Appendix B-3

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2009-0034-EXEC

In the Matter of Permits 12947A, 12949, 12950, and 16596 (Applications 12919A, 15736, 15737, 19351)

Sonoma County Water Agency

SOURCES: Dry Creek and Russian River

COUNTIES: Sonoma and Mendocino Counties

ORDER AMENDING ORDER WR 2009-0027-DWR AND CONDITIONALLY APPROVING TEMPORARY URGENCY CHANGE IN PERMITS 12947A, 12949, 12950, AND 16596

BY BOARD MEMBER ARTHUR G. BAGGETT, JR.:

1.0 INTRODUCTION

On April 6, 2009, Sonoma County Water Agency (SCWA or Permittee) filed a petition with the State Water Resources Control Board (State Water Board or Board) requesting approval of a Temporary Urgency Change to the subject permits pursuant to California Water Code section 1435. This order amends Order WR 2009-0027-DWR, which was issued by the Division of Water Rights (Division), and conditionally approves SCWA's petition.

The petition requests that from April 6, 2009 through October 2, 2009, instream flow requirements for the Upper Russian River (from its confluence with the East Fork of the Russian River to its confluence with Dry Creek) be reduced from 185 cubic feet per second (cfs) to 75 cfs, and the requirements for the lower Russian River (downstream of its confluence with Dry Creek) be reduced from 125 cfs to 85 cfs. The petition also requests that instream flow requirements be further reduced from July 1 through October 2, 2009, to 25 cfs for the upper Russian River and 35 cfs for the lower Russian River if during the period from April 1 through June 30 total inflow to Lake Mendocino is less than or equal to 25,000 acre-feet. The petition, in effect, requests that minimum flows for the Russian River be established based on dry-year

criteria for the period from April 6 to October 2, 2009 and, in the event that cumulative inflow to Lake Mendocino is less than or equal to 25,000 acre feet from April 1 through June 30, critical year criteria for the period from July 1 to October 2, 2009. No changes to the instream flow requirements for Dry Creek are requested. The request is made to prevent depletion of storage in Lake Mendocino, which would severely impact threatened or endangered Russian River fish species, create serious water supply impacts in Mendocino County and in Sonoma County upstream of the Dry Creek confluence, and harm Lake Mendocino and Russian River recreation.

2.0 DELEGATION

Pursuant to Resolution No. 2007-0057, the State Water Board has delegated authority to the Division Chief to act on petitions for temporary urgency change, provided no objections are outstanding. As explained below, the Division issued Order WR 2009-0027-DWR on April 6, 2009, conditionally approving the change petition. The State Water Board then provided notice of the change petition, received written comments and objections, and held a public workshop on the change petition. This Order revising Order WR 2009-0027-DWR is issued pursuant to Resolution No. 2007-0057, which delegates the authority to an individual Board Member to act on a petition for temporary urgency change.

3.0 BACKGROUND

SCWA's petition involves the following permits:

- Permit 12947A is for direct diversion of 92 cubic feet per second (cfs) from the East Fork Russian River and storage of 122,500 acre-feet per annum (afa) in Lake Mendocino from January 1 through December 31 of each year.

- Permit 12949 is for direct diversion of 20 cfs year-round from the Russian River at the Wohler and Mirabel Park Intakes near Forestville.

- Permit 12950 is for direct diversion of 60 cfs from the Russian River at the Wohler and Mirabel Park Intakes from April 1 through September 30 of each year.

- Permit 16596 is for year-round direct diversion of 180 cfs from the Russian River and storage of 245,000 afa in Lake Sonoma from October 1 of each year to May 1 of the succeeding year.

SCWA submitted with the petition a document prepared by its staff titled, "Hydrologic Analysis of Lake Mendocino Storage Under Dry 2009 Conditions" (Hydrologic Analysis) dated April 2009. The Hydrologic Analysis indicates that projections for Lake Mendocino water levels in 2009 are far more severe than they were in water year 2007, the last time the State Water Board approved a temporary urgency change reducing the Russian River instream flow requirements. As of April 1, 2009, storage level in Lake Mendocino was approximately 53,000 acre-feet (af). This is roughly 20,000 af less than Lake Mendocino storage was in 2007 at this time. During water years 2002, 2004, and 2007, hydrologic conditions in the Eel River and Russian River watersheds caused Lake Mendocino storage levels to decline to dangerously low levels by the end of the dry season. Recreation at Lake Mendocino was severely impaired, and serious risks existed for water supply and state and federally listed Russian River salmonid fishery resources, particularly adult Chinook salmon. The storage levels in Lake Mendocino dropped to a low of 24,400 af in December 2002. Water year 2004 and 2007 presented similar risks that were mitigated by SCWA filing for, and the State Water Board approving, a temporary urgency change petition that reduced the minimum instream flow requirements on the Russian River, thereby allowing more water to remain in Lake Mendocino for a longer period of time.

In June 2004, the Federal Energy Regulatory Commission directed Pacific Gas and Electric Company (PG&E) to reduce the amount of water diverted through the Potter Valley Project (PVP) tunnel into the Russian River, further reducing inflow to Lake Mendocino. Since October 2008, approximately 27,000 af less water has flowed through the PVP tunnel and into Lake Mendocino than during the same period during water year 2007, the last time the State Water Board approved a Temporary Urgency Change to reduce the Russian River instream flow requirements.

