




State of California
Department of Fish and Game

Memorandum

Date: July 1, 2011

To: Ms. Barbara Evoy, Chief
State Water Resources Control Board
Division of Water Rights
Post Office Box 2000
Sacramento, CA 95812

Attention: Ms. Jeanine Townsend
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From: 
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Subject: Proposed Russian River Frost Protection Regulation, Mendocino and Sonoma Counties



The Department of Fish and Game (DFG) appreciates the opportunity to comment on the proposed Russian River Frost Protection Regulation (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 (SWRCB) efforts to require diverters 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 principal intent of the Frost Protection WDMP is to develop a strategy to comply with the federal Endangered Species Act (ESA) and 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*). DFG believes the Regulation, if implemented, is critical to prevent take of listed salmonids during frost events on the Russian River and, as such, is vitally important to have in place by the stated date of February 1, 2012.

DFG is providing the following comments to assist in the development of the WDMPs and to ensure proper implementation and compliance with the Regulation and its stated intent of protecting salmonids:

The SWRCB should assure the WDMP measures meet all applicable statutes and regulations applicable to frost protection diversion, and establish program goals based on regulatory compliance. Compliance with ESA, CESA, Fish and Game Code

Section 1600, and all applicable sections of the California Water Code should be included as goals of each WDMP. To comply with Fish and Game Code Section 1602, all participants should be required to submit to DFG a notification package for a Lake and Streambed Alteration Agreement (LSAA). The WDMP should clearly state that water not be diverted until an LSAA is fully executed by the participant and DFG.

The WDMP should include specific requirements to ensure that it meets the stated ESA and CESA compliance goals that will provide adequate assurances that frost protection activities will not result in mortality of salmonids. The WDMP needs to contain an assessment of the potential risk of stranding mortality from frost diversions and the identification and implementation of any corrective actions necessary to prevent stranding mortality. As mentioned in our previous comments, the WDMP must include a robust element for establishing minimum instream flows and the associated stream stage to ensure frost protection diversions do not reduce stream flows below the flows necessary for listed salmonids and other aquatic species.

The WDMP must address flows in critical stream reaches that will maintain fish in good condition and prevent actions that could cause stranding mortality. DFG is generally supportive of the approach for determining stream stage that would prevent mortality as detailed in the draft Initial Statement of Reasons. However, it is unclear how the "inflection point" will correlate with specific habitat needs or whether it will result in the prevention of dewatering events that cause salmonid mortality. DFG and the National Marine Fisheries Service should be consulted when selecting transects and when determining the appropriate inflection point that might be considered protective.

Additionally, flows in each stream will vary during different water year types and the WDMPs may need to include development of separate inflection points for each water year. To achieve this, the SWRCB needs to consider that the risk assessment may require a series of transect locations and the need for multiple assessments to evaluate the effectiveness of the proposed measures. DFG staff remains available to consult with the SWRCB and the governing bodies to develop appropriate assessment methodology to assure that frost protection activities do not cause stranding mortality.

DFG currently has a small number of staff devoted to water right and water diversion issues in the Russian River, and more staff may be necessary to fulfill its role as both trustee agency and responsible agency and to fully participate in this process. DFG believes providing adequate staff levels for this effort will: 1) reduce review time for frost protection diverters because we will be able to review and provide timely input, 2) ensure CESA and Fish and Game Code 1600 oversight can be provided, 3) allow us to adequately review inflection point cross section information, and 4) help us participate in monitoring and compliance efforts.

DFG appreciates the opportunity to comment on the SWRCB's Russian River Frost Protection Regulation. We remain available to discuss specific components of a WDMP that would meet the goals as outlined in the regulations.

If you have questions, please contact Ms. Corinne Gray, Staff Environmental Scientist, at (707) 944-5526; Ms. Jane Arnold, Staff Environmental Scientist, at (707) 441-5371, or Mr. Greg Martinelli, Water Conservation Supervisor, at (707) 944-5570; or by writing to DFG at the memorandum address listed above.

cc: Mr. David Hines
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