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

DIVISION OF WATER RIGHTS

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

Sonoma County Water Agency

ORDER APPROVING TEMPORARY URGENCY CHANGE

SOURCE: Dry Creek, Russian River, and East Fork Russian River

COUNTIES: Sonoma and Mendocino Counties

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF TEMPORARY URGENCY CHANGE PETITION

On October 13, 2023, 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 changes to the subject permits pursuant to California Water Code section 1435. The TUCPs request implementation of an alternative hydrologic index based on storage values in Lake Mendocino, which is located on the East Branch of the Russian River, starting January 1, 2024 (proposed hydrologic index). The proposed hydrologic index is requested in lieu of the hydrologic index contained in the subject permits that is based on cumulative inflow to Lake Pillsbury, which is located on the Eel River (Eel River hydrologic index). The hydrologic index is used to determine the applicable minimum instream flow requirements in Term 20 of Permit 12947A, Term 17 of Permits 12949 and 12950, and Term 13 of Permit 16596. Sonoma Water's proposed hydrologic index, for up to 180 days beginning January 1, 2024, is as follows:

a. Dry water supply conditions will exist when storage in Lake Mendocino is less than:
   68,400 acre-feet as of January 1
   68,400 acre-feet as of February 1
   68,400 acre-feet as of March 1
   77,000 acre-feet as of March 16

86,000 acre-feet as of April 1
91,000 acre-feet as of April 16
93,000 acre-feet as of May 1
94,000 acre-feet as of May 16
94,000 acre-feet as of June 1

b. Critical water supply conditions exist when storage in Lake Mendocino is less than:

42,000 acre-feet as of January 1
49,000 acre-feet as of February 1
57,000 acre-feet as of March 1
67,000 acre-feet as of March 16
73,000 acre-feet as of April 1
74,000 acre-feet as of April 16
75,000 acre-feet as of May 1
76,000 acre-feet as of May 16
76,000 acre-feet as of June 1

c. Normal water supply conditions exist in the absence of defined dry or critical water supply conditions.

This temporary change is requested to ensure that the water supply condition for the Russian River is determined by an index that is reflective of watershed conditions. Sonoma Water states there is an urgent need to implement the proposed changes due to the significant reduction of Eel River water imports through Pacific Gas and Electric's (PG&E) Potter Valley Project (PVP). The influence of Eel River imports on downstream hydrologic conditions in the Russian River has been and will continue to be greatly diminished, and thus use of the Eel River hydrologic index is not a reliable metric for Russian River water supply conditions.

Sonoma Water utilized its Russian River hydrologic model to design storage thresholds for Lake Mendocino to ensure at least 36,000 acre-feet of water would remain in the reservoir by October 1. Sonoma Water determined that 36,000 acre-feet is the minimum amount of water that would be required on October 1 to avoid draining the reservoir if severe drought conditions occur through the following winter and spring months.

In the absence of the proposed changes, the applicable minimum instream flow requirements may require releases of water from Lake Mendocino and Lake Sonoma at levels that would risk significant depletions of storage levels that could cause impacts to human health and welfare and reduce water supplies needed for protection of listed salmon species in the Russian River.

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 cubic feet per second (cfs) from the East Fork Russian River and storage of 122,500 acre-feet (AF or af) per year in Lake Mendocino from January 1 through December 31 of each year;

- 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, which is located on Dry Creek, a tributary to the Russian River, from October 1 of each year to May 1 of the succeeding year.

2.2 Consultation with Other Agencies

Sonoma Water has consulted with the California Department of Fish and Wildlife (CDFW), the National Marine Fisheries Service (NMFS), and North Coast Regional Water Quality Control Board (North Coast Water Board) regarding the TUCPs and the effects of the proposed changes.

NMFS submitted a letter on November 30, 2023, encouraging the State Water Board to include certain terms and conditions to protect listed salmonids in the Russian River in any order approving the TUCPs. NMFS has been providing technical assistance to Sonoma Water in the development of future water supply operations on the Russian River with the objectives of: 1) protecting salmonid species listed under the federal Endangered Species Act, including threatened California Coastal (CC) Chinook salmon (*Onchorynchus [O.] tshawyscha*), endangered Central California Coast (CCC) coho salmon (*O. kisutch*), and threatened CCC steelhead trout (*O. mykiss*), residing in the Russian River; and 2) addressing water supply conditions at Lake Mendocino and Lake Sonoma to maintain viable operations that support municipal water distribution. NMFS's recommended terms and conditions in its November 30, 2023 letter are included in this Order to assist in preventing unreasonable effects on fish and wildlife in the near term while preserving water needed for multiple purposes, including protecting salmonid species in the Russian River in the longer term.

