

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

**DIVISION OF WATER RIGHTS**

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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, Russian River, and East Fork 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 November 17, 2021, 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 Lake Mendocino storage values starting December 11, 2021 (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 Lake Pillsbury inflow (current 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 December 11, 2021, is as follows:

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

40,000 acre-feet as of January 1  
59,000 acre-feet as of February 1  
68,000 acre-feet as of March 1  
69,500 acre-feet as of March 16

71,000 acre-feet as of April 1  
70,000 acre-feet as of April 16  
69,000 acre-feet as of May 1  
67,500 acre-feet as of May 16  
65,000 acre-feet as of June 1

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

31,000 acre-feet as of January 1  
36,000 acre-feet as of February 1  
52,000 acre-feet as of March 1  
53,000 acre-feet as of March 16  
54,000 acre-feet as of April 1  
53,000 acre-feet as of April 16  
52,000 acre-feet as of May 1  
51,000 acre-feet as of May 16  
50,000 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 in response to the current extremely dry conditions, severely low storage levels in Lake Mendocino and Lake Sonoma, and the current hydrologic index not aligning with observed hydrologic conditions in the Russian River Watershed. The proposed change is also requested in response to the reported failure of the transformer bank of the Potter Valley Project (PVP) hydroelectric plant in October 2021 that will likely continue to result in a significant reduction in the inter-basin transfers of Eel River water into the Russian River Watershed.

## 2.0 BACKGROUND

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<sup>1</sup>, Dry Creek, and the Lower Russian River<sup>2</sup>. These minimum instream flow requirements vary based on water supply conditions specified in Decision 1610 and are contained in Term 20 of Permit

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<sup>1</sup> 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.

<sup>2</sup> 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.

12947A, Term 17 of Permits 12949 and 12950, and Term 13 of Permit 16596. Sonoma Water's operations are also subject to the National Marine Fisheries Service (NMFS) Russian River Biological Opinion issued in 2008.

## 2.2 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 from October 1 of each year to May 1 of the succeeding year.

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:*

<i>From June 1 through August 31</i>	<i>185 cfs</i>
<i>From September 1 through March 31</i>	<i>150 cfs</i>
<i>From April 1 through May 31</i>	<i>185 cfs</i>

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 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.*

## 2.2 Current Drought Conditions and Response

The Russian River Watershed has experienced extremely dry conditions since 2020, with Water Year 2021 being the second driest year in the Ukiah Valley, and Water Year 2020 being the fourth driest, during the past 127 years of record. Lake Mendocino and Lake Sonoma are at or near their lowest levels since they began storing water in 1959 and 1984, respectively. As of November 15, 2021, the water supply storage level was 19,995 AF in Lake Mendocino, at approximately 29 percent of the available water conservation pool, which is the second lowest storage level for this time of the year since Lake Mendocino was filled in 1959. As of November 15, 2021, the water supply storage level was 122,322 AF in Lake Sonoma, which is the lowest storage level for this time of the year since Lake Sonoma was filled in 1986.

In addition to the extremely dry conditions in the past two years, the Russian River Watershed is expecting significantly less transfer water from the Eel River due to the PVP powerhouse failure. On October 7, 2021, Pacific Gas & Electric (PG&E) informed Sonoma Water that the transformer bank at the PVP powerhouse had failed and would need to be replaced to operate the powerhouse for power generation. Sonoma Water indicates it is highly uncertain that PG&E will make the costly repairs to continue power generation at PVP. PG&E's Federal Energy Regulatory Commission (FERC) license for PVP expires in April 2022, and PG&E withdrew its preliminary application document and notice of intent to relicense the project in January 2019.

In the TUCPs, Sonoma Water indicates the PVP can divert up to 240 cfs through the powerhouse into the East Fork Russian River under normal conditions. Sonoma Water also states that the PVP can separately bypass up to 135 cfs into the East Fork Russian River to meet both FERC license East Fork Russian River instream flow requirements and Potter Valley Irrigation District (PVID) water supply contract requirements. According to Sonoma Water, PG&E is currently bypassing 45 cfs into the East Fork Russian River to meet its stated FERC license obligations and PVID contract amounts until April 14, 2022. The transfer requirement to the East Fork Russian River will reportedly be reassessed based on the water supply conditions after that. PG&E has indicated that without powerhouse operation, it will be unlikely to make discretionary transfers of Eel River water through the PVP above its FERC license and contract obligations. Sonoma Water states that the total transfer through the PVP will be reduced by up to 400 AF per day without the discretionary transfer of Eel River water from hydropower generation, resulting in a significant reduction of a source of inflow to Lake Mendocino.