Without the requested reductions in the instream flow requirements, SCWA Hydrologic Analysis predicted that Lake Mendocino storage would drop to 10,000 acre-feet by mid August 2009 and go dry by the end of September. Lake Mendocino has never dropped below 12,000 af since it was first filled in 1959, and it is uncertain whether water could continue to be released from Lake Mendocino into the East Fork Russian River if lake storage were to drop to 10,000 af. If water cannot be released from Lake Mendocino during October and November 2009, there most likely will be severe impacts on the fishery and recreation resources that depend on the upper Russian River, and on water users that rely on the upper Russian River for their water

supplies. On March 23, 2009, the Mendocino County Board of Supervisors declared a local emergency and imminent threat of disaster due to drought conditions.

Following is the language contained in SCWA's permits regarding minimum instream flow requirements:

Term 18 of SCWA's Permit 12947A states:

For the protection of fish and wildlife, and for the maintenance of recreation in the Russian River, Permittee shall pass through or release from storage at Lake Mendocino sufficient water to maintain:

(A) A continuous streamflow in the East Fork Russian River from Coyote Dam to its confluence with the Russian River of 25 cfs at all times.

(B) The following minimum flows in the Russian River between the East Fork Russian River and Dry Creek:

(1) During normal water supply conditions when the combined water in storage, including dead storage, in Lake Pillsbury and Lake Mendocino on May 31 of any year exceeds 150,000 af or 90 percent of the estimated water supply storage capacity of the reservoirs, whichever is less:

From June 1 through August 31	185 cfs
From September 1 through March 31	150 cfs
From April 1 through May 31	185 cfs

(2) During normal water supply conditions and when the combined water in storage, including dead storage, in Lake Pillsbury and Lake Mendocino on May 31 of any year is between 150,000 af or 90 percent of the estimated water supply storage capacity of the reservoirs, whichever is less, and 130,000 af or 80 percent of the estimated water supply storage capacity of the reservoirs, whichever is less:

From June 1 through March 31	150 cfs
From April 1 through May 31	185 cfs
If from October 1 through December 31, storage in Lake Mendocino is less than 30,000 acre-feet	75 cfs

(3) During normal water supply conditions and when the combined water in storage, including dead storage, in Lake Pillsbury and Lake Mendocino on May 31 of any year is less than 130,000 af or 80 percent of the estimated water supply storage capacity of the reservoirs, whichever is less:

From June 1 through December 31	75 cfs
From January 1 through March 31	150 cfs
From April 1 through May 31	185 cfs

(4) During dry water supply conditions 75 cfs

(5) During critical water supply conditions 25 cfs

(C) The following minimum flows in the Russian River between its confluence with Dry Creek and the Pacific Ocean to the extent that such flows cannot be met by releases from storage at Lake Sonoma under Permit 16596 issued on Application 19351:

(1) During normal water supply conditions	125 cfs
(2) During dry water supply conditions	85 cfs
(3) During critical water supply conditions	35 cfs

For the purposes of the requirements in this term, the following definitions shall apply:

(1) Dry water supply conditions exist when cumulative inflow to Lake Pillsbury beginning on October 1 of each year is less than:

8,000 acre-feet as of January 1
39,200 acre-feet as of February 1
65,700 acre-feet as of March 1
114,500 acre-feet as of April 1
145,600 acre-feet as of May 1
160,000 acre-feet as of June 1

(2) Critical water supply conditions exist when cumulative inflow to Lake Pillsbury beginning on October 1 of each year is less than:

4,000 acre-feet as of January 1
20,000 acre-feet as of February 1
45,000 acre-feet as of March 1
50,000 acre-feet as of April 1
70,000 acre-feet as of May 1
75,000 acre-feet as of June 1

(3) Normal water supply conditions exist in the absence of defined dry or critical water supply conditions.

(4) The water supply condition designation for the months of July through December shall be the same as the designation for the previous June. Water supply conditions for January through June shall be predetermined monthly.

(5) Cumulative inflow to Lake Pillsbury is the calculated algebraic sum of releases from Lake Pillsbury, increases in storage in Lake Pillsbury, and evaporation from Lake Pillsbury.

(6) Estimated water supply storage space is the calculated reservoir volume below elevation 1,828.3 feet in Lake Pillsbury and below elevation 749.0 feet in Lake Mendocino. Both elevations refer to the National Geodetic Vertical Datum of 1929. The calculation shall use the most recent two reservoir volume surveys made by the U. S. Geological Survey, U. S. Army Corps of Engineers, or other responsible agency to determine the rate of sedimentation to be assumed from the date of the most recent reservoir volume survey.

Term 15 of both Permit 12949 and Permit 12950 require SCWA to allow sufficient water to bypass the points of diversion at the Wohler and Mirabel Park intakes on the Russian River to maintain the following minimum flows to the Pacific Ocean:

(1)	During normal water supply conditions	125 cfs
(2)	During dry water supply conditions	85 cfs
(3)	During critical water supply conditions	35 cfs

Term 13 of Permit 16596 sets forth the following minimum flows for Dry Creek and the Russian River:

(A) The following minimum flows in Dry Creek between Warm Springs Dam and its confluence with the Russian River:

(1) During normal water supply conditions:

75 cfs from January 1 through April 30
80 cfs from May 1 through October 31
105 cfs from November 1 through December 30

(2) During dry or critical water supply conditions:

25 cfs from April 1 through October 31
75 cfs from November 1 through March 31

(B) The following minimum flows in the Russian River between its confluence with Dry Creek and the Pacific Ocean, unless the water level in Lake Sonoma is below elevation 292.0 feet with reference to the National Geodetic Vertical Datum of 1929, or unless prohibited by the United States Government:

(1)	During normal water supply conditions	125 cfs
(2)	During dry water supply conditions	85 cfs
(3)	During critical water supply conditions	35 cfs

Permits 12949, 12950, and 16596 use the same water-year classification definitions as those listed in Permit 12947A. The water year classifications (Normal, Dry or Critically Dry) were established in State Water Board Decision 1610 (1986) and are based on cumulative inflow into Lake Pillsbury beginning October 1. Although Lake Mendocino storage is unusually low, cumulative inflow into Lake Pillsbury during this water year has been sufficiently high that, under Decision 1610, 2009 is currently classified as a normal year and will likely retain this classification for the remainder of 2009.

