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STATE WATER BOARD  
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SACRAMENTO

## Water Advisory Committee Advisory to the Sonoma County Water Agency Board

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April 23, 2009

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

Jake Mackenzie, Chair – Rohnert Park  
Susan Gorin, Vice Chair – Santa Rosa  
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Mark Bramfitt – Valley of the Moon WD

RE: Objection to and Petition for Reconsideration of State Water Board Order WR 2009-0027-DWR

Dear Chairman Hoppin, Vice-Chair Spivey-Weber and Members of the State Water Board,

The Water Advisory Committee (WAC) to the Sonoma County Water Agency (Water Agency) Board of Directors appreciates the timely issuance of, State Water Board Order WR 2009-0027-DWR (the Order), which will enable preservation of storage in Lake Mendocino for later release in support of the fall run Russian River Chinook Salmon. The WAC is aware that this dry year and reduced diversions from the Eel River thru the Potter Valley Project have resulted in reduced storage in Lake Mendocino which will not support normal year flows in the Russian River. The WAC is also aware that implementation of the Biological Opinion is a critical constraint on water supply flows in the Russian River Watershed. Nevertheless, the WAC is submitting an objection to and a petition for reconsideration of the Order, and respectfully requests that the State Water Board reconsider certain items of the Order which are contrary to law, not in the public interest, and not within the jurisdiction of the Board.

The WAC would like to work with the State Water Board and the Water Agency in a collaborative and constructive way on temporary urgency petitions and water rights orders needed to address the Russian River situation this year. Unfortunately, the provisions of the Water Agency's recent petition and the resulting Order were not shared with us until after they were complete. If we had been given an opportunity to participate early in the process, we believe we could have provided clarity and ensured efficacy.

The Water Agency provides water to approximately 600,000 people in the counties of Sonoma and Marin. The Water Agency supplies water to eight primary contractors, consisting of the cities of Cotati, Petaluma, Rohnert Park, Santa Rosa, Sonoma, the Town of Windsor, and the North Marin and Valley of the Moon Water Districts (Water Contractors). The WAC is a committee representing these eight Water Contractors, advising the Board of Directors of the Water Agency on policy and fiscal matters affecting the WAC member agencies.

Water conservation implementation and recycled water development and use have been mainstays of our region's water portfolio, leading to the region's gallons per capita per day (gpcd) water use being significantly below the statewide average of 154 gpcd. All of the WAC member agencies are signatories to the California Urban Water Conservation Council Memorandum of Understanding Regarding Urban Water Conservation in California (MOU), and are aggressively implementing the Best Management Practices (BMPs) defined by the MOU. From 1997 to 2008, WAC member agencies and the Water Agency have spent in excess of \$47,000,000 on water conservation programs and are leaders in the State of California in implementing innovative conservation programs that go above and beyond the 14 BMPs.

The Water Agency and the Water Contractors have a contractual agreement for water supply, entitled the Restructured Agreement for Water Supply (Restructured Agreement), which defines maximum water allocations for each Water Contractor. Section 3.5 of the Restructured Agreement defines how the Water Agency will allocate water during a water shortage, using a methodology that rewards conservation, avoids percentage cutbacks based upon historical usage, and assures no penalty for "demand hardening" due to water conservation. The water shortage allocation methodology rewards those that have implemented water conservation measures and ensures that those in the community who have been implementing water conservation measures are not penalized.

In 2007, the Water Contractors, working collaboratively with the Water Agency, were successful in reducing Russian River diversions by 22%, exceeding the requirements to comply with WR Order 2007-022. The result preserved water in Lake Mendocino for later release in support of the fall run Russian River Chinook Salmon. Similarly, in 2008, while no State Water Board intervention was necessary (dry spring conditions and flow requirements were in effect), the Water Contractors, working collaboratively with the Water Agency, were again successful in reducing Russian River diversions and preserving water in Lake Mendocino for the fall run of Chinook Salmon.

Now, in 2009, despite the proven track record of the beneficial results of the collaborative efforts of the Water Agency and the Water Contractors, the State Water Board has adopted an Order that does not recognize the local water supply plans, programs and ordinances the Water Contractors have in place to respond to water supply shortages and, unintentionally, is a disincentive to continued water conservation efforts.

The WAC hereby formally objects to the Order and hereby respectfully requests and petitions for reconsideration of certain provisions of the Order for the following reasons:

1. The Water Agency submitted a Hydrologic Analysis of Lake Mendocino (Analysis) with its Temporary Urgency Change Petition (Petition). The Analysis noted that a 20% reduction in diversions from the upper reach of the Russian River, coupled with lower instream flow requirements, would provide enough water for fishery and recreation uses in the fall. We are not aware of any hydrologic analysis that differs from that submitted by the Water Agency. Requiring a 25% percent reduction in diversions from the Russian River to the Water Agency's service area from April 6, 2009 to October 2, 2009 is not supported by the Analysis, exceeds the

level of protection needed for the beneficial interests of concern to the State Water Board, and harms the Water Contractors and their customers. The WAC respectfully requests that, to be consistent with the Analysis presented with the Petition, that reductions in diversions of 20% be required of water users in the upper reach of the Russian River (e.g., upstream of the confluence with Dry Creek) from May 15, 2009 to November 15, 2009 and that Provision 13 be changed to specify that any reduction in Agency diversions due to reduced Russian River flows be compared to a baseline of 2004—the same year used for State Water Board’s temporary change order issued in 2007 requiring a 15% reduction in diversions.

