

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

**DIVISION OF WATER RIGHTS**

**ORDER WR 2020-0102-EXEC**

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

**Sonoma County Water Agency**

**ORDER APPROVING TEMPORARY URGENCY CHANGE**

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SOURCE: Dry Creek and Russian River

COUNTIES: Sonoma and Mendocino Counties

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BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

**1.0 SUBSTANCE OF TEMPORARY URGENCY CHANGE PETITION**

On June 10, 2020, Sonoma County Water Agency (Sonoma Water) filed Temporary Urgency Change Petitions (TUCPs) with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) requesting approval of a change to the subject permits pursuant to California Water Code section 1435. The TUCPs requested the following temporary reductions to the Russian River instream flow requirement terms of the subject permits, to address low storage conditions in Lake Mendocino and avoid potential violations of the Incidental Take Statement contained in the 2008 National Marine Fisheries Service (NMFS) Biological Opinion (hereafter, 2008 Biological Opinion)<sup>1</sup>:

(1) From July 1, 2020 through December 27, 2020, reduce instream flow requirements for the Upper Russian River<sup>2</sup> from 75 cubic feet per second (cfs) to 50 cfs;

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<sup>1</sup> No changes to the instream flow requirements for Dry Creek are requested pursuant to the TUCPs.

<sup>2</sup> The Upper Russian River refers to the Russian River from its confluence with the East Fork of the Russian River to its confluence with Dry Creek.

- (2) From July 1, 2020 through December 27, 2020, reduce instream flow requirements for the Lower Russian River<sup>3</sup> from 85 cfs to 60 cfs.
- (3) If storage in Lake Mendocino drops more than one percent below the target water supply storage level depicted in Figure 5 of the petition package on any day during the period of this Order, then, from that date through December 27, 2020, reduce instream flow requirements for the Upper Russian River from 50 cfs to 40 cfs, and reduce instream flow requirements for the Lower Russian River from 60 cfs to 50 cfs. Table 1 of the petition package summarizes the calculated daily values of target water supply storage levels.
- (4) The minimum instream flow requirement be implemented as a 5-day running average of average daily stream flow measurements with instantaneous minimum instream flows being no less than 40 cfs on the Upper Russian River and no less than 50 cfs on the Lower Russian River, unless storage drops more than one percent below the target water supply storage at Lake Mendocino, then the instantaneous minimum instream flow would be no less than 30 cfs on the Upper Russian River and no less than 40 cfs on the Lower Russian River.

The 5-day running average allows Sonoma Water to manage flows more efficiently in the Russian River. Sonoma Water does not control and is not able to predict the timing and magnitude of diversions by Russian River water users downstream of the reservoirs. Consequently, a 5-day running average allows for a reduced frequency of reservoir release changes to respond to transitory flow reductions due to large diversions that may occur simultaneously. Sonoma Water will also be able to manage stream flows with smaller operational buffers, thereby conserving water supply in Lake Mendocino.

Approval of these TUCPs will increase storage levels in Lake Mendocino in the fall, which will be used for releases of stored water for the benefit of returning adult Chinook salmon, and improve the likelihood of carryover storage for use in 2021 in the event 2021 is also a dry year.

## **2.0 BACKGROUND**

### **2.1 Sonoma Water's Water Right Permits**

The TUCPs involve the following water right permits held by Sonoma Water:

- Permit 12947A (Application 12919A), which authorizes direct diversion of 92 cfs from the East Fork Russian River and storage of 122,500 acre-feet (AF) per year in Lake Mendocino from January 1 through December 31 of each year;

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<sup>3</sup> The Lower Russian River refers to the Russian River downstream of its confluence with Dry Creek to the Pacific Ocean.

- Permit 12949 (Application 15736), which authorizes direct diversion of 20 cfs from the Russian River from January 1 through December 31 of each year;
- Permit 12950 (Application 15737), which authorizes direct diversion of 60 cfs from the Russian River from April 1 through September 30 of each year; and
- Permit 16596 (Application 19351), which authorizes direct diversion of 180 cfs from the Russian River from January 1 to December 31 of each year and storage of 245,000 AF in Lake Sonoma from October 1 of each year to May 1 of the succeeding year.

## 2.2 Requirements of D1610

Sonoma Water controls and coordinates water supply releases from Lake Mendocino and Lake Sonoma to implement the minimum instream flow requirements in State Water Board Decision 1610 (1986) (hereafter, Decision 1610). Decision 1610 set minimum instream flows in the Russian River to “preserve the fishery and recreation in the river and in Lake Mendocino to the greatest extent possible while serving the needs of the agricultural, municipal, domestic, and industrial uses which are dependent upon the water.” (Decision 1610, p. 21.)