CDFW submitted a letter on November 29, 2023, in support of Sonoma Water's TUCPs. The letter of support encouraged implementation of the TUCPs subject to terms and conditions substantially similar to those proposed by NMFS.

2.3 Requirements of State Water Board Decision 1610

Sonoma Water controls and coordinates water supply releases from Lake Mendocino and Lake Sonoma to implement the minimum instream flow requirements in accordance with its water rights, including permit terms implemented pursuant to Decision 1610, which the State Water Board adopted on April 17, 1986. Decision 1610 specifies minimum instream flow requirements for the Upper Russian River,[1] Dry Creek, and the Lower Russian River.[2] These minimum instream flow requirements vary based on water supply conditions specified in Decision 1610 and are contained in Term 20 of Permit 12947A, Term 17 of Permits 12949 and 12950, and Term 13 of Permit 16596.

Term 20 of Sonoma Water's Permit 12947A states the following:

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

[1] For purposes of this Order, Upper Russian River refers to the mainstem Russian River from its confluence with the East Fork Russian River to its confluence with Dry Creek.
[2] For purposes of this Order, the Lower Russian River refers to the mainstem Russian River from its confluence with Dry Creek to the Pacific Ocean.

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*

Term 13 of Permit 16596 states the following:

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

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]

Term 17 of Permit 12949 and Term 17 of Permit 12950 both state the following:

For the protection of fish and wildlife, and the maintenance of recreation in the Russian River, permittee shall allow sufficient water to bypass the points of diversion 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

Water supply conditions established for the above flow requirements as required in Decision 1610 are defined in Term 20 of Permit 12947A, Term 17 of Permits 12949 and 12950, and Term 13 of Permit 16596 as follows:

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 redetermined 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.*

Term 20 of Permit 12947A includes an additional provision:

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 (USGS), 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.*

2.3 2008 Biological Opinion

CCC steelhead, CCC coho salmon, and CC Chinook salmon are listed as threatened or endangered species under the federal Endangered Species Act (16 U.S.C § 1531 et seq.). In accordance with the requirements of section 7 of the federal Endangered Species Act (16 U.S.C. § 1536), NMFS, the U.S. Army Corps of Engineers (USACE), and Sonoma Water participated in a consultation process involving studies to determine whether the operation of the dams that form Lake Mendocino and Lake Sonoma for water supply and flood control purposes, and channel maintenance operations and other activities in the Russian River would jeopardize the survival and recovery of these

listed fish species or adversely modify critical habitat for the species. The consultation process culminated in a 2008 Russian River Biological Opinion (2008 Biological Opinion) issued by NMFS that analyzed project operations for a 15-year period from September 2008 until September 2023. The 2008 Biological Opinion includes summaries of the studies, analyses of the project impacts, and a determination that flows in the late spring, summer and fall in the Upper Russian River and Dry Creek during normal year types, 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 also found that the minimum instream flows required by Decision 1610 for the lower Russian River during the summer months adversely affect critical habitat in the Russian River estuary by causing artificially elevated inflow to the estuary, which requires breaching of the sand bar at the river's mouth to avoid local flooding.

Among other measures, the 2008 Biological Opinion required Sonoma Water to seek changes to Decision 1610 flow requirements during the spring, summer, and fall months to maintain suitable habitat for CCC steelhead and CCC coho salmon and avoid take under the Endangered Species Act and described requirements for improving habitat in Dry Creek downstream of Lake Sonoma, including upper flow limits to protect habitat. The 2008 Biological Opinion required Sonoma Water to petition to the State Water Board to change Decision 1610 on a long-term basis and on an interim basis pending approval of long-term changes. Accordingly, Sonoma Water filed petitions with the State Water Board on September 23, 2009, to permanently change Decision 1610 minimum instream flow requirements. The 2008 Biological Opinion required that Sonoma Water petition the State Water Board for temporary changes to the Decision 1610 minimum instream flow requirements beginning in 2010 and for each year until the State Water Board issues an order on Sonoma Water's petition for the permanent changes to these requirements.

The 2008 Biological Opinion only analyzed project operations through September 2023. Sonoma Water is working with the NMFS, USACE, and CDFW to reinitiate consultation and develop a Biological Assessment (BA) for continuation of the USACE and Sonoma Water operations in the Russian River watershed. Sonoma Water entered into an agreement with a consulting firm in January 2021, to complete a BA that can be used by both the USACE and NMFS for a new Biological Opinion authorizing incidental take of Chinook salmon, coho salmon, and steelhead related to water supply and flood control operations, and channel maintenance and other activities in portions of the Russian River watershed.

