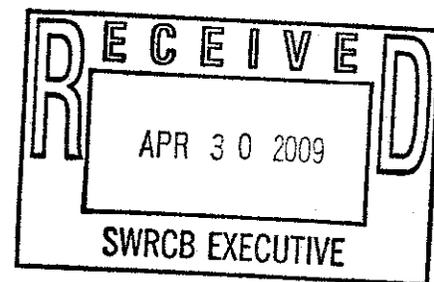


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21 April 2009

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



Re: Response to the Protest and Petition of Reconsideration of  
State Water Board Order WR 2009-0027-DWR

Dear Chairman Hoppin, Vice-Chair Spivey-Weber and Members of the Board:

I have been a resident of the City of Rohnert Park since April of 1985. Before that, I had a home in Novato, Marin County where I lived for ten years. I lived in Novato in the period of 1975 to 1985, which included the severe drought. I am going to include a brief history of my experiences in Novato which I hope will give you some perspective of where I am coming from in this letter.

I moved to Novato from Contra Costa County where I had lived for more than 30 years. I moved to Marin County because I had heard that there were housing construction moratoriums being imposed because of the lack of water. I purposely moved to this area because I thought that the moratoriums on construction would allow me to enjoy a much slower pace as compared to that in Contra Costa County, where there were tracts of houses going up and covering acre after acre of land all over the county.

I bought a house in Novato on San Marin Drive. It was a pleasant short distance from Highway 101 through green pasture land and rolling hills to a little valley of development. Beyond that were more rolling hills and agricultural lands. Not much construction was going on.

And then the drought came and Marin County had to adapt water conservation measures. However, it didn't seem to apply to Novato. Although my family and I were working to save water, my next door neighbor was out regularly washing his car, watering his lawns and essentially ignoring the fact that there was a drought. I confronted him about his wasteful water use and he retorted, telling me that "We didn't have to worry about water in Novato because we get our water from the Russian River. If you don't believe me, go down to the Novato Water District and ask them?" And yes, Novato got its water from the Russian River. And when the drought happened, a pipeline was run across the Richmond-San Rafael Bridge for southern Marin County water needs.

And that was the beginning of my education into water use and water availability.

The drought ended and then we had a lot of rain. My home was among homes that were flooded. My house was flooded three times in the next couple of years of heavy rain. Water "conservation" was quickly forgotten by too many people.

In 1980, I filed a lawsuit against the City of Novato in a complaint about the Novato General Plan not being in compliance with the Government Codes and other regulations. I won a court imposed order for the City of Novato to upgrade the General Plan and bring it into compliance. This process to a year and three months of public meetings.

I had a second issue going against the builder who built our tract house. After spending about five years trying to get Condiotti to make repairs on our brand new house, including filing complaints, along with my neighbors, with the State Contractors License Board, I filed a lawsuit against Condiotti Enterprises for not properly building our house. The house was fraught with Building Code violations and shoddy construction. I won that lawsuit by settling out of court. Condiotti bought the house back at a current market value, which was about double what I had originally paid for it. I moved to Rohnert Park, where I quickly learned about living in a house that is served by a municipal well water system. I learned that the City of Rohnert Park had a minimal concerns for water. There were no water meters and people could use all the water they wanted to.

The first week that I lived in my new house I discovered that Rohnert Park's well water was not filtered. One Saturday morning I put a bucket under the downstairs bathroom faucet to draw a buck of water to wash my car. I left the bathroom to get a bottle of car wash soap and when I came back I had a bucket of water that looked like coffee.

"Oh, oh" I thought, "there must be dirt in the water heater." The water heater was just outside the downstairs bathroom - in the garage. I shut the cold water faucet off to the water heater, turned off the gas heating element and opened the safety valve. I ran a hose from the water heater out to the front lawn and proceeded to drain the "dirty water" out of the water heater. In a few minutes the water cleared up but I noticed white flecks coming out of the hose. I put the end of the hose in a bucket. By the time the water heater had drained, the bucket was half full of sand. I took a sample jar of the sand and Monday morning I went down to the City of Rohnert Park Public Works Department to file a complaint.

That is when I learned that the Rohnert Park well water was not filtered. I asked the manager of the Public Workers Department if they would install a filter system on my house. "No, if you want filtered water, you will have to install it yourself!"

And so I did. I installed two filters. One was a .05 micron filter and the other was a carbon filter.

But that was just the beginning. When the weather got hot I found that I was having to change the two filters out every week. They would bet plugged up with iron oxide and manganese dioxide. These two chemicals were the cause of my coffee colored water and I learned from my

neighbors and people who lived in other sections of Rohnert Park that the episodes of brown water were common. The people who lived in 'G' Section had even more severe problems with their water. It came out brown, white and milky colored or smelling like a frog pond. And this was the beginning of an annual routine - changing the water filters every couple of months until the hot weather and then having to change them weekly. Year after year.

