



September 15, 2011

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Clerk to the Board
State Water Resources Control Board
P.O. Box 100
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Subject: Comment Letter – Russian River Frost Protection Regulation

Dear Chairman Hoppin,

Family Winemakers of California, a statewide association of small, premium wine producers, submits these comments on the changes to the Draft Russian River Frost Protection Regulation noticed by the State Water Resources Control board on August 31, 2011. Our comments are specific to the presumption that all groundwater is hydraulically connected to the Russian River stream system, the lack of standards for independently demonstrating that a groundwater source is not connected to the stream system, which allows Water Board staff to subjectively make a regulatory decision that could impact a key alternative identified in the environmental impact report as a mechanism for growers to deal with frost events instead of or in addition to stream diversions, and the overlooked impact of cross media pollution caused by shifting to frost protection alternatives.

These comments are offered in the context that the draft regulation does not give growers the flexibility to divert and store water during high flow periods for use during potentially low flow periods that occur during frost season.

The Revised Regulations continue to improperly assume all groundwater is hydraulically connected unless the groundwater diverter proves otherwise.

The September 1 draft text of the regulation (Section 862 (a)) presumes that “[f]or purposes of this section, groundwater pumped within the Russian River watershed is considered hydraulically connected to the Russian River stream system if that pumping contributes to a reduction in stream stage to any surface stream in the Russian River watershed during any single frost event.” This suggests that a groundwater diverter is burdened with the responsibility to prove that any diversion did not contribute to a reduction in stream stage. Proving a negative is extremely difficult given the multitude of factors that would need to be assessed, not the least of which is access to non-owned property between the diverter and the stream. There is no scientific basis to conclude that all groundwater basins are hydraulically connected to the stream system and the only purpose here is to prevent use of groundwater for frost protection.

The Water Board should undertake the responsibility of mapping all groundwater within the Russian River stream system in order to identify potential stream stage diversion issues. That would relieve growers of the cost of proving the lack of connection to the stream system and focus the regulation on a subset of groundwater basins that could have an impact of stream stage.

Hydraulically connected proof standards are needed.

Subsection (d) allows an individual groundwater diverter to independently demonstrate that there is no hydraulic connection to the Russian River stream system in order to be exempt from the groundwater aspects of the regulation. The draft regulation does not specify or

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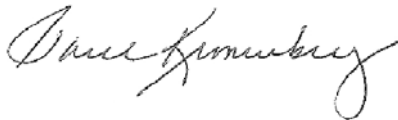
even hint what the criteria are for proving that there is no hydraulic connection. Without criteria each petitioner faces a subjective review by the Board staff and a subjective decision. Without basic criteria each petitioner will be forced to guess what might satisfy a demonstration that there is no hydraulic connection. That cost impact doesn't appear to be included in the economic analysis. Additionally, the lack of guidance to staff and petitioners will inevitably result in inconsistent determinations. Lastly, the Deputy Director for Water Rights is not required to exempt the diverter after even a scientifically compelling demonstration. That person is authorized to exempt, but not required to exempt.

Alternative frost protection methods have cross-media pollution impacts.

Requiring data for “acres frost protected by means other than water diverted from the Russian River stream system” in the Water Demand Management Program inventory (Section c (1)(D)) will increase anti-diversion creep within the regulation. It will set a baseline from which the WDMP will ultimately force stream system diverters to use alternative methods regardless of the cost and the cross-media pollution that will occur in air quality. Using heaters and wind machines as alternatives transfer environmental impacts from water to the air basin. The regulation does not adequately address this cross-media impact, which is bad environmental policy. In fact, current frost protection methodologies have emerged from a shift away from air emissions that come from using wind machines and heaters. The Water Board should not adopt a regulation that causes new pollution impacts in order to mitigate potential stranding of salmonids. Lastly, there is a presumption in the DEIR that growers will be able absorb the cost of shifting to frost protection alternatives.

Family Winemakers of California urges the Water Board to delay approval of the Russian River Frost Protection Regulation until these issues are addressed and the issue of longer term on-stream and off-stream storage is incorporated in the final regulation.

Sincerely,



Paul Kronenberg
President

Cc: Assemblymember Wes Chesbro
Assemblymember Michael Allen
Senator Noreen Evans