3.0 PROCEDURAL REQUIREMENTS CONCERNING THE TEMPORARY URGENCY CHANGE PETITION

On October 26, 2023, the State Water Board issued and delivered to Sonoma Water a notice of the temporary urgency change petitions 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 within 20 days from the date of issuance of the notice by the State Water Board. Sonoma Water published the notice in *Ukiah Daily Journal* and *The Press Democrat* on November 5, 2023. In addition, the State Water Board posted the notice of the temporary urgency change petitions on its website and distributed the notice through its electronic notification system.

Any interested person may file an objection to a temporary urgency change. (Wat. Code, § 1438, subd. (d).) The State Water Board must promptly consider the objection and may hold a hearing on any objection. *(Id.*, § 1438, subd. (e).) The State Water Board exercises continuing supervision over temporary urgency change orders and may modify or revoke temporary urgency change orders at any time. (*Id*, §§ 1439, 1440.) Temporary urgency change orders automatically expire 180 days after issuance, unless they are revoked, an earlier expiration date is specified, or they are renewed. (*Id*., §§ 1440, 1441.)

Objections to Sonoma Water's TUCPs were due by November 27, 2023. The State Water Board received a letter of support for the TUCPs from the Mendocino County Russian River Flood Control and Water Conservation Improvement District (RRFC), which also holds rights to store water in Lake Mendocino. As stated above, CDFW also submitted a letter that expressed support for the TUCPs, provided that certain terms are included as conditions of approval. In addition, NMFS submitted a letter intended as technical assistance that recommended substantially the same conditions of approval.

CDFW supported the State Water Board's conditional approval of Sonoma Water's TUCPs to preserve water stored in Lake Mendocino and Lake Sonoma to meet the needs of federal and state listed salmonids in the Russian River. CDFW and NMFS proposed terms and conditions to support smolt survival, including: 1) the implementation in consultation with CDFW and NMFS of pulse flow releases from Lake Sonoma in spring 2024 to aid in the study of smolt survival over a range of river conditions; 2) adherence to ramping requirements for decreases in reservoir release rates from Lake Mendocino and Lake Sonoma to protect against stranding juvenile fish; and 3) providing a pulse flow from Lake Mendocino in consultation with CDFW and NMFS during dry or critically dry conditions to encourage hatchery smolt outmigration. The State Water Board has considered and incorporated the terms and conditions from the support letter of CDFW into Conditions 2-4 of this Order.

The NMFS and CDFW proposed terms and conditions in 2021, which the State Water Board included as conditions of approval of TUCPs, that required Sonoma Water to conduct continuous water quality monitoring and reporting in the Russian River, as well as ongoing consultation with NMFS, CDFW, and the North Coast Regional Water Quality Control Board (North Coast Water Board). Consistent with past approvals, the State Water Board has included Conditions 5 and 6 in this Order to require water quality monitoring and reporting to assist the NMFS, CDFW, the North Coast Water Board, and the State Water Board in overseeing the effects of the TUCPs on conditions in the Russian River and determining if additional actions are required.

The State Water Board also received a comment on Sonoma Water's TUCPs from Russian River Keeper (RRK).

RRK urged the State Water Board to require Sonoma Water to reduce its diversions by 20 percent in order to protect water supplies and carryover storage. In addition, RRK recommended the State Water Board use its authorities to manage water diversion and use by all users within the Russian River Watershed by requiring on-going water conservation measures and increased real-time monitoring and reporting of use. RRK recommended a database be created for water users to report daily projections of water use to aid in real-time flow management.

RRK expressed concern about the proposed changes that determine when dry and critically dry water years occur, as well as the methodology used to create the new Lake Mendocino storage thresholds. In addition, RRK asserted that Sonoma Water is overstating the impacts of the reduced Potter Valley flows by not considering the consistent tailwater flow from Potter Valley and stated that the current flow variances are substantially similar to those that have been in place the past several years. RRK further stated that Sonoma Water's recent reservoir operations are not consistent with its stated goal of maintaining increased carryover storage, in part because Sonoma Water increased releases after October 15, 2023, after the period when a previous temporary urgency change order was in effect.

RRK requested the State Water Board add requirements to ensure Sonoma Water continues to diligently pursue its obligations under its pending change petition to modify the hydrologic index and minimum instream flows under its Russian River water rights, as well as a time schedule for completion of the Fish Flow Habitat and Water Rights Project Environmental Impact Report (Fish Flow EIR) that Sonoma Water is preparing to support its petitions for permanent changes to Decision 1610 minimum instream flow requirements. The draft Fish Flow EIR was released for public comment in 2016 and is available for review on Sonoma Water's website. RRK further recommended any modified flow regime should include ramped pulse flows to trigger juvenile salmonid migration in early spring.

