

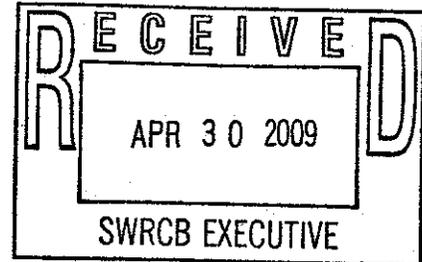


Association of California Water Agencies
Leadership Advocacy Information *Since 1910*

April 30, 2009

Via Email (jtownsend@waterboards.ca.gov)

Mr. Charlie Hoppin, Chair
State Water Resources Control Board
ATTN: Ms. Jeanine Townsend
1001 "I" Street
Sacramento, CA 95814



RE: Request for Reconsideration of State Water Board Order WR 2009-0027-DWR

Dear Chair Hoppin and Board Members:

The Association of California Water Agencies ("ACWA") appreciates the timely issuance of State Water Board Order WR 2009-0027-DWR ("order"). As we are all aware, the water supply challenges that the Sonoma County Water Agency ("SCWA") and its contractors are experiencing is at a critical juncture. This order will ensure that adequate water is stored in Lake Mendocino for later release that will benefit the Russian River Chinook Salmon fall run.

ACWA represents nearly 450 public throughout the state of California. Collectively, these agencies are responsible for approximately 90 percent of the water delivered to cities, farms and businesses throughout the state. Our members are fully committed to protecting California's fisheries during the course of their operations. ACWA recognizes that specific measures may be warranted, at the local level, to ensure adequate water is available during critical salmonid life stages.

This being said, ACWA is extremely concerned with the approach taken by the Division of Water Rights staff during its modification of SCWA's original petition for a Temporary Urgency Change, as finalized in State Water Board Order WR 2009-0027-DWR. Both the process and underlying policies adopted by staff have statewide implications which warrant immediate review by the State Water Resources Control Board ("Board"). The final order and supporting documents provide no discussion, much less analysis to justify the provisions adopted by staff. They appear to be nothing more than arbitrarily imposed constraints. The hydrologic analysis completed by SCWA and submitted with its Temporary Urgency Change petition is the only complete, objective scientific analysis we are aware of that is relevant to this order. It would appear that little consideration was given to the technical analysis provided by SCWA. The final order and supporting documents fail to provide any analysis that justifies overriding the technical analysis submitted by SCWA.

ACWA is also troubled by the lack of analysis in the final order or supporting documentation to justify several of the conclusions. For example, the final order concludes, without any substantive analysis, that there will be no impact on the SCWA water contractors and other legal water users. We find it difficult to accept that conclusion when the final order significantly increases the overall water conservation goals for Sonoma and Mendocino counties, and precludes a class of legitimate water users from having access to water during the time covered by the final order. These constraints are unrelated to the reduction in instream flow, and outside of the legitimate parameters of a temporary urgency change petition. Temporary urgency change petitions are by their nature handled rapidly and should be narrowly construed. This is the opposite of what has occurred in this matter.

Arguably by prohibiting the continued legal use of water (i.e. irrigating commercial turf grass), the Division of Water Rights has, *de facto*, declared that such a use no longer constitutes a "beneficial use of water." There is no basis for this conclusion, and it is unrelated to the requested change petition. To declare, without foundation, one particular beneficial use unconstitutional is at best arbitrary and capricious. Surely the Board does not consider it acceptable policy for the Division of Water Rights to usurp the authority of the regional and State water boards.

Finally, we are troubled by the staff's apparent lack of consideration for all the efforts to promote local water conservation practices by SCWA and its water contractors. The "one-size-fits-all" approach set forth in several of the provisions adopted by the Division of Water Rights staff, in effect, overrides local conservation efforts. While some of these efforts are mandated under existing State laws that require the development and implementation of local plans to address local water shortages, many are voluntary efforts that have been in place for years. Prescriptive, one-size-fits-all approaches fail to allow for local circumstances and conditions, and will most likely discourage local, voluntary, conservation practices. It should be the policy of the Board to encourage, rather than impede local efforts and partnerships between the water agencies, water contractors and local government which advance water conservation.

In conclusion, ACWA respectfully requests that the State Water Resources Control Board (SWRCB) direct its staff to revise Order WR 2009-0027-DWR, and in a manner that is consistent with the terms supported by the analysis and evidence presented by the SCWA in its original petition. If you have any questions please do not hesitate to give me a call at (916) 441-4545.

Sincerely,



Timothy Quinn
Executive Director
Association of California Water Agencies

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cc: Mr. Randy Poole, General Manager, Sonoma County Water Agency
Ms. Dorothy Rice, Executive Director, State Water Resources Board
Ms. Victoria Whitney, Deputy Director, Water Rights Division, State Water Resources
Board