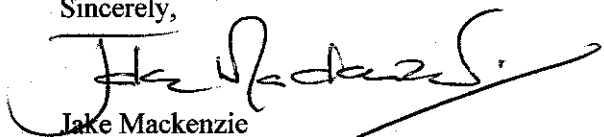
2. The Analysis describes the Russian River Biological Opinion issued by the National Marine Fisheries Service in 2008, and the constraints that it imposes on deliveries of water from Lake Sonoma to the Water Agency water contractors during the months of June through October. These constraints preclude the Water Agency from providing additional flow to the mainstem of the Russian River, to make up for reduced instream flows in the upper River, and are the basis for the request in the Petition for reduced instream flow requirements for the River below the confluence with Dry Creek. The WAC respectfully requests that the Board defer to the Biological Opinion with regard to the restrictions in flows in Dry Creek.
3. Provision 14 of the Order limits the water rights of the Water Agency by prohibiting irrigation of commercial turf. It is primarily the Water Contractors who have customers who actually do such irrigation. “Commercial turf” is not defined, nor is the distinction between commercial turf and other forms of turf (e.g., single-family or multi-family homes, schoolyards, public parks, sports fields, street medians, etc.). Irrigation of commercial turf is a lawful beneficial use of water, and the Water Contractors do not currently have authority to prohibit irrigation of commercial turf; instead the Water Contractors’ water conservation programs have aggressively promoted replacement of turf with low- or no-water landscape materials and smart irrigation practices for the turf that does exist and require landscapes in new commercial development to be consistent with the State Model Water Efficient Landscape Ordinance, as required by State Law. Requiring commercial businesses to prohibit the irrigation of their turf, as apparently intended by Provision 14, will create a financial hardship and cause injury to an entire class of lawful users of water, without any defensible basis of which we are aware. The WAC respectfully requests that the State Water Board remove Provision 14 from the Order and allow each Water Contractor to continue to work within its community to incentivize the retrofitting of turf to low water use landscapes that are consistent with the requirements of the State Model Water Efficient Landscape Ordinance.
4. The Water Agency and Water Contractors have adopted Water Waste Ordinances and Urban Water Shortage Contingency Plans (Shortage Plans) as required by California Water Code Section 10632. Each Water Contractor’s Shortage Plan takes into account our individual water supply portfolios, each of which is different, and allows the Water Contractors to meet the water supply shortage taking into account the unique needs and priorities of the community. The State Water Board should recognize these local plans as required by State Law.
5. To date, six of the Water Contractors have declared water shortage emergencies for 2009, and have enacted their Shortage Plans (North Marin, Santa Rosa, Valley of the Moon, Sonoma, Cotati and Windsor).

6. The Water Contractors have executed a memorandum of understanding to form the Sonoma Marin Saving Water Partnership, which provides for continuation of the types of formal collaboration undertaken during the past two years, and enables the Water Contractors to undertake a more regional approach to water conservation in the Sonoma and Marin region.
7. The Order only has specific language regarding reductions in urban water use, although it does reference reductions in both agricultural and urban use in the plan required of Sonoma County Water Agency in Provision 15 of the Order. The Order should treat the users in an equitable rather than differential manner and recognize the work that both retail urban water supply agencies and agricultural water users have done to date to improve water use efficiency.
8. Provision 17 of the Order references "measures to eliminate the use of residential water wasting devices." This term is not defined, and we are not aware of any reference to "residential water wasting devices" in the California Water Code. Given that municipal water supply, of which residential use is one component, is defined by the California Water Code to be the highest and best use of water in California, the WAC respectfully requests that the Board provide further definition to this term, before requiring the Sonoma County Water Agency to develop a plan to eliminate its use.

The cities and water districts in Sonoma and Marin counties are recognized as statewide leaders in water conservation, recycled water use, and sustainability. The concept of reducing underutilized landscape turf in commercial areas has merit. Let us work with you collaboratively to lead the state in this area too. An immediate ban on irrigating commercial turf could set this effort back years.

The WAC respectfully objects to and requests that the State Water Board reconsider the Order, and we ask that the State Water Board allow our region to utilize existing water shortage contingency plans to reduce diversions from the Russian River this summer, to achieve the long-term conservation targets established by the Governor, and to let the local jurisdictions provide a plan to retrofit existing commercial turf with low water use landscaping over a multi-year phase in period.

Sincerely,



Jake Mackenzie  
Chair, Water Advisory Committee

cc. Randy Poole, General Manager/Chief Engineer Sonoma County Water Agency