Finally, RRK asserts the use of the TUCP process to temporarily revise Decision 1610 on an annual and semi-annual basis sidesteps adequate review under the California Environmental Quality Act (CEQA).

The Division requested Sonoma Water to respond to some of RRK's public comments, and Sonoma Water submitted a response on December 6, 2023. Regarding RRK's request for ongoing water conservation, Sonoma Water stated that in the spring of 2021 and 2022, Sonoma Water reduced its Russian River diversions by 20 percent from July 1 through October 31, compared to diversions during the same period in 2020. This action was taken to preserve declining storage levels in Lake Sonoma. Sonoma Water asserted this action had no impact on water supply or storage conditions in the Upper Russian River or Lake Mendocino, respectively, because Sonoma Water decides how much water to release from Lake Mendocino based solely on the need to meet minimum instream flow requirements at various gage locations on the Upper Russian River. During *Dry* and *Critical* water supply years, the Lower Russian River minimum instream flow requirement is 10 cfs higher than the Upper Russian River.

Consequently, during *Dry* and *Critical* water supply years Sonoma Water must make releases from Lake Sonoma both to increase mainstem Russian River flow below Dry Creek to meet the higher minimum instream flow requirements on the Lower Russian River and to support Sonoma Water's entire diversion amount at its Wohler and Mirabel diversion facilities. For these reasons, Sonoma Water asserted that water conservation efforts would not affect storage in Lake Mendocino. In addition, conservation opportunities during the winter months are largely limited to indoor use, and saving a significant amount of water used indoors (e.g., through efficiency upgrades) would be difficult to achieve within the effective period of this Order. Accordingly, a condition requiring Sonoma Water to conserve water and reduce its diversions is not included in this Order.

RRK expressed concern about the proposed changes that determine when dry and critically dry water years occur, as well as the methodology used to create the new Lake Mendocino storage thresholds. Sonoma Water utilized their Russian River hydrologic model to design the proposed Lake Mendocino storage thresholds that are used to determine the water year type and resulting minimum instream flows. The hydrologic index is designed to avoid the draining of Lake Mendocino that can lead to potential human health and safety and fisheries impacts during dry water years. The State Water Board has implemented measuring and monitoring requirements, pulse flows and ramping requirements for fisheries protection and has continuing authority to make adjustments to this Order to reduce the likelihood of potential impacts to the fishery or other legal users of water in the Russian River.

In response to RRK's comment that Sonoma Water overstated the impact of reduced Potter Valley flows and did not account for tailwater flow from Potter Valley, Sonoma Water stated that the Federal Energy Regulatory Commission's (FERC) order approving PG&E's variance request was not issued until late September. Eel River transfers

during the summer of 2023 were based on the terms and conditions of their FERC operating license and averaged approximately 130 cfs until the order was issued. The future Eel River imports were calculated by modeling the requested changes in the most recent variance (which PG&E intends to file again in January 2024) with the PVP hydrologic model. Estimates of return flow from PVID were based on analysis of observed gage data on the East Fork Russian River. Sonoma Water recommended RRK review the Calpella gage data during both the summer of 2021 and 2022 when similar PVP variances were in place. Observed flows at the gage were approximately 12 cfs for much of the period. During this period, the State Board curtailed over 1,800 appropriative water rights and riparian claims due to the lack of available natural flow and Eel River transfers into the Russian River watershed.

In response to RRK's comment that Sonoma Water reservoir releases in 2023 were not consistent with the goal of preserving carryover storage, Sonoma Water explained that, with the expiration of the previous order on October 15, the required minimum instream flow on the Upper Russian River increased from 125 cfs approved by the order to 150 cfs required in Sonoma Water's water right permits and Decision 1610. Consequently, Sonoma Water needed to increase releases from Lake Mendocino to meet the higher minimum instream flow requirement.

In regard to RRK's request for ramped pulse flows for juvenile salmon migration, the CDFW and NMFS drafted specific terms and conditions that will be included in this Order to address spring salmon outmigration. Section 4.1 of this Order discusses Sonoma Water's diligence in pursuing the permanent change petitions in the context of the urgency of the TUCPs subject to this Order.

