

MEMORANDUM

To: Water Advisory Committee October 18, 2010
From: Chris DeGabriele, Chair, Technical Advisory Committee
Subject: Temporary Allocation of Water Deliveries – Summer 2009
T:\GM\SCWA\2010\WAC memo re temp allocation of water deliveries summer 2009 10-2010.doc

North Marin Water District received an invoice from Sonoma County Water Agency in early February charging NMWD approximately \$90,000 in liquidated damages for water delivery in excess of entitlement for the summer of 2009 when SCWA declared a “temporary impairment” of the transmission system due to budgetary constraints. During summer 2009, SCWA allocated NMWD a 6.0 mgd delivery threshold from June 15 to October 2. In June, July and August, NMWD exceeded the 6 mgd threshold by 4.51 mgd, 0.46 mgd and 1.18 mgd respectively. The June exceedence resulted from NMWD delivering backfeed water produced at Stafford Lake to Marin Municipal requiring all Novato water demand be delivered by SCWA. NMWD successfully argued with SCWA that since the temporary impairment was based upon FY 2009/10 budgetary constraints, June delivery (prior fiscal year) should not be included; and subsequently, received an invoice in early March for approximately \$40,000 eliminating June delivery from the liquidated damages calculation.

In the intervening period, NMWD reached an agreement with the City of Rohnert Park to transfer a portion of its excess delivery entitlement for the months of July and August 2009 to NMWD intended to eliminate the charge for liquidated damages. NMWD legal counsel reviewed the issue and agreed that NMWD and Rohnert Park could make a water contractor-to-water contractor transfer of water delivery entitlement pursuant to the Restructured Agreement even though it’s after the fact, so long as no water contractor objects and the transfer does not exceed the total water availability limitations set by SCWA. At no time during the 2009 impairment period was the 53 mgd limit set by SCWA exceeded by the collective water contractor deliveries. NMWD and SCWA legal counsel disagree on whether the transfer provisions contained in Sections 3.3 (a) and (b) of the Restructured Agreement apply in a “temporary impairment” situation.

Rather than incurring legal expense by both parties arguing over RA Sections 3.3, SCWA will agree to a new temporary allocation of water deliveries for summer of 2009 as approved by the Water Advisory Committee. The proposed retroactive and alternate temporary allocation of water deliveries in the attached resolution (Attachment 1) reflects a small reduction for individual water contractors’ allocations where the original allocation was in excess of actual deliveries for the summer 2009. Cumulatively, an additional 1.2 mgd can then be allocated to North Marin.

The Technical Advisory Committee has reviewed this approach and shared the information with each WAC member so that they are prepared to vote today.

Recommendation:

Approve the Resolution of the Water Advisory Committee Revising the Temporary Allocation of Transmission System Capacity During the Temporary Impairment Period from June 15 to October 2, 2009.