



NAPA COUNTY FARM BUREAU

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July 5, 2011

Jeanine Townsend, Clerk of the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100



RE: Comments on the proposed Russian River Frost Regulation

Dear Board Members,

On behalf of over 950 members of Napa County Farm Bureau, we respectfully submit the attached comments on the proposed Russian River Frost Regulation. The proposed regulation would: regulate all water used for frost protection in the Russian River Watershed including pre-1914, riparian, licensed, permitted and groundwater; would declare all diversions for frost protection unreasonable unless and until the water is diverted pursuant to a Board approved water demand management program.

While we support efforts to insure adequate stream flow for fisheries, we believe that the proposed rule is not based on sound science; includes water users that have no detrimental effect on salmonids; provides little consideration for the priority of individual water rights; ignores other water users in the watershed such as domestic or municipal; will require detailed data collection; and will result in significant costs on agricultural operations within the watershed. Even more concerning is the fact that the proposed regulation is based upon an unprecedented and justified assertion of the Board's authority under the reasonable use doctrine, ostensibly for purposes of regulatory convenience and in order to avoid the takings clause.

The need for this regulation is based on a letter to the Board dated February 19, 2009 from NOAA Fisheries which referenced two episodes of fish stranding that occurred in the April 2008 and requested the Board to implement emergency regulations related to the use of Russian River water for frost protection. However, after almost three years, there has been little evidence brought forward to support this need. The transparency amongst the agencies to develop collaborative solutions was disheartening and the only information that was able to be obtained to truly understand the overall scope of the issue was found through multiple FOIA requests. This regulation lacks both factual analysis and evidence to support the conclusion that every frost diversion in the Russian River watershed is harming salmonids.

We incorporate by reference the comments submitted by the California Farm Bureau Federation on the proposed regulation.

As members of the agricultural community, we encourage the Board to reject the proposed regulation and instead support the collaborative, cost effective and productive solution to allow for Russian River water to be used both for farming and the fishery without additional layers of needless regulation.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Lincoln".

Jim Lincoln
President