Regarding CEQA, the 2008 Biological Opinion required Sonoma Water to petition the State Water Board for temporary changes to the Decision 1610 minimum instream flow requirements beginning in 2010 and for each year until the State Water Board issues an order on Sonoma Water's petitions for permanent changes to these requirements. Sonoma Water has submitted long-term petitions pursuant to Water Code section 1700 et seq. to modify Decision 1610 and is working to meet the requirements of CEQA by completing a revised draft Fish Flow EIR. Sonoma Water is a party to a process that will address the disposition of the PVP and the resulting flows, which will inform their development of the Fish Flow EIR.

4.0 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: (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. (Wat. Code, § 1435, subd. (b)(1-4).)

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 State Water Board. (Wat. Code, § 1440.)

4.1 Urgency of the Proposed Change

Under Water Code section 1435, subdivision (c), an "urgent need" means "the existence of circumstances from which the [State Water 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 . . . ."

Urgent need exists for the proposed change in the hydrologic index for determining minimum instream flow requirements in the Russian River. The hydrologic index in Decision 1610 is based on cumulative inflow to Lake Pillsbury, however, given the reduction in water transfers from the Eel River system, there will be little to no correlation between cumulative inflow into Lake Pillsbury and the hydrologic conditions in the Russian River watershed.

In the absence of the proposed changes, the applicable minimum instream flow requirements may require releases of water from Lake Mendocino at levels that would risk depletions of storage levels that could cause impacts to human health and welfare and reduce water supplies needed for protection of listed salmon species in the Russian River. Given the status of salmonids under the federal Endangered Species Act, there is a need for prompt action. Reduced flows in the spring could also improve habitat for listed salmonids. In this case, there has been an extensive analysis of the needs of the fishery and experts have agreed that instream flows in the spring, summer, and fall months appear to be too high.

The proposed changes to the hydrologic index are also designed to avoid a risk of Lake Mendocino reaching critically low storage levels in the fall. The need for emergency regulations in 2021 and 2022 to curtail diversions in the Russian River watershed to preserve storage in Lake Mendocino made clear that modifications to the index are

necessary to ensuring an appropriate level of carryover storage is maintained in the event the following water year experiences drought conditions.

Water Code section 1435, subdivision (c) also states that the State Water Board shall not find a petitioner's need to be urgent if it concludes that the petitioner has not exercised due diligence either in petitioning for a change pursuant to provisions other than a TUCP or in pursuing that petition for change. In this case, Sonoma Water has submitted petitions pursuant to Water Code section 1700 et seq. to modify Decision 1610 (the long-term petitions), including but not limited to modifying the hydrologic index that establishes water year type for Permit 12947A. Sonoma Water continues to work on those pending long-term petitions, including efforts to meet the requirements of CEQA by completing a revised draft of the Fish Flow EIR that will be relied upon by Sonoma Water and the State Water Board. Sonoma Water has stated development of the Fish Flow EIR is contingent on the disposition of the PVP. In November 2023, PG&E circulated a Conceptual Draft Surrender Application to solicit input on their proposed plan for the PVP. That conceptual plan includes a proposal for a regional entity to maintain diversions from the Eel River into the Russian River; Sonoma Water is a participant in that process and is working towards certainty regarding future PVP flows, which will inform their development and completion of the Fish Flow EIR. Given Sonoma Water's efforts to obtain approval of long-term changes to Decision 1610 requirements, the State Water Board finds that Sonoma County has exercised due diligence to this point and that there is an urgent need for the TUCPs.

4.2 No Injury to Any Other Lawful User of Water

Under Decision 1610 and the terms and conditions of its associated water rights permits, 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. Therefore, because minimum flows will be present, it is anticipated that all other lawful users of water will still be able to divert and use the amounts of water that they are legally entitled to during the period specified in this temporary urgency change order. In addition, the purpose of the TUCPs is to match the water supply condition and minimum instream flows, which is likely to reduce the amount of previously stored water that Sonoma Water is required to release in order to meet instream flow requirements. Other legal users of water will not be injured by a 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 rediversion 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].)

Based on the information available, granting the TUCPs will not result in injury to any

other lawful user of water. Pursuant to Water Code section 1439, 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 and instream beneficial uses. To assist the Board in supervising the diversion and release of water by Sonoma Water while operating pursuant to this Order, Condition 12 is included in this Order to assess the extent of storage releases from Lake Mendocino relative to PVP flows and natural flows originating upstream of Lake Mendocino.

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

Prior to approval of a TUCP, the State Water 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 to the extent feasible and in the public interest. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.) Public trust resources may include, but are not limited to, wildlife, fish, aquatic habitat, 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 (Fish & G. Code, § 2050 et seq.). 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 & G. Code, §§ 2053 & 2055.)

