



Re: Draft Russian River Frost Protection Regulation

There is sufficient evidence that water use demands in the Russian River watershed, particularly the tributaries, exceeds supplies. We want to see the regulations adopted, strengthened, mandated, and enforced by the SWRCB with effective public oversight. Without the improvements outlined below, harm to ESA protected fish, which include strandings, will continue until the listed species becomes totally decimated. Here are the recommended improvements:

- Uphold your 1994 SWRCB statement on frost irrigation as “non-beneficial use” due to the availability of other forms of frost protection and the adverse effects standard frost actions have on fish. Note that conditions have gotten much worse since then, not better.
- The change of terminology of "harm" to "stranding mortality", after meeting with the Farm Bureau, has serious implications for the intended application of the ESA and the consequent effectiveness of the new regulations. With the change to the latter term, fish will have to die of exposure but also have to be found. Otherwise, if stream flow is diverted to a point where fish become weakened, trapped, or otherwise "harmed", this is an endangerment to their well being and their life. Trapping, for example, is covered under the ESA and stranding is a form of trapping intended or not. Once trapped in an isolated pool, they are easy prey for predators and/or will be slowly weakened to the point of death from exposure. Finding dead bodies is difficult and tricky business and the Farm Bureau knows this. The original term should be maintained.
- Adhere to all provisions of AB2121. Frost Regulations must be consistent with State Policy to Maintain Flows in Northern California Streams.
- Bring about consistency with the Federal ESA, State ESA, Water Code and DFG Codes including “take” avoidance discussed by DFG and NMFS.
- Set a priority for the use of alternative methods for avoiding the use of frost control irrigation water. Alternative frost controls, including not planting in frost prone zones, wind, etc., need to be incorporated in the permitting process. In addition, an alternative analysis including alternatives listed here as well as other methods should be analyzed in this DEIR.
- Make real-time availability and transparency of stream monitoring data. The monitoring requirement should specify real time stream gauge monitoring as well as public access to all monitoring data.
- Require that all frost water irrigators actually hold legal water rights and required licenses and permits for diversion and/or storage prior to use of frost water for irrigation. Diversion should not be allowed until the diverter has a valid water right (license) and has agreed to comply with the proposed policy.

- Do not rely on voluntary measures to carry out provisions of the policy. Asserting a Water Demand Management Program to control and monitor such diversion is necessary and should be managed solely by a State Responsible Agency (State Board, Regional Board, or Department of Fish and Game).

- The policy, regulation, and environmental document should address all cumulative effects and related limiting factors of cumulative diversion for frost protection.

Sincerely,

Larry Hanson, Manager

Northern California River Watch