



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

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## State Water Resources Control Board

JAN 24 2012

John H. Thomas  
P.O. Box 478  
Ukiah, CA 95482

Dear Mr. Thomas:

### WATER DEMAND MANAGEMENT PROGRAMS SUBMITTED FOR COMPLIANCE WITH THE RUSSIAN RIVER FROST PROTECTION REGULATION, MENDOCINO COUNTY

The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) has received and reviewed your second Water Demand Management Program (WDMP) submittal dated December 30, 2011 and finds that you still have not satisfied the submittal requirements for an initial WDMP as outlined in State Water Board Resolution 2011-0047. The Division's December 9, 2011 letter responding to your first WDMP submittal stated that in order for your initial WDMP to be deemed complete you would need to provide a schedule for completing a stream stage monitoring program and conducting a risk assessment, both of which require consultation with the Department of Fish and Game (DFG) and the National Marine Fisheries Service (NMFS). This second submittal still does not include those schedules and therefore is still not a WDMP acceptable to the State Water Board.

Your second submittal again discusses an operation proposal (which isn't required at this time) based on the minimum flows set for the Russian River in State Water Board Decision 1610, your Department of Fish and Game (DFG) 1600 permit, and the ramping flows in Table 3 of the National Marine Fisheries Service (NMFS) Biological Opinion for the Russian River. While your proposal may be consistent with the goals of the Regulation in concept, you should note that it may not adequately address the risk of stranding mortality. Even if flows are above the minimum requirements of these other decisions and permits, the risk of dewatering a section of the river exists if the diversion of water by numerous diverters is uncoordinated. Additionally, even if everybody individually monitors a stream gage and ceases their diversions because flows drop, the river will still experience the effect of the cumulative withdrawal. While you have put together a proposal that in concept may constitute an adequate stream stage monitoring program, until you consult with DFG and NMFS it will not be accepted by the State Water Board. Division staff has made an effort to start an initial discussion regarding your proposal with NMFS staff to assist with starting the consultation process. Staff at NMFS has stated that the standards you have proposed may not be appropriate, therefore consultation with NMFS and DFG will be necessary. Please note that, pursuant to State Water Board Resolution No. 2011-0047, a complete stream stage monitoring program is not required for approval of an initial WDMP. As stated in our December 9, 2011, letter, in order for your initial WDMP proposal to be found acceptable, you will need to submit a *schedule* for developing a stream stage monitoring program and conducting a risk assessment in consultation with DFG and NMFS.

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR



Your second submittal has clarified that you will be the governing body representing three separate WDMPs for four separate ranches. The Division's December 9, 2011 letter recommended that you consider working with a group of diverters to form a WDMP. This recommendation was made to help accomplish the State Water Board's objective for adopting the Regulation. In the Environmental Impact Report developed for the adoption of the Regulation, the State Water Board's stated objective is to establish a Regulation that will prevent salmonid stranding mortality while minimizing the impacts of the Regulation on the use of water for purposes of frost protection. In support of this objective, the State Water Board's goals are to (a) promote local development and governance of programs that prevent stranding mortality during the frost season, (b) provide transparency of diversion and stream stage monitoring data, (c) ensure that the State Water Board can require any changes to WDMPs that are necessary to ensure that WDMPs are successful and implemented on a timely basis, (d) provide for State Water Board enforcement against non-compliance, and (e) develop a comprehensive regulation that includes all diverters of water for frost protection use, including diverters who pump groundwater that is hydraulically connected to the stream system.

As can be seen above, the goal of the regulation is for diverters to coordinate and manage their diversions to minimize the cumulative impacts of their diversions on fishery resources and prevent stranding mortality. While nothing in the regulation prohibits you from turning in an initial WDMP for your individual ranches, this type of submittal is unlikely to meet the goals of the regulation in the long term. The State Water Board recognizes that implementation of this regulation will take time. This is why the resolution adopted by the State Water Board included a phased approach to meeting all of the requirements of the regulation. While your submittal may meet the requirements of an initial WDMP, assuming you submit the required schedule, in the long term you will not be able to meet the other requirements of the regulation unless you actively manage your diversions with other diverters in the vicinity of your diversion and conduct a proper risk assessment based on all diversions affecting the stream reaches from which you divert for frost protection. As a matter of cost and efficiency, the State Water Board anticipates that diverters will form groups in order to accomplish this rather than simply operate numerous individual WDMPs. Specifically, risk assessments submitted under individual-diverter WDMPs will likely not be acceptable without full consideration of all other diversions for frost protection on the same stream reach. For this reason, it is strongly recommended that you consider working with the group of diverters along the reach of the Russian River where your diversions occur to develop one WDMP for the group. This approach provides better assurance that the goals of the Regulation can be met and at the same time minimizes the costs to individual diverters.

The State Water Board has now received WDMP proposals from two other growers in Mendocino County that divert water from the Russian River, and like you, they propose to act as individuals with an individual WDMP for each of their ranches. Also, like you, they have supplied the same type of inventory information and propose to use the Decision 1610 flows and Biological Opinion as their protective levels. You should consider joining together with these diverters and others along the main stem Russian River to form a single WDMP and together develop a *schedule* for consultation with DFG and NMFS regarding your proposed operations and protective levels.

Please submit any additional information or a *new* WDMP to the Division by the February 1, 2012 deadline. Should you have any questions or if you would like to meet with Division staff, please contact Mr. John O'Hagan of my staff at (916) 341-5368 or by email at [johagan@waterboards.ca.gov](mailto:johagan@waterboards.ca.gov) Written correspondence should be addressed as follows:

State Water Resources Control Board  
Russian River Frost Regulation  
Attention John O'Hagan  
P.O. Box 2000  
Sacramento, CA 95812-2000

Sincerely,



Barbara Evoy, Deputy Director  
Division of Water Rights