The TUCPs are focused on preservation of sufficient carryover storage in Lake Mendocino while continuing the flows consistent with the range of flows required by Decision 1610 while new instream flow requirements are developed. Improved conditions that result from the temporary urgency changes are twofold. First, the proposed modifications to the Lake Mendocino storage index will result in use of a hydrologic index that reflects conditions within the Russian River watershed and result in watershed management decisions that are reflective of the actual hydrology in the watershed. Secondly, reducing instream flows will substantially reduce the risk of drawing down Lake Mendocino to unsafe levels, resulting in the likelihood of increased carryover storage and conservation of cold water pool. The cold water pool in Lake Mendocino is critical for providing cooler water temperatures in the Upper Russian River, to improve freshwater rearing habitat quality, and enhanced management of the flows in early fall for the benefit of fish migration. Designing the thresholds to ensure at least 36,000 af of carryover storage on October 1 would, based on the modeling conducted by Sonoma Water to develop the thresholds, reduce the risk of Lake Mendocino reaching critical storage levels or emptying should the hydrologic conditions of 2021 occur again. As noted in the Informative Digests supporting the State Water Board's emergency regulations in 2021 and 2022 in the Russian River watershed, Lake

Mendocino emptying would have catastrophic effects for all fisheries reliant on Lake Mendocino releases during the summer months. Short term impacts as a result of reduced instream flows would not be unreasonable given that, in the absence of the proposed changes, the existing minimum instream flow requirements may require releases of water from Lake Mendocino and Lake Sonoma at levels that would risk depletions of storage levels that could reduce water supplies needed for multiple beneficial uses, including protection of listed salmon species in the Russian River.

It is possible that the proposed changes to the hydrologic index could increase the likelihood of the water supply condition being determined *Dry* or *Critical*, resulting in correspondingly lower minimum instream flow requirements that could impair recreational uses. However, this Order is effective for 180 days following January 1, 2024, therefore impacts to recreation should be minimal, as the Order will expire prior to the peak recreational season. In addition, since 2004, Russian River flows have frequently been managed at decreased levels, both under Decision 1610 and under other temporary urgency change orders. Although recreational uses may be minimally affected by flow reductions, given the analysis in the 2008 Biological Opinion and the potential impacts to water supplies and fisheries that could occur if the temporary changes are not approved, any impact on recreation for this summer would be reasonable under the circumstances and with the operational buffer flows made by Sonoma Water.

To better understand and forecast the amount of storage available for release to meet instream flows in Lake Mendocino relative to other purposes, including carryover storage and diversion by customers of the RRFC, Condition 11 of this Order requires Sonoma Water to continue the technical work described in the Planning and Management Terms of the March 21, 2022 Memorandum of Understanding Concerning Lake Mendocino Storage Planning and Russian River Management (MOU) between Sonoma Water and the RRFC. Further, this Order requires Sonoma Water to report biweekly to CDFW, NMFS, and the North Coast Water Board regarding the current hydrologic and water quality conditions for the Russian River when water supply conditions are classified as Dry or Critical. This information will assist the State Water Board in determining whether additional actions or modifications to this Order are necessary.

With the conditions imposed by this Order, including regular monitoring and reporting of conditions by Sonoma Water and the permit terms recommended by the NMFS and CDFW, the State Water Board finds that granting the proposed temporary changes will not have an unreasonable effect on fish or wildlife, or other instream beneficial uses and public trust resources will be protected to the extent feasible and in the public interest. 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 of fish, wildlife, and other instream beneficial uses.

4.4 The Proposed Change is in the Public Interest

As discussed above, the purpose of the TUCPs is to ensure that the water supply condition and corresponding minimum instream flow requirements in the Russian River watershed are aligned with actual watershed hydrologic conditions in order to maintain sustainable reservoir and river operations to protect municipal water supply and listed salmon species in the Russian River. In the absence of the proposed changes, the applicable minimum instream flow requirements may require releases of water from Lake Mendocino and Lake Sonoma at levels that would risk significant depletions of reservoir storage levels. Such depletions in storage could cause impacts to human health and welfare and reduce water supplies needed for fisheries protection.

5.0 COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT

The State Water Board must comply with any applicable requirements of the 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 April 25, 2023. The State Water Board has reviewed the information submitted by Sonoma Water and has made its own independent finding that the requested changes are categorically exempt from CEQA.

The changes sought by the TUCPs are consistent with the following Categorical CEQA exemptions for the following reasons:

1) A Class 1 categorical exemption "consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use." (Cal. Code Regs., tit. 14, § 15301.) 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. The proposed action will be within the range of minimum instream flows established by Decision 1610.