I went before the Rohnert Park city council and complained about the water. I took a set of used filters to show the city council people what I was talking about. The only response I got was one of the city councilmen telling me that I should move back to where ever I had come from.

I filed complaints at the State Office of Drinking Water at their office on 'D' Street in Santa Rosa. After a couple of appearances there, a technician was sent out to my house. He installed a water pressure meter and took samples of my water. He told the city that they needed to back-flush the water lines and eventually the Public Workers people were doing "back-flushing" at night.

The City Engineer kept talking about his plan that eventually the City of Rohnert Park would be getting most of their water from the Sonoma County Water Agency. Rohnert Park had about 80 percent of its water from wells and 20 percent was purchased from the Water Agency.

Eventually, the City of Rohnert Park had to install water meters. There are still a couple of housing sections that do not have water meters but for the most part, most of Rohnert Park water is now metered.

There was an issue raised about water in the late 1980's and the Rohnert Park city council placed a 200 units per year limit on building permits to be issued. This was quickly ignored when Condiotti Enterprises and another developer put in requests for permits to build 'M' Section and 'R' Section. There was another issue about the scarcity of sewage capacity. The City of Rohnert Park had used up its allotment at the Llano Road Sewage Treatment Plant. There were two meters on the sewer line from Rohnert Park. One was at the Rohnert Park end of the sewer line and the other was at the sewage treatment plant. The readings were not actual. They were only estimates because the meters were not working. (I obtained a series of monthly reports and I also went to each of the other subscriber's to the sewage treatment service and talked to each one).

There was a period of time in Rohnert Park's "water" history when the City of Rohnert Park obtained the City of Petaluma "surplus" allotment. I believe the figure was given as a 400% increase in Rohnert Park's water draw from the Sonoma County Water Agency.

In 1990, Harvey Bell and the Sierra Club filed a lawsuit (Case No. 175957) against the City of Rohnert Park for not having a complying General Plan. They won and the city of Rohnert Park had a court order to overhaul the General Plan.

There was also another issue of Rohnert Park having over drawn the underlying aquifer by 150 feet. The General Plan had a statement about the Rohnert Park water coming out of the aquifer. It was stated that the City of Rohnert Park drew more than 4 million gallons a day while the recharge rate of the aquifer was a little of 3 million gallons a day. This overtaxing of the aquifer did not include in its accounting all of the homes in the water-shed district but outside the Rohnert Park city limits. It also did not include the water use by Sonoma State University, the water use by the unincorporated area called Canon Manor and the water use by the City of Cotati.

To this day, I do not know what the status is of that "overdraft" but two lawsuits were filed against the City of Rohnert Park because the town of Penngrove, which includes the area of the Penngrove ZIP code had a large number of water wells either going dry or becoming very distressed. Before filing the lawsuit, John King, a Penngrove resident went before the Rohnert Park planning commission and the city council and got involved with the Rohnert Park General Plan update process. In spite of the tremendous amount of data and arguments about the Rohnert Park's plans for the future, Mr. King was essentially ignored and in the summer of 2000, King helped found the South County Resource Preservation Committee and they filed a lawsuit against the City of Rohnert Park.

When we went to court, the court room was filled to capacity to the extent that the judge even allowed some of the audience to sit in the jury section. Apparently, the judge assumed that half of the people at the hearing were from Rohnert Park and he started making a speech about how a city is like a large ship and it takes a while for it too change direction. He went on to say that the people of Penngrove were like a little speed boat and were able to maneuver more quickly. He was beginning to get into a further discussion about how the smaller community would have to be more patient, when the attorney for John King and raised her hand and got the judge's attention and explained to him that all of the people in the courtroom were from Penngrove and that there were only a couple of people from the city of Rohnert Park. The judge then suggested that maybe the two parties of the lawsuit should go out into the hall and discuss a settlement.

A settlement was reached.

A second lawsuit was filed by a 501(c)(3) non-profit organization called the O.W.L. Foundation a yet another lawsuit was filed by a group of about 14 organizations who were dissatisfied with the Sonoma County Water Agency's lack of honesty about how much water there really is in the county. The O.W.L. Foundation lost this lawsuit on a technicality that I think would have been appealable.

I have been attending the W.A.C. and T.A.C. meeting for the water sub-contractors to the Water Agency for several years. I have video-taped a lot of the meetings and I have recorded records of what goes on at these meetings, usually held on the first Monday of each month at the Llano Road Sewage Treatment Plant.

I note that Marin County is a part of this W.A.C./T.A.C. organization because they buy water.