4.0 DIVISION OF WATER RIGHTS ISSUANCE OF ORDER WR 2009-0027-DWR APPROVING SCWA'S TEMPORARY URGENCY CHANGE PETITION AND PUBLIC NOTICE

Pursuant to Water Code section 1438, subdivision (a), the Division issued a temporary change order, Order WR 2009-0027-DWR, conditionally approving the Temporary Urgency Change petition.

The State Water Board issued and delivered to SCWA on April 10, 2009, a notice of the proposed change. Pursuant to Water Code section 1438, subdivision (b)(1), SCWA was required to publish the notice in a newspaper having a general circulation that is published within the counties where the points of diversion lie. The Notice was published in the Ukiah Daily Journal on April 14, 2009 and Santa Rosa's Press Democrat on April 17, 2009. The State Water Board mailed and emailed the Notice to the interested persons who had requested notice of proposed temporary urgency changes and to other known interested persons.

The State Water Board also provided notice of a public workshop scheduled for May 6, 2009, to receive comments regarding SCWA's Temporary Urgency Change Petition and Order WR 2009-0027 DWR. The State Water Board posted on its website (1) the notice of Order

WR 2009-0027-DWR, (2) the notice of the May 6, 2009 public workshop, (3) a copy of SCWA's petition for temporary urgency change, and (4) Order WR 2009-0027-DWR.

5.0 PUBLIC COMMENTS ON THE PETITION

The State Water Board received approximately 105 written comments on the petition and Order WR 2009-0027-DWR, including comments from the North Coast Regional Water Quality Control Board (North Coast Regional Water Board), the California Department Fish and Game (DFG), the National Marine Fisheries Service (NMFS), SCWA water contractors (i.e., SCWA customers), municipalities, local business owners, the California Landscape Contractors Association, the Association of California Water Agencies, environmental groups, and private citizens. The SCWA contractors expressed opposition to inclusion of a term in the order requiring a 25 percent reduction in Russian River diversions to the SCWA service area. The SCWA contractors, local business owners, and the California Landscape Contractors Association, also opposed inclusion of a term prohibiting irrigation of commercial turf grass within the SCWA service area during the term of the order. Additionally, these commenters requested that definitions be provided for commercial turf grass and residential water wasting devices, as referenced in Order WR 2009-0027-DWR.

DFG, environmental groups, and private citizens expressed concerns regarding impacts to water quality, community water systems, and fisheries as result of reduced Russian River flows. The North Coast Regional Water Board, environmental groups, and private citizens expressed support for the prohibition against irrigating commercial turf grass. These entities also called for increased water quality monitoring, public access to water quality data, and adaptive management of Russian River flow based on monitoring results. NMFS, environmental groups, and private citizens expressed support for the 25 percent mandatory reduction in Russian River diversions to the SCWA service area. Environmental groups and private citizens also requested that additional flow gages be established on the Russian River and that authorized and unauthorized water diversion be better accounted for to ensure compliance with flow objectives. Tourism and recreation based business owners commented that reduced summertime flows in the Russian River would hurt the local economy. The City of Ukiah commented that water conservation would reduce the City's revenue and its ability to deliver water to its customers.

6.0 PUBLIC WORKSHOP ON THE PETITION

The State Water Board held a public workshop on May 6, 2009, to receive comments regarding SCWA's Temporary Urgency Change Petition and Order WR 2009-0027 DWR. During the workshop the State Water Board heard comments from approximately 25 attendees, including representatives from SCWA, the SCWA Water Advisory Committee, Russian Riverkeeper, the County of Mendocino, the City of Petaluma, the City of Santa Rosa, the Association of California Water Agencies, Marin Municipal Water Distinct, Mendocino County Russian River Flood Control and Water Conservation Improvement District, the City of Ukiah, DFG, Friends of the Eel River, private business owners and private citizens. The oral comments were similar to those expressed in writing. In general, most of commenters recognized the need for conserving water in Lake Mendocino. Similar to the written comments, some expressed concerns that reduced flows would result in impacts to recreation and water quality in the lower Russian River and requested implementation of mandatory water conservation requirements along with improved flow and water quality monitoring. Other commenters objected to the prohibition against irrigating commercial turf grass and imposition of mandatory reductions in SCWA Russian River diversions.

At the State Water Board's public workshop, Division of Water Rights staff presented background information regarding the conditions leading up to approval of the temporary urgency change order and issuance of Order WR 2009-0027-DWR. Staff also presented a Russian River Flow Analysis prepared by SCWA at staff's request, which evaluated flow conditions in the lower Russian River under the reduced instream flow conditions specified in the temporary urgency change petition and Order WR 2009-0027-DWR. The staff presentation and the Russian River Flow Analysis demonstrated that a reduction in diversion at SCWA's Wohler/Mirabel pumping facilities is needed to achieve downstream minimum flows and a safe operating buffer, given the constraints on releases from Warm Spring Dam and anticipated inflows from the Upper Russian River. Based on the information contained in the SCWA Russian River Flow Analysis a 25 percent reduction in diversion at the Wohler/Mirabel pumping facilities will result in average flows of approximately 45 cfs at the Hacienda Bridge. This is 10 cfs more than the 35 cfs minimum flow requirement specified Order WR 2009-0027-DWR, but the analysis does not account for depletion (due to evapotranspiration and diversions) between the Hacienda Bridge and the Russian River Estuary or an operating buffer. Additionally, imposition of a 25 percent reduction in SCWA diversions will benefit water quality, recreation,

and fisheries, to the extent that such a reduction would provide flows in excess of the 35 cfs minimum requirement in the lower river.

