

State Water Resources Control Board

MAR 23 2012

Bevill Vineyard Management, LLC
4724 Dry Creek Road
Healdsburg, CA 95448

WATER DEMAND MANAGEMENT PROGRAM SUBMITTED FOR COMPLIANCE WITH THE RUSSIAN RIVER FROST PROTECTION REGULATION, SONOMA COUNTY

The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) received and reviewed the Water Demand Management Programs (WDMPs) that you submitted for initial compliance with California Code of Regulations, title 23, section 862 (the Regulation) commonly known as the Russian River Frost Protection Regulation. You submitted WDMPs for diversions made near Dry Creek, Mark West Creek, Atascadero Creek, and Wood Creek.

Your proposed WDMPs for diversions made near Dry Creek, Mark West Creek, Atascadero Creek, and Wood Creek do not contain a schedule for completing stream stage monitoring programs and conducting risk assessments, which is a requirement of the initial WDMPs. Therefore, the WDMPs you have submitted are not acceptable at this time. In order for your initial WDMP proposals to be acceptable, you will need to submit a schedule for developing a stream stage monitoring program and conducting a risk assessment that includes the required consultation with the Department of Fish and Game and the National Marine Fisheries Service. An acceptable schedule should identify milestone dates for: collection of required inventory information; a determination of the number, type, and location of stream gages; a determination of the stream stage that should be maintained at each gage; installation of stream gages; and conduction of a risk assessment of cumulative frost diversions affecting stream stage.

WDMPs were also submitted for vineyards that you frost protect using recycled water supplied by the cities of Santa Rosa and Windsor. Frost protecting with recycled water supplied by the cities of Santa Rosa and Windsor is not currently subject to the Regulation. No further action is necessary if you are using recycled water to frost protect the vineyards you identified.

On February 2, 2012, the Mendocino County Superior Court granted a stay of enforcement of the Regulation pending resolution of two lawsuits filed against the State Water Board regarding adoption of the Regulation. This is not a ruling on the merits of the cases, it is simply a ruling on whether the Regulation is enforceable prior the court issuing a ruling on the merits. The hearing is currently scheduled for June 4-5, 2012. This letter is being sent to provide you with a response regarding your WDMP submittal should you choose to voluntarily proceed in the interim.

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The State Water Board's objective was to establish a regulation that will prevent salmonid stranding mortality while minimizing the impacts 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. The stated purpose of a WDMP is to assess the extent to which diversions for frost protection affect stream stage and manage diversions to prevent cumulative diversions for frost protection from causing a reduction in stream stage that causes stranding mortality.

I am encouraged by indications in some of the initial WDMPs submitted by Bevill Vineyard Management that a local group is in the process of being formed for Dry Creek. Water diverters will likely be most effective in meeting the goals of the Regulation if they combine their efforts. We suggest jointly establishing local development and governance of a WDMP that coordinates and manages multiple frost diversions to minimize the cumulative potential for stranding mortality. While nothing in the Regulation prohibits an individual diverter or property owner from establishing a WDMP, an individual WDMP on a source used by several others cannot meet the purpose or goals of the Regulation without coordination and communication with other diverters. For this reason, it is recommended that you also consider working with other water users along the reaches of Mark West Creek, Atascadero Creek, and Wood Creek. This approach would provide better assurance that the goals of the Regulation can be met and at the same time minimize the costs to individual diverters.

Copies of initial WDMPs with schedules that have been accepted by the State Water Board are available at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/russian_river_frost/prctn_reg.shtml.

Division staff will continue to be available to answer questions and discuss ways for diverters to meet the goals and terms of the Regulations while the Mendocino County Superior Court considers the lawsuits. 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. Written correspondence should be addressed as follows: State Water Resources Control Board, Russian River Frost Regulation, Attn: John O'Hagan, P.O. Box 2000, Sacramento, CA 95812-2000.

Sincerely,


Barbara Evoy, Deputy Director
Division of Water Rights