



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Division of Water Rights

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Arnold Schw
Governor

SEP 23 2009

In Reply Refer to:
363:DL:262.0(17-16-05)

Ms. Chris Malan, Manager
Living River Council
2945 Atlas Peak Road
Napa, CA 94558

Dear Ms. Malan

WATER RIGHT COMPLAINT REGARDING CLEAR LAKE BASIN IN LAKE COUNTY

The State Water Resources Control Board (State Water Board) Division of Water Rights (Division) is in receipt of the water right complaint you filed on behalf of the Living Rivers Council (LRC) and Friends of Clear Lake (FOCL) regarding water quality problems at Clear Lake. In the complaint, LRC and FOCL request that the State Water Board review all water right permits in the Clear Lake Basin and, under its continuing authority over permitted rights¹, modify those rights by restricting the diversion and use of water to protect public health and public trust resources.

The water quality problem at Clear Lake is primarily related to nuisance algae blooms, which are generally considered to be the result of nutrient loading. As you know, Clear Lake was included on the Clean Water Act Section 303(d) List of Impaired Waterbodies for nutrients in 1986. The Central Valley Regional Water Quality Control Board (Regional Water Board) has been working diligently with responsible parties and other interested stakeholders to develop and implement a nutrient control TMDL program for Clear Lake. I understand that the Regional Water Board has responded to your recent inquiries and provided you with information regarding past and current efforts to monitor and respond to the water quality problems at Clear Lake.

Your water right complaint contains no evidence to demonstrate that diversions are responsible for the water quality problems at Clear Lake. Furthermore, I believe that diversions made pursuant to permitted water rights represent only a fraction of the total diversions in the Clear Lake watershed. The Division has limited information regarding diversions made under claim of riparian or pre-1914 appropriative right, and no evidence to suggest that such diversions are unreasonable or cause unreasonable harm to public trust resources. The complaint also contains no evidence to suggest that limitations placed on diversions made under permits and licenses will result in a significant improvement in water quality at Clear Lake. However, requiring permittees and licensees to cease or curtail diversion of water would most likely have a serious, adverse impact on the public health and safety of those who rely upon the use of water under permitted rights.

¹ - The complaint document refers to "All *permitted water users/diverters* of the Clear Lake watershed basin (located in Lake County California)". I assume this to include all active water right permits and licenses issued by the State Water Board.

Ms. Chris Malan

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The State Water Board, through its Regional Water Board, is already dedicating significant resources to monitor, analyze, and control the water quality problems at Clear Lake. Therefore, the Division will take no further action in regard to your water right complaint. If the Regional Water Board finds that water diversions are contributing to the water quality problems at Clear Lake, the State Water Board may invest additional Division resources to determine whether modification of water rights to restrict the diversion and use of water within or from the basin is in the public interest.

If you have any questions regarding this matter, I can be reached via telephone at (916) 341-5377 or via e-mail at: crich@waterboards.ca.gov.

Sincerely,



Charles A. Rich, Chief
Complaint Unit

cc: Friends of Clear Lake
P.O. Box 492
Glenhaven, CA 95443

Genevieve Sparks
Central Valley Regional Water Quality Control Board
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