

LATE COMMENT

STATE WATER RESOURCES CONTROL BOARD PROPOSED REGULATION

DRAFT Text of Proposed Regulation

Amendment to Division 3 of Title 23 of the California Code of Reg



Add the following section:

§ 862 Russian River, Special.

Budding grape vines and certain other crops in the Russian River watershed may be severely damaged by spring frosts. Frost protection of crops is a beneficial use of water under section 671 of this chapter. During a frost, however, the high instantaneous demand for water for frost protection by numerous vineyardists and other water users may ~~cause~~ contribute to a rapid decrease in stream stage that results in the mortality of salmonids due to stranding. Stranding mortality can be avoided by coordinating or otherwise managing diversions to reduce instantaneous demand. A diversion of water for frost protection that causes stranding mortality is an unreasonable use of water and a violation of Water Code section 100, if the diversion could have been managed to prevent stranding mortality. The board has authority under section 100 to require diverters using water for frost protection to participate in a program to assess the effects of diversions of water for frost and to require diverters that significantly affect or contribute to a significant cumulative effect on stream stage in salmonid bearing streams during a frost event between March 15 and May 15 to take corrective actions.

(a) After March 14, 2012, any diversion of water from the Russian River stream system, ~~including the pumping of hydraulically connected groundwater,~~ for purposes of frost protection from March 15 through May 15 shall be in accordance with ~~be unreasonable and a violation of Water Code section 100, unless the water is diverted in accordance with~~ a board approved water demand management program (WDMP), ~~or the water is diverted upstream of Warm Springs Dam in Sonoma County or Coyote Dam in Mendocino County unless exempted from participation in accordance with paragraph (7) of subdivision (d).~~

(b) The purpose of the WDMP is to assess the extent to which diversions for frost protection affect stream stage and manage diversions to prevent ~~shall ensure that~~ cumulative

1 diversions for frost protection ~~do not result in from causing~~ a reduction in stream stage that
2 causes stranding mortality. The WDMP, and any revisions thereto, shall be administered by an
3 individual or governing body (governing body) capable of ensuring that the requirements of the
4 program are met.

5 (1) Any WDMP developed pursuant to this section shall be submitted to the board by
6 February 1 prior to the frost season. A WDMP shall be deemed approved for the current
7 frost season if the board does not take formal action on the WDMP by March 14 of the
8 current frost season.

9
10 (2) For the 2012 frost season, compliance with the Sonoma County Frost Protection
11 Ordinance or participation in the Upper Russian River Stewardship Alliance in
12 Mendocino County shall be deemed in compliance with this section if a WDMP does not
13 exist in which a diverter may participate.

14
15 (c) At a minimum, and subject to the implementation schedules below, the WDMP shall
16 include (1) an inventory of the frost diversion systems within the area subject to the WDMP, (2)
17 a stream stage monitoring program, (3) development of water diversion and stream stage
18 criteria, ~~(4)~~ an assessment of the potential risk of stranding mortality due to frost diversions,
19 ~~(5)~~ the identification and timelines for implementation of any corrective actions necessary to
20 prevent stranding mortality caused by frost diversions, and ~~(6)~~ annual reporting of program
21 data, activities, and results. In addition, the WDMP shall identify the diverters participating in the
22 program and any known diverters within the area subject to the WDMP who declined to
23 participate. ~~The WDMP also shall include a schedule for conducting the frost inventory,~~
24 ~~developing and implementing the stream stage monitoring program, and conducting the risk~~
25 ~~assessment.~~

26
27 (1) Inventory of frost diversion systems: For the first season of operation of a WDMP,
28 ~~T~~he governing body shall establish an inventory of all frost diversions included in the
29 WDMP. The inventory, except for diversion data, shall be completed within three months
30 after board approval of a WDMP. The inventory shall be updated annually with any
31 changes to the inventory and with frost diversion data. The inventory shall include for
32 each frost diversion:

33 (A) Name of the diverter;

34 (B) Source of water used and location of diversion;

- 1 (C) A description of the diversion system and its capacity;
2 (D) Acreage ~~erved~~ frost protected and acres frost protected by means other than
3 water diverted from the Russian River stream system; and
4 (E) The rate of diversion, hours of operation, and volume of water diverted during
5 each frost event for the year.