Decision 1610 established water year classifications of *Normal*, *Dry*, and *Critically Dry*, which are based on cumulative inflow into Lake Pillsbury (in the Eel River Watershed) beginning October 1 of each year.<sup>4</sup> From October 1, 2019 to June 1, 2020, the cumulative inflow into Lake Pillsbury was 108,309 AF. Consequently, the water supply condition is categorized as *Dry* for the remainder of the year and the following conditions apply:

- Term 20 of Sonoma Water's Permit 12947A requires Sonoma Water to pass through or release from storage at Lake Mendocino sufficient water to maintain instream flows of 75 cfs for the Upper Russian River and 85 cfs for the Lower Russian River.
- Term 17 of both Permit 12949 and Permit 12950 requires Sonoma Water to allow sufficient water to bypass the points of diversion at the Wohler and Mirabel Park Intakes on the Russian River to maintain 85 cfs to the Pacific Ocean.
- Term 13 of Permit 16596 requires Sonoma Water to maintain 85 cfs in the Lower Russian River unless the water level in Lake Sonoma is below elevation 292 feet with reference to the National Geodetic Vertical Datum of 1929, or unless prohibited by the United States Government.

## 2.3 2008 Biological Opinion

Central California Coast (CCC) steelhead (*Oncorhynchus mykiss*), CCC coho salmon (*O. kisutch*), and Central Coast (CC) Chinook salmon (*O. tshawytscha*) in the Russian River watershed are listed as threatened or endangered species under the federal Endangered Species Act. In accordance with the requirements of section 7 of the federal

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<sup>4</sup> Permits 12947A, 12949, 12950, and 16596 use the same water-year classification definitions.

Endangered Species Act, NMFS, Sonoma Water, and the U.S. Army Corps of Engineers participated in a consultation process involving studies to determine whether the water supply and flood control operations of the Russian River, including the operations authorized under the subject permits, are likely to harm the survival and recovery of these listed fish species. The 2008 Biological Opinion includes summaries of the studies, analyses of the project impacts and a determination that summer flows in the Upper Russian River and Dry Creek, as required by Decision 1610, are too high for optimal juvenile salmonid habitat within the Russian River system. According to the 2008 Biological Opinion, two types of issues are associated with the summer flows required by Decision 1610: (1) the flows create current velocities that limit the amount of freshwater rearing habitat available to salmonids; and (2) the flow release requirements deplete the cold water pool in Lake Mendocino, contributing to relatively high water temperatures, which reduce the quality of available rearing habitat.

The 2008 Biological Opinion sets limits on releases from Lake Mendocino and Lake Sonoma during the summer months to maintaining suitable habitat for CCC steelhead, CCC coho salmon, and CC Chinook salmon and avoid take under the Endangered Species Act. These limitations are relevant to the TUCPs because the limitations on higher releases from Lake Sonoma restrict the ability of Sonoma Water to release additional water from Lake Sonoma through Dry Creek to offset reduced releases from Lake Mendocino for maintaining instream flows in the Lower Russian River. The Incidental Take Statement from the 2008 NMFS Biological Opinion set limits on how many months from June through October Sonoma Water may operate a monthly median daily release above 105 cfs from Lake Sonoma during the period the 2008 Biological Opinion is effective. These criteria are set to avoid jeopardizing listed salmonids and their habitat in Dry Creek. The Biological Opinion establishes four tiers of Incidental Take Allowance for reservoir release from Lake Sonoma (Warm Springs Dam) based on monthly median daily release. Detailed information of the Allowance Tiers and expended exceedances are as follows.

- Allowance Tier for monthly median release of 105 cfs to 120 cfs has 34 allowable exceedances (18 accumulative exceedances have occurred).
- Allowance Tier for monthly median release of 120 cfs to 140 cfs has 16 allowable exceedances (2 accumulative exceedances have occurred).
- Allowance Tier for monthly median release of 140 cfs to 160 cfs has 5 allowable exceedances (0 accumulative exceedance has occurred).
- Allowance Tier for monthly median release higher than 160 cfs has 1 allowable exceedance (0 accumulative exceedance has occurred).

## **2.4 2020 Drought Conditions and Response**

Water year 2020 has been the third driest year in the Russian River Watershed during the past 127 years of record. As of June 1, 2020, the water supply storage level in Lake Mendocino was 67,693 AF. In addition, on April 30, 2020, the Federal Energy Regulatory Commission approved PG&E's temporary variance request to reduce minimum instream

flow requirements below the powerhouse in the East Fork Russian River. Accordingly, Sonoma Water forecasted that Eel River transfers through the Potter Valley Project would be reduced by 50 to 60 AF per day between May 1, 2020, and December 31, 2020, further impacting the storage condition in Lake Mendocino. A recent analysis prepared by Sonoma Water indicates that unless additional measures are taken, water levels in Lake Mendocino will decline below 27,000 AF by October 1. These projected storage levels would be insufficient to maintain minimum instream flows in the Russian River or meet consumptive water supply demands. The lack of stored water would harm listed and threatened Russian River fish species, cause serious water-supply impacts in Mendocino County and the Alexander Valley in Sonoma County, and impact recreation in Lake Mendocino and the Russian River.

Sonoma Water's analysis also projected that the storage levels in Lake Mendocino depicted on Figure 5 of the petition package would be adequate to meet minimum instream flow requirements, demands by downstream water users, and preserve storage for summer early rearing juvenile steelhead and the fall migration of Chinook salmon. These storage levels were therefore proposed by Sonoma Water and are adopted as minimum target storage levels in Lake Mendocino for the term of this Order.