I am going to note that in spite of the clamor about the lack of water in Marin County, going back to at least 1975 when I moved there, there has been a substantial amount of construction in Marin County (and Sonoma County too but I will get into that later). Two weeks ago, I had to go to the little town of Point Reyes Station. On the way back to Rohnert Park I drove by the Nicasio Reservoir and noted that it was filled to beyond capacity. It was overflowing.

When I got to the point of turning onto the road that led to Novato, I noted that the Stafford Reservoir was also filled to the point of overflowing. I don't recall having enough rain in the last few months to put that much water into those reservoirs. But I remember that Stafford is filled from the pipeline from the Russian River. I will do more investigation into the water and rainfall to those two dams. But, my first impression that for a three year drought period it does not seem right that these reservoirs are filled to overflowing.

Another point I want to make about this is that the Lake Mendocino Reservoir up near the city of Ukiah, Mendocino County is almost dry.

I would like to point out that the number of acres of grape-for-wine vineyards has increased tremendously in the last couple of years. There are vineyards everywhere and they all use a lot of water. I believe the overdrafting of the Russian River water for the purpose of frost control is to blame for the two large fish kills in the last few months.

There is one other issue I would like to make and that has to do with the proposal by the Graton Rancheria Indian Tribe and its partner, Stations Casinos of Las Vegas, Nevada to build a huge gambling casino and hotel in property just outside of the city limits of Rohnert Park.

From time-to-time I have raised this issue at the WAC/TAC meetings but no one wants to take my questions seriously, "where is this operation going to get its water?"

There are other violations of the General Plans of both Rohnert Park and the County but no one seems to make any connections.

There is a proposal for a housing tract of 4,500 homes and 5 million square feet of commercial construction on the east side of Rohnert Park on a strip of land that is California designated groundwater recharge land. If this land is built on and paved over it will have a serious effect on future recharging of the underlying aquifer.

In my opinion, I believe a moratorium on all construction should be imposed on both Sonoma County and Marin County.

I have included a DVD of the special meeting of the WAC/TAC last Monday. I have a lot of files and records about the misuse of water in Rohnert Park and Sonoma County. Thank you for reading my letter. I apologize for not making it more thorough but I think that time is of the essence. We still do not have the rainfall we need.

Paul D. Stutrud



April 17, 2009

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street  
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Mr. Randy Poole  
General Manager/Chief Engineer  
Sonoma County Water Agency  
P. O. Box 11628  
Santa Rosa, CA 95406

RE: Protest and Petition of Reconsideration of State Water Board Order WR 2009-0027-DWR

Dear Chairman Hoppin, Vice-Chair Spivey-Weber and Members of the Board,

The Water Advisory Committee (WAC) to the Sonoma County Water Agency (Water Agency) Board of Directors appreciates the timely issuance of the subject Order which will enable preservation of storage in Lake Mendocino for later release in support of the Russian River fall run Chinook salmon. The WAC is aware that this dry year and reduced diversions from the Eel River thru the Potter Valley Project have resulted in reduced storage in Lake Mendocino which will not support the normal year flows on the Russian River. Nevertheless, the WAC is submitting a protest and petition of reconsideration of State Water Board Order WR 2009-0027-DWR and respectfully requests that the State Board reconsider certain items of the Order which are contrary to law, not in the public interest and not within the jurisdiction of the State Water Board.

The WAC would like to work with the State Board and the Water Agency in a collaborative and constructive way on temporary urgency petitions and orders. Unfortunately, the provisions of this recent petition and order were not shared with us when we could have provided clarity and ensured efficacy. As a result, we are submitting this protest and petition of reconsideration of State Water Board Order WR 2009-0027-DWR and respectfully request that the State Board reconsider certain items of the Order which are contrary to law, not in the public interest and not within the jurisdiction of the State Water Board.

The Water Agency provides water to approximately 600,000 people in the counties of Sonoma and Marin. The Water Agency supplies water to eight primary contractors, consisting of the cities of Cotati, Petaluma, Rohnert Park, Santa Rosa, Sonoma, the Town of Windsor, and the North Marin and Valley of the Moon Water Districts. The WAC is a committee representing these eight water contractors, advising the Board of Directors of the Water Agency on policy and fiscal matters affecting the WAC member agencies.

Water conservation implementation and recycled water development and use have been mainstays of our region's water portfolio, leading to the region's gallons per capita per day (gpcd) water use being significantly below the statewide average of 154 gpcd. All of the WAC member agencies are signatories to the California Urban Water Conservation Council Memorandum of Understanding (MOU) Regarding Urban Water Conservation in California and are aggressively implementing the Best Management Practices (BMPs) defined by the MOU. From 1997 to 2008, WAC member agencies and the Water Agency have spent in excess of \$47,000,000 on water conservation programs and are leaders in the State of California in implementing innovative conservation programs that go above and beyond the 14 BMPs.