During the workshop, Division of Water Rights staff also recommended the following modifications to Order WR 2009-0027-DWR that were intended to address some of the written comments received:

a. Clarify the terms of the Order by explicitly setting 2004 as the baseline year for purposes of measuring mandatory water diversion reduction and water conservation goals and providing definitions for commercial turf and residential water wasting devices;

b. Modify the water conservation measurement period to provide more time for water users to respond to the call for water conservation;

c. Extend the date on which critically dry year minimum instream flows could take effect until after the Fourth of July weekend to reduce impacts to recreation and water quality;

d. As requested by DFG, base the trigger for critically dry year flows on Lake Mendocino Storage, rather than inflows to Lake Mendocino;

e. Delete term 3 to allow releases from Warm Springs Dam for the purpose of providing increased flow in the lower river as requested by the NMFS;

f. Revise water quality monitoring requirements to consider comments from DFG and the North Coast Regional Water Board and define contingency actions;

g. Require a plan to monitor fish habitat and fish health conditions;

h. Revise ramping rates based on input from DFG and NMFS;

i. As requested by DFG, direct SCWA to request renewal of the Temporary Urgency Change Petition if increasing flow would otherwise impair the fishery; and

j. Require SCWA to develop a water right accounting procedure and a method for determining when the Russian River is being supplemented by project water.

7.0 COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT

The State Water Board has determined that the petition qualifies for an exemption under CEQA. A Class 7 exemption "consists of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment." (Cal. Code Regs, tit. 14, § 15307.) The proposed action will assure the maintenance of a

natural resource, i.e., the instream resources of the Russian River. A Class 8 exemption "*consists of actions* taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment." (Id., § 15308.) The proposed action will assure the maintenance of the environment, i.e., the instream environment of the Russian River.

On February 27, 2009, Governor Schwarzenegger declared a drought related state of emergency. Additionally, On March 23, 2009 the Mendocino County Board of Supervisors declared a local emergency and imminent threat of disaster due to drought conditions. Storage in Lake Mendocino is extremely low. Information provided by SCWA demonstrates that continued releases of water under normal year operating rules would prematurely drain remaining storage. If storage in Lake Mendocino is depleted, water will not be available to support threatened and endangered species, agriculture, and domestic/municipal water service. Approval of the Temporary Urgency Change Petition is therefore necessary to prevent and mitigate damage to the environment, fishery resources, property, public health, and essential public services. Accordingly the project is statutorily exempt from CEQA because it is necessary to prevent or mitigate an emergency. (Pub. Resources Code, §§ 21080, subd. (b)(4), 21172.)

8.0 LAW GOVERNING TEMPORARY URGENCY CHANGE PETITIONS

Water Code section 1435 provides that a permittee or licensee who has an urgent need to change the point of diversion, place of use, or purpose of use from that specified in the permit or license may petition the State Water Board for a conditional temporary change. The State Water Board's regulations set forth the filing and other procedural requirements applicable to petitions for temporary urgency changes. (Cal. Code Regs., tit. 23, §§ 805, 806.) The Board's regulations also clarify that a petition for a temporary urgency change in a permit or license other than a change in point of diversion, place of use, or purpose of use may be filed, subject to the same filing and procedural requirements that apply to changes in point of diversion, place of use, or purpose of use. (*Id.*, § 791, subd. (e).)

Before approving a temporary urgency change, the Board must make the following findings:

1. The permittee or licensee has an urgent need to make the proposed change;
2. The proposed change may be made without injury to any other lawful user of water;
3. The proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses; and
4. The proposed change is in the public interest.

(Wat. Code, § 1435, subd. (b)(1-4).)

8.1 Urgency of the Proposed Change

Under Water Code section 1435, subdivision (c), an urgent need to make a proposed change exists when the State Water Board concludes that the proposed temporary change is necessary to further the constitutional policy that the water resources of the State be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented. However, the State Water Board shall not find the need urgent if it concludes that the petitioner has failed to exercise due diligence in petitioning for a change pursuant to other appropriate provisions of the Water Code.

In this case, an urgent need exists for the proposed change because SCWA predicts full depletion of storage in Lake Mendocino in September 2009 unless the requested temporary urgency change is approved. Water supplies sufficient to support survival of listed Russian River salmonid fisheries, agricultural and municipal use, and recreation are threatened. Without the proposed change, SCWA would need to release additional stored water from Lake Mendocino, resulting in a reduction and likely elimination of water supplies for water users in Mendocino County, particularly in the Redwood Valley area, causing potential impacts to human health and welfare, in addition to a reduction of resources needed for fishery protection and more stable flows in the upper Russian River during the fall, when state and federally listed fish species are most sensitive to flows and temperatures. Further, if Water Year 2010 is a dry or critically dry year, as appears likely, extra storage in Lake Mendocino will be crucial for the continued survival of the Russian River fishery and for water supply reliability during 2010.

