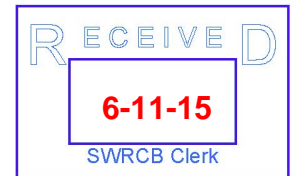


commentletters



From: Patrick Porgans <porgansinc@sbcglobal.net>
Sent: Thursday, June 11, 2015 1:21 AM
To: commentletters
Subject: Comments on DRAFT Emergency Drought-Related Regulations for Tributaries in Russian River Watershed

To: Clerk of the State Water Resources Control Board
From: Patrick Porgans, Porgans & Associates

11 June 2015

Re: Drought-Related Emergency Regulation Requiring Enhanced Water Conservation and Additional Water User Information for the Protection of Specific Fisheries in Tributaries to the Russian River

Members of the Board:

Porgans & Associates (P/A) submit the following comments to the State Water Board (SWB) on behalf of our clients, stating their position and concerns relative to the adoption of a drought-related emergency regulation purportedly to help protect federal- and state-listed anadromous fish in four priority Russian River tributary watersheds (Dutch Bill Creek, Green Valley Creek, Mark West Creek, and Mill Creek). *The emergency regulation would require (1) enhanced water conservation, and (2) information on water use. The State Water Board will consider adoption of the proposed emergency regulation on June 17 as part of its June 16-17 public meeting.* [Source: SWB Fact Sheet, p. 1.]

With dry conditions continuing across much of California, many of the State's key fisheries are now at record low numbers and several species are in danger of extinction. Central California Coast (CCC) coho salmon (coho salmon) and Central California Coast steelhead (steelhead) in the Russian River tributaries are listed as endangered or threatened by federal or state agencies and face a particularly perilous situation, affecting their ability to survive a fourth year of drought. [Source: SWB Fact Sheet, p. 1.]

The four watersheds have been identified by CDFW and NMFS as a high priority for Central Coast California coho salmon preservation and encompass 113 square miles and about 13,000 landowners. [Source: SWB Fact Sheet, p. 2.]

On the surface the proposed regulation to conserve water for the purpose of protecting listed species is undoubtedly a worthwhile endeavor, however, it falls short and targets urban users that are not the major consumers of water diverted from surface and groundwater sources within the watershed; and exempts diversions by vintners.

Agricultural Diversions Greatest Threat to Anadromous Fish: The public record attests to the fact that the greatest threat to anadromous fish, in the tributaries of the Russian River, has been massive unregulated diversions by landowners that grow grapes. In addition, several years ago, hundreds of unauthorized diversions and impoundment of water by vintners for the most part went unabated, at which time the SWB reassigned staff to investigate illegal diversions in the Delta, when anadromous fish were killed as a result of diversions to irrigate grapes. P/A participated in gathering data and evidence that substantiated the killing "Take" of salmonid species, directly attributable to unauthorized diversions in the watershed by vintners. P/A brought this matter to the attention of the SWB, NMFS, and CDFW. The decline of anadromous fisheries in the Russian River watershed has been well documented since the 1980's, when the state initiated what turned out to be a failed anadromous fish-doubling program.

The DRAFT states, "Emergency Actions due to Insufficient Flow for Specific Fisheries in Tributaries to the Russian River" In Title 23 Division 3, Chapter 2, change name of Article 24 and add Section 876 to read:
Article 24. Curtailment of Diversions and Other Actions Based on Insufficient Flow to Meet All Needs.

(a) *For the purposes of this section:*

(6) *“Landscapes” includes all plantings besides ornamental turf, including but not limited to trees, annual plants, perennial plants, and edible plants, but does not include agricultural commodities meeting the definition of Government Code section 51201. [DRAFT, 8 June 2015, p. 1.]*

According to CA Government Code Section 51201 (c), it states:

(4) *Land planted with fruit- or nut-bearing trees, vines, bushes, or crops which have a nonbearing fruit of less than five years and which normally returns during the commercial bearing period on an annual basis from the production not less than two hundred dollars (\$200) per acre.*

Our clients view the Board’s proposed action as being myopic and inequitable as it selectively targets urban users. P/A apprised our clients that the Board has adopted similar regulations that exempt agricultural users and places the burden on urban users’ statewide.

There are other intrinsic shortcomings inherent in the DRAFT regulations; i.e., The SWB has yet to quantify the amount of water consumed within the tributaries of the watershed; flow monitoring is limited; specific data on the subsurface waters and hydraulically connectivity to surface stream is yet to be quantified. As written, the Board leans on the diverter to provide the amount of water used; unless the user obtains water from a water district; if the user(s) fails to provide the Board with the requested data, within a 30 day period they can be subject to a penalty of \$500 per day.

It is with all due respects, that P/A brought the matter of water shortages and unauthorized diversions within the respective watersheds to the SWB’s attention nearly ten years ago. During a three (3) year period, P/A repeatedly requested that the Board use its authority to reconcile the increasing demands for water within this region. The SWB opted not to take P/A’s suggestion. In light of the aforementioned facts, the Board’s action is viewed as de facto and essentially put the onus on the backs of the urban users and neglects to factor in the agricultural users contribution to dewatering of critical habitat, a matter that the Board should have exercised its authority years ago to reconcile this government induced conundrum.

P/A had to limit its DRAFT comments due to time constraints and other more pressing issues attributable to government’s mismanagement of the public’s waters. Please see to it that these comments are entered into the record and posted on the Board’s website. Thank you.

cc: Interested parties