Sonoma Water requested changes to the minimum instream flow requirements on both the Upper and Lower Russian River to maintain water in storage in Lake Mendocino at levels necessary to meet water supply demands and maintain instream flows. Reduced instream flows on the Upper Russian River will result in significantly less contribution to instream flows on the Lower Russian River. Increased releases from Lake Sonoma into Dry Creek would be necessary to maintain Decision 1610 minimum instream flow requirements on the Lower Russian River while meeting water supply demands. Releases into Dry Creek in addition to those necessary to meet water supply demands are, however, likely to violate the Incidental Take Statement in the 2008 Biological Opinion which restricts releases from Lake Sonoma into Dry Creek to prevent flows that are too high to maintain habitat for juvenile salmonids. Therefore, Sonoma Water proposes to reduce the minimum instream flow requirements for the Lower Russian River to avoid the need for increased release rates from Lake Sonoma in excess of the flows authorized by the 2008 Biological Opinion.

### **3.0 COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT**

The State Water Board must comply with applicable requirements of the California Environmental Quality Act (CEQA) prior to issuance of any order approving a TUCP. (Cal. Code Regs., tit. 23, § 805.) Sonoma Water determined that the requested change is categorically exempt under CEQA as the change meets the Class 1, 7, and 8 exemption criteria. Sonoma Water filed a Notice of Exemption on June 8, 2020. The State Water Board has reviewed the information submitted by Sonoma Water and has made its own independent finding that the requested changes are statutorily and categorically exempt from CEQA.

The changes sought by the TUCPs are consistent with the following statutory and categorical CEQA exemptions for the following reasons:

- 1) Information provided by Sonoma Water demonstrates that continued releases of water pursuant to permit term requirements could cause storage levels in Lake Mendocino to decline to unsafe levels. If storage in Lake Mendocino is depleted there will be serious impacts to human health and welfare and water will not be available to protect aquatic life, including threatened and endangered species in the Russian River. Approval of the TUCPs is therefore necessary to prevent and mitigate loss of, or 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); Cal. Code Regs., tit. 14, § 15269, subd. (c).)
- 2) The proposed action consists of the operation of existing facilities involving negligible or no expansion of use beyond that existing, and accordingly is categorically exempt from CEQA under a Class 1 exemption. (Cal. Code Regs., tit. 14, § 15301.) The proposed action will be within the range of minimum instream flows established by Decision 1610.
- 3) 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.” (*Id.*, § 15307.) The proposed action will ensure the maintenance of a natural resource (i.e., the instream resources of the Russian River) by increasing availability and improving the quality of salmonid rearing habitat in the Upper Russian River and more closely mimicking natural inflow to the estuary, thereby enhancing the potential for maintaining a seasonal freshwater lagoon that could support increased production of juvenile steelhead. Accordingly, these changes are categorically exempt from CEQA pursuant to a Class 7 exemption.
- 4) 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 ensure the maintenance of the environment (i.e., the instream environment of the Russian River) in the same way as stated for the Class 7 exemption.

#### **4.0 PROCEDURAL REQUIREMENTS CONCERNING THE TEMPORARY URGENCY CHANGE PETITION**

Pursuant to Water Code section 1438, the State Water Board may issue a temporary urgency change order in advance of the required notice. The State Water Board will issue and deliver to Sonoma Water as soon as practicable, a notice of the temporary urgency change order pursuant to Water Code section 1438, subdivision (a). Pursuant to Water Code section 1438, subdivision (b)(1), Sonoma Water is required to publish the notice in a newspaper having a general circulation, and that is published within the counties where the points of diversion lie. In addition, the State Water Board will post the notice of the temporary urgency change order on its website, along with the TUCP (and accompanying materials), and will distribute the notice through an electronic notification system.

Any interested person may file an objection to a temporary urgency change. (*Id.*, subd. (d).) The State Water Board must promptly consider the objection and may hold a hearing on any objection. (*Id.*, subd. (e).)

As of July 8, 2020, the State Water Board had received about 75 comments on the TUCPs from the Russian River Watershed Protection Committee and residents from communities near the Lower Russian River objecting to the lowering of instream flow requirements in the Lower Russian River below 70 cfs. The comments raised similar issues, which include:

- 1) Water quality impacts related to algal blooms and cyanobacteria that can result in health impacts to humans, pets, and wildlife;
- 2) Impacts to recreational uses of the Lower Russian River;
- 3) Recommendations regarding the additional releases of water from Lake Sonoma to meet instream flow requirements;
- 4) Objection to the petitions on the basis that they are not in the public interest;
- 5) The need for additional conservation measures and enforcement of conservation by Sonoma Water to reduce water supply demands.

