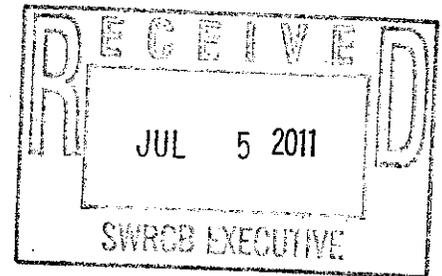


SAVE MARK WEST CREEK

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July 2, 2011

Mr. Charles Hoppin, Chair
State Water Resources Control Board
1001 I Street, 24th Floor
P.O. Box 100
Sacramento CA 95812-2000



RE: RUSSIAN RIVER FROST PROTECTION DRAFT EIR

The undersigned are co-chairs of the unincorporated non-profit group SAVE MARK WEST CREEK (SMWC); the creek is a federally protected year round major tributary to the Russian River located in the Mayacama mountain range of eastern Sonoma County. As the recognized advocacy group for Mark West Creek (MWC) and its rapidly dwindling water, salmonids and wildlife populations, we write you to (1) express our appreciation and conditional support of the State Water Resources Control Board's (SWRCB) long overdue proposed Russian River Frost Protection Regulation ("the plan") designed to avoid the annual slaughter of Russian River salmonids by vintners seeking to 'protect' their crop of wine grapes (nee: profits) and (2) to implore the SWRCB not to put (or allow) enforcement of the plan in the hands of any Sonoma County public agency or board, or a local entity or individual, since none has the will, independence, or power to withstand the inevitable and repeatedly successful efforts of the wine industry to neuter, co-opt, control and corrupt any environmentally prophylactic act and/or program.

Our conditional support of the plan as it currently exists, is subject to the comments and reservations of the July 5, 2011, comment letter re the Draft EIR report concerning the subject Frost Protection Regulation and Proposed Regulation authored by the Sonoma County Water Coalition (SCWC), of which SMWC is a supporter. Seeing no productivity in simply restating the SCWC scientific and legal points and arguments, SMWC does hereby incorporate same by this reference as if fully set forth in its entirety and endorse the comments and conclusions of SCWC.

I. SAVE MARK WEST CREEK' AREA'S NEGATIVE EXPERIENCES

We became active in the fight to save Mark West Creek, which runs through both our upper watershed properties, in 2006 when the high-end vineyards and winery upstream (Pride, Cornell) sucked the North Fork of the MWC dry with powerful pumps that depleted the groundwater table. We filed protests and complaints with both the state and local agencies with regulator oversight duties, to deaf ears. When the 10,000 cubic yard landslide on a clear cut (no timber harvest permit) hillside on Cornell's land completely closed the North Fork (not reported by Cornell) of MWC, we again filed complaints which received only administrative lip-service.

SMWC co-chairs brought complaints simply as citizens asking government to stop permitting commercial damage to our local environment: co-chair Doerksen is a licensed Civil Engineer with an extensive hydrology background.

is a forester (has planted more than 1 million fir and redwoods on his original 500 acre ranch, a Farm Bureau member and has lived on MWC since 1967. Co-chair Krimel, a licensed California attorney for 30 years, has lived on MWC since 1985. Despite years of documented abuses, in 2010 Sonoma County authorized Cornell to build two buildings totaling 6,700 sq. ft. winery, with 10,200 sq. ft. of caves, within eyesight of the landslide of 2006! SMWC has documented to state and local agencies that Cornell's neighbor, Pride Vineyards, trucks irrigation water on site beginning in early summer each year when the North Fork of MWC runs dry, yet Sonoma County has approved Pride's neighbor Cornell to build a winery and needlessly increase its 25 acreage planted in grapes despite the lack of water. This is not sound planning and public policy, but rather is insane planning without concern for public benefit or responsible policy.

II. NUMEROUS STUDIES AND PAPERS ESTABLISH THE NEED FOR A COMPREHENSIVE PLAN

The above-described Pride-Cornell winery water depletion absurdity is only one of dozens of projects Sonoma County agencies have approved while faced with competent scientific evidence that regulatory responsibility required the rejection of the projects submitted. To put local regulators in charge of SWRCB's water and salmonid protection plan (when river, stream and groundwaters are used to avoid frost damage to grapes) is self-defeating as Sonoma County agencies have long-served as the lackey, "yes man" apologists for the very worst aspects of the vast wine industry of Sonoma County. The agencies of Sonoma County have been tested as environmental watchdogs, and they have failed miserably.