2) A Class 7 categorical 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 ensure the maintenance of a natural resource (i.e., the instream resources of the Russian River) by increasing water supply availability and improving the quality of salmonid rearing habitat in the Russian River. In addition, the regulatory process governing TUCPs requires consideration of potential impacts to the environment and findings that the changes will be in the public interest and will not unreasonably

affect fish, wildlife, or other instream beneficial uses. Accordingly, these changes are categorically exempt from CEQA pursuant to a Class 7 exemption.

3) A Class 8 categorical 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." (Cal. Code Regs., tit. 14, § 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 categorical exemption, and the regulatory process establishes procedures for protection of the environment. Accordingly, the proposed temporary changes are also categorically exempt under Class 8.

6.0 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 right holder, Sonoma Water, has an urgent need to make the proposed changes;

2. The proposed changes will not operate to the injury of any other lawful user of water;

3. The proposed changes will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses; and

4. The proposed changes are 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 January 1, 2024, through a period of 180 days.

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

1. The minimum instream flow requirements for the Upper Russian River, the Lower Russian River, and Dry Creek will be established using a hydrologic index based on water storage in Lake Mendocino. For the purposes of the requirements in Term 20 of Permit 12947A, Term 17 of Permit 12949, Term 17 of Permit 12950, and Term 13 of Permit 16596, the following definitions shall apply:

    a. Dry water supply conditions exist when storage in Lake Mendocino is less than:

        68,400 acre-feet as of January 1
        68,400 acre-feet as of February 1
        68,400 acre-feet as of March 1
        77,000 acre-feet as of March 16
        86,000 acre-feet as of April 1
        91,000 acre-feet as of April 16
        93,000 acre-feet as of May 1
        94,000 acre-feet as of May 16
        94,000 acre-feet as of June 1

    b. Critical water supply conditions exist when storage in Lake Mendocino is less than:

        42,000 acre-feet as of January 1
        49,000 acre-feet as of February 1
        57,000 acre-feet as of March 1
        67,000 acre-feet as of March 16
        73,000 acre-feet as of April 1
        74,000 acre-feet as of April 16
        75,000 acre-feet as of May 1
        76,000 acre-feet as of May 16
        76,000 acre-feet as of June 1

    c. Normal water supply conditions exist in the absence of defined dry or critical water supply conditions.

2. To complement the release of acoustic tagged Coho salmon smolts, Sonoma Water will consult with NMFS and CDFW regarding the timing, magnitude, and duration of pulse flow releases from Lake Sonoma above the minimum rates already defined. During normal, dry, or critically dry hydrologic conditions, and when Sonoma Water is in control of releases from Lake Sonoma, when mainstem Russian River flow conditions from the confluence of Dry Creek to the Hacienda Bridge gauging station are adequate to conduct the study:

    a. Sonoma Water will release up to four groups of acoustic tagged Coho salmon smolts at weekly intervals. The target time period for these releases is between April 15 and May 15, 2024, but it is possible that conditions in the river may preclude safe deployment of equipment in a timely manner thus changing the time period of the releases and/or the number of groups that can be released;

    b. In an attempt to create different flow magnitudes (between 600 and 300 cfs) for each release group from the confluence of Dry Creek downstream to the Hacienda Bridge gauging station, Sonoma Water will increase releases from Lake Sonoma to maintain a flow at the mouth of Dry Creek of:

        i. Up to 350 cfs for 4 days;
        ii. Up to 300 cfs for 4 days;
        iii. Up to 250 cfs for 4 days;
        iv. Up to 200 cfs for 4 days; and
        v. Whether these occur and the order in which they occur will depend on ambient flow conditions.

    c. During each pulse flow event, releases will ramp up and down to match flow conditions in the mainstem river at rates to be determined as defined below.

3. To protect against stranding of juvenile fish when releases from Lake Mendocino and Lake Sonoma are reduced to *Dry* or *Critical* levels under this Order after March 1, flow in the East Fork Russian River immediately below Coyote Valley Dam and in Dry Creek shall not be reduced by more than 12 cfs per hour, with a minimum of four hours between the end of each flow reduction. Flow reduction shall not exceed 24 cfs per day except to meet objectives of coho salmon smolt survival study in coordination with NMFS and CDFW. The NMFS Santa Rosa office and CDFW 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 coordination with NMFS, CDFW, and notification to the Deputy Director of the Division of Water Rights (Deputy Director). Sonoma Water shall submit a summary report of correspondence details to the Deputy Director within one week of each coordination meeting.

