

State Water Resources Control Board

MAR 23 2012

Mr. David Koball
Fetzer Vineyards
P.O. Box 611
Hopland, CA 95449

Dear Mr. Koball:

WATER DEMAND MANAGEMENT PROGRAM FOR MCNAB CREEK;
WATER DEMAND MANAGEMENT PROGRAM FOR DOOLEY CREEK;
SUBMITTED FOR COMPLIANCE WITH THE RUSSIAN RIVER FROST PROTECTION
REGULATION, MENDOCINO COUNTY

The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) received and reviewed the Water Demand Management Program (WDMP) that you submitted for initial compliance with California Code of Regulations, title 23, section 862 (the Regulation) commonly known as the Russian River Frost Protection Regulation. I am encouraged that you have been able to form a WDMP group for the McNab Creek watershed and a WDMP group for the Dooley Creek watershed. Group WDMPs further the State Water Board's goal of promoting local development and governance of a program that prevents stranding mortality during the frost season. The initial WDMPs you have submitted for each of these watershed groups are substantially complete; however they do not contain an acceptable schedule for completing a stream stage monitoring program, and conducting a risk assessment, which is a requirement of the initial WDMP. Therefore, the two WDMPs you have submitted are not acceptable at this time. In order for your initial WDMP proposals to be acceptable, you will need to submit a schedule for developing a stream stage monitoring program and conducting a risk assessment that includes the required consultation with the Department of Fish and Game (DFG) and the National Marine Fisheries Service (NMFS). An acceptable schedule should identify milestone dates for: collection of required inventory information; a determination of the number, type, and location of stream gages; a determination of the stream stage that should be maintained at each gage; installation of stream gages; and conduction of a risk assessment of cumulative frost diversions affecting stream stage.

As you are aware, on February 2, 2012, the Mendocino County Superior Court granted a stay of enforcement of the Regulation pending resolution of two lawsuits filed against the State Water Board regarding adoption of the Regulation. This is not a ruling on the merits of the cases, it is simply a ruling on whether the Regulation is enforceable prior the court issuing a ruling on the merits. The hearing is currently scheduled for June 4-5, 2012. This letter is being sent to provide you with a response regarding your WDMP submittals should you choose to voluntarily proceed in the interim.

MAR 23 2012

Mr. David Koball

- 2 -

Division staff has been in contact with you by telephone and have informed me that you are willing to submit a revised schedule to be included with your initial WDMP submittals for the McNab Creek and Dooley Creek watersheds. Staff has also informed me that you have already met with staff of DFG and NMFS. If you are considering proceeding with meeting the requirements of the Regulation on a voluntary basis, please amend your WDMPs to include a complete *schedule* with milestone dates for completing a stream stage monitoring program and conducting a risk assessment. Copies of initial WDMPs with schedules that have been accepted by the State Water Board are available at:

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

Division staff will continue to be available to answer questions and discuss ways for diverters to meet the goals and terms of the Regulations while the Mendocino County Superior Court considers the lawsuits. Should you have any questions or if you would like to meet with Division staff, please contact Mr. John O'Hagan of my staff at (916) 341-5368 or by email at johagan@waterboards.ca.gov. Written correspondence should be addressed as follows: State Water Resources Control Board, Russian River Frost Regulation, Attn: John O'Hagan, P.O. Box 2000, Sacramento, CA 95812-2000.

Sincerely,



Barbara Evoy, Deputy Director
Division of Water Rights

As you are aware, on February 2, 2012, the Mendocino County Superior Court granted a stay of enforcement of the Regulation pending resolution of two lawsuits filed against the State Water Board regarding adoption of the Regulation. This is not a ruling on the merits of the cases, it is simply a ruling on whether the Regulation is enforceable until the court issues a ruling on the merits. The hearing is currently scheduled for June 4-8, 2012. This letter is being sent to provide you with a response regarding your WDMP submittals should you choose to voluntarily proceed in the interim.