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State proposes new limits on vineyards using Russian River water

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State water regulators have proposed new rules that would limit the use of Russian River water for frost protection, igniting fears among grape growers in Sonoma and Mendocino counties.

"This would have a very significant impact if something like this were to be approved," Mendocino County Farm Bureau Executive Director Devon Jones said of the proposal, which was drafted by state Water Resources Control Board staffers.

An environmental leader, meanwhile, called the proposal "a mixed bag" in terms of its protection for endangered salmon and steelhead.

Jeff Miller, a spokesman for the Center for Biological Diversity, credited the water board staff for "at least thinking about some good things in terms of regulations." But he remained skeptical, fearing the proposal might rely too much on the voluntary cooperation of farmers.

Federal officials and environmental groups have called for the state Water Resources Control Board to set regulations to ensure adequate water in the river and its tributaries for fish during frost season.

On freezing nights in spring, many growers spray water over their vineyards to protect the vines from damage. The irrigation water freezes and encapsulates the green buds in ice, keeping the plant tissue safe at a constant 32-degree temperature.

But federal officials said frost protection in 2008 and 2009 stranded and killed both coho salmon and steelhead. The strandings occurred on Felta Creek, a tributary of Dry Creek, and on the Russian River near Hopland.

The Endangered Species Act prohibits human activity that results in the death of protected fish. The National Marines Fisheries Service opened an investigation in 2008 and has yet to announce the results of the inquiry.

On Tuesday the water board will hold its third workshop on the issue in the past year. In preparation, staff members last week released their proposed rules.

Essentially the rules require farmers to show that any water diversions or well pumping for frost protection won't harm fish.

One way to do that is to become part of an approved "water demand management program." Another is to convince the state board that the diversions will have "a negligible effect" on flows in the river or its tributaries.

Nick Frey, president of the Sonoma County Wine Grape Commission, said growers are concerned the new rules may set them up for failure.

"How do you prove you're not having an effect?" Frey asked.

Both growers and environmentalists noted that under the regulations, the pumping of some groundwater could be illegal if it is determined to be "subterranean flow," meaning it is hydraulically connected to the river or a stream.

Growers wondered if that was setting some new precedent. But water board spokesman William Rukeyser the state has long regulated sub-surface water that can affect stream flow in a waterway.

The frost protection issue may focus new attention on those water users who don't hold approved rights to divert from the river or its tributaries.

Growers have complained that it can take many years to obtain such rights from the state water board. Environmentalists have called on the state to shut down illegal diversions.

How many such diversions exist is a matter of debate. Rukeyser said the state has counted about 800 ponds or reservoirs in the watershed for which no permits or written authorization apparently exists. Many may turn out to be exempt from regulation, he said, and it is unknown whether any are tied to vineyards.

No action will be taken at Tuesday's meeting, Rukeyser said. The board must provide a comment period of 45 days for any proposed action. And once the board acts, the new rules must be reviewed and approved by the state Office of Administrative Law. As such, it remains uncertain whether the new rules will take effect during the coming frost season, which begins in March.

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