The State Water Board has considered these comments and objections in this Order. The State Water Board will also consider objections to this Order received during the noticing period. The State Water Board exercises continuing supervision over temporary urgency change orders and may modify or revoke temporary urgency change orders at any time. (Wat. Code, §§ 1439, 1440.) Temporary urgency change orders automatically expire 180 days after issuance, unless they are revoked, or an earlier expiration date is specified. (*Id.*, § 1440.)

## **5.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY URGENCY CHANGE**

Water Code section 1435 provides that a right holder who has an urgent need to change the point of diversion, place of use, or purpose of use from that specified in the water right may petition for a conditional temporary change order. The State Water Board's regulations set forth the filing and other procedural requirements applicable to TUCPs. (Cal. Code Regs., tit. 23, §§ 805, 806.) The State Water Board's regulations also clarify that requests for changes to permits or licenses other than changes 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 TUCP, the State Water Board must make the following findings (Wat. Code, § 1435, subd. (b)(1-4).): (1) the right holder 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.

A temporary change order does not result in the creation of a vested right, even of a temporary nature, but shall be subject at all times to modification or revocation in the discretion of the Board. (Wat. Code, § 1440.)

### **5.1 Urgency of the Proposed Change**

Under Water Code section 1435, subdivision (c), an "urgent need" means "the existence of circumstances from which the board may in its judgment conclude 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 . . . ."

In this case, an urgent need exists for the proposed change in minimum instream flow requirements on the Upper Russian River. Sonoma has identified Water Year 2020 as the third driest year in the Russian River watershed during the past 127 years of record. Reduction in water transfers from the Eel River through the Potter Valley Project will also greatly impact Lake Mendocino's water supply storage. Lake Mendocino reservoir levels are projected to reach critically low conditions without the propose changes. The critically low conditions would likely prevent Sonoma Water from meeting water supply demands and continuing to make reservoir releases necessary to support the various beneficial uses that rely on these releases in the Russian River, including fall-run Chinook salmon which enter the river primarily in October and November. An extreme drawdown of Lake Mendocino would also reduce available suitable habitat for rearing juvenile steelhead in the Upper Russian River as it would deplete Lake Mendocino's cold water hypolimnion and



increase the temperature of water released from Coyote Valley Dam. The sustained release of cold water from Lake Mendocino is crucial to support rearing habitat for steelhead in the river segment downstream from the dam.

Furthermore, if upcoming dry conditions persist and significant storm events are delayed or do not occur in Water Year 2021, carryover storage in Lake Mendocino will be crucial for the continued recovery of the Russian River salmonid fishery and water supply reliability during 2021. Without the proposed changes, the current minimum instream flow requirements would require releases of water from Lake Mendocino at levels that would risk significant depletion of storage and potential elimination of water supplies for water uses in Mendocino County and northern Sonoma County above the confluence with Dry Creek. Such depletion in storage and reduction in or elimination of water supplies would cause serious impacts and put water supplies at risk to support survival of listed Russian River salmonid fishery species, municipal and agriculture supplies, and recreation use in the Russian River.

An urgent need also exists for the proposed change in minimum instream flow requirements on the Lower Russian River because reductions in the Upper Russian River flows would require an increase in Lake Sonoma releases into Dry Creek to meet lower Russian River flow requirements as well as water supply demands. Higher releases from Lake Sonoma may cause Sonoma Water to violate the Incidental Take Statement contained in the 2008 Biological Opinion and reduce the suitability of habitat for threatened and endangered fish species in Dry Creek. Sonoma Water is currently releasing approximately 120 cfs at Lake Sonoma, which puts reservoir operations above the 105 cfs threshold established in the Incidental Take Statement of the 2008 NMFS Biological Opinion. Sonoma Water is projecting to operate Lake Sonoma Releases for the month of July by utilizing an exceedance allowance in the "120-140 cfs" tier. Sonoma Water also expects to continue similar reservoir operations for Lake Sonoma releases for August and September so additional allowances would be required.

Under the current TUCPs, the proposed reduction in minimum flows of 25 cfs from the current minimum instream flow in the Upper and Lower Russian River would decrease releases from Lake Mendocino, but releases from Lake Sonoma would need to remain at about the same elevated levels. If the minimum flow requirements in the Lower Russian River were higher than requested, Sonoma Water would be required to increase releases from Lake Sonoma into the highest flow tiers (>160 cfs) of the Incidental Take Statement. Furthermore, Sonoma Water is under an additional constraint due to habitat restoration construction projects required under the Biological Opinion that will continue in Dry Creek this summer. These on-going projects require stream flows to be less than 150 cfs for construction safety. Therefore, although a number of comments were received by the Board suggesting to increase water releases from Lake Sonoma to meet instream flow requirements in the Lower Russian River, the flow limitations in the 2008 Biological Opinion and the current construction activities restrict this option.