The Water Agency and the contractors have a contractual agreement for water supply, entitled the Restructured Agreement for Water Supply (Restructured Agreement) which defines maximum water allocations for each water contractor. Section 3.5 of the Restructured Agreement defines how the Water Agency will appropriate water during a water shortage, using a methodology that rewards conservation, avoids percentage cutbacks based upon historical usage, and assures no penalty for "demand hardening" due to water conservation. The water shortage allocation methodology rewards those that have implemented water conservation measures and ensures that those in the community who have been implementing water conservation measures are not penalized.

In 2007, the Water Contractors working collaboratively with the Water Agency were successful in reducing Russian River diversions by 22%, exceeding the requirements to comply with WR Order 2007-022. The result preserved water in Lake Mendocino for later release in support of the fall run Russian River Chinook Salmon. Similarly, in 2008, while no State Board intervention was necessary (dry spring conditions and flow requirements were in effect), the Water Contractors working collaboratively with the Water Agency were again successful in reducing Russian River diversions and preserving water in Lake Mendocino for the fall run of Chinook Salmon.

The WAC protests the Order and respectfully requests reconsideration of certain Provisions of the Order for the following reasons:

1. The Water Agency submitted a Hydrologic Analysis of Lake Mendocino (Analysis) with the Temporary Urgency Change Petition. The Analysis noted a 20% reduction in diversions from the Russian River coupled with lower instream flow requirements would provide for enough water for fishery and recreation uses in the fall. Requiring a 25% percent reduction in diversions from the Russian River to its service area from April 6, 2009 to October 2, 2009 is not supported by the Analysis and harms the water contractors and their customers. The WAC respectfully requests that, to be consistent with the Analysis presented in the Petition, Provision 13 be changed to specify 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 June 1, 2009 to October 2, 2009.
2. Provision 13 is unclear, referring to a reduction in diversions calculated based on permittee's actual diversion from the Russian River from April 6, 2009 through October 2, 2009. The WAC respectfully requests that Provision 13 be changed to calculate the reduction in diversions compared to 2004—the same year used for the temporary change order issued in 2007 requiring a 15% reduction in diversions.

3. Irrigation of commercial turf is a lawful use of water and the water contractors do not currently have authority to prohibit irrigation of commercial turf. Requiring commercial businesses to prohibit the irrigation of their turf, provision 14, will be a financial hardship and will injure a lawful user of water. The WAC respectfully requests that the State Board remove this provision and allow the water contractors to continue to work with their communities 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, as required by State law.
4. The Water Agency's adopted Water Shortage Allocation Methodology per Section 3.5 of the Restructured Agreement allocates water in a manner that rewards past water conservation efforts and encourages continued water conservation implementation. Across the board percentage cutbacks penalizes those communities which have implemented conservation measures. The WAC respectfully requests that the State Board change Provision 15 to allow the Water Agency and its contractors to use the existing agreement which rewards past conservation efforts and encourages continued conservation efforts instead of requiring an across the board 25% cutback.
5. The Water Agency and water contractors have adopted Water Waste Ordinances and Urban Water Shortage Contingency Plans (Shortage Plans) as required by California Water Code Section 10632. Each contractor's Shortage Plan takes into account our different water supply portfolios and allows the contractors to meet the water supply shortage taking into account the needs and priorities of the community. The State Water Board should recognize these local plans as required by existing state law.
6. To date 5 of the Water Contractors have declared water shortage emergencies and enacted their Shortage Plans (North Marin, Santa Rosa, Valley of the Moon, Sonoma and Cotati).
7. The Water Contractors have executed a memorandum of understanding to form the Sonoma Marin Saving Water Partnership enabling formal collaboration of the nature undertaken the past two years and to undertake more regional approach to water conservation in the Sonoma and Marin region.
8. The Order has specific language regarding urban water use. It seems reasonable that agriculture should be subjected to similar water reductions.

The cities and water districts in Sonoma and Marin counties are recognized as statewide leaders in water conservation, recycled water use, and sustainability. The concept of reducing underutilized landscape turf in commercial areas has merit. Let us work with you collaboratively to lead the state in this area too. An immediate ban on irrigating commercial turf could set this effort back years.

The WAC requests that the State Board reconsider the Order and allow our region to utilize existing water shortage contingency plans to reduce diversions from the Russian River this summer, to achieve long-term conservation targets established by the Governor, and to let the local jurisdictions provide a plan to retrofit existing commercial turf with low water use landscaping over a multi-year phase in period.

Sincerely,

Jake Mackenzie  
Chair, Water Advisory Committee