Water Code section 106 establishes that the use of water for domestic purposes is the highest use of water. SCWA predicts that without the proposed change Lake Mendocino would be drawn down to levels that jeopardize SCWA's ability to release water to the Russian River. In this event, water supplies for domestic and municipal uses of Russian River water would be severely impaired. Moreover, SCWA permits include terms requiring a 50 percent reduction in

deliveries to the Redwood Valley County Water District when Lake Mendocino storage drops below 30,000 acre feet in order to preserve Lake Mendocino Water Supply reliability. The purpose of this order is, in part, to prevent Lake Mendocino storage from dropping below 30,000 acre feet, which would otherwise occur in the absence of this order, based on information available to the State Water Board. SCWA forecasts indicate that Lake Mendocino Storage would drop below 30,000 acre-feet during June of 2009 unless the Temporary Urgency Change Petition is approved and conservation measures are implemented.

For the reasons stated above, an urgent need for the proposed change exists. The trigger for changing from dry-year to critically dry-year criteria should be based, however, on storage in Lake Mendocino, rather than inflow to Lake Mendocino, as proposed by SCWA. According to the California Data Exchange Center website (http://cdec.water.ca.gov/river/rivcond.html), Lake Mendocino storage as of July 1 has never dropped below 63,534 af for the period between June 1, 2004 and December 31, 2008 (i.e, Lake Mendocino Storage was 63,534 af on July 1, 2007).[1] The data also show that the maximum drawdown that occurred after July 1, 2007 was 35,630 af, which brought Lake Mendocino storage down to 27,904 acre feet on December 17, 2007. The State Water Board approved a temporary urgency change petition to preserve storage in Lake Mendocino during 2007, but minimum instream flows were never reduced below dry year criteria. Based on drawdown data from 2007, Lake Mendocino storage could fall below 30,000 acre feet this year if storage is less than 65,630 af on July 1, 2009. If Lake Mendocino storage exceeds 65,630 af on July 1, 2009, it is unlikely that storage would fall below 30,000 af, obviating the need to further reduce instream flows to critically dry year criteria. Therefore, the terms of Order WR 2009-0027-DWR will be modified to specify that critically dry year instream flow requirements may be implemented only if Lake Mendocino Storage is less than 65,630 af on July 1, 2009.

To ensure that the water resources of the State are put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented, Order 2009-0027-DWR added terms requiring SCWA to (1) temporarily reduce diversions from the Russian River by 25 percent; (2) prohibit irrigation of commercial turf grass within the SCWA service; (3) submit a

[1] We take official notice of recorded storage levels for Lake Mendocino during the period from June 1, 2004 through December 31, 2008. Official notice is taken pursuant to California Code of Regulations, title 23, section 648.2 (authorizing the State Water Board to take official notice of matters that may be judicially noticed), and pursuant to Evidence Code section 452, subdivision (h) (authorizing judicial notice of facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy).

plan detailing the actions that will be taken to work with Russian River water users to reach an overall water conservation goal of 25 percent in Sonoma County and 50 percent in Mendocino County during the period from April 6, 2009 to the expiration of this order, and (4) submit a report within one year identifying actions SCWA will take to maximize water conservation in its service area. Similar terms will be included as conditions of this approval, subject to several modifications based on comments received from interested persons, as described below. Including these terms as conditions of approval supports the determination that the proposed change will maximize the beneficial use of water resources and prevent the waste of water, and therefore an urgent need for the change exists, as defined by Water Code section 1435, subdivision (c).

Implementation of the diversion reduction requirement described above should be delayed due to unexpected rainfall in early May, which marginally improved hydrologic conditions in the Russian River watershed since issuance of Order WR 2009-0027-DWR. As a result of the rainfall, mean daily flow at the United States Geological Survey (USGS) Guerneville gage (USGS # 11467000) has remained above the normal year minimum instream flow requirement of 125 cfs for the lower Russian River. As of May 27, 2009, the USGS reported flows of 239 cfs at the Guerneville gage.[2] Recent data indicate that flow is steadily decreasing, but the data suggest that flow should remain above normal year minimum instream flow criteria until about June 15, 2009. As a result, the need to curtail diversion from the lower Russian River has been delayed and accordingly the period during which mandatory reduction in Russian River diversion to the SCWA service area may also be delayed. Order WR 2009-0027-DWR will be modified to change the start date for mandatory reduction in Russian River diversion to June 15, 2009 rather than April 6, 2009. The terms of this order also will be modified to clarify that 2004 should be used as the baseline for purposes of measuring the requirement that SCWA reduce its diversions by 25 percent.

The term prohibiting the irrigation of commercial turf grass should be modified to define "commercial turf" and to allow the irrigation of commercial turf in accordance with a water budget that meets certain criteria. Article X, section 2 of the California Constitution requires that "water resources of the State be put to beneficial use to the fullest extent to which they are capable, and that waste or unreasonable use or unreasonable method of use of water be

[2] We take official notice of reported daily average flow at the USGS Guerneville gage (USGS # 11467000) during May of this year pursuant to California Code of Regulations, title 23, section 648.2 and Evidence Code section 452, subdivision (h).

prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare." The 2005 California Water Plan includes recommendations from the Landscape Task Force convened pursuant to Assembly Bill 2717 and signed into law in 2004. The Landscape Task Force recommendations include, in part, the following recommendations: (1) reduce the evapotranspiration (ET) Adjustment Factor in the Landscape Model Ordinance and review the ET Adjustment Factor every ten years for possible further reduction, (2) require dedicated landscape meters, (3) promote the use of recycled water in urban landscapes, and (4) increase the public's awareness of the importance of landscape water use efficiency.

