

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING/WORKSHOP – DIVISION OF WATER RIGHTS
JANUARY 19, 2010**

ITEM 7

SUBJECT:

WORKSHOP TO RECEIVE A RECOMMENDATION FROM STAFF CONCERNING BOARD ACTION TO ADDRESS THE EFFECTS OF WATER DIVERSION PRACTICES FOR FROST PROTECTION OF CROPS ON SALMONIDS IN THE RUSSIAN RIVER WATERSHED IN MENDOCINO AND SONOMA COUNTIES

DISCUSSION:

In a letter dated February 19, 2009, the National Oceanic and Atmospheric Administration's National Marine Fisheries Service requested that the State Water Board take immediate action, such as implementing emergency regulations, to address concerns that water diversions for frost protection in the Russian River watershed will cause significant salmonid mortality.

On April 7, 2009, the State Water Board held a public workshop to receive information regarding the need for and the effect of water diversions for purposes of frost protection of crops. At the April 7 workshop, the Board Chairman directed the stakeholders to work together cooperatively to implement actions to prevent future impacts to fish from frost protection diversions and also directed Board staff to assist the stakeholders and to report to the Board on their progress in the fall of 2009.

On November 18, 2009, the Board held a follow-up workshop, at which the Board received information regarding: (1) the current status of Russian River salmonids since the April 7 workshop, (2) cooperative voluntary actions taken by stakeholders since the April 7 workshop to prevent future impacts to salmonids from frost protection diversions, and (3) the need for short- or long-term regulatory action by the State Water Board.

Following the November 18 workshop, the Board Chairman asked staff to make a recommendation to the Board in January 2010. Staff recommends that the Board pursue regulations through the formal rulemaking process. The draft text of the proposed regulations is attached. Any proposed regulatory action will be publicly noticed, and the State Water Board will hold a public hearing on the proposed action and provide opportunity for comment.

POLICY ISSUES:

N/A

FISCAL IMPACT:

N/A

REGIONAL BOARD IMPACT:

N/A

STAFF RECOMMENDATION:

N/A

**STATE WATER RESOURCES CONTROL BOARD
PROPOSED REGULATIONS**

Draft Text of Proposed Regulations

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

Add the following section:

§ 740 Russian River, Special.

(a) After [date], any diversion of water from the Russian River stream system, including the pumping of closely connected groundwater, for purposes of frost protection between March 15 and June 1 that the board has determined to be significant shall be considered unreasonable and a violation of Water Code section 100, unless the water is diverted pursuant to a board approved water demand management program. Any such water demand management program shall ensure that the instantaneous cumulative diversion rate does not result in a reduction in stream flow that is harmful to anadromous fish. The program shall be administered by an individual or governing body capable of resolving disputes and ensuring that the goals of the program are met. In addition, the program shall include, for the March 15 through June 1 period, monitoring and reporting to the individual or governing body responsible for administering the program, and to the board of (1) instantaneous water diversion rates for each water diversion that the board has determined to be significant and (2) flows in the Russian River mainstem and any tributaries that support anadromous fish. The program shall provide for the transmission of monitoring data, in an appropriate format, not less than hourly, to an internet site accessible to the board.

(b) For purposes of this section, any diversion from the Russian River stream system, including the pumping of closely connected groundwater, shall be considered significant, unless

the diverter can establish to the satisfaction of the board that the diversion will have a negligible effect on flows in any portion of the Russian River stream system that provides habitat for anadromous fish.

(c) For purposes of this section, groundwater shall be considered closely connected groundwater if it is pumped from areas described as subterranean flow or mapped active stream channels and associated alluvial deposits on maps prepared by Stetson Engineers, Inc. dated February 22, March 8, or March 9, 2008, unless the person pumping the groundwater can demonstrate to the satisfaction of the board that the groundwater is not hydraulically connected to any surface stream within the Russian River stream system.

(d) Any water demand management program developed pursuant to this section shall be submitted to the board for review and approval at least thirty days before the date when approval is requested. The board may require changes to the water demand management program at any time.

(e) Compliance with this section shall constitute a condition of all water right permits and licenses that authorize the diversion of water from the Russian River stream system. The board will retain jurisdiction to revise terms and conditions of all frost protection permits should future conditions warrant.

NOTE: Authority cited: Section 1058, Water Code.

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