## **5.2 No Injury to Any Other Lawful User of Water**

Sonoma Water is required to maintain specified flows in the Russian River from its most upstream point of diversion to the Russian River's confluence with the Pacific Ocean. Because minimum flows will be maintained, it is anticipated that all other lawful users of water will be able to divert and use the amounts of water to which they are legally entitled during the period specified in this temporary urgency change order. Other legal users of water will not be injured by reduction in releases of previously stored water because water released from storage is not available for diversion by downstream users with an independent basis of right. (See e.g., *North Kern Water Storage Dist. v. Kern Delta Water Dist.* (2007) 147 Cal.App.4th 555, 570 [when the stored water is released for use, it is not part of the river's natural flow and redirection of this water does not count toward the appropriator's current allocation of river water]; *State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 737-745 [a riparian or appropriator has no legally protected interest in other appropriators' stored water or in the continuation of releases of stored water].)

The State Water Board will supervise diversion and use of water under this temporary urgency change order for the protection of all other lawful users of water pursuant to Water Code section 1439.

## **5.3 No Unreasonable Effect upon Fish, Wildlife, or Other Instream Beneficial Uses**

Prior to approval of a TUCP, the Board must find that the proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses. In addition, the State Water Board has an independent obligation to consider the effect of approval of Sonoma Water's petitions on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal. 3d 419 [189 Cal. Rptr. 346].) Public trust resources may include, but are not limited to, wildlife, fish, aquatic dependent species, streambeds, riparian areas, tidelands, and recreation in navigable waterways, as well as fisheries located in non-navigable waterways. It is also the policy of this state that all state agencies, boards, and commissions shall seek to conserve endangered species and threatened species and shall use their authority in furtherance of the purposes of the California Endangered Species Act. State agencies should not approve projects that would jeopardize the continued existence of any endangered species or threatened species if there are reasonable and prudent alternatives available consistent with conserving the species or its habitat that would prevent jeopardy. (Fish & Game Code, §§ 2053 & 2055.)

Although flows in the Russian River will be reduced upon approval of this petition, maintenance of stored water in Lake Mendocino for subsequent release is crucial for maintaining habitat for threatened and endangered fish species during the critical life stages that occur during the fall. With the conditions imposed by this Order, including

ongoing efforts to support water conservation and regular monitoring and reporting of conditions by Sonoma Water, the State Water Board finds that granting the proposed temporary changes will not have an unreasonable effect on fish, wildlife, or other instream beneficial uses and protects public trust resources to the extent feasible. The State Water Board will continue to evaluate conditions in the watershed throughout the duration of this Order and consider other actions that may further the protection fish, wildlife, and other instream beneficial uses.

### **5.3.1 CONSERVATION**

Sonoma Water is actively engaged in water conservation to reduce demands on water stored in Lake Mendocino for municipal supply. Sonoma Water and its water contractors have implemented water use efficiency programs to comply with the California Water Conservation Act since the establishment of the Sonoma-Marín Water Saving Partnership (Partnership) in 2010. The Partnership represents twelve North Bay water utilities in Sonoma and Marin counties that have joined to provide regional solution for water use efficiency.

This summer the Partnership is implementing a campaign in both English and Spanish to reinforce water saving behavior and to encourage customers to implement water use efficiency upgrades, via broadcast radio, print media, and digital media placements through the peak water use months. The Partnership also sets up online training programs and hosts virtual outreach events for water conservation. The Partnership's water use for 2019 was 15% below the 2013 benchmark year chosen by the state for water use reductions during the drought. Regional water use in the first three months of 2020 is 10% below the 2013 benchmark for the same period despite low rainfall this spring. Sonoma Water anticipates the Partnership's summertime activities will continue the successful water use reductions from previous efforts.

To ensure continuation of these conservation activities, this Order includes a condition that requires Sonoma Water to provide updates to the Board within one month of adoption of this Order and bi-monthly thereafter for the duration of the TUCPs regarding activities and programs being implemented by Sonoma Water and its water contractors to assess and reduce water loss, promote increased water use efficiency and conservation, and improve regional water supply reliability.

### **5.3.2 RECREATION**

Reduced flows in the Russian River could impair recreational uses by lowering flows below those necessary for recreational boating and reducing the opportunities for other recreational activities such as swimming. Given the extremely low projected storage in Lake Mendocino and the potential impacts to the environment, fishery resources, and essential public services that could occur if the temporary changes are not approved, these impacts to recreation are reasonable under the circumstances. Maintenance of flows in excess of those required by this Order risks reduction of water storage in Lake

Mendocino to levels that may not support minimum flows during the fall that are necessary for threatened and endangered fish species, or maintain carryover storage to support releases for minimum flows in the following year should drought conditions continue. Given the conflicting demands on limited water supplies, the need to maintain minimum storage levels to protect public water supplies and threatened and endangered species, and the implementation of conservation measures by Sonoma Water, this Order protects recreational interests in the Russian River to the extent feasible. Should changes in water supply conditions allow for enhanced flows that would further recreational interests, this Board retains the authority to amend or revoke this Order as appropriate.

