

# Russian River Frost Protection Regulation



# Past Activities

- 9/12/2011 State Water Board adopted the regulation and certified the EIR.
- 12/29/2011 OAL approved the regulation and filed it with the Secretary of State.
- Section 862 added to California Code of Regulations, title 23, division 3, chapter 2, article 22.
- **Effective December 29, 2011**

# Court Litigation

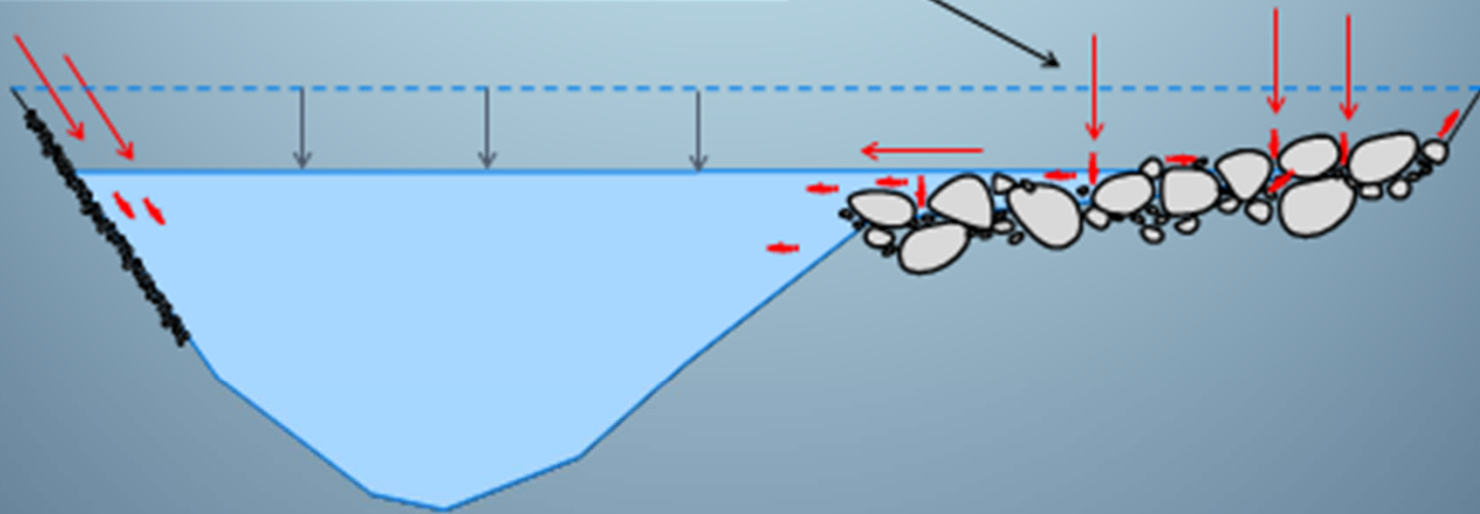
- In January 2012, lawsuits were filed against the regulation and Mendocino County Superior Court issued an order that stayed enforcement of the regulation.
- On September 26, 2012, the court issued an order invalidating the regulation and then on March 6, 2013 issued an amended decision. In May 2013 the State Water Board appealed the decision.
- On June 16, 2014, the First District Court of Appeal reversed the trial court decision. Plaintiffs appealed.
- On October 1, 2014, the California Supreme Court denied the plaintiffs' petition making the Court of Appeal decision final.

# Purpose

- Frost protection of crops is a beneficial use of water.
- Stranding mortality of salmonids can be avoided by coordinating or otherwise managing water diversions for frost protection to reduce instantaneous demand.

# What is a stranding

If water surface stage drops rapidly, salmonid fry may be trapped in the shallow dewatered zone of stream channels



# Stream stage drops and wetted area recedes from bank



# Stranding Mortality



# Basic Requirement

- After March 14, 2015, except for diversion upstream of Warm Springs Dam in Sonoma County or Coyote Dam in Mendocino County, 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 diverted in accordance with a board approved water demand management program (WDMP).



# Do I have to be part of a WDMP?

- Yes, if you answer “yes” to all of the following:
  - 1.) Do I divert surface or groundwater from the Russian River stream system anytime between March 15 through May 15?
  - 2.) Is my diversion downstream of Warm Springs Dam or Coyote Dam?
  - 3.) Do I divert water for the purpose of frost protection?

# WDMP

- To assess the extent to which diversions for frost protection can affect stream stage
- To manage cumulative diversions to prevent salmonid stranding mortality
- Can be administered by an individual or governing body

# WDMP Components

- Inventory of frost diversion systems in the area of the WDMP
- Stream stage monitoring program
- Risk assessment of stranding mortality due to frost diversions
- Identification and timelines for corrective action implementation
- Annual reporting of program data, activities, and results

# Additional WDMP Reporting

- Known diverters within the area subject to the WDMP who declined to participate
- Schedule for conducting the frost inventory, developing and implementing the stream stage monitoring program, and conducting the risk assessment

# Phased WDMP Implementation

\* Consistent with SWRCB Resolution 2011-0047

## I. February 1, 2015 – Initial WDMP

- ❖ Identity of the WDMP governing body
- ❖ Names of participating diverters
- ❖ Source of water and acreage frost protected
- ❖ Schedule for completing the frost inventory, developing and implementing the stream stage monitoring program, and conducting the risk assessment

# Phased WDMP Implementation

## II. Three Month update

Remaining inventory information except for the diversion data.

- ❖ Location of the diversions
- ❖ Description of the diversion system and its capacity
- ❖ Acreage frost protected by means other than water diverted from the Russian River Stream System

# Phased WDMP Implementation

## III. September 1, 2015 – First Annual Report

- ❖ Updates to the inventory
- ❖ For each diverter - rate of diversion, hours of operation, and volume of water diverted during each frost event for the year
- ❖ High priority stream stage monitoring data
- ❖ Progress towards determining protective stream stages

# Phased WDMP Implementation

## IV. September 1, 2016 – 2<sup>nd</sup> Annual Report

- ❖ Inventory Updates
- ❖ Stream stage monitoring data
- ❖ Diversion data for year
- ❖ Installation of medium priority stream gages
- ❖ Some stream stage criteria and risk assessment completed



# Phased WDMP Implementation

## V. September 1, 2017 – Third Annual Report

- ❖ Inventory Updates
- ❖ Diversion Data for year
- ❖ Stream stage monitoring data
- ❖ Complete initial stream gage installations and determination of necessary stream stages
- ❖ Updated risk assessment
- ❖ Corrective action plan and implementation schedule if corrective action is needed

# Groundwater Exemption

- Governing body may develop and submit criteria for identifying groundwater (GW) diversions that are not hydraulically connected to the Russian River stream system
- Individual GW diverters may submit information acceptable to the Division that demonstrates a diversion is not hydraulically connected to the Russian River stream system.
- Individuals should participate in WDPM since stream monitoring data is likely necessary to demonstrate lack of response.

# Compliance and Enforcement

- All water diverters must comply with the regulation.
- Diversion of water in violation of the regulation is a violation of Water Code section 100
- The State Water Board can issue an Order for noncompliance. Violation of the Order can result in fines.

# WDMP Compliance Responsibility

- The WDMP shall identify known diverters within the area subject to the WDMP who declined to participate, and any instances of non-compliance including the failure to implement corrective actions.
- The WDMP is not responsible for enforcement.

# Information

Web

[http://www.waterboards.ca.gov/  
Waterrights/water\\_issues/programs/policy.shtml](http://www.waterboards.ca.gov/Waterrights/water_issues/programs/policy.shtml)