6
7 (2) Stream stage monitoring program: Commencing in the first frost season of operation,
8 The governing body and an independent science review panel shall develop a stream
9 stage monitoring program in consultation with the Board, National Marine Fisheries
10 Service (NMFS) and California Department of Fish and Game (DFG). For the purposes
11 of this section, consultation involves an open exchange of information for the purposes
12 of obtaining recommendations. The stream stage monitoring program shall include the
13 following:

- 14
15 (A) A determination of the number, type, and location of stream gages necessary
16 for the WDMP to ~~ensure that~~ assess the extent to which frost diversions ~~de~~
17 ~~not~~ may affect stream stage and cause stranding mortality;
18 (B) A ~~determination of the stream stage that should be maintained at each gage~~
19 study plan for determining where stream stage criteria must be developed to
20 prevent stranding mortality to be;
21 (C) Provisions for the installation, ongoing calibration, and maintenance of
22 stream gages;
23 (D) Data quality assurance/quality control protocols; and
24 (E) Monitoring and recording of stream stage at intervals not to exceed 15
25 minutes; and
26 (F) Schedule for phased installation and calibration of stream gages over a
27 period of time not to exceed three frost seasons.

28
29 (3) Water diversion and stream stage criteria. Commencing in the second frost season
30 of operation and to be completed before the fourth season of operation, the governing
31 body and an independent science review panel shall develop water diversion and stream
32 stage criteria to minimize the risk of stranding mortality caused by frost protection
33 including, but not limited to, criteria regarding maximum allowable rate of stage change

1 for given stream types and salmonid life stages, in consultation with the Board, NMFS
2 and DFG.

3
4 (43) Risk assessment: Commencing in the third frost season of operation, bBased on
5 the inventory and water diversion and stream stage information described above, and
6 information regarding the presence of habitat for salmonids, the governing body shall
7 conduct a risk assessment that evaluates the potential for frost diversions to cause
8 stranding mortality. The risk assessment shall be conducted in consultation with the
9 Board, NMFS and DFG. The risk assessment shall be evaluated and updated annually.

10
11 (54) Corrective Actions: Commencing in the first frost season of operation, iif the
12 governing body determines that diversions for purposes of frost protection have the
13 potential to cause stranding mortality, the governing body shall notify the diverter(s) of
14 the potential risk. Commencing in the second frost season of operation, tThe governing
15 body, in consultation with the diverters, shall develop a corrective action plan that will
16 prevent-minimize the risk of stranding mortality. Corrective actions may include
17 alternative methods for frost protection, best management practices, better coordination
18 of diversions, construction of offstream storage facilities, real-time stream gage and
19 diversion monitoring, or other alternative methods of diversion. Corrective actions also
20 may include revisions to the number, location and type of stream stage monitoring
21 gages, or to the stream stages considered necessary to prevent stranding mortality. In
22 developing the corrective action plan, the governing body shall consider the relative
23 water right priorities of the diverters and any time delay between groundwater diversions
24 and a reduction in stream stage. The corrective action plan shall include a schedule of
25 implementation. To the extent feasible, the corrective action plan shall include interim
26 corrective actions if long-term corrective actions are anticipated to take over three years
27 to fully implement. The diverters shall implement corrective actions in accordance with
28 the corrective action plan, ~~or cease diverting water for frost protection.~~

29
30 (65) Annual Reporting: Commencing in the first frost season of operation, tThe
31 governing body shall submit a publically available annual report of program operations,
32 risk assessment, and corrective actions by September 1 following the frost season that
33 is the subject of the report. The report shall include:
34

- 1 (A) The frost inventory, including diversion data.
- 2 (B) Stream stage monitoring data.
- 3 (C) The risk assessment and its results, identification of the need for any
- 4 additional data or analysis, and a schedule for obtaining the data or completing
- 5 the analysis.
- 6 (D) A description of any corrective action plan that has been developed, any
- 7 corrective actions implemented to date, and a schedule for implementing any
- 8 additional corrective actions.
- 9 (E) Any instances of noncompliance with the WDMP or with a corrective action
- 10 plan, including the failure to implement identified corrective actions.