Sonoma Water states that under these operating conditions of the PVP, the influence of the Eel River water imports on Lake Mendocino water storage and downstream hydrologic conditions in the Russian River will be greatly diminished. Therefore, there will be little to no correlation between cumulative inflow into Lake Pillsbury and the hydrologic conditions in the Russian River Watershed. The TUCPs request that storage thresholds in Lake Mendocino be used directly as the hydrologic index to determine the

water supply condition in the Russian River Watershed. The same storage thresholds were requested by Sonoma Water in prior TUCPs approved in December 2013 and February 2021.

The current severe water supply shortage in the Russian River Watershed, particularly the Upper Russian River, resulting from two consecutive extremely dry years, has been recognized by both the state and local governments. On April 21, 2021, Governor Gavin Newsom proclaimed a regional drought emergency for the Russian River Watershed in Mendocino and Sonoma counties. The Governor has continued the drought emergency proclamation for Sonoma and Mendocino counties through further drought proclamations on May 10, July 8, and October 19, 2021. On April 20, 2021, Mendocino County declared a local emergency and imminent threat of disaster in Mendocino County due to drought conditions. On April 27, 2021, Sonoma County also adopted a resolution proclaiming a local drought emergency due to drought conditions in Sonoma County. On June 15, 2021, the State Water Board adopted an emergency regulation for the Curtailment of Diversions to Protect Water Supplies and Threatened and Endangered Fish in the Russian River Watershed (Cal. Code Regs., tit. 23, §§ 877-879.2). Consequently, on August 2, 2021, the State Water Board issued curtailment orders to Upper Russian River Watershed diverters. On August 10, 2021, the State Water Board issued curtailment orders to Lower Russian River Watershed diverters. Due to temporary high flows resulting from atmospheric river conditions, curtailments were temporarily suspended on October 21, 2021, in the Lower Russian River Watershed and on October 23, 2021, in the Upper Russian River Watershed. Temporary curtailment suspensions will likely remain in place through the month of December, based on current forecasts. Curtailments may resume in early January 2022 unless additional precipitation beyond what is currently forecasted occurs.

Sonoma Water has filed three previous sets of TUCPs since June 2020 to address the current drought. On July 28, 2020, in Order WR 2020-0102-EXEC (2020 TUCP order), the State Water Board approved Sonoma Water's TUCPs to temporarily reduce the minimum instream flow requirements in the Russian River. After the 2020 TUCP order expired on December 27, 2020, Sonoma Water filed another TUCP for Permit 12947A in January 2021 to change the hydrologic index that is the subject of this Order. The State Water Board issued an order approving the TUCP on February 4, 2021, and approved clarifying amendments to the order on February 11, 2021. Sonoma Water filed the third set of TUCPs in May 2021 to address the critical drought conditions in the whole Russian River Watershed. The TUCPs were approved on June 14, 2021, in Order WR 2021-0056-EXEC (June 2021 TUCP order), and amended on October 22, 2021, to adjust diversion reductions required under Condition 11 to reflect the temporary but continuing high flow conditions described above.

Decision 1610 established the current hydrologic index, in which water supply conditions are classified as "normal," "dry," or "critical" based on cumulative inflow into Lake Pillsbury (in the adjacent Eel River Watershed) beginning October 1 of each year. From October 1, 2020, to May 31, 2021, the cumulative inflow into Lake Pillsbury was

82,215 AF. Consequently, the water supply condition is categorized as dry for the remainder of 2021. Sonoma Water is currently managing the Russian River instream flows based on a critical water supply condition as authorized by the June 2021 TUCP order. The State Water Board's June 2021 TUCP order expires after December 10, 2021, at which point, under the current hydrologic index, the water supply condition would change back to dry for the remainder of the calendar year. The corresponding minimum instream flow requirements would become 75 cfs in Dry Creek and the Upper Russian River and 85 cfs in the Lower Russian River.

From October 1, 2021, to November 14, 2021, the cumulative inflow into Lake Pillsbury was 41,947 AF. Consequently, pursuant to the current hydrologic index under Decision 1610, the water supply condition would be categorized as normal for at least from January 1 through February 2022, with a minimum instream flow requirement of 150 cfs on the Upper Russian River and 125 cfs on the Lower Russian River. Without an additional temporary urgency change order approving the requested changes, Sonoma Water would be required to be released from Lake Mendocino and Lake Sonoma, actions which could deplete the reservoirs to severely low levels. As stated above, storage conditions at both Lake Mendocino and Lake Sonoma are currently exceptionally low.

