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State Water Resources Control Board



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Division of Water Rights
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NOTICE OF PREPARATION AND PUBLIC SCOPING MEETING

DATE: October 27, 2010
TO: Distribution List
FROM: State Water Resources Control Board, Division of Water Rights
SUBJECT: Notice of Preparation of an Environmental Impact Report and Notice of Scoping Meeting - Russian River Frost Protection Regulation, Mendocino and Sonoma Counties

The purpose of this Notice of Preparation is: (1) to advise trustee agencies, and interested organizations and persons, that the State Water Resources Control Board (State Water Board or Board) will be the lead agency and will prepare an Environmental Impact Report (or EIR) for the proposed Russian River Frost Protection Regulation (or Regulation), which would prohibit diversions of water from the Russian River stream system for purposes of frost protection, unless they are in accordance with an approved water demand management program (WDMP) and (2) to seek input on significant environmental issues, reasonable alternatives, and mitigation measures that should be addressed in the EIR. 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.

Responses to this Notice of Preparation must be received in writing by 5 p.m. on Tuesday, November 30, 2010. Responses must be received on schedule to allow full consideration of all concerns.

A public scoping meeting has been scheduled to explain the proposed Regulation and provide other information to trustee agencies and the interested public. The public scoping meeting will also provide agency personnel and concerned organizations and public citizens the opportunity to submit written comments concerning Regulation alternatives, significant effects, and mitigation measures that should be analyzed in the EIR. The public scoping meeting has been scheduled for:

Wednesday, November 17, 2010
3:00 PM – 5:00 PM
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA

1.0 BACKGROUND

In a letter dated February 19, 2009, and received by the State Water Board on February 27, 2009, National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries Service) requested that the State Water Board take immediate action, such as implementing emergency regulations, to address concerns that water diversions for purposes of frost protection will cause significant salmonid mortality. The letter documents two episodes of fish stranding mortality that occurred in April 2008, the first on Felta Creek in Sonoma County, and the second on the mainstem of the Russian River, near Hopland in Mendocino County.

Coho salmon (*Oncorhynchus kisutch*), Chinook salmon (*Oncorhynchus tshawytscha*), and steelhead (*Oncorhynchus mykiss*) all spawn and rear in the Russian River watershed. Chinook salmon and steelhead are listed as threatened pursuant to the federal Endangered Species Act (ESA). Coho salmon are listed as endangered pursuant to the federal ESA and California ESA and are in danger of extinction

California Environmental Protection Agency

in the Russian River. During a frost event, the high instantaneous demand for water for frost protection by numerous vineyardists and other water users may reduce the flow or stage¹ in the Russian River stream system to levels that are harmful to salmonids.

In addition to its permitting authority, the State Water Board has a duty to protect, where feasible, the State's public trust resources, including fisheries. The State Water Board also has the authority under article X, section 2 of the California Constitution and Water Code section 100 to prevent the waste or unreasonable use, unreasonable method of use, or the unreasonable method of diversion of all waters of the State. Water Code section 275 directs the State Water Board to "take all appropriate proceedings or actions before executive, legislative, or judicial agencies . . ." to enforce the constitutional and statutory prohibition against waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, commonly referred to as the reasonable use doctrine.

For this project, application of the reasonable use doctrine requires consideration of the benefits of diverting water for purposes of frost protection, the potential harm to salmonids, and the diverters' ability to frost protect without adversely affecting salmonids by coordinating or otherwise managing their diversions to reduce instantaneous demand. The premise underlying the proposed Regulation is that a diversion of water that is harmful to salmonids is an unreasonable use of water if the diversion can be managed to avoid the harm.

2.0 PROJECT DESCRIPTION

The primary objective of the proposed project is to develop a State Water Board regulation by adding Section 862, Russian River, Special to division 3 of title 23, California Code of Regulations. The proposed Regulation would prohibit diversions from the Russian River stream system for purposes of frost protection from March 15 through May 15, unless they are in accordance with a WDMP approved by the State Water Board. The proposed Regulation would apply to all diversions, including hydraulically connected groundwater, regardless of the diverter's basis of right, unless a diversion is exempted by the Board. In order to be approved, a WDMP would be required to ensure that the instantaneous cumulative diversion rate does not result in a reduction in stream stage that is harmful to salmonids and would be required to include stream and diversion monitoring and reporting requirements. The number and location of stream stage monitoring gages would be required to be established in consultation with the NOAA Fisheries Service and the California Department of Fish and Game. The WDMP would be required to be administered by a governing body capable of ensuring the goals of the program are met.