11

12 The report shall document consultations with the independent science review panel,

13 DFG and NMFS regarding the stream stage monitoring program and risk assessment

14 and shall explain any deviations from recommendations made by the independent

15 science review panel. DFG or NMFS during the consultation process. In addition, the

16 annual report shall evaluate the effectiveness of the WDMP, and recommend any

17 necessary changes to the WDMP. Any recommendations for revisions to the WDMP

18 shall include a program implementation plan and schedule. The board may require

19 changes to the WDMP, including but not limited to the risk assessment, corrective action

20 plan, and schedule of implementation, at any time.

21

22 (7) Commencing in the second frost season of operation, the governing body shall

23 develop criteria defining groundwater and surface water users that do not significantly

24 affect or contribute to a significant, cumulative, instantaneous effect on stream stage in

25 salmonid bearing streams during a frost protection event between March 15 and May 15,

26 and determine whether those water users should be exempt from the WDMP and this

27 section or exempt from certain WDMP requirements including but not limited to

28 corrective actions and/or diversion reporting. Any exemption criteria shall be submitted

29 to the board by February 1 prior to the frost season. Proposed exemptions shall be

30 deemed approved for the current frost season if the board does not take formal action on

31 the proposed exemptions by March 14 of the current frost season. Provided, however,

32 the governing body may determine based upon information collected pursuant to this

33 subdivision that water users exempted from the WDMP must later participate in the

34 WDMP.

1
2 (8) For purposes of this section, the independent science review panel shall consist of a
3 core team of at least five independent scientists with the collective expertise in the
4 following fields: fluvial geomorphology/geology; hydrology (specializing in surface-
5 groundwater interactions); aquatic/fish ecology; riparian ecology; meteorology/frost
6 protection; viticulture; resource economics; and sustainable business practices. The
7 independent scientists shall comply with the National Academy of Sciences policy on
8 conflicts of interest.
9

10 (d) For purposes of this section, ~~groundwater all diverters pumpinged groundwater~~ within
11 the Russian River watershed for the purposes of frost protection shall be required to participate
12 in the WDMP for the 2012 and 2013 frost seasons, unless determined to not significantly affect
13 or contribute to a significant, cumulative, instantaneous effect on stream stage and are
14 exempted from the WDMP in accordance with subdivision (c)(7) above. Diverters pumping
15 groundwater shall be required to participate in a WDMP after the 2013 season only if the
16 governing body determines that the specific diverter's pumping of groundwater may significantly
17 affect or contribute to a significant, cumulative, instantaneous effect on stream stage in
18 salmonid bearing streams between March 15 and May 15. ~~is considered hydraulically~~
19 ~~connected to the Russian River stream system unless the diverter can demonstrate to the~~
20 ~~satisfaction of the board that the groundwater being diverted is not hydraulically connected to~~
21 ~~any surface stream within the Russian River watershed.~~
22

23 (e) Compliance with this section shall constitute a condition of all water right permits and
24 licenses that authorize the diversion of water from the Russian River stream system for
25 purposes of frost protection. The diversion of water in violation of this regulation, including the
26 failure to implement the corrective actions included in any corrective action plan developed by
27 the governing body, is subject to enforcement by the board. The board has continuing authority
28 to revise terms and conditions of all permits that authorize the diversion of water for purposes of
29 frost protection should future conditions warrant.
30

31
32 NOTE: Authority cited: Section 1058, Water Code.

33 Reference: Section 2, Article X, California Constitution; and Sections 100, 275 and 1051.5,
34 Water Code.