The normal water supply conditions designated by the current hydrologic index were premised on the PVP's substantial transfers of water from the Eel River to the East Fork Russian River (see, e.g., Decision 1610, p. 5) and do not accurately reflect the present severe drought conditions in the Upper Russian River despite Lake Pillsbury cumulative inflows. Sonoma Water's proposed temporary urgency change would maintain the reasoning on which Decision 1610's minimum instream flow requirements are based by relying on the same statistical distribution of hydrologic conditions used by Decision 1610. Sonoma Water's proposed temporary urgency change would use Lake Mendocino storage, rather than cumulative inflow into Lake Pillsbury, as the basis for defining the applicable hydrologic condition. This proposed temporary urgency change would implement minimum instream flow requirements under Decision 1610 that would adjust to changes in the Upper Russian River Watershed hydrologic conditions. Streamflow requirements would increase if additional seasonal rainfall results in Lake Mendocino storage increasing or remaining above the volumes specified in the proposed hydrologic index.

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

Ordinarily, the State Water Board must comply with applicable requirements of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) (CEQA) prior to issuance of any order approving a TUCP. (Cal. Code Regs., tit. 23, § 805.) However, the Governor's April 21, 2021 Drought Emergency Proclamation, ordering paragraph 7 suspended CEQA and regulations adopted pursuant to CEQA in Mendocino and Sonoma Counties, to the extent necessary for the State Water Board to

address drought-related impacts through “[m]odifying requirements for reservoir releases or diversion limitations” in the Russian River Watershed “to ensure adequate, minimal water supplies for critical purposes.” Sonoma Water’s requests to temporarily modify the hydrologic index in its water rights permits—and thereby temporarily modify reservoir release and instream flow requirements in the Russian River—due to historically dry conditions qualify for this suspension under the Governor’s April 21, 2021 Drought Emergency Proclamation. In conjunction with approving this Order, the State Water Board will add the activities approved under this Order to its list of suspended projects on its website.

In addition to the Governor’s suspension of CEQA covering the activities proposed and approved under this Order, Sonoma Water determined that the requested water right changes are categorically exempt under CEQA’s emergency statutory exemption and Class 7 and 8 categorical exemptions. Sonoma Water filed a Notice of Exemption on November 16, 2021. 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) As mentioned above, on April 21, 2021, the Governor proclaimed a drought emergency in Mendocino and Sonoma counties due to drought conditions in the Russian River Watershed. The Governor’s Drought Emergency Proclamation ordered the State Water Board to consider specific actions to “ensure adequate, minimal water supplies for critical purposes.” Information provided by Sonoma Water demonstrates that continued releases of water to maintain minimum instream flows required by Sonoma Water’s current water right permit terms could contribute to storage levels in Lake Mendocino and Lake Sonoma declining to unsafe levels. As discussed in this Order, if storage in Lake Mendocino and Lake Sonoma are depleted, there will be serious water supply impacts to human health and safety, 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 safety, and essential public services. Accordingly, the project is statutorily exempt from CEQA because it is necessary to prevent or mitigate an emergency—in this case, a proclaimed drought emergency—that poses a clear and imminent danger. (Pub. Resources Code, §§ 21060.3 & 21080, subd. (b)(4); Cal. Code Regs., tit. 14, § 15269, subd. (c).)
- 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 is necessary for

maintenance of viable operations to support municipal use and protect listed salmonid species in the Russian River by preventing Lake Mendocino from declining to a storage level at which the reservoir may no longer be operational in light of the extremely dry condition the region has been experiencing.

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.” (*Id.*, § 15308.) The proposed action will assure 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 proposed temporary changes are also therefore categorically exempt under Class 8.

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

Pursuant to Water Code section 1438, subdivision (a), 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. 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 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).) 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, an earlier expiration date is specified, or they are renewed. (*Id.*, §§ 1440, 1441.)

#### **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: (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.)

### **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 [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 . . . .”