The State Water Board, Division of Water Rights (Division) will evaluate the Regulation in an Environmental Impact Report.

3.0 PROJECT LOCATION/REGULATION AREA

The Russian River Frost Protection Regulation will cover the geographic area of the Russian River and its tributaries in Mendocino and Sonoma Counties, which, according to NOAA Fisheries Service, provides 1,778 miles of potential salmonid habitat. The Regulation would also extend to hydraulically connected groundwater. The Russian River flows approximately 110 miles from the Ukiah Valley in Mendocino County to the mouth of the River at the Pacific Ocean in Sonoma County. A map of the project area is shown in **Figure 1** (see enclosure).

4.0 POTENTIAL ALTERNATIVES

No Regulation alternatives have yet been identified as of the issuance of this Notice of Preparation. The Division seeks additional data and input on Regulation alternatives from trustee agencies, Tribes, and the interested public. At a minimum, any proposed alternatives must protect salmonids in the Russian River area during frost protection operations. The Division will consider all comments and available and relevant information received during the scoping process.

¹ The level of the water surface in a river measured with reference to some arbitrary zero level or datum.

5.0 PROBABLE ENVIRONMENTAL EFFECTS TO BE ANALYZED IN THE ENVIRONMENTAL IMPACT REPORT

The Division has determined that the following environmental issue areas will be evaluated in the EIR: Aesthetics, Agricultural Resources, Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, Noise, and Utilities and Service Systems.

For the purposes of the California Environmental Quality Act (CEQA), the proposed project is adoption of the Russian River Frost Protection Regulation. Adoption of the Regulation itself will not cause direct adverse environmental impacts or approve any particular water diversion projects. Moreover, in general, the Regulation will operate to protect salmonids by restricting diversions from the Russian River, its tributaries, and interconnected groundwater, during the frost season, from March 15 through May 15, unless they are in accordance with an approved WDMP. Adoption and implementation of the Regulation could, however, lead diverters to take actions that could result in indirect environmental impacts. Future actions that could occur as a result of adoption and implementation of the Regulation include, but are not limited to: modifying or constructing new off-stream storage reservoirs to store water diverted prior to the frost season for later use for frost protection; switching to a different method or combination of methods of frost protection such as installing wind machines, heaters, or non-interconnected groundwater wells, or employing helicopters. Affected persons could also make other changes to management practices, such as management of cover crops, use of barriers, use of alternative sources of water from water purveyors, or replacement of frost sensitive crops with more frost tolerant crops. Finally, growers could choose to discontinue frost protection all together.

Aesthetics

Indirect impacts to aesthetic resources, including scenic vistas, and degradation of existing visual quality, have the potential to occur if in response to adoption and implementation of the Regulation, diverters take actions such as, but not limited to, constructing new off-stream storage reservoirs or installing wind machines. In addition, rather than participate in an approved WDMP a diverter could elect not to frost protect, which could lead to crop losses and eventually switching to more frost tolerant crops or even fallowing. Storage reservoir construction activities could cause short-term impacts such as temporary visual disturbances due to earthwork activities and vehicular traffic. Storage reservoirs, wind machines, crop changes, barriers, or fallowed land could change the appearance of the landscape depending on where the property is located.

Agricultural Resources

Adoption of the Regulation may indirectly result in potentially significant impacts to important farmland resources. For instance, the adoption and implementation of the Regulation could indirectly lead to crop losses to the extent that a diverter elects not to frost protect, rather than participate in an approved demand management program. Crop losses could in turn lead the diverter to fallow lands that are currently irrigated or choose to switch to more frost tolerant crops. The inability to use water for purposes of frost protection without participating in a WDMP could render certain agricultural operations uneconomic, and lead to the conversion of agricultural land to non-agricultural uses.

Air Quality

Adoption and implementation of the Regulation could, indirectly, influence affected parties to take actions such as, but not limited to, constructing new off-stream storage reservoirs, switching to frost protection by wind generation, or installing groundwater wells in non-interconnected aquifers. Such activities could affect air quality. Construction of off-stream reservoirs could cause impacts such as temporary increases in air pollution from airborne dust and construction vehicle exhaust. Fuel powered wind machines, heaters, and pumps to fill reservoirs or draw water from wells could lead to increased greenhouse gas emissions.