The members of SMWC all have riparian rights to MWC, and are familiar with the vineyard-triggered periodic winter reduced flows in the creek when temperatures threaten frost conditions and the summertimes draw-down that kills the fish. SMWC members can supply volumes of anecdotal evidence of damage to the creek in the cause of frost protection, but this is unnecessary given the plethora of scientific publications describing water diversions for frost protection published over the past decade. Given the advanced research that is now available and which SMWC has supplied to the Sonoma County Public Resource Management Dept. (PRMD), the county's Board of Zoning Appeals (BZA), and the Board of Supervisors (BOS), it is unimaginable that Sonoma County continues to operate contrary to law and reason. As one PRMD staffer advised the SMWC co-chairs, the upper MWC's designation by the county and ABAG as a "high priority conservation area" in reality "means NOTHING". This from a county employee charged with enforcing CEQA and other protective statutes and regulations!

While the following studies and treatise are not appended to this letter, we will happily supply them upon request. SMWC has previously supplied same to the various local agencies mentioned, and to the SCWRCB as well.

- Dr. Matt Deitch, Ph.D., in his 2006 study on frost control in the Russian River basin, noted "...these natural catchment processes cannot explain the sudden changes in streamflow in spring that occur only on days when temperatures are near freezing, especially considering that no such changes occur in streams without upstream vineyard development." Dr. Deitch further noted that up to 97% of flows are diverted for frost protection.

- Dr. Adina Merenlender, Ph.D., in a study published in 2008, reported results and readings very similar to those ascertained by Dr. Deitch in 2006.
- Dr. Stacy K. Li, Ph.D., is a retired Fish Biologist of NOAA Fisheries who has exhaustively studied MWC, both for NOAA pre-retirement and subsequent thereto as a private, independent consultant. Dr. Li issued a Memorandum dated June 27, 2008, entitled "Adverse Effects of Frost Protection on ESA Listed Fish in the North Bay", which sets forth the issues and the dispositive data re frost protection negatives; this memo is a 'must read' given its scope and clarity.

III THE GROWERS HAVE FORFEITED THEIR SEAT AT THE FROST PROTECTION TABLE

Unfortunately recent projects and wine industry representations which have proven to be false, coupled with unethical actions and gross untruths by local vintners about their activities, have stripped the growers of any and all credibility in this debate. Therefore, imagine SMWC's members' disbelief when it was revealed the County's grape grower's association and the county had worked out a frost protection plan in secret meetings. In addition to violating state 'open meeting' laws, these secret meetings co-opted county officials, reflected the growers' dominating control over local officials, violated provisions of CEQA and exposed the symbiotic cozy relationship between the subject and its regulators, and now hopefully serves to disqualify Sonoma County regulators from overseeing and enforcing the Russian River Frost Protection Regulation. These various 'back door' efforts by wine industry leaders should serve notice they are not to be believed and can't take any leadership role in enforcement.

This Board should recognize that what is not at issue in this process is the small locally owned family farm. There are three primary vintners in the upper watershed of MWC which run the creek dangerously dry in summer and frost season, as follows:

1. Cornell Vineyards. Mr. Cornell has been attempting to build his West Coast empire here for ten years. He has, fortunately, been distracted from development by his job as a managing director of Goldman Sachs in New York City and his seats on the boards of six other multinational corporations. Those duties, and his \$14 million updating of his historic residence in New York, have thankfully slowed his efforts to run MWC dry and kill the fish that breed and live therein.
2. Fisher Winery. Start up capital for this winery came by way of Detroit, the headquarters of General Motors (Body by Fisher). In honor of the working folk that allowed the Fishers' manufacturing successes, Fisher's least expensive bottle of wine is priced above \$60.00.
3. Pride Vineyards. Pride's purchase came from his dental empire, which focused on the design of dental offices and a billing system, which encouraged comprehensive, long-term remedial care with in-house financing.

It must be patently visible to even the most casual observer that the grape growers and winemakers of Sonoma and Mendocino counties do not process the basic neutrality essential to meaningful monitoring and oversight. The wine industry has ingratiated itself with the traditional, long-term agricultural powers in these counties, and have greatly benefited from the union. The combination of new money from the wine business, and old connections and power from the true farmers, is a combination public trust agencies have been subservient to; allowing any of the affiliated agricultural groups a role (beyond observation) in the regulatory enforcement element of the frost protection plan would constitute a fatal design defect rendering all the efforts of hundreds for naught. Any local agency solution would involve the wine industry, which controls local politics through its careful and effective planning. A state agency, unimpeded by the locals, or a state level Special Master will be necessary for the plan's enforcement to have any intended positive impact.

