

State Water Resources Control Board

MAR 23 2012

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WATER DEMAND MANAGEMENT PROGRAM 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) received and reviewed the Water Demand Management Program (WDMP) 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. Your proposed WDMP does not contain a schedule for completing a stream stage monitoring program and conducting a risk assessment, which is a requirement of the initial WDMP. Therefore, the WDMP you have submitted is not acceptable at this time. In order for your initial WDMP proposal 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 Department of Fish and Game and 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.

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 to 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.

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

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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.

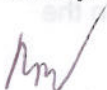
Water diverters will likely be most effective in meeting the goals of the Regulation if they combine their efforts. We suggest jointly establishing local development and governance of a WDMP that coordinates and manages multiple frost diversions to minimize the cumulative potential for stranding mortality. 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 consider working with the other diverters along Bidwell Creek and its tributaries where your diversions occur to develop one WDMP for the group. 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/prtctn_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 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