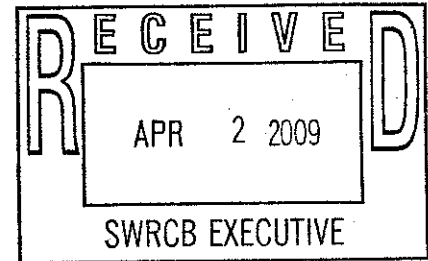




**Brian J. Johnson**  
Director, California Water Project  
Staff Attorney

April 2, 2009

Mr. Charlie Hoppin, Chair  
and Members of the Board  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814  
Via email to [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)



**Re: 4/7/2009 Russian River Frost Protection Workshop**

Dear Mr. Hoppin and Members of the Board:

On behalf of Trout Unlimited (TU), I submit the following comments for the Workshop to Receive Information regarding the Need for and the Effect of Water Diversions for Purposes of Frost Protection in Mendocino and Sonoma Counties.

The need for action is urgent. In the Russian River, coho salmon are almost extirpated. This year, fewer than a dozen returning adults were spotted; experts believe the number returning unnoticed may be larger, but not by much. Only the coho broodstock program (the salmon equivalent of the captive condor effort) and restoration projects conducted by wildlife agencies, private landowners, and other stakeholders in a heated race against the clock are keeping the population viable. Since the Russian River is located in the heart of the Central California Coast coho salmon evolutionary unit and historically supported one of its largest runs, the loss of the Russian population threatens the survival of the entire species. For steelhead, the situation is slightly less desperate, but only slightly.

Everyone who has studied salmon recovery in the Russian agrees on one thing: there isn't enough water in the streams. More specifically, summer rearing habitat is in critically short supply. Coho juveniles must survive for a year in fresh water, and there is an urgent need for everyone (agriculture, urban, rural residential) to find alternatives to summer diversions. It is also true that late winter and springtime diversions (including but not limited to frost protection) sometimes strand either fish that are emerging from eggs or year-old smolts moving downstream to the sea, or dewater redds. During wintertime, diversions can physically block fish passage or reduce flows in a way that limits migration or spawning opportunities; these effects tend to be highly localized but may be locally significant unless mitigated. There is a second thing everyone recognizes: there isn't enough information on streamflows or water diversions for regulators to do their jobs or diverters themselves to coordinate.

There is some encouraging news. For one thing, just about everyone agrees on both the problem and the need for change. While we don't always agree about the specific solutions, you will not hear anyone questioning the need for action. And for some solutions, there is widespread agreement. For example, farmers and fish activists both tend to support forgoing direct diversions for frost protection or irrigation in favor of wintertime diversions to off-stream

storage. To make it happen, farmers will need to make sure the water stored results in a foregone diversion later on, and participate in efforts to ensure the water remains in stream. Environmental activists, for their part, will need to accept diversions to off-stream storage when the science supports such practices, and encourage it where farmers are willing to put water back in the stream during critical times. Agencies will need to be a willing partner in these efforts, using both the carrot for stewardship-minded water users and the stick for those who refuse to play by the rules.

We have had very productive conversations with grape growers in Sonoma County and are beginning what we expect to be similarly productive conversations in Mendocino County to support their efforts on conservation and water use, through the program we call *Water & Wine*. You will hear a lot from the farming community at the workshop, and you can be assured that we will do everything we can to work with them to develop solutions to improve their water supply stability as we also improve stream flows for fish.

We have several specific recommendations for urgent action as a result of this workshop.

First, the state should mandate universal monitoring and reporting, so we have real-time information about supply (streamflows) and demand (water diversions). This should mandate should operate regardless of the water user's basis of right and regardless of their intended use. This is a constitutional principle, and should be a requirement of reasonable use.

Second, the state should set a time schedule for a solution to diversions for frost protection. You should consider a solution that builds on the Napa model that includes regulating ponds to reduce the instantaneous rate of diversion for frost and coordination of diversions, and other actions such as wind machines, efficiency improvements, and micro-sprinklers. It should not stop with frost protection. Where the diversion is located in a place that could affect summer rearing habitat, the solution should include enough storage to enable the user to forego those diversions. The Napa model is not the only possible model, but it is the logical starting point for a program that learns from that experience and is tailored to conditions in the Russian. The solutions for the mainstem and the solutions for the tributaries are not necessarily the same. We suggest that one year is an appropriate schedule for this program to be underway, provided the agencies are willing to support permitting and funding for the effort.

Third, SWRCB and DFG, not to mention environmental activists, must do their share. It is not possible to ask water users to change their practices if it will be impossible for the new practices to be permitted. I am confident that staff at the Division of Water Rights understands this fact, and I am encouraged by the very fast response to the application filed for the Pine Gulch Watershed Enhancement Project in Marin County where three landowners are trading a summertime diversion for off-stream storage. The Board's response to the frost protection issue should include guidance in support of applicants who seek to make such changes, and it should include coordination with DFG. We believe our comments on A.B. 2121 provide useful suggestions on how it could be implemented.

Fourth, the agencies should expand the scope of their inquiry beyond frost protection and agriculture. The problems we have in the basin are cumulative, so all water users need to be part of the solution. Urban and rural residential uses, many of which moved into the basin after agriculture began, also contribute substantially to the problem. While the instantaneous demand for rural residential uses does not compare to that for frost protection, the local consequences of

rural demand can be important—particularly in summertime. Since coho and steelhead survive in very small pools through the dry season, even a single poorly located well can eliminate juvenile rearing habitat. At a minimum, new residential water uses should be subject to the same conditions imposed on agriculture. We also strongly recommend that the state support efforts to ensure that no new residential permits be granted without a valid water right, and without measures in place to ensure that the diversions can be managed without harm to fish. In many cases, this will require a tank for storage. Such tanks have proven effective in the ground-breaking program for the Mattole River, and they could be part of the solution in the Russian as well.

Fifth, the State Water Board and the Governor should support stronger funding for the Division of Water Rights, including both permitting and enforcement. Until the state is prepared to stop illegal diversions, those diversions will continue.

Sixth, the State Water Board and the Governor should support funding for water supply and stream flow solutions through IRWMP and similar sources, and should support funding for state and federal stimulus dollars that can contribute to the solution. For example, the Governor should direct CalTrans to devote a significant share of its highway monies to fix fish passage barriers that contribute to the decline of anadromous species.

Seventh, the State Water Board should continue to work with NMFS to develop published guidance for best practices, including water supply. While we appreciate NMFS's effort to bring visibility to these issues with its letter to the State Board, we are disappointed that the agency was not yet prepared to offer its own solutions. We believe that NMFS can provide more guidance to water users about which practices risk ESA violations, and which do not, and we know that at least some staff at NMFS agree.

Last, the State Water Board should continue its work to finalize the AB 2121 Instream Flow Policy, with a new sense of urgency. We promise to do the same.

Thank you for considering our comments.

Sincerely,



Brian J. Johnson