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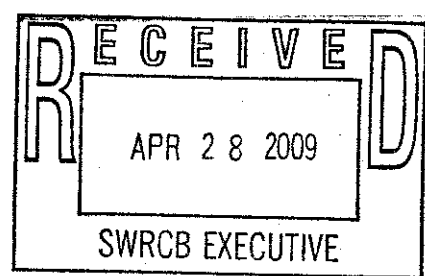
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April 28, 2009

Via E-Mail and U.S. Mail

Division of Water Rights
State Water Resources Control Board
1001 I Street, 14th Floor
Sacramento, CA 95814
E-Mail:
commentletters@waterboards.ca.gov



Re: Comment Letter: Sonoma County Water Agency Temporary
Urgency Change Petition Workshop (May 6, 2009)

To Whom it May Concern:

Attached please find a comment letter dated April 13, 2009, regarding the Sonoma County Water Agency's Temporary Urgency Change Petition. Please include the attached letter in the Board's materials, and in the official record, for the above-referenced Workshop. Thank you for your consideration.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Kevin P. Bundy

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April 13, 2009

Via E-Mail and U.S. Mail

Mr. Charles R. Hoppin, Chair
Ms. Francis Spivey-Weber, Vice-Chair
Mr. Arthur G. Baggett Jr., Ms. Tam M. Doduc, Members
Ms. Dorothy Rice, Executive Director
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Victoria Whitney
Division of Water Rights
State Water Resources Control Board
PO Box 2000
Sacramento, CA 95812-2000
E-Mail: vwhitney@waterboards.ca.gov

Re: Temporary Urgency Change Petition and Order (Application Nos. 12919A, 15736, 15737, 19351; Permit Nos. 12947A, 12949, 12950, 16596); Impacts Related to Frost Protection

Dear Chairman Hoppin, Members of the Board, and Ms. Whitney:

Our firm represents Friends of the Eel River ("FOER") in matters related to the diversion and use of water from the Eel River within the Russian River basin. FOER is deeply concerned that frost protection activities may result in take of listed Russian River salmonids under the flow regime proposed in the above-referenced Temporary Urgency Change Petition ("Petition"), filed by the Sonoma County Water Agency

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Victoria Whitney, Division of Water Rights
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("SCWA") on April 6, 2009, and approved by the State Water Resources Control Board ("Board") on the same day (the "Order").

The Order permits a minimum flow of 75 cfs in the Russian River between the confluence with the East Fork and the confluence with Dry Creek, effective on April 6, 2009. According to a presentation by the National Marine Fisheries Service at the Board's frost protection workshop on April 7, 2009, hydrographs of the Russian River flow gage at Hopland show instantaneous flow reductions of roughly 70-80 cfs in response to frost events in 2008. As several participants in the workshop pointed out, if base flows in the river are at only 75 cfs, a single night of frost protection could effectively dewater the main stem and cause additional take of listed salmon and steelhead. This threat is exacerbated due to this year's dry conditions—conditions that tend to result in increased use of the main stem, rather than upper tributaries, for spawning and rearing.

The Board's decision not to take any action on frost protection this season, in conjunction with its approval of the Order, thus could have very serious consequences for threatened and endangered salmonids. Indeed, these decisions could set the stage for additional, unlawful take of listed fish between now and the end of frost season.

The Board's decision regarding frost protection also could undermine the purpose of the Petition and Order (namely, to conserve water in Lake Mendocino for release later this summer and fall). At the frost protection workshop, SCWA presented information regarding its attempts this year to mitigate the effect of frost pumping by releasing additional water from Lake Mendocino in advance of anticipated frost events. If base flows in the river are lower, SCWA will have to release far more water—in effect, enough water to double the flow—in order to provide enough water for frost pumping while maintaining the minimum flows required under the Order. The Petition does not analyze, and the Order does not address, whether there is enough water in Lake Mendocino to support SCWA's continuing experiments with timed releases for frost protection through the remainder of this year's frost season.

FOER understands that salmonids in the Russian River would suffer tremendously if Lake Mendocino were to go dry later this summer. FOER also appreciates the Board's effort to include mandatory conservation measures as conditions in the Order. The minimum flows authorized in the Order, however, will pose a substantial risk to listed salmon and steelhead unless the Board also takes steps to curtail frost protection activities during the rest of this year's frost season.

FOER thus urges the Board to reconsider its decision not to take any action regarding frost protection pumping this year. If the Russian River is dewatered during a

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frost event and another fish kill occurs, we presume that NMFS and the Department of Fish and Game will fully enforce the federal and state Endangered Species Acts—but by that time, it will be too late to protect the fish.

FOER also concurs in the request filed on April 9, 2009, by Russian Riverkeeper for a hearing and public comment period regarding the Order. Thank you for your consideration of our comments and concerns in this matter.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Kevin P. Bundy

cc: Robert Hoffman, Assistant Regional Administrator, NMFS
Richard Macedo, California Department of Fish and Game
Nadananda, Friends of the Eel River
David Keller, Friends of the Eel River