IV THE SELECTION AND SUPPORT OF THE LEAD AGENCY PER CEQA IS CRITICAL TO THE PLAN'S SUCCESS

The October 27, 2010, SWRCB 'Notice of Preparation and Public Scoping Meeting' aptly described a most challenging formational aspect of the Russian River Frost Protection Regulation when it noted, at page 1:

"NO RESPONSIBLE AGENCIES EXIST FOR THIS PROJECT BECAUSE NO OTHER AGENCY HAS AUTHORITY TO CARRY OUT OR APPROVE THE ACTIVITIES THAT WILL BE SUBJECT TO THE REGULATION."

No further reference is made to the non-existence of a responsible agency to aid the implementation and monitoring of the plan. If the above-quote remains accurate at this juncture, the major threshold primarily is the identification and selection going forward of the lead agency for CEQA compliance, and of responsible agencies; the distinction for CEQA purposes between the two is critical. Disputes can arise when multiple agencies seek to assert jurisdiction over the project and control the environmental documentation. See, e.g. City of Redding v. Shasta County LAFCO (1989) 209 Cal. App. 3d 1169.

The lead agency has primary responsibility for decisions regarding the proper manner of complying with CEQA in considering the carrying out a project. Pub. Res. Code §21067; 14 Cal. Code Regs. §15050; see Planning & Conservation League v. Dept. of Water Resources (2000) 83 Cal. App 4th 892, 903. All public agencies other than the lead agency that have discretionary approval power over the project are "responsible agencies" (14 Cal. Code Regs. §15381) which are bound by certain decisions made by a lead agency, including the determination of whether it is appropriate to prepare an EIR, negative declaration, or a mitigated negative declaration. (The latter is by far the 'favorite' without exception.)

Detailed provisions for determining which agency should act as lead agency are set forth in Cal. Code Regs. §15051-15053. Two or more public agencies with a "substantial claim" to serve as lead agency for a particular project may agree between themselves who shall take the lead role. However, that agreement may not designate the lead agency contrary to CEQA and the CEQA Guidelines principles. Planning & Conservation League v. Dept. of Water Resources, *Supra*, 83 Cal. App. 4th at p. 103.

Again, at the risk of redundancy, SMWC emphatically urges the Board to maintain control over (1) which is the lead agency, and (2) efforts by other responsible agencies, private concerns, etc., to take control of the project and plan. The future existence of fish life in the Russian River watershed, and more specifically the upper Mark West Creek, is in the balance of the success of the Frost Protection Plan. In years of dealing with Sonoma County agencies in matters of similar concern, SMWC has yet to find a local agency we consider honest, committed and not co-opted by corporate winery interests.

V MARK WEST CREEK AND ITS INHABITANTS ARE AT DEATH'S DOOR

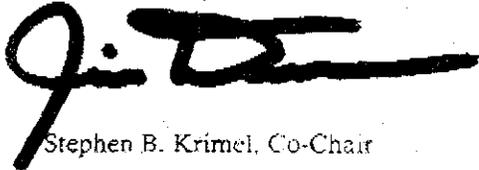
When SMWC co-chair Jim Doerksen acquired his 500 acre ranch on St. Helena Road, which included 9/10 of a mile of MWC flowing through it, the CDFG gave him a monitoring summary that recorded the number of fish in his major tributary into the Russian River. The summary showed the 28 mile long MWC averaged 9,500 fish per mile, with a profusion of steelhead, many coho, and even a substantial population of Chinook. Now 44 years later, monitoring reflects a basically salmonid-dead creek, with an average of less than 1 fish per mile.

V CONCLUSION

On behalf of the human habitants of MWC, and on behalf of the flora and fauna we've treasured for decades as they've dwindled, we urge you to adopt the suggestions in the letter of the SCWC, of which SMWC is a supporter, and it guarantees the wine industry and its close political allies not have any role in the enforcement of the Frost Protection Plan.

Sincerely,

Jim Doerksen, Co-Chair



Stephen B. Krimel, Co-Chair

