

CARMEL J. ANGELO
Chief Executive Officer
Clerk of the Board



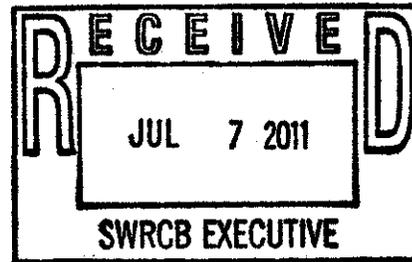
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PAULINE RANTALA
Senior Deputy Clerk of the
Board

COUNTY OF MENDOCINO
BOARD OF SUPERVISORS

June 28, 2010

LATE COMMENT



Mr. Charles R. Hoppin, Chair
State Water Resources Control Board
c/o Jeanine Townsend, Clerk to the Board
P.O. Box 100
Sacramento, CA 95812-2000

RE: COMMENTS ON PROPOSED DRAFT RUSSIAN RIVER FROST REGULATION AND
RUSSIAN RIVER FROST REGULATION DRAFT EIR

Chair Hoppin and Board Members:

The Mendocino County Board of Supervisors (BOS) believes the proposed Russian River Frost Regulation is unnecessary and will place an unreasonable burden on the agency and the regulated community. We have written to and appeared before your Board on this issue beginning in March 2009. We have consistently advocated for a regional managed frost water program to achieve protection for listed fish species in compliance with the Endangered Species Act (ESA). The successful efforts of the Upper Russian River Stewardship Alliance (URSA), in collaboration with other regional stakeholders and individual landowners, to address problems associated with direct diversion for instantaneous demand for frost protection are well documented. The proposed regulation as written is completely unwarranted and ignores the unprecedented and comprehensive efforts taken to date to address this problem.

The Mendocino County BOS has been mystified by the failure of your Board and other regulatory agencies, principally the National Marine Fisheries Service (NMFS) to acknowledge the URSA led efforts that have resulted in enhanced data, effective flow management protocols and newly constructed off-stream storage for frost protection that offsets the need for 90 cubic feet per second (cfs) of direct diversion while the greatest flow deviation recorded in 2008 was 83 cfs. The problems observed in 2008 on the upper main stem of the Russian River have been successfully resolved and URSA has proposed protocols to assure continued compliance with the Endangered Species Act.

The reluctance of your staff to recognize the URSA led regional effort was explained when a Freedom of Information Act (FOIA) request confirmed that your staff, while ostensibly engaged in a collaborative stakeholder process, met secretly with other agencies and conspired to manufacture a "need" for regulation. The record is clear that SWRCB staff not only solicited the February 19, 2009 letter from the NMFS, but encouraged NMFS staff to specifically request emergency regulations. These actions undermined the collaborative process then underway and appear to have compromised the independent decision making responsibility of the agencies. In order to restore trust in the process we respectfully request full public disclosure and a comprehensive investigation of this matter. We also respectfully request that the proposed regulation be tabled pending the outcome of this investigation. We do not believe it is prudent to proceed until it is independently established that a need for regulation currently exists.

THE BOARD OF SUPERVISORS

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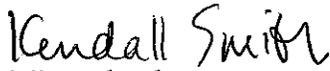
KENDALL SMITH
Fourth District

DAN HAMBURG
Fifth District

It is important to recognize that use of water for frost protection each spring is *not* unreasonable, but an allowable, permitted and established beneficial use of water by agriculture. In fact, it is the proposed regulations, which ignore the significant efforts by the regional stakeholders, that are themselves unreasonable. Further, sufficient regulations are currently in place to protect special status fish species listed pursuant to the ESA and the habitat upon which those species depend. Flows within the Russian River watershed are also already dictated by Decision 1610 and will be further regulated by the process required by AB 2121. Surrounding habitat is additionally protected by the Clean Water Act, the Porter Cologne Act, and the Fish and Game Code. Existing regulations provide strong protection and equally strong penalties for violations of the ESA.

In conclusion, instead of the ill-advised and unwarranted proposed regulations, we strongly encourage your Board to recognize and approve the comprehensive and effective program developed by URSA and their regional partners.

Sincerely



Kendall Smith, Chair
Mendocino County Board of Supervisors

cc: United States Senator Barbara Boxer
United States Senator Dianne Feinstein
Senator Noreen Evans
Congressman Mike Thompson
Assemblymember Wesley Chesbro