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UKIAH VOICES CONCERNS TO STATE WATER BOARD REGARDING MISGUIDED REGULATIONS ON RUSSIAN RIVER WATER USE CURTAILMENTS

Ukiah, CA. June 11, 2021. – The City of Ukiah sent a letter to the State Water Resources Control Board (Water Board) this week outlining a series of problems with the emergency regulations that are being considered by the State to reduce water use in the Russian River. Drought conditions have made it necessary to take action to protect limited water supplies and endangered fish species, but the draft regulations proposed by the Water Board do not adequately consider or respond to the legal considerations for existing historical water rights and how to most effectively and fairly manage the limited water resources that are available.

Ukiah’s letter highlights how the regulations would have an acute impact on the City and its ability to share water resources across the Ukiah Valley by sluicing water away from Mendocino County to serve a few large public agencies and population centers further downstream. Essentially, the regulations set curtailment rules based on geography, instead of based on the state’s long-established water rights priority system.

“There is a better path for conservation and management of the shared water resources in the region,” said Phil Williams, special counsel for the City of Ukiah. “Ukiah has been committed to creating and participating in a voluntary conservation framework that provides for the peaceful and equitable provision of water for all on the Russian River. Such a program is viable, justifiable, and superior to the proposed emergency regulations which are not based on science or legal precedent, do not treat our communities equitably, and lead to conflict.”

The proposed regulations create two geographic areas with distinct regulatory implications for each: 1) the Lower Russian River Watershed including areas in Sonoma County within the Dry Creek watershed and downstream of the confluence of the Russian River and Dry Creek; and 2) the Upper Russian River Watershed including the area in Mendocino and Sonoma Counties that drains toward the Russian River and Cry Creek confluence. Unfortunately, and unfairly, the emergency regulations pre-determine that water use in the Upper Russian River Watershed constitutes a “waste” and “unreasonable” use of

water but gives no such pre-determination for the Lower Russian River Watershed. In essence, the regulations declare that export water to Sonoma County and to meet unspecified habitat needs of salmonids is a more righteous beneficial use of water than the people of the Upper Russian River Watershed continuing to responsibly steward the water resources. Ukiah is not suggesting that other water users should be similarly deprived of equal protection and due process – the City argues that *no water right holder*, regardless of geography, should be treated with such a predetermined value judgment and without the opportunity for a hearing and presentation of evidence on the circumstances.

Unjustified transfer of responsibility from Sonoma Water to other water users

The regulations would relieve Sonoma County Water Agency of its obligations for maintaining in-stream flows, while shifting the burden of those obligations to other water rights holders on the Russian River. Sonoma Water was given the right to build a dam on Lake Mendocino in 1951, if the agency maintained a minimum of 25 cubic feet per second (CFS) flows in the river. This was an important compromise that reflected the nature and rights of other water users in the region. There are a variety of water rights holders, including the City of Ukiah and nearby farms, that have water rights which are more senior and therefore more durable than Sonoma Water; but those more senior water rights holders would now face a larger obligation for in-stream flows, when those flow conditions were explicitly created as a mitigation measure for the creation of Coyote Valley Dam.

Limits Ukiah's capability to share resources regionally

Ukiah holds a water right from 1872, which is critically important to providing clean, reliable water to the businesses and families in the greater Ukiah Valley, including 16,000 city residents and more than 13,000 people and 5,000 homes in the outlying Ukiah Valley. The City can use its senior water right strategically by creating partnerships and supply arrangements with smaller districts or users in the region, as was demonstrated during the drought of 2015 when Ukiah was able to make water available to communities whose water providers were unable to meet basic demands for health and safety.

“No other entity is in the same position as Ukiah to help out local water districts and local users,” said Phil Williams. “In the water world, holding a pre-1914 water right is very valuable, and should be viewed as an important regional asset to be used carefully and strategically.”

Lack of data leads to incorrect assumptions

The Water Board has not shown that it properly evaluated the Upper Russian River system through a water availability analysis to support the determination that water should no longer be available to senior riparian and appropriative water rights holders in order of legal priority. The regulations incorrectly assume that all water in the Russian River is “stored water” and that any diversion above that necessary for health and safety is a wasteful and unreasonable use of water. But this judgment ignores a long history of water law in California, which supports the principle that reasonable use determinations cannot be made arbitrarily and require an analysis of the particular circumstances.

Regulations harm rural and disadvantaged communities for the benefit of others

When Governor Newsom recently held a press conference to announce a state of emergency in the Russian River, he announced he was here to take “action to bolster California’s resilience to drought and support vulnerable communities, local economies and ecosystems.” However, the Water Board’s proposed regulations do not honor that promise. Instead, the regulations appear to sacrifice the lower-income and more rural communities in Ukiah Valley for the benefit of the wealthier regions further downstream.

In summary, the proposed regulations are not appropriate or lawful

- They do not reflect conservation requirements that are appropriately aligned with water rights status.
- They are not based on adequate data to support the decision-making and enforcement on curtailment orders.
- They arbitrarily divest water rights holders in the Upper Russian River Watershed while providing full protections to water rights holders in the Lower Russian River Watershed.
- They do not reflect the State Water Board’s commitment to environmental justice.
- The emergency regulations cut off the ability to use further data and investigation to understand water supply and demand on the Russian River and abandon the possibility that further refinement of the regulations is possible or warranted.

There is a better path forward

Instead of adopting the regulations as proposed by the Water Board, Ukiah has been advocating for the adoption of a voluntary conservation agreement that allows for collaboration and localized water planning and sharing across the region. Ukiah has been working with other regional urban and agricultural stakeholders through the Mendocino County Water Resiliency Task Force, which has created the framework for a conservation agreement. The Task Force will be presenting to the Water Board next Tuesday, June 15 on the interests of the Ukiah Valley, and will underscore how a voluntary conservation agreement would provide a better pathway that would still address drought conditions while driving actions based on more precise information and cooperation.

“Water supply and allocation is complex and should not be treated as a strict zero-sum game where local agencies compete against each other for every drop of water,” said Sean White, Ukiah’s Director of Water and Sewer. “Instead, we urge collaboration and coordination through a voluntary conservation framework so that available resources are protected, and we can use data to inform flexible, responsible local action.”


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