

Ukiah Daily Journal

July 31, 2014

Ukiah-Area Grape Growers Still Battling Frost Regulations

By Justine Frederiksen

udjff@ukiahdj.com *@justfrederiksen on Twitter*

UPDATED: 07/30/2014 09:35:40 PM

Local grape growers have requested to have another hearing regarding the reversal of a decision that halted new state regulations regarding the use of water for protecting crops from frost damage.

Rudolph and Linda Light, who have 23 acres of grapes in Redwood Valley, filed a lawsuit in 2011, when the State Water Resources Control Board implemented new rules limiting the amount of water grape growers can divert from the Russian River for frost protection.

In the fall of 2012, Mendocino County Superior Court Judge Ann Moorman agreed with the Lights and declared the new regulations "constitutionally void."

In her written decision, Moorman said "The court concludes that the SWRCB exceeded its authority by having adopted a regulation encompassing all classes of water rights holders including riparian and failing to make the necessary specific findings as to those water users."

Moorman also declared the new regulations invalid because the state did not present convincing evidence that the regulations were necessary.

In adopting the regulations, the SWRCB said "the high, instantaneous demand for water for frost protection by numerous vineyardists and other water users may contribute to a rapid decrease in stream stage that results in the mortality of salmonids."

Because of this, the regulation required that between March 15 and May 15, "any diversion of water (except for diversion upstream of Coyote Dam or Warm Springs Dam) from the Russian River stream system, including the pumping of hydraulically connected groundwater, for purposes of frost protection shall be diverted in accordance with a board-approved water demand management program."

Attorney Matisse Knight, of the firm Carter, Momsen & Knight, said the suit argued that the SWRCB "does not have the legal authority to take what is beneficial, frost protection, and turn it into an unreasonable use and try and regulate it," and that the regulation did not comply with the California Environmental Quality Act.

In general, Moorman's ruling calls into question the state water board's procedures from the beginning. Moorman begins her discussion with the fact that frost protection is already, by law, a "beneficial" use of riparian (riverside) water rights. The water board, in her view, over-reacted to the die-off, or stranding, of some fish in the Russian River in 2008.

Specifically, on April 20, 2008, biologists from the National Marine Fisheries Service were alerted to two strandings (where fish die for lack of water). One was a group of 10 young steelhead near Hopland and the second was 31 young salmonids in a tributary to the Russian River in Sonoma County.

Moorman pointed out that blaming the farmers was unfair. In fact, she wrote, a "perfect storm" of weather and water management problems really were at fault. First, she noted that 2008 was a particularly cold winter after a severely dry year. Vineyard owners in Mendocino County were warned by local agriculture experts to frost protect on numerous occasions.

Last month, Moorman's decision was overturned by the state's Court of Appeal after the SWRCB appealed.

On July 24, the Lights petitioned the court for a rehearing, and the brief filed by the firm Carter, Momsen & Knight states that the decision "effects a dramatic increase in the power of the board over the exercise of riparian and pre-1914 water rights in California. The turmoil this decision will produce is clearly inconsistent with the Legislature's 1982 determination in Water Code section 109 that: 'the growing water needs of the state require the use of water in an efficient manner and that the efficient use of water requires certainty in the definition of property rights to the use of water.'"

Attorney Jared Carter concludes the petition by stating, "review should be granted to confirm to many concerned water rights holders that water rights in this state are subject to the rule of law, and are not subject to the changes in values as perceived by a majority of the board."

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