The condition regarding commercial turf irrigation imposed in order WR 2009-0027-DWR, as modified herein, is necessary to comply with article X, section 2 of the California Constitution and Water Code section 1435, subdivision (c), taking into consideration (1) the competing demands for water in the Russian River watershed and the limited supply that exists, in part as a result of reduced inflow to the watershed due to operational changes at PG&E's Potter Valley Hydroelectric Project, which diverts water from the Eel River and discharges it to the East Fork of the Russian River, which is expected to continue to occur, (2) the presence of listed species who depend on instream flows in the Russian River for their continued survival, (3) the benefit to the economy of the state that results from the winegrape industry in the Sonoma and Mendocino areas, which depend on the waters of the Russian River, and (4) the benefits of reducing urban landscaping water use, consistent with the recommendations of the Landscape Task Force.

8.2 No Injury to Any Other Lawful User of Water

The SCWA is required to maintain specific flows in the Russian River from its most upstream point of diversion to the river's confluence with the ocean. Therefore, it is anticipated that all of the SCWA water contractors and other legal users of water will receive the water to which they are entitled during the reduced flows specified in this Order. Moreover, failure to implement the reduced instream flows could result in depletion of Lake Mendocino, which in turn could give rise to serious impacts to users of water downstream of Lake Mendocino later in the year.

According to the California Data Exchange Center website (http://cdec.water.ca.gov/cgi-progs/stages/FLOWOUT), as of May 11, 2009, the California Department of Water Resources estimated the unimpaired flow of the Russian River to be at 37 percent of average unimpaired

flow for the water year.[3] Although the water year ends September 30, most precipitation in the watershed falls between October and May. SCWA's reservoir release locations are located many miles upstream of the locations at which compliance with the instream flow requirements imposed by this order is determined. Considering the demand for water in the watershed and the short supply, there is a likelihood that other water users who do not have the legal right divert water, either because they have no water right or other legal entitlement that allows them to divert water from the Russian River or its tributaries, or because the right that they have is not of sufficiently high priority to allow them to divert and use water this year, will divert water released by SCWA and prevent it from being used for its intended purpose. The SCWA has informed the State Water Board that SCWA intends to submit additional change petitions in the future seeking revisions in instream flow conditions required by its water right permits. In order to better account for water diversion from the Russian River and ensure minimum instream flows are achieved in the future, a term will be added to the Order requiring SCWA to develop a water right accounting procedure and a method for determining when the Russian River is being supplemented by project water.

8.3 No Unreasonable Effect upon Fish, Wildlife, or Other Instream Beneficial Uses

Although flows downstream from Coyote Dam will be decreased upon approval of SCWA's petition, conservation of water in Lake Mendocino will allow enhanced management of the flows in early fall for the benefit of fish migration. Reduced flows in the Russian River may impair instream beneficial uses, including recreation. The potential for impairment to instream beneficial uses, however, is not unreasonable considering the potential impacts to fisheries, water supply, and recreation in Lake Mendocino that could occur if the petition is not approved.

As recommended during the May 6, 2009 public workshop, the date on which minimum instream flows could be reduced to critically dry year flows will be delayed until July 6, 2009 to reduce potential impacts to fish, wildlife, recreation, and water quality during the Fourth of July holiday. Based on comments received from the North Coast Regional Water Board and numerous members of the public, the water quality monitoring plan submitted by SCWA pursuant to WR 2009-0027-DWR has been updated. The revised water quality monitoring plan includes additional monitoring sites, increased frequency of monitoring, and provisions for public access to the data. In response to comments from NMFS, term 3 in Order WR 2009-0027-

[3] We take official notice of the California Department of Water Resources runoff data for water year 2009 pursuant to California Code of Regulations, title 23, section 648.2 and Evidence Code section 452, subdivision (h).

DWR will be deleted to provide SCWA with the flexibility to release water from Warm Springs Dam for the purpose of augmenting flows in the lower Russian River. As requested by DFG, SCWA has developed a fisheries monitoring plan in consultation with the DFG and NMFS. Accordingly, a term will be added to the Order requiring SCWA to implement the fisheries monitoring plan and consult with DFG on a weekly basis. Additionally, a term will be added directing SCWA to request renewal of the Temporary Urgency Change Petition no later than September 15, 2009, if DFG or NMFS determines that increasing flows on October 2, 2009 would adversely affect the Russian River fishery. Finally, the ramping rates specified in Order WR 2009-0027-DWR will be revised at the request of DFG.

8.4 The Proposed Change is in the Public Interest

The proposed change will help conserve water in Lake Mendocino so that it can be released for listed Russian River salmonid fisheries present in the Russian River during the fall Chinook salmon migration season. It is in the public interest to preserve water supplies for these beneficial uses when hydrologic circumstances cause severe reductions to water supplies.

Approval of SCWA's petition will help SCWA maintain the level in Lake Mendocino for a longer period of time. SCWA estimated in its Hydrologic Analysis that if the normal-year instream flow requirements remained in effect, Lake Mendocino would reach minimum pool by late August 2009 and would be completely drained by September. However, SCWA forecasted that Lake Mendocino storage would not drop below 22,000 af during the remainder of Water Year 2009 if the Temporary Urgency Change Petition is approved and 20 percent cumulative conservation is achieved.

On February 27, 2009, Governor Schwarzenegger proclaimed a state of emergency and ordered immediate action to manage the drought crisis. The Governor's proclamation requested that all urban water users immediately increase their water conservation activities in an effort to reduce their individual water use by 20 percent.

