September 1, 2011
Clerk of The Board
State Water Resources Control Board
Sacramento, California

Re: Russian River Frost Protection Regulations; California Fisheries and Water Unlimited Comments and Recommendations

I have reviewed the proposed regulations for the draft Russian River Frost Protection Regulation. The following are my comments:

1. The regulation may exempt the pumping of the underflow of the Russian River watershed. Diverting the underflow require a water right permit. Groundwater pumping does not. Divertin the underflow affects surface flows. The regulation should make it clear that pumping the underflow for frost protection is prohibited and the groundwater source must be fully documented as groundwater.

2. Regulations that are not monitored are meaningless. There must be public assurances that the Board and its staff will monitor the regulations to prevent harm and injury to threatened and endangered steelhead and salmon species.

3. Regulations that are not monitored and enforced are meaningless. There must be public assurances that the Board and its staff will monitor and enforce the regulations to prevent harm and injury to threatened and endangered steelhead and salmon species.

4. The DFG has a very limited staff. This agency is very political and may not take legal and administrative actions to prevent violations of the regulations. This agency needs to give assurances to the public that the Department will monitor and enforce the regulations in addition to violations of the California Fish and Game Codes for the same violation. In other words, the Board's frost regulations must not exempt the same violations from a violations of the California Fish and Game Code.

5. The US NOAA Fisheries also has a limited staff. This agency may not take legal and administrative actions to prevent violations of the regulations because of staffing. This agency needs to give assurances to the public that the US NOAA Fisheries will monitor and enforce the regulations in addition to violations of the provisions of the federal Endangered Species Act for the same violation. In other words, the Board's frost regulations must not exempt the same violations from a violations of the federal Endangered Species Act.

6. The Board staff must also take part in the monitoring and enforcement of the frost regulations.

7. Monitoring the stream gauges may show violations of the frost protection measures, but may not show the party that violated the regulations unless there is a stream gauge below all diversions. Consequently, all diversion pipes should also be metered to determine whether water was used for frost protection by the individual diverter.

8. The penalties for non-compliance should at least $10,000 a day similar to the Federal Power Act for violations of the requirements. The Board should foster legislation to increase penalties because of the value of water. $500 per day is very small.

9. A monitoring and enforce report should be made public annually to give the public the assurance that the public trust fishery assets are being protected at all times by the Board, DFG, and the US NOAA Fisheries.

10. In conjunction with the frost regulation, the Board should revisit all water right permits; water right licenses; pre-1914 water rights; and riparian rights so that valid terms and conditions are ordered by the Board and its staff that will allow the threatened steelhead and endangered salmon to recover fully.

Place my comments into the records and have the Board and its staff respond to the comments

Thank you for the opportunity to provide the Board and its staff with comments.

Respectfully Submitted

Signed by Bob Baiocchi

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