

RESOLUTION NO. _____

RESOLUTION OF THE WATER ADVISORY COMMITTEE REVISING THE TEMPORARY ALLOCATION OF TRANSMISSION SYSTEM CAPACITY DURING THE TEMPORARY IMPAIRMENT PERIOD FROM JUNE 15, 2009 TO OCTOBER 2, 2009

WHEREAS, the Water Advisory Committee (WAC) was created pursuant to Part 5 of the 2006 Restructured Agreement for Water Supply (Restructured Agreement) to perform the functions specified therein; and

WHEREAS, the Restructured Agreement is the contract among the Sonoma County Water Agency (Agency) and its eight signatory Water Contractors, and Section 3.5 of the Restructured Agreement specifies how water transmission system capacity is allocated in the event of a temporary impairment of the transmission system; and

WHEREAS, on May 12, 2009 the Agency’s Board of Directors adopted Resolution 09-0474, declaring the Agency’s water transmission system temporarily impaired and limited to a capacity of approximately 53 million gallons per day (MGD, average day peak month); and

WHEREAS, on June 16, 2009 the Agency Board of Directors adopted a Temporary Allocation of Transmission System Capacity for the period from June 15 through October 2, 2009 (Temporary Impairment Period) and agreed to replace the Agency’s Temporary Allocation with an alternate allocation unanimously approved by the WAC; and

WHEREAS, the Agency allocated the 53 MGD, average day peak month capacity among the individual Water Contractors consistent with the methodology set forth in Section 3.5 of the Restructured Agreement which rewards and encourages water conservation, avoids cutbacks based upon a percentage of historic consumption, and among other things, bases the amounts necessary for human consumption, sanitation, and fire protection upon no greater than average indoor per capita use of the Water Contractors; and

WHEREAS, the parties to the Restructured Agreement have agreed that it is extremely difficult and impractical to determine the damage caused as a result of taking water in excess of the limitations contained in Section 3.5; and

WHEREAS, Section 3.5 provides for the payment of liquidated damages in the event that a Water Contractor exceeds its allocation during a temporary impairment period; and

WHEREAS, during the Temporary Impairment Period, the Water Contractors collectively did not exceed 53 MGD, average day peak month capacity; and

WHEREAS, North Marin Water District (NMWD) exceeded its individual Water Contractor allocation for the months of June, July, and August, 2009 and the Agency has billed NMWD for liquidated damages for the months of July and August, 2009; and

WHEREAS, in discussions between the Agency and NMWD, the Agency has agreed that if all Water Contractors agree to a retroactive alternate allocation of the water transmission system capacity for the Temporary Impairment Period, which would provide that the collective, total water delivery capacity allocations did not exceed 53 MGD, average day peak month, and that no individual Water Contractor exceeded its revised allocation, the Agency will not charge liquidated damages to NMWD; and

WHEREAS, although the Waster Contractors may not necessarily agree on the Agency’s interpretation of the Restructured Agreement (e.g. reallocation vs. transfer), but because: (1) Section 3.5 provides for a allocation methodology that rewards and encourages conservation, avoids cutbacks based upon a percentage of historic consumption, and among other things, bases the amounts necessary for human consumption, sanitation, and fire protection upon no greater than average indoor per capita use of all of the Water Contractors; and (2) the Agency provided temporary water transmission system capacity allocations to each Water Contractor (and other Agency Customers) for the Temporary Impairment Period; and (3) there was no injury to any Water Contractor, and no injury to the system given that the Water Contractors did not exceed the collective temporary water transmission system capacity limitation of 53 MGD, average day peak month for the Temporary Impairment Period; and (4) the Water Contractors have the ability to retroactively agree upon an alternate temporary allocation of the water transmission system capacity in such a way that avoids liquidated damages for individual Water Contractor(s), the Water Contractors seek by this approval to avoid legal dispute, and to amicably resolve this as set forth herein.

NOW, THEREFORE, BE IT RESOLVED that the WAC unanimously agrees to an alternate, Temporary Allocation of Transmission System Capacity for the Temporary Impairment Period from June 15, 2009 to October 2, 2009 as follows:

**Alternate Temporary Allocation of Transmission System Capacity
June 15 to October 2, 2009
Sonoma County Water Agency Customers**

Water Contractor	Original Agency Temporary Allocation June 16, 2009 (mgd)	Retroactive, Alternate Temporary Allocation November 1, 2010 (mgd)
Cotati	1.0	1.0
Petaluma	9.3	9.1
Rohnert Park	4.3	4.2
Sonoma	2.2	2.2
Windsor (Airport Service Area)	0.6	0.5
NMWD	6.0	7.2
Santa Rosa	24.5	23.8
Valley of the Moon Water District	3.3	3.2
Other Agency Customers	1.4	1.4
Total	53	53

DULY PASSED this ____ day of _____, 2010.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: _____
Clerk

APPROVED: _____
Chair, Water Advisory Committee