection have the potential to cause stranding
3 mortality, the governing body shall notify the diverter(s) of the potential risk.

4 Commencing in 2013, ~~t~~The governing body, in consultation with the diverters, shall
5 develop a corrective action plan that will ~~prevent~~minimize the risk of stranding mortality.
6 Corrective actions may include alternative methods for frost protection, best
7 management practices, better coordination of diversions, construction of offstream
8 storage facilities, real-time stream gage and diversion monitoring, or other alternative
9 methods of diversion. Corrective actions also may include revisions to the number,
10 location and type of stream stage monitoring gages, or to the stream stages considered
11 necessary to prevent stranding mortality. In developing the corrective action plan, the
12 governing body shall consider the relative water right priorities of the diverters and any
13 time delay between groundwater diversions and a reduction in stream stage. The
14 corrective action plan shall include a schedule of implementation. To the extent feasible,
15 the corrective action plan shall include interim corrective actions if long-term corrective
16 actions are anticipated to take over three years to fully implement. The diverters shall
17 implement corrective actions in accordance with the corrective action plan,~~or cease~~
18 ~~diverting water for frost protection.~~

19
20 (65) Annual Reporting: Commencing in 2012, ~~t~~The governing body shall submit a
21 publically available annual report of program operations, risk assessment, and corrective
22 actions by September 1 following the frost season that is the subject of the report. The
23 report shall include:

24
25 (A) The frost inventory, including diversion data.

26 (B) Stream stage monitoring data.

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

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

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

1
2 The report shall document consultations with the independent science review panel,
3 DFG and NMFS regarding the stream stage monitoring program and risk assessment
4 and shall explain any deviations from recommendations made by the independent
5 science review panel, DFG or NMFS during the consultation process. In addition, the
6 annual report shall evaluate the effectiveness of the WDMP, and recommend any
7 necessary changes to the WDMP. Any recommendations for revisions to the WDMP
8 shall include a program implementation plan and schedule. The board may require
9 changes to the WDMP, including but not limited to the risk assessment, corrective action
10 plan, and schedule of implementation, at any time.

11
12 (7) Commencing in 2013, the governing body shall identify water users that do not
13 significantly affect or contribute to a significant cumulative effect on stream stage in
14 salmonid bearing streams between March 15 and May 15 and exempt those water users
15 from the WDMP and this section or exempt them from certain WDMP requirements
16 including but not limited to corrective actions and/or diversion reporting; provided,
17 however, the governing body may determine based upon information collected pursuant
18 to this subdivision that water users exempted from the WDMP must later participate in
19 the WDMP.

20
21 (8) For purposes of this section, the independent science review panel shall consist of a
22 core team of at least five independent scientists with the collective expertise in the
23 following fields: fluvial geomorphology/geology; hydrology (specializing in surface-
24 groundwater interactions); aquatic/fish ecology; riparian ecology; meteorology/frost
25 protection; viticulture; resource economics; and sustainable business practices. The
26 independent scientists shall comply with the National Academy of Sciences policy on
27 conflicts of interest.

28
29 (d) For purposes of this section, groundwater-all diverters pumped groundwater within
30 the Russian River watershed for the purposes of frost protection shall be required to participate
31 in the WDMP for the 2012 and 2013 frost seasons, unless determined to not significantly affect
32 stream stage and exempted from the WDMP in accordance with subdivision (c)(7) above.
33 Diverters pumping groundwater shall be required to participate in a WDMP after the 2013
34 season only if the governing body determines that the specific diverter's pumping of

1 groundwater may significantly affect or contribute to a significant cumulative effect on stream
2 stage in salmonid bearing streams between March 15 and May 15. ~~is considered hydraulically~~
3 ~~connected to the Russian River stream system unless the diverter can demonstrate to the~~
4 ~~satisfaction of the board that the groundwater being diverted is not hydraulically connected to~~
5 ~~any surface stream within the Russian River watershed.~~

6
7 (e) Compliance with this section shall constitute a condition of all water right permits and
8 licenses that authorize the diversion of water from the Russian River stream system for
9 purposes of frost protection. The diversion of water in violation of this regulation, including the
10 failure to implement the corrective actions included in any corrective action plan developed by
11 the governing body, is subject to enforcement by the board. The board has continuing authority
12 to revise terms and conditions of all permits that authorize the diversion of water for purposes of
13 frost protection should future conditions warrant.

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16 NOTE: Authority cited: Section 1058, Water Code.

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