Biological Resources

The purpose of the Regulation is to benefit biological resources. Adoption and implementation of the Regulation could influence affected parties to take actions such as, but not limited to, expanding existing or constructing new off-stream storage reservoirs or installing wells to pump groundwater that is not interconnected to the Russian River stream system instead of diverting surface water or interconnected ground water. Construction of new off-stream storage reservoirs, enhancements to existing diversions, or changes in timing of diversions may occur within areas supporting state and federally listed animal and plant species. Other resources protected by local policies and ordinances such as wetlands and oak woodlands, may be impacted.

Cultural Resources

Adoption and implementation of the Regulation could influence affected parties to take actions that could in turn affect cultural resources. Potential actions that may be taken by affected parties in response to adoption and implementation of the Regulation could include, but are not limited to, the construction of new off-stream storage reservoirs, the enhancement of some existing diversion facilities, or installation of non-interconnected groundwater wells. Such activities could affect any historic sites and archeological resources that are situated within the area of potential effect.

Geology and Soils

Adoption and implementation of the Regulation could influence affected parties to take actions such as, but not limited to, constructing facilities (e.g., roads, diversion facilities, off-stream storage reservoirs). These activities could affect geology and soils in the regulated area, depending on its stability, such as a short-term increase in the potential for site-specific erosion or landslides.

Hazards and Hazardous Materials

Adoption and implementation of the Regulation could influence affected parties to take actions such as, but not limited to, expanding existing or constructing new off-stream storage reservoirs or installing non-interconnected groundwater wells. Such activities could include temporary use of hazardous materials.

Hydrology and Water Quality

Adoption and implementation of the Regulation could lead water diverters to take actions such as, but not limited to, expanding existing or constructing new off-stream reservoirs to store water for use during the frost protection season. These construction activities could cause short-term impacts such as increases in sediment discharged to streams due to construction. Increased storage capacity could result in increased surface water diversions in the winter for later use during the frost season.

Adoption and implementation of the Regulation may also lead to changes in management practices, which could affect hydrology and water quality. Management practices for frost prevention that may be used as a result of the Regulation include, but are not limited to, the usage of copper compounds or non-ice nucleating bacteria to reduce the incidence of frost injury. Increased levels of copper in the water could cause a decline in water quality.

In addition, off-set wells may be used as a result of the adoption and implementation of the Regulation. Growers may begin diverting water from new wells outside the area designated as hydraulically connected groundwater. Increased use of groundwater could result in a net deficit in aquifer volume or a lowering of the groundwater table level.

Land Use and Planning

Adoption of the Regulation in itself will not conflict with applicable land use plans, policies, regulations, habitat conservation plans, or natural community conservation plans. Adoption and implementation of the

Regulation could, however, influence affected parties to take actions such as, but not limited to, modifying existing or constructing new off-stream storage reservoirs or in extreme cases following land following a crop loss. These actions could affect existing land uses and conflict with local planning and regulation.

Noise

Adoption and implementation of the Regulation could influence affected parties to take actions such as, but not limited to, expanding existing or installing new off-stream storage reservoirs to store water for use during the frost protection season, installing wind machines, or using helicopters during a frost event. Reservoir construction activities could cause temporary noise impacts and wind machines and helicopters may periodically affect noise levels in the regulated area.

Utilities and Service Systems

Adoption and implementation of the Regulation could influence affected parties to take actions that could affect utilities and service systems including, but not limited to, expanding existing or constructing new off-stream storage reservoirs or seeking alternative sources of water from water purveyors in the Regulation area. Reservoir construction could cause temporary increases in solid waste generation. Increases in water demand may be sufficient to influence water purveyors to construct new water treatment facilities or expand existing facilities (including water distribution systems), the construction of which could cause significant environmental effects.

The Division will analyze any project alternatives or mitigation measures that would minimize or avoid the potential environmental impacts described above in the EIR. Certain activities, such as expansion or construction of off-stream reservoirs or expansion or construction of water treatment facilities in response to adoption of the Regulation would be subject to a separate project-level CEQA analysis by the appropriate lead agency.

