

# Wagner & Bonsignore

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November 30, 2010

Mr. Bill Cowan  
State Water Resources Control Board  
Division of Water Rights  
P.O. Box 2000  
Sacramento, CA 95812-2000

Re: Proposed Russian River Frost Regulation EIR

Dear Mr. Cowan:

Wagner & Bonsignore is the authorized agent for several agricultural entities in Sonoma and Mendocino Counties that divert water from the Russian River watershed for frost protection purposes. The State Water Resources Control Board's (SWRCB) October 27, 2010 Notice of Preparation (NOP) states that it is preparing an Environmental Impact Report (EIR) for the proposed Russian River Frost Protection Regulation. We are providing the following comments for the scoping of the proposed EIR:

## Background

The proposed frost protection regulation is a direct result of fish stranding incidents that occurred during the 2008 frost protection season. However, to our knowledge the National Marine Fisheries Service (NMFS) has not conducted a scientific investigation to support the contention that the 2008 strandings were due solely to the diversion of water for frost protection, or that frost protection operations were a significant contributing factor in the strandings. If NMFS has conducted a scientific investigation to support these assertions, it has not produced a report for public review. During the April 2009 SWRCB workshop, data was presented showing how other factors such as Russian River channel entrenchment and associated drop in groundwater levels could have contributed to the dewatering of tributaries. Prior to embarking on the preparation of this EIR, we strongly urge the SWRCB to obtain from NMFS, and disclose to the public, a scientifically-based report on the cause of the 2008 strandings. The SWRCB should not consider adoption of a frost protection regulation until it can be determined whether diversions for frost protection were the cause of the fish mortality occurrences. A regulation that targets only those diverting water for frost protection is unsupported.

### Project Description

The NOP does not provide an adequate project description. The project description is presented as a project 'objective'. The actual language of the proposed regulation should be included in the project description if the SWRCB intends to evaluate its impacts in the EIR. While a project objective shall be part of the part of the project description (CEQA Guidelines Section 15124(b)), Guidelines Section 15124(c) requires that the project description shall contain a "general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposal and supporting public service facilities." The project description in the NOP falls short of this requirement. It will be problematic for the public and the regulated community to provide comments on alternatives, effects, and mitigation measures when the project has not been adequately defined.

Further, the project purpose and project description are too narrowly defined. CEQA Guidelines Section 15124 states "An EIR should include a clearly written statement of objectives to help the lead agency develop a reasonable range of alternatives to evaluate in the EIR." The NOP's project purpose is so narrow that it constrains the analysis of alternatives by identifying only one acceptable alternative, the proposed regulation. In order to solicit pertinent comments, a clearly written statement of the project purpose and objectives is essential. In reviewing the project background provided in the NOP, it seems that the project purpose should be to develop a *program* that minimizes the instantaneous effect of diversions on salmonids during a frost event.

The NOP states that the proposed regulation will apply to diversions from "hydraulically connected groundwater" and "interconnected groundwater", however, these terms are not defined in the NOP and to our knowledge have not been defined by the SWRCB in any of its previous proceedings. The project location is also not well defined. The NOP makes reference to a 'region' as being "outside the area of hydraulically connected groundwater". The EIR should identify the geographical location of this 'area' and provide a scientific basis for how it was determined.

The proposed regulation only applies to diversions for frost protection purposes. The proposed regulation should include, and the EIR should evaluate, water right priorities and *all* diversions from the watershed during the proposed study period of March 15 through May 15. The NOP states that diversions must be in accordance with an approved water demand management program (WDMP) that ensures that the diversion does not result in "a reduction in stream stage that is harmful to salmonids". The EIR should provide a definition of this objective in order to evaluate how this requirement would be achieved. How does an entity prove it is having a 'negligible impact'? Clear-cut definitions of what constitutes an acceptable WDMP should be identified in the EIR.

### Potential Alternatives

If the basic objective is to reduce the effects of water diversions on salmonids during a frost event, then an alternative to the proposed regulation should be the "Russian River Frost

Program” presented to the SWRCB by Mendocino County and Sonoma County interests in December 2009. This Program is a non-regulatory diversion management plan that has already fostered reductions in diversion rates during frost periods. The Russian River Frost Program advocates expedited processing of changes to existing water rights and for new appropriations that will result in a reduction in instantaneous demands within the watershed. These types of projects have had (and will have) an immediate positive effect on the instantaneous demand during the frost protection season. The Russian River Frost Program is already organized and operating, and should constitute a qualified Water Demand Management Plan. The EIR should evaluate the effectiveness of the Russian River Frost Program as an alternative. If it is found to be the most effective and/or protective alternative, then there would be no need for the proposed frost protection regulation. SWRCB can best utilize its reasonable use authority by evaluating individual diversions rather than adopting a blanket regulation.

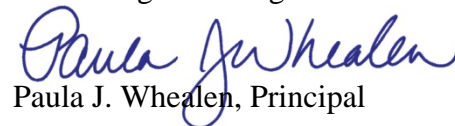
#### Probable Environmental Effects

The NOP understates the far-reaching direct impacts that would occur if the regulation is adopted. Since there is no clear definition of what the SWRCB would consider as an acceptable WDMP, the proposed regulation would essentially be a ban on diversions for frost protection. The NOP states that adoption of the proposed regulation could have indirect impacts. We believe the impacts from implementation of the regulation would be immediate and direct. The economic study prepared by Professor Robert Eyler of Sonoma State University and recently submitted to the SWRCB clearly identifies the impacts to local tax revenue, land values, and jobs in Mendocino and Sonoma Counties. These effects should be fully analyzed by the SWRCB in the EIR.

We appreciate the opportunity to provide these comments for the EIR on the proposed Russian River Frost Protection Regulation. We ask that these comments, and those submitted by the Russian River Frost Program and those representing other agricultural entities, be seriously considered in order to draft a more balanced regulation, if one is even necessary. As currently drafted, the proposed regulation would have devastating impacts to the agricultural resources of Mendocino and Sonoma Counties.

Very truly yours,

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Paula J. Whealen, Principal