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**Brian J. Johnson**  
Director, California Water Project  
Staff Attorney

November 30, 2010

Bill Cowan  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95812-2000

**Re: Scoping Comments for Russian River Frost Protection Regulation**

Dear Bill:

Trout Unlimited submits the following CEQA scoping comments for the Russian River Frost Protection Regulation. We strongly urge the State Water Board to complete the development of the reasonable use rule for frost protection and to adopt a final rule substantially similar to the draft rule published previously and discussed in Chairman Hoppin's working group. We have three CEQA scoping suggestions.

**I. Baseline and Alternatives**

The purpose of CEQA is to evaluate the potential environmental effects of an agency action and the alternatives to that action (including the "no project" alternative), and to disclose the consequences of that choice to the agency and members of the public. In this case, the task is to evaluate and compare the environmental consequences of adopting the rule versus rejecting the rule, as well as (perhaps) the consequences of adopting a different rule.

The first step toward developing a useful analysis is to properly define the baseline. As a rule, the CEQA baseline is existing conditions. Beyond that basic rule, the agency has a certain amount of flexibility to define the baseline differently in different circumstances in order to develop an environmental report that serves to best inform the agency decision.

Here, the baseline must include past impacts from past practices, including construction of existing diversion works and the impacts of previous diversions. The baseline should not include future harm from the possible future operation of those diversion works (using past practices as an indicator for future action). Those impacts have not yet occurred, and are not part of the existing condition.

Defining the baseline in this way will allow the agency to evaluate potential future impacts and alternatives fairly. A future diversion operated according to the proposed alternative will have one set of impacts (perhaps construction of an off-stream pond and a diversion to storage, or construction and operation of wind machines), whereas a future diversion operated according to the "no project" alternative will have other impacts (perhaps a direct diversion from a flashboard dam). What is certain is that both the "no project" and the regulation alternative will

have environmental impacts. The purpose of CEQA is to disclose and compare those alternatives.

If the baseline is defined incorrectly to include not only existing conditions but also future diversions pursuant to existing infrastructure and based on past practices, then the CEQA analysis will give misleading results. With that baseline, the “no project” alternative will, for CEQA purposes (but not in real life) have zero environmental consequences, and every action alternative will, for CEQA purposes (but not in real life) have a more destructive impact on the environment. Having CEQA impacts that far removed from real world impacts would render the CEQA analysis useless for decision making.

## **II. Relationship to County Ordinance**

At the public scoping meeting, I raised the possibility of tension between the State Board’s CEQA analysis, where the agency has apparently decided that an EIR is warranted, and Sonoma County’s draft CEQA analysis for its frost ordinance, which states that the project could have no possible impact on the environment. Since that time, the County has apparently shifted its approach and is planning an ordinance limited to developing an inventory of frost protection diversions and a monitoring program. If the County goes with that approach, my concern may be overtaken by events. If the County goes back to its original approach, I would suggest that the State Water Board and County work to resolve any potential inconsistencies.

## **III. Project Description**

Other commenters at the public meeting, including Paula Whealan, mentioned that both scoping and development of the EIR would be aided by a more complete project description. We agree, and believe that the State Water Board is in a position to provide a more complete project description. The State Board has released draft rule to the public, and Chairman Hoppin’s work group made a few recommendations that seemed to have broad if not universal support from the work group and Board staff. It ought to be possible to release a revised draft rule in the near future, and we would urge the Board to do so.

Thank you for your consideration of my comments.

Sincerely,



Brian J. Johnson