### ***5.3.3 WATER QUALITY AND AVAILABILITY OF AQUATIC HABITAT***

Reduced minimum flows in the Upper and Lower Russian River may have some immediate adverse impacts to water quality and the availability of aquatic habitat for fish and other species in the Upper and Lower Russian River. These impacts are, however, expected to be offset by improvements to water quality and aquatic habitat by allowing continued minimum releases during the fall and into 2021 should dry conditions continue. The Russian River sustains an annual run of adult Chinook salmon that depend on the release of stored water from Lake Mendocino during October, November, and early December. Reductions in the minimum instream flow requirements will also improve carryover storage in Lake Mendocino and significantly benefit instream beneficial uses if dry conditions persist into Water Year 2021. Reducing releases to maintain instream flows will protect water supply in Lake Mendocino to assist in conserving a cold water pool to maintain cooler water temperatures in the Upper Russian River, improve freshwater rearing habitat quality, and enhance management of the flows in early fall for the benefit of fish migration.

To allow for adaptive management of releases from Lake Mendocino, this Order requires Sonoma Water to provide weekly updates to the State Water Board, CDFW, NMFS, and the Regional Water Board regarding the current hydrologic and water quality conditions on the Russian River and provide bi-weekly updates on fishery conditions. When more than 100 salmonids have been observed passing the monitoring station at Mirabel Dam, Sonoma Water is required to provide weekly updates on fishery conditions. This information will assist the State Water Board in determining whether additional actions or modifications to this Order are necessary.

Both NMFS and CDFW support the TUCPs to conserve water storage in Lake Mendocino for the benefit of listed salmonids, conditioned upon ongoing monitoring, reporting, and consultation requirements. These proposed terms and conditions have been included in this Order. The monitoring activities will be summarized in annual reports intended to evaluate whether and to what extent the reduced flows may have caused any impacts to water quality and availability of aquatic habitat for salmonids. This information will serve to inform the State Water Board's continuing supervision of the diversion and use of water under this temporary urgency change order pursuant to Water Code section 1439. In addition, this information may be used to assist the study and

development of future long-term changes to Decision 1610 instream flow requirements for which separate petitions are pending.

#### **5.3.4 CYANOBACTERIA**

Cyanobacteria are present in most freshwater and marine aquatic environments. When conditions are favorable, including abundant light, elevated water temperature, elevated levels of nutrients, and lack of water turbulence and velocity, cyanobacteria can quickly multiply into a bloom. Not every bloom is toxic; however, harmful algal blooms (cyanoHABs) are a concern as some species of cyanobacteria produce toxins that have the potential to impact drinking water, recreation, and fish and wildlife. Cyanotoxins were present in the Russian River in 2015, 2016, 2017, and 2018.

There are currently no federal water quality criteria or regulations for cyanobacteria or cyanotoxins. However, some toxins (microcystins and cylindrospermopsin) have been added to the contaminant candidate list under the Safe Drinking Water Act. In addition, the Clean Water Act sets ambient water quality standards and requires that the Environmental Protection Agency develop management strategies for assessing and managing algal toxins. As of 2020, there is no regulation in the State of California specifically regarding cyanobacteria or cyanotoxins. However, there has been an increase in cyanoHABs in California.

Sonoma Water has developed a 2020 Water Quality Monitoring Plan for the Russian River Estuary Management Project (2020 Water Quality Monitoring Plan) in consultation with the North Coast Regional Water Board. Sonoma Water's 2020 Water Quality Monitoring Plan includes freshwater monitoring for the purpose of assisting in the evaluation of cyanoHAB conditions and the risk co-factors contributing to nuisance blooms (e.g., flow, temperature, nutrient, etc.).

The State Water Board has considered the objections raised by members of the public regarding potential public health impacts from cyanobacteria or cyanotoxins in the Russian River. This Order includes conditions that require Sonoma Water to continue measuring and monitoring water quality in the Russian River to evaluate cyanoHAB conditions and the factors contributing to nuisance blooms. This Order also requires Sonoma Water to continue consultation with the Regional Water Board on any water quality issues caused by the TUCPs during the period of this Order. The State Water Board reserves jurisdiction to revise terms and conditions in this Order if the Sonoma County Department of Public Health post health advisories related to cyanotoxins or indicator bacteria and will consult with the Regional Water Board regarding any health advisories.

#### **5.4 The Proposed Change is in the Public Interest**

Approval of the TUCPs to temporarily reduce minimum instream flows will help conserve stored water in Lake Mendocino. If drought conditions persist, stored water can be released to maintain instream flows for the benefit and protection of all uses of the Russian

River, including the salmonid fisheries and recreation as well as consumptive uses. It is in the public interest to preserve water supplies for these beneficial uses given the extreme hydrologic circumstances and reduced water supplies.

Should the conditions that support the approval of this Order change, whether in alterations to water supply or identification of additional impacts to aquatic habitat, water quality, or other matters within the public interest, the State Water Board has the authority to revoke this approval or modify the terms and conditions of this Order as necessary to promote the interests of the public.

## 6.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1435. The findings of this Order are based on unique circumstances created by drought, and are independent from any findings to be made in connection with the related change petitions filed by Sonoma Water in 2009 and revised in 2016 pursuant to Chapter 10 of Division 2 of Part 2 of the Water Code.

