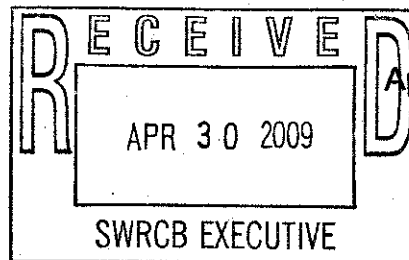




MARIN MUNICIPAL WATER DISTRICT

220 Nellen Avenue Corte Madera CA 94925-1169
www.marinwater.org



April 30, 2009

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

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 Marin Municipal Water District (MMWD) 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. MMWD is one of the retail water agencies that purchases water from the Sonoma County Water Agency (SCWA), and would be directly affected by the provisions of this Order.

We are very aware that this dry year and reduced diversions from the Eel River through the Potter Valley Project have resulted in reduced storage in Lake Mendocino which will not support normal year flows in the Russian River. It is critical this year to reduce the instream flow requirements at both Healdsburg and Guerneville, to allow SCWA to preserve adequate water supplies in Lake Mendocino to provide cool water releases for salmon spawning in the fall. This situation in Sonoma County is similar to the dilemma that exists in the Sacramento River Valley, in which flow releases to meet the salinity standard at Chipps Island can pose a challenge to maintaining adequate cold water supplies in Lakes Shasta and Oroville to protect fall and winter runs of Chinook salmon. The recent Biological Opinion from the National Marine Fisheries Service concerning salmonids in the Russian River watershed recognizes this problem and requires SCWA to petition for a permanent reduction in instream flow requirements in the Russian River.

SCWA prepared and submitted a very comprehensive and compelling hydrologic analysis as part of its petition for a temporary urgency change to instream flow requirements. We support SCWA's request for reduced instream flows, and we appreciate the State Water Resources Control Board's (the Board) approval of these

reductions in required flows. As part of that analysis, SCWA projected that adequate storage could be maintained in Lake Mendocino with the addition of 20% reductions of water diversions (compared to 2004, presumably) by both municipal and agricultural water users in the upper river watershed, e.g., upstream of Healdsburg. We appreciate the Board's commitment to assist SCWA in meeting this objective.

SCWA's petition also noted that water storage in Lake Sonoma is currently over 90% of capacity, which would normally provide adequate water to meet the needs of users along Dry Creek and in the lower reach of the river. However, the Biological Opinion establishes a range of flow restrictions in Dry Creek and downstream flow requirements that SCWA must meet to assure protection of endangered and threatened salmonids. These restrictions will require reductions in diversions from Dry Creek and the Russian River, by both SCWA and agricultural and municipal appropriative water rights holders. These restrictions are referenced in the SCWA petition, and will require extra efforts this year in water conservation programs by SCWA's retail water contractors.

Water conservation is a hallmark of our operations at MMWD, and indeed, of the other retail water contractors that purchase water from SCWA (which includes the City of Santa Rosa, the North Marin Water District and others). MMWD is one of the charter members of the California Urban Water Conservation Council, and has reduced overall water use in its service territory by 12% in the past 20 years, and per capita water use by almost 20% in that same time frame. MMWD is on track to reduce per capita use by an additional 10% in the next 15 years, through the projected expenditure of \$44 million in MMWD funds, to be matched by \$77 million in ratepayer funds. Water conservation practices can be successful, but they take time to implement, and they come with a cost.

Certain provisions of the Board's order are not supported by the evidence presented by SCWA in their petition, and we respectfully request that the Board modify these provisions. This letter is a petition for reconsideration of certain provisions of the order, described as follows:

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. MMWD 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. MMWD respectfully requests that the Board defer to the Biological Opinion with regard to the restrictions in flows in Dry Creek and diversions by SCWA from its facilities at Wohler and Mirabel. MMWD also requests that the Board act expeditiously on any petition from SCWA to enforce water rights on Dry Creek and the Russian River, to prevent any illegal diversions.
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. MMWD 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 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.
5. 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.

MMWD appreciates the opportunity to comment on State Water Board Order WR 2009-0027-DWR, and requests that the Board reconsider and modify the provisions cited herein. We look forward to working with the Board and with SCWA to ensure that water resources in the Russian River are managed in a manner to protect aquatic species, particularly those listed as endangered and threatened, and that other beneficial uses are protected and maintained.

Sincerely,


Paul Helliker
General Manager