4. To assist hatchery steelhead smolt releases from Coyote Valley Fish Facility during dry or critically dry hydrologic conditions when Sonoma Water is in control of releases from Lake Mendocino, Sonoma Water shall consult with CDFW on the timing and level of temporary and periodic flow increases from Lake Mendocino to be made between February 1 and the expiration of this Order, for the purpose of encouraging hatchery smolt outmigration from the East Fork Russian River and Upper Russian River. Sonoma Water shall ramp up and ramp down releases over a period of 10 days to achieve a release of no more than 125 cfs for three days. Ramping rates will be determined in consultation with NMFS and CDFW.

5. Monitoring shall be conducted from January 1, 2024 through a period of 180 days to determine the effects of this Order on water quality as follows:

    a. Sonoma Water shall continue ongoing monitoring in coordination with the USGS at the existing multi-parameter water quality sonde sites on the Russian River, including the multi-parameter water quality sondes at USGS stream gages located near Calpella, Hopland, Cloverdale, Jimtown, Diggers Bend near Healdsburg, and Hacienda Bridge. These data sonde stations are maintained as part of Sonoma Water's early warning detection system in coordination with USGS. The data sonde stations at the Calpella, Hopland, Jimtown, Diggers Bend, and Hacienda Bridge gages shall collect pH, water temperature, dissolved oxygen, specific conductivity, and turbidity. The data sonde at the Cloverdale gage shall collect dissolved oxygen and temperature. All data sonde stations record shall measurements every fifteen (15) minutes. These data are available on the USGS "Current Water Data for California" website.

    b. Upon direction from either the Deputy Director or the Executive Officer of the North Coast Regional Board, and as conditions allow, Sonoma Water shall conduct monitoring on the East Fork Russian River at a seasonal water quality data sonde located approximately 1/3 mile (0.33 mi) downstream from Lake Mendocino or at Johnson's Beach (Guerneville), and Sonoma Water shall record hourly measurements of water temperature, dissolved oxygen, specific conductivity, pH, and turbidity.

6. By March 1, 2024, Sonoma Water shall consult with the North Coast Water Board to discuss potential water quality impacts and whether additional water quality monitoring activities should be required to document water quality conditions in the Russian River. If any water quality issues of concern are observed from the monitoring required by Term 5, Sonoma Water shall initiate earlier or additional consultation with the North Coast Water Board. The North Coast Water Board may also initiate additional consultation to discuss concerns

based on available water quality information. Sonoma Water shall submit a summary report of consultation details and a description of proposed monitoring activities to the Deputy Director within one week of each consultation meeting. If no additional consultation is necessary, Sonoma Water shall submit an explanation to the Deputy Director within one week after the conclusion of the effective period of the changes approved by this Order. Upon consultation with the North Coast Water Board, the Deputy Director may make any necessary revisions to Term 5.

7. Sonoma Water shall report to the Deputy Director, the Executive Officer of the North Coast Water Board, the Environmental Program Manager of CDFW, and the Supervisory Fish Biologist of NMFS on a biweekly basis regarding the current hydrologic condition of the Russian River system, including current reservoir levels and the rate of decline for Lake Mendocino, Lake Pillsbury, and Lake Sonoma; a 16 day cumulative rainfall forecast; current inflow from the Potter Valley Project; and a summary of the available water quality data collected pursuant to Term 5. Sonoma Water shall also make each report available on a publicly accessible website.

8. 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.

9. The State Water Resources Control 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.

10. Sonoma Water shall immediately notify the Deputy Director if any significant change in storage conditions in Lake Mendocino occurs that warrants reconsideration of this Order.

11. Sonoma Water shall continue to conduct the activities described in Planning and Management Terms of the March 21, 2022 Memorandum of Understanding Concerning Lake Mendocino Storage Planning and Russian River Management (MOU). Projections of Lake Mendocino storage and the amounts of stored water available for the uses described in items (A) through (D) of Section 1.3 of the MOU shall be provided to the Deputy Director by March 1, 2024.

12. Based upon the methodology for characterizing Lake Mendocino and Lake Sonoma water inflows, releases, and rediversions developed pursuant to Condition 11 of the State Water Board's TUCP order dated February 4, 2021, and Condition 12 of the State Water Board's TUCP order dated June 14, 2021, Sonoma Water shall maintain a spreadsheet of daily average release rates and characterization of those releases. Sonoma Water shall make the spreadsheet available to State Water Board staff within five days of being requested and shall include the spreadsheet as an attachment to Sonoma Water's annual Progress Report by Permittee for Permits 12947A, 12949, 12950 and 16596. Sonoma Water shall implement any amendments to either methodology requested by the Deputy Director within 15 days of the request.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

Erik Ekdahl, Deputy Director
Division of Water Rights

Dated: December 27, 2023