I conclude that, based on the available evidence:

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

## ORDER

**NOW, THEREFORE, IT IS ORDERED THAT:** the petitions filed by Sonoma Water for a temporary urgency change in Permits 12947A, 12949, 12950, and 16596 are approved and effective from the date of this Order until December 27, 2020.

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

1. The minimum instream flow requirements 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:

- a. Minimum instream flow in the Upper Russian River shall remain at or above 50 cubic feet per second (cfs).
  - b. Minimum instream flow in the Lower Russian River shall remain at or above 60 cfs.
  - c. If storage in Lake Mendocino drops more than one percent below the target water supply storage level depicted in Figure 5 of the petition package on any day during the period of this Order, then, from that date through December 27, 2020, reduce instream flow requirements for the Upper Russian River from 50 cfs to 40 cfs, and reduce instream flow requirements for the Lower Russian River from 60 cfs to 50 cfs. Table 1 summarizes the calculated daily values of target water supply storage levels.
  - d. The minimum instream flow requirement shall be implemented as a 5-day running average of average daily stream flow measurements with instantaneous minimum instream flows being no less than 40 cfs on the Upper Russian River and no less than 50 cfs on the Lower Russian River, unless storage drops more than one percent below the target water supply storage at Lake Mendocino, then the instantaneous minimum instream flow would be no less than 30 cfs on the Upper Russian River and no less than 40 cfs on the Lower Russian River.
2. Sonoma Water shall conduct the following fisheries monitoring tasks and associated recording and reporting requirements. A summary report of the fisheries monitoring tasks described below shall be submitted to the Deputy Director for Water Rights, CDFW and NMFS by April 1, 2021, in accordance with the NMFS and CDFW annual reporting requirements as more fully described in the NMFS Biological Opinion.
- a. Beginning no later than September 1, 2020, and continuing through the duration of this Order, Sonoma Water shall monitor and record daily numbers of adult salmon and steelhead moving upstream past the life cycle monitoring station at the Mirabel Dam fish ladder. Mirabel fish ladder numbers shall be included in bi-weekly reports required in Term 6.
  - b. Beginning October 1, 2020, if adult salmon and steelhead can enter the Russian River estuary and suitable water clarity allows redd and spawning surveys, Sonoma Water shall monitor numbers of adult salmon and steelhead in representative reaches in Dry Creek, Alexander Valley and the Upper River. Monitoring shall occur on a weekly basis continuing through the duration of this Order or until sustained flows at the USGS gage at Hacienda (No.11467000) are above 135 cfs.
  - c. By October 15, 2020, or after a cumulative seasonal total of 100 adult salmon and steelhead move upstream past the counting station at the Mirabel fish ladder, whichever is earlier, Sonoma Water shall consult with NMFS and CDFW regarding the possibility of increasing the instream flow at the gage at Hacienda to a level not to exceed 135 cfs. Consultations shall occur every two weeks and a summary report of consultation details and any

increases to the minimum flows shall be submitted to the Deputy Director for Water Rights within one week of each consultation meeting.

The requirements of this term may be modified after consultation by Sonoma Water with NMFS and CDFW, and upon approval by the Deputy Director for Water Rights.

3. Sonoma Water shall monitor the Russian River and its estuary in accordance with the "Water Quality Monitoring Plan for the Russian River Estuary Management Project" dated July 2020 to evaluate cyanoHAB conditions and the risk co-factors contributing to nuisance blooms (e.g., flow, temperature, nutrients, etc.). Sonoma Water shall submit a copy of the final plan and any subsequent amendments to the Deputy Director for Water Rights and the Executive Officer of the Regional Water Board within two weeks of their completion.

Sonoma Water shall monitor water elevations in the estuary per the 2008 Biological Opinion and provide updates on the status of conditions and proposed management actions to be provided in the bi-weekly updates.

4. Sonoma Water shall monitor water quality in the Russian River, including continuous monitoring of temperature, dissolved oxygen, pH, and specific conductivity at multiple stations from Ukiah to Jenner as described below:
  - a. Monitoring on the East Fork Russian River shall occur at a seasonal water quality data sonde with real-time telemetry located approximately 1/3 mile (0.33 mi) downstream from Lake Mendocino, and Sonoma Water shall record hourly measurements of water temperature, dissolved oxygen, specific conductivity, pH, and turbidity.
  - b. Monitoring on the Russian River shall occur at three, multi-parameter "permanent" water quality data sondes at USGS stream gages located at Hopland, Diggers Bend near Healdsburg, and Hacienda Bridge. These three data sondes are referred to as "permanent" as they are maintained as part of Sonoma Water's early warning detection system in coordination with USGS on its "Real-time Data for California" website. The data sonde at Sonoma Water's river diversion facility at Mirabel was removed in March 2014 due to construction of fish screen/fish ladder facilities; therefore, it will not be included in the 2020 monitoring effort. Sonoma Water staff is currently evaluating options for installing a data sonde at the fish screen/fish ladder facility and anticipate having it operational by the end of summer 2020.
  - c. Monitoring on the Russian River shall occur at three seasonal data sondes with real-time telemetry in cooperation with USGS at USGS gages at Cloverdale station (north of Cloverdale at Commisky Station Road), Jimtown (at the Alexander Valley Road bridge), and at Johnson's Beach (Guerneville). The data sonde at the Cloverdale gage collects dissolved oxygen and



temperature, the data sonde at the Jintown gage collects pH, temperature, dissolved oxygen, specific conductivity and turbidity, and the data sonde at Johnson's Beach collects pH, temperature, dissolved oxygen, specific conductivity and turbidity. Data from these locations is available on the USGS "Real-time Data for California" website.

