



FRIENDS OF THE EEL RIVER

SAUSALITO OFFICE

P.O. Box 2039
Sausalito, California 94966
2346 Marin Ship Way, Suite 102
Sausalito, California 94965
Phone: (415) 332-9810
Website: www.eelriver.org
Email: foer@eelriver.org

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Via Email and U.S. Mail

California State Water Resources Control Board
Attn: Bill Cowan
PO Box 2000
Sacramento, CA 95812-2000
rfrostregulation@waterboards.ca.gov

Comments on the Notice of Preparation for the Russian River Frost Protection Regulation EIR

Dear Mr. Cowan:

This letter is submitted by Friends of the Eel River (FOER) as comments on the NOP for the Russian River Frost Protection Regulation Environmental Impact Report (“Project”). I have attended the Scoping Meeting for this Project held by SWRCB in Santa Rosa on Wednesday, November 17, 2010, and my oral comments submitted at that time are supplemented with this letter.

Project Description and Environmental Setting

The NOP states that

“The primary objective of the proposed project is to develop a State Water Board regulation by adding Section 862, Russian River, Special to division 3 of title 23, California Code of Regulations. The proposed Regulation would prohibit diversions from the Russian River stream system for purposes of frost protection from March 15 through May 15, unless they are in accordance with a WDMP approved by the State Water Board. The proposed Regulation would apply to all diversions, including hydraulically connected groundwater, regardless of the diverter’s basis of right, unless a diversion is exempted by the Board. In order to be approved, a WDMP would be required to ensure that the instantaneous cumulative diversion rate does not result in a reduction in stream stage that is harmful to salmonids and would be required to include stream and diversion monitoring and reporting requirements. The number and location of stream stage monitoring gages would be required to be established in consultation with the NOAA Fisheries Service and the California Department of Fish and Game. The WDMP would be required to be administered by a governing body capable of ensuring the goals of the program are met.”

The EIR must provide the actual proposed regulatory language, conditions, assumptions as well as the contents of a proposed WDMP to allow for informed review of the Project and comments by the public and stakeholders.

The EIR must carefully consider and describe the existing environmental setting for the Project. The EIR should contain a full description and discussion of existing water rights, diversions (legal and illegal), pumping and storage (legal, permitted as well as illegal or unpermitted) within the Russian River watershed, including its tributaries, which are used for sources of the frost protection water supplies. The segments and seasonality of any overdrafted portions of the Russian River must be identified clearly.

The EIR must also have a full description and discussion of any reasonably foreseeable changes of flows within the Russian River. This includes changes in River and tributary base flows and seasonal flows, and tributary connectivity due to existing and newly approved gravel and sand mining of the Russian River and its tributaries, as well as timber harvest practices and land conversions that impact erosion, soil stability, loss of groundwater and other impacts to River and tributary flows.

The EIR must also include changes in flows due to compliance with AB2121 requirements, NMFS Russian River Biological Opinion requirements, revisions proposed for D.1610 (including a change in hydrologic index from the upper Eel River watershed to the Lake Mendocino watershed) and any proposed changes in municipal and/or agricultural water demands and River or groundwater extraction from Sonoma County Water Agency and any other municipal or agricultural water rights holders.

In addition, the EIR must describe clearly the inflows to the East Branch Russian River derived from diversions from the Eel River through the Potter Valley Project. Inasmuch as water stored in Lake Mendocino is used to provide any elements of a water balance and flow regime for the Russian River and its listed salmonids, the conditions of the Eel River diversions must be included in the environmental setting for this Project's EIR. *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 870-71. The Project is proposing to provide a revised and improved regulatory setting and practices for the Russian River. It is likely that the Eel River flows through the Potter Valley Project will change again in the future as the new FERC relicensing process begins. Hence, the EIR should include a scenario in which ***no*** flows from the Eel River are diverted to the Russian River.

In addition, the EIR must describe and discuss the proposed Sonoma County Vineyard Frost Protection Ordinance(s) and Best Management Practices guidelines, as currently proposed, and likely to be soon adopted by the Sonoma County Board of Supervisors and Agricultural Commissioner, and any parallel efforts being undertaken in Mendocino County.

Environmental Impacts

The EIR must not understate the severity or extent of the impacts associated with the proposed Project.

The EIR should be able to demonstrate through predictive modeling of the subject tributaries and Russian River that the flows remaining in the Russian River and tributaries following approval and adoption of the Project's regulations and WDMP will indeed not be harmful to the protected species of salmonids and other public trust resources.

Any continued dependence upon water stored and released from Lake Mendocino for providing adequate flows in the Russian River requires a complete description in the EIR of the impacts of continued diversions from the Eel River through the PG&E Potter Valley Project which flow into Lake Mendocino. *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 870-71. The EIR must describe the impacts of any potential water storage, releases or permitting regimes for supplementing inadequate Russian River mainstem flows with water derived from the Eel River diversions and released from Lake Mendocino.

Alternatives

The EIR must analyze a reasonable range of feasible alternatives that would lessen the environmental impacts of the proposed Project.

In addition to the regulatory language and Water Demand Management Program ("WDMP") of the proposed Project, the EIR should evaluate other alternative means of reducing or avoiding the risks of fish stranding mortality and other damages to protected species and public trust resources associated with the use of water

diversions for purposes of frost protection. Such alternatives can be used in conjunction with a regulatory and WDMP framework to help reduce water demands in the first place, while still reaching the goal of achieving reasonably effective frost protection for economically viable crops.

Alternative means of achieving of protecting listed salmonids with reasonably effective frost protection should include, at a minimum:

- avoidance of planting grapes and other crops in known frost-prone areas and topography
- use of varieties that are more resistant to frost damage
- use of wind and heating options for vineyards at risk
- use of devices and methods such as Shur Farms Frost Protection Cold Air Drain which utilizes air movement, not water, to protect crops from frost damage (www.shurfarms.com)

Given the simultaneous listing and protections for three salmonid species in the Eel River, and given the likelihood of reductions in flows from the Eel River through the Potter Valley Project, it is important that the EIR evaluate thoroughly an alternative that does not rely on any continued diversions from the Eel River. This would include any prospective changes in water sources for storage and release from Lake Mendocino. This includes raising Coyote Dam, removing sediments within the reservoir, and other means of re-managing the water supply pool and flood storage pool at Lake Mendocino.

We appreciate this opportunity to comment on the Russian River Frost Protection Regulation EIR NOP. We reserve our right to raise other issues and comments during the environmental review process.

Please send a copy of the Draft EIR when available to:

David Keller
Bay Area Director, Friends of the Eel River
1327 I St., Petaluma, CA 94952
dkeller@eelriver.org

Ellison Folk
Shute, Mihaly & Weinberger LLP
396 Hayes Street, San Francisco, CA 94102
Folk@smwlaw.com

Nadananda
Executive Director, Friends of the Eel River
PO Box 2039, Sausalito, CA 94966
Nadananda@eelriver.org

Sincerely,

David Keller
Bay Area Director, Friends of the Eel River

Cc: Ellison Folk; Nadananda