6.0 COMMENTS

Please send your comments regarding the proposed Russian River Frost Protection Regulation Environmental Impact Report to the address below. When submitting your comments, please identify a contact person in case we have any questions and include in the subject line, **“Proposed RR Frost Regulation EIR.”**

Attention: Bill Cowan
State Water Resources Control Board
P.O. Box 2000, 1001 I. Street, 14th Floor
Sacramento, CA 95812-2000

Phone: (916) 341-5304
FAX: (916) 341-5400
Email: rrfrostregulation@waterboards.ca.gov

7.0 ACCESSIBILITY AND DIRECTIONS

Persons with hearing or speech impairments can contact us by using the California Relay Service Telecommunications Device for the Deaf (TDD). TDD is reachable only from phones equipped with a TDD Device. HEARING IMPAIRED REPLAY SERVICE: TDD to voice 1-(800)-735-2929; voice to TDD 1-(800)-735-2922.

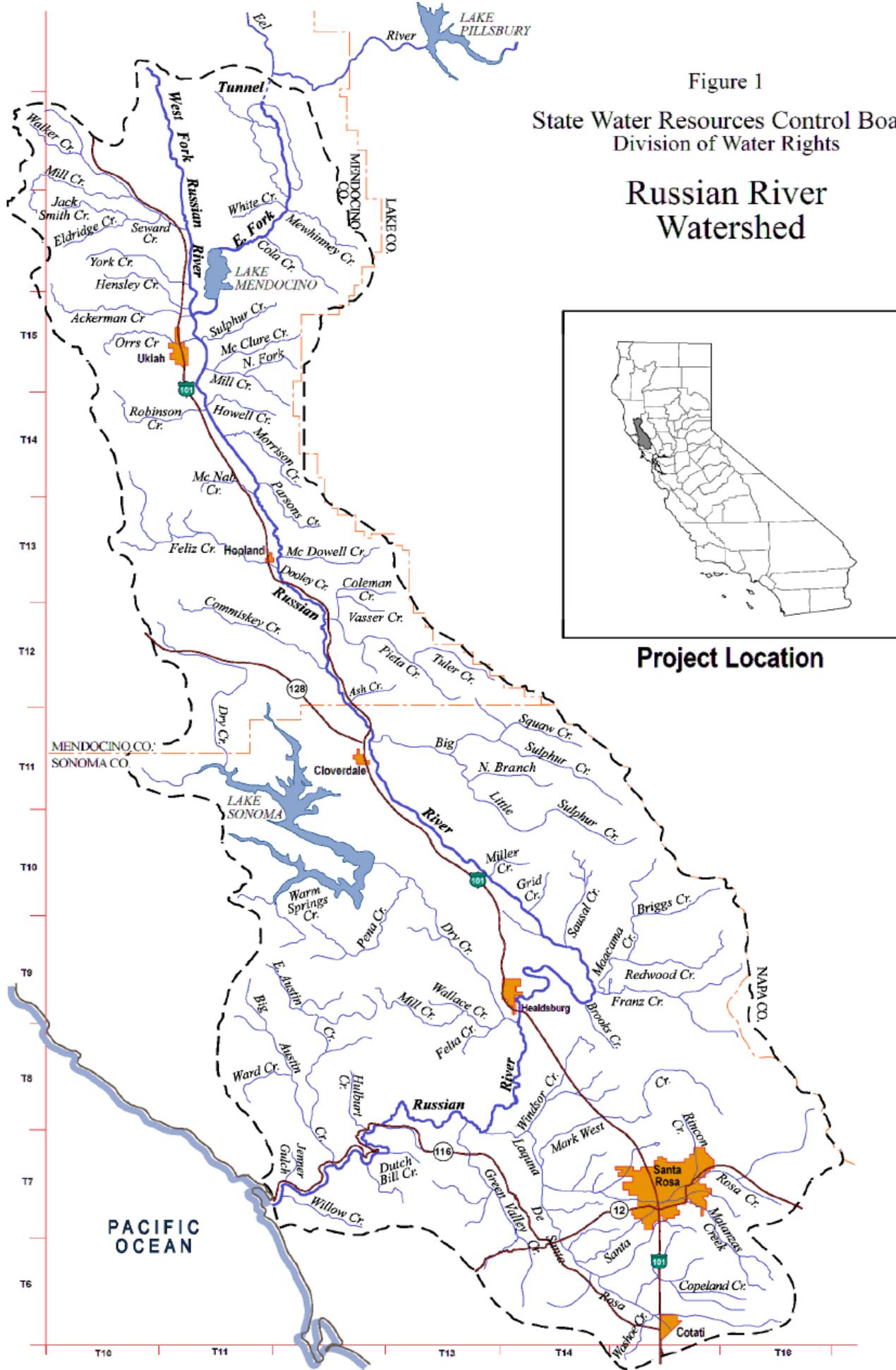
The facility is accessible to people with disabilities. Anyone requiring reasonable accommodation to participate in the meeting should contact Jean Lockett, Secretary, at (707) 576-2307 or JLockett@waterboards.ca.gov at least five (5) working days prior to the meeting.