5. Sonoma Water shall provide reports of the water quality monitoring tasks as detailed below.
  - a. Summary data from the permanent water quality data sondes required in Term 4 and the nutrient/bacterial/algal sampling data obtained in accordance with Term 3 (as data becomes available) shall be submitted to the Deputy Director for Water Rights and the Executive Officer of the Regional Water Board in the weekly hydrologic status report required in Term 6.
  - b. All water quality data collected pursuant to Terms 3 and 4 during the term of this Order shall be summarized. The summary report shall include an evaluation of whether, and to what extent, the reduced flows authorized by the Order caused any impacts to water quality, including any water quality impacts affecting recreation or the availability of aquatic habitat for salmonids. The summary report shall also include recommendations for minimizing cyanoHAB outbreaks during the current and future water years under similar flow conditions to those experienced through December 27, 2020. The report shall be submitted to the Deputy Director for Water Rights and the Executive Officer of the Regional Water Board, CDFW and NMFS by April 1, 2021.
  - c. If any water quality issues of concern are observed from the continuous monitoring or water sampling after July 15, 2020, Sonoma Water or the Regional Water Board may initiate additional consultation. Sonoma Water shall submit a summary report of consultation details to the Deputy Director for Water Rights within one week of each consultation meeting. Upon consultation with the Regional Water Board, any necessary revisions to this Order shall be made upon approval by the Deputy Director for Water Rights.
6. Sonoma Water shall report to the Deputy Director for Water Rights, the Executive Officer of the Regional Water Board, the Environmental Program Manager of CDFW, and the Supervisory Fish Biologist of NMFS on a weekly basis regarding the current hydrologic condition of the Russian River system, including current Lake Mendocino reservoir level, the rate of decline for Lake Mendocino, a 16-day cumulative rainfall forecast, current inflow from the Potter Valley Project, and a summary of the available water quality data, including bacteria indicators. Fish counts shall be reported every two weeks.

7. This Order does not authorize any act that results in the taking of a candidate, 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 et seq.) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 et seq.). If a “take” will result from any act authorized under this Order, Sonoma Water shall obtain authorization for an incidental take permit prior to operation of the project. Sonoma Water shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary urgency changes authorized under this Order.
8. The State Water Board reserves jurisdiction to supervise the temporary urgency changes 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.
9. Sonoma Water shall immediately notify the Deputy Director for Water Rights if any significant change in storage conditions in Lake Mendocino occurs that warrants reconsideration of this Order.
10. Within one month of the date of this Order and bi-monthly thereafter for the duration of the approval, Sonoma Water shall provide a written update to the Deputy Director for Water Rights regarding activities and programs being implemented by Sonoma Water and its water contractors to assess and reduce water loss, promote increased water use efficiency and conservation, and improve regional water supply reliability. Sonoma Water shall also describe any other outreach activities conducted to encourage conservation within the Russian River Watershed. The description shall summarize efforts to coordinate outreach activities with other entities, including the Russian River Watershed Protection Committee.
11. To facilitate releases of Lake Mendocino stored water with minimal operational buffers, Sonoma Water shall coordinate with the Mendocino County Russian River Flood Control and Water Conservation Improvement District (District) regarding implementation of a program for real-time 3-day advance forecasts of hourly diversions by all of the District’s irrigation and municipal customers under all bases of right. Sonoma Water shall provide an update to the Deputy Director for Water Rights, CDFW and NMFS regarding the outcome of consultation and the effectiveness of reporting by April 1, 2021.
12. To protect against stranding of fish when releases from Lake Mendocino are reduced under this Order, flow in the East Fork Russian River immediately below Coyote Dam shall not be reduced by more than 12 cfs/hr., with a minimum of 4 hours between the end of each flow reduction. Flow reduction shall not exceed 24 cfs per day. NMFS Santa Rosa Office (North Coast team) shall be notified by email 48 hours in advance of ramping events that will reach 24 cfs per day. Ramping rates specified in this term may be revised upon consultation with NMFS

and CDFW. Sonoma Water shall submit a summary report of consultation details to the Deputy Director within one week of each consultation meeting.

13. If the Sonoma County Department of Public Health post health advisories related to cyanotoxins or indicator bacteria, Sonoma Water shall notify the Regional Water Board. Any necessary revisions to the terms and conditions of this Order as a result of Sonoma Water's consultation with the Regional Water Board shall be made upon approval by the Deputy Director for Water Rights.

July 28, 2020

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Dated



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Eileen Sobeck,  
Executive Director