On September 27, 2006, Governor Schwarzenegger signed Assembly Bill 32, the Global Warming Solutions Act of 2006 (Nuñez, Chapter 488, Statutes of 2006). Pursuant to AB 32, the California Air Resources Board adopted a scoping plan on December 12, 2008, outlining the State's strategy to achieve greenhouse gas (GHG) emissions limits. The scoping plan recommended implementation of six greenhouse gas reduction measures targeted at the water

sector, largely to develop additional supply reliability to meet water demand. These measures include increased water use efficiency, and water recycling, and urban runoff re-use. In addition to reducing GHG emissions, these measures can have many co-benefits, including enhancing water supply reliability.

Given the severity of water supply conditions in the Russian River Watershed and the Governor's directives to implement water conservation measures, this order adds terms requiring immediate mandatory water conservation, and longer-term water conservation planning and reporting, including a plan to reduce the use of residential water wasting devices in the SCWA service area.

Approval of the petition, as conditioned, will be in the public interest and consistent with the overall goals of the Governor's drought emergency proclamation and AB 32.

9.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1435.

I conclude that, based on the available evidence:

1. The permittee has an urgent need to make the proposed change;
2. The petitioned change will not operate to the injury of any other lawful user of water;
3. The petitioned change will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses; and,
4. The petitioned change is in the public interest.

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ORDER

NOW, THEREFORE, IT IS ORDERED THAT: the petition filed by Sonoma County Water Agency for temporary change in Permits 12947A, 12949, 12950, and 16596 is approved, subject to the conditions set forth below.

All existing terms and conditions of the subject permits remain in effect, except as temporarily amended by the following provisions:

1. From the date of this Order until October 2, 2009, minimum flows in the Russian River, as specified in Term 20 of Permit 12947A, Term 17 of Permits 12949 and 12950, and Term 13 of Permit 16596, shall be modified as follows:

   Minimum instream flow in the **Russian River from its confluence with the East Fork of the Russian River to its confluence with Dry Creek** shall be as follows:

   a. From April 6, 2009 through July 5, 2009, minimum instream flow shall remain at or above 75 cubic feet per second (cfs).

   b. From July 6 through October 2, 2009, minimum instream flow shall remain at or above 75 cfs, if Lake Mendocino storage is equal to or greater than 65,630 acre feet on July 1, 2009;

   c. From July 6 through October 2, 2009, minimum instream flow shall remain at or above 25 cfs, if Lake Mendocino storage is less than 65,630 acre feet on July 1, 2009;

   Minimum instream flow in the **Russian River from its confluence with Dry Creek to the Pacific Ocean** shall be as follows unless the water level in Lake Sonoma is below 292.0 feet with reference to the National Geodetic Vertical Datum of 1929, or unless prohibited by the United States Government:

   a. From April 6, 2009 through July 5, 2009, 2009, minimum instream flow shall remain at or above 85 cubic feet per second (cfs).

   b. From July 6 through October 2, 2009, minimum instream flow shall remain at or above 85 cfs, if Lake Mendocino storage is equal to or greater than 65,630 acre feet on July 1, 2009;

   c. From July 6 through October 2, 2009, minimum instream flow shall remain at or above 35 cfs, if Lake Mendocino storage is less than 65,630 acre feet on July 1, 2009;

For purposes of compliance with this term, minimum instream flow requirements shall be met on an instantaneous flow basis.

2. SCWA shall immediately consult with the National Marine Fisheries Service (NMFS) and the Department of Fish and Game (DFG) after a cumulative seasonal total of 200 adult Chinook salmon move upstream past the SCWA Mirabel inflatable dam. Upon the written recommendation of NMFS and DFG, instream flow at the USGS gages at both Hopland (No.11462500) and Healdsburg (No. 11464000) on the Russian River shall be increased to 125 cfs after a cumulative seasonal total of 200 adult Chinook salmon move upstream past the SCWA Mirabel inflatable dam. A lag time of three to seven days for the higher flows to reach Healdsburg is appropriate.

3. To protect against stranding of fish when releases from Lake Mendocino are converted from normal-year to dry-year criteria, or from dry-year to critical-year criteria, flow in the East Fork Russian River immediately below Coyote Dam shall not be reduced by more than 15 cfs per hour.

4. SCWA shall monitor and record daily numbers of adult Chinook salmon moving upstream past the Mirabel inflatable dam beginning no later than August 15, 2009, and ending upon expiration of this Order. SCWA shall consult with NMFS and the DFG on a weekly basis regarding the status and findings of the monitoring effort. Chinook salmon monitoring requirements specified in this term may be revised at the direction of NMFS and DFG.

5. If operations pursuant to this Order result in sustained closure of the lagoon at the terminus of the Russian River at the Pacific Ocean, or numbers of adult salmon in the Russian River are determined by NMFS to be very low through September 30, 2009, then SCWA shall immediately consult with NMFS and DFG regarding possible measures to facilitate upstream movement of salmon. SCWA shall immediately implement measures required by NMFS and DFG to facilitate the movement of salmon.

6. SCWA shall implement the Fisheries Monitoring Plan dated May 24, 2009 that was developed in consultation with DFG and NMFS. SCWA shall consult with NMFS and DFG on a weekly basis regarding the status and findings of the monitoring effort.

7. SCWA shall implement the Temperature and Water Quality Monitoring Plan dated May 22, 2009 that was developed for monitoring the effects of the temporary urgency change after consultation with DFG and North Coast Regional Water Board staff.

8. If minimum instream flow requirements are reduced to critically dry year criteria, SCWA shall coordinate once weekly conference calls with Division of Water Rights, NMFS, DFG, and North Coast Regional Water Board staff to discuss the results of ongoing water quality, temperature and fisheries monitoring. Agency personnel may recommend to the Deputy Director for Water Rights actions required to alleviate water quality, public health, or fishery concerns that arise as a result of implementation of this Order.