A map and directions to the North Coast Regional Water Quality Control Board facility are available at: http://www.waterboards.ca.gov/northcoast/about_us/contact_us.shtml.

Enclosures: Figure 1: Project Location
Mailing List Survey
Form B

Figure 1
 State Water Resources Control Board
 Division of Water Rights

Russian River Watershed

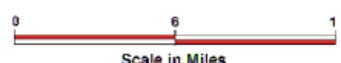


Project Location

PACIFIC OCEAN

LEGEND

- Watershed Boundaries
- County Boundaries
- Roads
- Cities



**NOTICE OF PREPARATION AND OF SCOPING MEETING
FOR AN
ENVIRONMENTAL IMPACT REPORT
FOR THE
PROPOSED RUSSIAN RIVER FROST PROTECTION REGULATION**

Russian River Watershed, Mendocino and Sonoma Counties

Mailing List Survey

If you would like to remain on the mailing list and receive future announcements regarding the **Russian River Frost Protection Environmental Impact Report (EIR)**, please provide a mailing address and/or email information below, and send it by November 30, 2010, to:

Bill Cowan
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000
or by e-mail to rfrostregulation@waterboards.ca.gov
with the subject line, "**Russian River Frost Protection EIR.**"

To save paper, the State Water Board strongly encourages provision of an email address.

(Name)	(Agency)	(Email)
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(Street)	(City)	(State/ Zip Code)
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If you subscribe or have subscribed to the "Russian River Frost Regulation" Lyris list at http://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.shtml you do not need to respond to this notice. You will continue to receive announcements regarding the Russian River Frost Regulation rulemaking process as well as future announcements regarding the development of the Russian River Frost Protection EIR.

(Note: New subscribers will receive a confirmation e-mail when you first subscribe. You must respond to that e-mail or you will automatically be removed from the subscription list.)

To: State Clearinghouse, Governor's Office of Planning and Research
(Agency)

P.O. Box 3044
(Address)

Sacramento, CA 95812-3044

Subject: Notice of Preparation of a Draft Environmental Impact Report

Lead Agency:

Agency Name State Water Resources Control Board
 Street Name P.O. Box 2000, 1001 I Street, 14th Floor
 City/State/Zip Sacramento, CA 95812-2000
 Contact Bill Cowan at (916) 341-5304
or by e-mail at: rrfrostregulation@waterboards.ca.gov

The State Water Resources Control Board's Division of Water Rights (Division) will be the Lead Agency and will prepare an Environmental Impact Report for the project identified below. The State Water Board, Division of Water Rights (Division) will evaluate the Regulation in an Environmental Impact Report (EIR). The EIR will evaluate the potential environmental impacts of the regulation and any alternatives or mitigation measures necessary to avoid any significant environmental impacts.

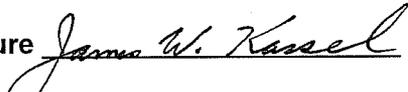
The Division is seeking comments from trustee agencies and interested persons concerning the scope and content of the environmental information to be included in the Environmental Impact Report. Please send your response to **Bill Cowan** at the address shown above. We will need the name of the contact person in your agency.

The project description, location, and the potential environmental effects are contained in the attached materials. An Initial Study was not prepared for this project. The Notice of Preparation and other related documents may be obtained via the Internet on the State Water Board website at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/russian_river_frost/

Project Title: Russian River Frost Protection Regulation

Project Location: Russian River Watershed Sonoma and Mendocino Counties
Counties

Name James W. Kassel **Signature**  **Date** 10/27/10

Title Assistant Deputy Director for Water Rights, State Water Resources Control Board

Reference: California Code of Regulations, Title 14, (CEQA Guidelines) Sections 15082(a), 15103, 15375