

## Memorandum

Date: November 30, 2010

To: Ms. Barbara Evoy, Chief  
State Water Resources Control Board  
Division of Water Rights  
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Attention: Mr. Bill Cowan– [bcowan@waterboards.ca.gov](mailto:bcowan@waterboards.ca.gov)

From:  for  
Scott Wilson, Acting Regional Manager  
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Subject: Russian River Frost Protection Regulation, Notice of Preparation, SCH #2010102053,  
Mendocino and Sonoma Counties

The Department of Fish and Game (DFG) appreciates the opportunity to comment on the Notice of Preparation (NOP) of the Russian River Frost Protection Regulation and is providing comments based on its status as a Trustee Agency for California's fish and wildlife resources and as a Responsible Agency under Fish and Game Code Section 1600 et. seq. and the California Endangered Species Act (CESA).

DFG is supportive of the State Water Resources Control Board's efforts to develop a Water Demand Management Plan (WDMP) to control diversions from the Russian River stream system for purposes of frost protection from March 15 through May 15. The Environmental Impact Report (EIR) should include a full description of the WDMP as its measures will determine how implementation of the Regulation will affect instream resources. Without a full description of the proposed WDMP, DFG cannot provide complete comments on environmental issues, reasonable alternatives or mitigation measures that should be evaluated in the EIR. As such, DFG is providing comments to assist in the development of the WDMP and intends to provide additional comments after circulation of the WDMP.

There are several key components that should be made a requirement of the WDMP in order to ensure that it meets the goals outlined in the NOP and will provide adequate assurances that take of listed salmonids will not occur due to frost protection. The WDMP should include: 1) establishment of specific goals and objectives, 2) assurances that the plan will meet other statute and regulations, 3) avoidance of take and adverse effects to listed species by establishing, complying and monitoring minimum bypass flows; 4) avoidance of adverse effects by use of alternative BMPs in-lieu of surface flow, and 5) a method to make program data readily available to agencies and the public.

The principal intent of the Frost Protection WDMP is to develop a strategy to comply with the federal Endangered Species Act (ESA) and the California Endangered Species Act (CESA) by ensuring that operation of frost protection diversions do not result in take of

listed fish species: chinook salmon (*O. tshawytscha*), coho salmon (*O. kisutch*) and steelhead (*O. mykiss*). The WDMP should assure that its measures meet all applicable statute and regulations applicable to frost protection diversion and establish program goals based on regulatory compliance. The requirements and compliance with CESA, Fish and Game Code Section 1600, and California Water Code should be addressed. At a minimum, all participants should be required to submit to DFG a Notification package for a Lake and Streambed Alteration Agreement (LSAA) pursuant to Fish and Game Code Section 1602 for any diversion of water within any streams. The WDMP should clearly state that water should not be diverted until an LSAA is executed by the participant and DFG.

The EIR should identify all potential impacts to listed fish and other aquatic species which may occur due to frost protection diversions (e.g. stranding of listed fish, dewatering or impairment of stream flow, etc.) and elements of the WDMP should be designed to address those impacts. The EIR should also evaluate the effects of frost protection on sensitive amphibians such as the California red-legged frog (*rana draytonii*), the foothill yellow-legged frog (*rana boylei*) and other aquatic species, in addition to listed salmonids. While adverse conditions for fish and aquatic species may occur in part due to activities, circumstances, or events unrelated to frost protection, the EIR should evaluate whether frost protection activities contribute to conditions that adversely affect listed fish and other aquatic life.

A draft WDMP should be included and circulated in the EIR to evaluate whether its measures meet the goals as outlined in the NOP. The WDMP should include at a minimum the following components:

1. The WDMP should include a robust element for establishing minimum instream flows suitable for salmonids to ensure that operation of frost protection diversions do not reduce flow below the necessary minimum suitable flows for listed salmonids and other aquatic species. The WDMP should recognize that in critical stream reaches any reduction of flow below that needed to maintain fish in good condition would be considered a significant impact. Minimum instream flows should be developed for all streams with listed species that result in a measurable reduction in flow during frost protection events.
2. The WDMP should include specific measures that would require that all instream diversions bypass sufficient flow to maintain instream resources in good condition. Such measures should include diversion management that ensures that suitable bypass flows are maintained and in compliance
3. The WDMP should detail how resources should be allocated to streams and focus on streams where frost protection is occurring. Gauging and maintenance of minimum bypass flows should be conducted on all streams where frost protection diversion occurs and listed species may be present. Gauging data should be made available to the agencies and public on a real-time basis when possible. Participants should be responsible for being aware of and reporting bypass flows or criteria at diversions.
4. The WDMP should include promotion of cultural Best Management Practices (BMPs) to reduce the need for direct diversion for frost protection. BMPs should focus on measures that substantially reduce water usage. The use of offstream storage or well

construction should include measures to ensure that filling of storage ponds or operation of wells does not adversely affect aquatic species or habitats. The WDMP should identify measurable performance goals for BMPs, describe how information on BMPs will be disseminated, identify success criteria in performance goals for water savings stemming from BMP implementation, and describe how program success will be evaluated and reported.

5. The WDMP should require that each participant prepare a plan for implementing BMPs on their property and that these plans be made available to the agencies upon request. The WDMP should describe measures if a participant does not participate in the WDMP or prepare a plan and the mechanism for which participants would be brought into compliance.
6. The WDMP should describe who is responsible for data collection and immediately reporting events that lead to take of listed species or adverse conditions for listed species or aquatic habitat. It should also detail who is responsible for implementing corrective action when frost protection diversion causes or contributes to take of listed species or adverse conditions for listed species or aquatic habitat.
7. Program data and reports should be furnished to agencies periodically and in response to a request. The purpose should be to inform diversion management and verify that diversions are operated in conformance with program goals. Participants should be responsible for being aware of and reporting bypass flows or criteria at diversions.
8. The WDMP should include a robust effectiveness monitoring program to determine whether measures are meeting prescribed goals and objectives. The program should include sufficient success criteria, monitoring, and reporting and potential remediation measures to address any insufficiencies.

DFG appreciates the opportunity to comment on the EIR for the State Water Resource Control Board's Russian River Frost Protection Regulation. We remain available to discuss the development of a WDMP that would meet the goals as outlined in the NOP. DFG recommends that the draft WDMP be included in the circulated EIR to allow sufficient public and agency review. If you have questions, please contact Ms. Corinne Gray, Staff Environmental Scientist, at (707) 944-5526; or Mr. Greg Martinelli, Water Conservation Supervisor, at (707) 944-5570; or by writing to DFG at the memorandum address listed above.

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