

Mendocino County
Inland Water & Power Commission

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June 30, 2011

Mr. Charles R. Hoppin, Chair
c/o Jeanine Townsend, Clerk of the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Re: Comments on the Draft Russian River Frost Regulation sent via email to
commentletter@waterboards.ca.gov

Dear Chairman Hoppin and Members of the Board,

The Mendocino County Inland Water and Power Commission (MCIWPC), a Joint Powers Authority whose member agencies include the County of Mendocino, City of Ukiah, Redwood Valley County Water District, the Potter Valley Irrigation District and the Mendocino County Russian River Flood Control and Water Conservation Improvement District, wishes to comment on the latest State Water Resources Control Board (SWRCB) Draft of the Russian River Frost Regulation.

We believe that the proposed frost water regulation is unwarranted. After reviewing documents, released in response to a Freedom of Information Act (FOIA) request, we now know that the heavy handed reaction by the staff of NMFS and the SWRCB was unnecessary and that there is no evidence that the diversion of water for frost protection, in the spring of 2008, impacted salmonid fish populations in the Russian River watershed. Since 2008, thousands of hours of time and millions of dollars have been spent by the agricultural communities of Mendocino and Sonoma counties in an effort to remedy a problem that never existed. The Directors of the SWRCB should allow existing Federal and State laws to protect anadromous fish, abandon the effort to create a new frost protection water regulation and investigate the events that led to their decision that a regulation was needed.

Farmers were notified that they had dewatered two places in the Russian River watershed during the spring of 2008, and that fish had been stranded. The agricultural community took the charge very seriously. A tremendous voluntary effort was undertaken to mitigate the reported taking of

threatened anadromous fish. Hundreds of hours of meetings and workshops were attended, economic analyses were conducted, grower coalitions were formed, water use data was collected, contractors and attorneys were hired, grants were applied for and received, ponds were built, a multicounty frost forecasting network was developed, new USGS and other gages were installed, meteorological analyses of microclimatic conditions were undertaken and millions of dollars were spent.

At the same time negative letters were written to editors decrying the greediness of farmers, concerned citizens became fish police, federal and state agencies assembled a task force and extra law enforcement personnel were hired to watch every move farmers made on cold nights.

Repeatedly, during the time all of this was happening, NMFS was asked to provide the information they had collected in 2008. We needed details of the extent of the fish stranding, where it had occurred and what the physical conditions had been so that we could appropriately work on a remedy for the perceived problem. Time after time NMFS informed us that this was an ongoing investigation and the information could not be released.

Initially, after the reported strandings occurred in 2008, the interaction between the farmers and NMFS staff appeared to be collaborative. We were confused about the change in the reaction of NMFS and SWRCB staff as time went on, particularly as the collaborative atmosphere dissolved into an all out enforcement effort and the threat of the total loss of water for frost protection became "a solution".

The reason for the change in the tone and demeanor of the interaction became clear to us as detailed information was revealed in the documents finally released in the FOIA request. Based on these documents it is clear that there had been communication between members of NMFS and SWRCB staff that simply cannot be categorized as open and collaborative. In fact, the communication that went on between staff members shows that there was a concerted effort to find evidence of wrong doing and to assume that the farmers would continue to harm fish unless they were severely regulated.

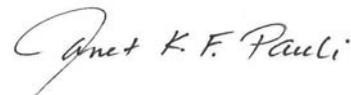
The FOIA documents clearly tell the story of how a handful of 2.5 inch juvenile fish were found in two locations in the Russian River watershed with no evidence that they had been stranded by the actions of farmers. Concurrent USGS gage date showed that the river flows, during the supposed time of the stranding, were well within the criteria used by NMFS to determine what

passage flows should be for that time of the year and that year class of fish. More recently, in an attempt to justify their extreme reactions and exaggerate the impacts of their false accusation that farmers had dewatered the river, NMFS produced a statistically manipulated report, that multiplied ten stranded juvenile fish into thousands (25,872) of dead fish along the entire length of the Russian River.

In all of the FOIA documents there was absolutely no recognition by the staff members of NMFS or SWRCB of the immense amount of voluntary time and money that had been spent by farmers to mitigate the perceived problem. There was no concern about the potentially severe economic impact of a punishing regulation. When these facts are coupled with a clear lack of scientific oversight and the blatant exaggeration of data by the staff of these agencies, it should be of grave concern to the Directors of the SWRCB. Falsely accused farmers put thousands of hours, and millions of dollars, into trying to fix a problem that didn't exist. Our water rights were jeopardized and the economy of two counties was seriously, and unnecessarily, threatened.

We believe that the Directors of the SWRCB have been deceived, just as we have been deceived. Creating this regulation would set a precedent proving that laws can be enacted with no oversight or underlying basis in fact. Therefore, instead of continuing to discuss an unnecessary and overreaching regulation, the Directors of the SWRCB should be conducting an investigation into the events that have led us all down a very long road for no reason.

Sincerely,



Janet K.F.Pauli
Chairman

cc: Senator Dianne Feinstein
Senator Barbara Boxer
Congressman Mike Thompson
California State Senator Noreen Evans
California State Assemblymember Wes Chesbro
Senator Anthony Cannella, Chairman, California State Senate Agricultural Committee
Paul Wenger, President, California Farm Bureau Federation
Paul Kelley, President, Association of California Water Agencies
Robert Koch, President and CEO, Wine Institute
John Aguirre, President, California Association of Wine Grape Growers