9. This Order does not authorize any act that results in the taking of a threatened or endangered species, or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this Order, the permittee shall obtain authorization for an incidental take permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary urgency change authorized under this Order.

10. The State Water Board reserves jurisdiction to supervise the temporary urgency change under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

11. The SCWA shall immediately notify the State Water Board if any significant change in storage conditions in Lake Mendocino occurs that warrants reconsideration of this Order.

12. SCWA shall make a 25 percent reduction in diversions from the Russian River to its service area from June 15, 2009 until expiration of this order (October 2, 2009). This reduction shall be calculated based on Permittee's actual diversion from the Russian River from June 15, 2009 through October 2, 2009 as compared to actual diversion from the Russian River from June 15, 2004 through October 2, 2004.

13. As a condition of water delivery to its customers, SCWA shall prohibit irrigation of commercial turf grass within the SCWA service area for the period of June 15, 2009 through October 2, 2009 unless irrigation is managed in conformance with water a budget designed to achieve the following maximum applied water allowance (MAWA):

MAWA = (ETo) (0.75) (LA) (0.62)
where:
MAWA = Maximum applied water allowance (gallons per month)
Eto = Reference Evapotranspiration (inches per month)
0.75 = ET Adjustment Factor
LA = Landscaped Area (square feet)
0.62 = conversion factor (to gallons per square foot)

This term shall not apply to commercial turf irrigated exclusively with municipal recycled water.

For the purposes of this Order, commercial turf is defined as turf that is not used regularly by a significant number of people, including commercial and governmental ornamental turf located in median strips along streets, at public and private office buildings, business parks, out-of-bounds areas at golf courses, and unused areas in parks. Commercial turf does not include regularly used turf, such athletic fields, golf courses, and parks and other areas where turf is actually used by substantial numbers of people to walk, play, or sit on (as opposed to turf that is primarily ornamental).

14. On September 1, 2009, SCWA shall submit to the Division of Water Rights, DFG and NMFS, a forecast of storage in Lake Mendocino and an assessment of SCWA's ability to make releases in support of fall run Chinook salmon during the migration and spawning season. SCWA is directed to request in writing renewal of the temporary urgency change petition no later than September 15, 2009 if DFG or NMFS determines that increasing flows on October 2, 2009 will adversely affect the Russian River fishery.

15. By May 6, 2009, SCWA shall submit a plan to the State Water Resources Control Board to obtain the cooperation and participation of agricultural and municipal Russian River water users to reach a water conservation goal of 25 percent in Sonoma County and 50 percent in Mendocino County for the period of April 6, 2009 until the expiration of this order (October 2, 2009). In addition, the plan shall include measures to identify and prevent any waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water. The plan shall include a detailed schedule with planned

completion dates for key events. The plan, including the schedule, is subject to approval by the State Water Board Deputy Director for Water Rights (Deputy Director) in regard to its completeness and inclusion of significant project milestones. SCWA shall submit any additional information or revisions to the schedule requested within the period specified by the Deputy Director. SCWA shall implement the schedule as approved by the Deputy Director. SCWA shall include the following information in the plan:

a. An explanation of SCWA's authority or other ability to impose mandatory water conservation measures and identification of the persons and entities subject to that authority.

b. Identification of Russian River water users who are not subject to SCWA's authority to impose mandatory water conservation measures.

c. Steps that SCWA will take to investigate the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water from the Russian River. SCWA shall submit monthly reports to the State Water Board on its progress.

d. Steps that SCWA will take to gain the cooperation and participation of water users in conserving water and preventing the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water from the Russian River. SCWA shall submit monthly reports to the State Water Board on its progress.

16. SCWA shall prepare a Water Conservation Status Report for SCWA's service area and other areas served by Lake Mendocino. The report shall specify the water conservation measures being implemented in the areas served by Lake Mendocino, and shall specify the water savings resulting from the measures during the term of this temporary urgency change. The report shall be submitted to the Deputy Director by December 31, 2009. The scope and content of the report shall be similar to the report submitted to comply with WR Order 2007-0022.

17. SCWA shall prepare a Water Conservation Plan for SCWA's service area and other areas served by Lake Mendocino. The Water Conservation Plan shall describe and quantify current water conservation efforts and the water conservation measures that can be implemented in the future, including measures to eliminate the use of residential water wasting devices. The Water Conservation Plan shall provide estimates of the quantity of water applied to commercial turf in the SCWA service area and provide recommendations for long-term reductions in water use on commercial turf. The Water Conservation Plan shall include a description of the authority or mechanisms that will be used to implement the identified conservation measures and a schedule for

implementation. The plan shall be submitted to the Deputy Director by April 6, 2010. For the purposes of this Order, residential water wasting devices are defined as indoor residential plumbing fixtures and appliances that use more water than readily available cost effective alternatives, including but not limited to showerheads, toilets, faucets, dishwashers, and clothes washing machines.

18. SCWA shall develop a water right accounting procedure and a method for determining when the Russian River is being supplemented by project water. SCWA shall submit a report to the Deputy Director by December 31, 2009 describing the proposed water right accounting procedure. Beginning December 31, 2009, SCWA shall post on its website notification of periods when the Russian River is being supplemented by project water for purposes of meeting minimum instream flow requirements or to satisfy downstream water demands other than those of SCWA.

Dated: MAY 2 8 2009

Arthur G. Baggett, Jr.
Board Member