In this case, an urgent need exists for the proposed change in the hydrologic index for determining minimum instream flow requirements in the Russian River. As described in the TUCPs, cumulative inflow into Lake Pillsbury does not reflect hydrologic or water supply conditions in the Russian River Watershed; storage levels in Lake Mendocino and Lake Sonoma are currently at or near the lowest levels for this time of the year since they were filled, but the current hydrologic index per Decision 1610 indicates conditions are dry for the remainder of this year and normal starting in January 2022. Furthermore, the Russian River Watershed is experiencing significant reductions of Eel River transfers through the PVP due to inoperability of the powerhouse for the foreseeable future. The current hydrologic index under Decision 1610, which is based on cumulative inflow into Lake Pillsbury, is not applicable to water supply conditions in the Russian River due to the changes in PVP operations.

Without the proposed change, Decision 1610's applicable minimum instream flow requirements may require releases of water from Lake Mendocino and Lake Sonoma at levels that would contribute to significant depletions of reservoir storage and potential elimination of water supplies for water users in Mendocino, Sonoma, and Marin Counties if the current drought continues into 2022. Such depletion or possible

elimination of stored water supplies would risk serious impacts to human health and safety and fishery protection. Extremely low storage levels may result in loss of the cold-water pool in Lake Mendocino that is needed to support listed Russian River salmonid fishery species in the fall, and may cause increased total dissolved solid or mercury concentrations if lake-bottom sediments become displaced due to reservoir operation at low storage levels.

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. As noted in the State Water Board's February 2021 order approving Sonoma Water's TUCP for Permit 12947A, a number of factors have hindered action on Sonoma Water's long-term change petitions to modify Decision 1610 and Permits 12947A, 12949, 12950, and 16596. As required as a condition of that order, Sonoma Water has provided a schedule of milestones and completion dates for further actions necessary to act on its long-term change petitions. In its report dated April 1, 2021, Sonoma Water stated that it planned to submit amended petitions for long-term water right changes in Fall 2021, to recirculate a draft environmental impact report (EIR) for the proposed project in December 2021, and to both certify a final EIR and approve a final project in September 2022. Sonoma Water has been meeting with the State Water Board staff regularly on progress of its long-term petitions while it continues to work on the Fish Habitat Flows and Water Rights Project Draft EIR. However, Sonoma Water has stated that the long-term petitions and draft EIR have been delayed due to the dire drought last summer and changes in the PVP. Sonoma Water plans to provide an update on status of the long-term petitions and draft EIR in January 2022. In light of these circumstances and representations, the State Water Board finds that Sonoma Water has exercised due diligence. Sonoma Water must continue to diligently pursue its stated course of action, as outlined in its report and schedule, but there is also an urgent need now, during the current critical water conditions and ongoing drought emergency, to grant Sonoma Water's TUCPs.

## **5.2 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 Lake Mendocino to the Russian River's confluence with the Pacific Ocean. This Order retains these existing minimum instream flow requirements but temporarily changes the circumstances under which "normal," "dry," or "critical" water supply conditions will apply. Minimum instream flows will continue to be maintained under this Order consistent with hydrologic conditions within the Russian River Watershed. 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 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.]

In conjunction with other actions in response to the current drought state of emergency within the Russian River Watershed, the State Water Board will supervise diversion and use of water under this 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 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 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 (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.)

Although relying on Lake Mendocino storage thresholds to define the water supply conditions may result in lower instream flows in the Russian River than would ordinarily be required under Sonoma Water's permits, maintenance of stored water in Lake Mendocino and Lake Sonoma for subsequent release is crucial for ensuring sufficient water supplies for human health and safety use and 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 Consultation with Other Agencies**

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

NMFS submitted a letter on December 3, 2021 in support of Sonoma Water's TUCPs 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. NMFS's 2008 Biological Opinion addresses the need for modifying minimum instream flow requirements to: 1) protect 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) address water supply conditions at Lake Mendocino and Lake Sonoma to maintain viable operations that support municipal water distribution. The December 3, 2021 letter indicates that the proposed TUCPs meet both objectives towards preventing Lake Mendocino from declining to a storage level at which the reservoir may no longer be operational. NMFS has requested additional terms and conditions be included to any order issued by the State Water Board to provide water needed to protect listed salmonids in the Russian River. NMFS's requested terms and conditions in the December 3, 2021 letter are included in this Order to prevent unreasonable effects on fish and wildlife in the near term while preserving water needed for protecting salmonid species in the Russian River in the longer term.

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 North Coast Water Board regarding the current hydrologic and water quality conditions for the Russian River. This Order also requires Sonoma Water to initiate additional consultation with the North Coast Water Board on additional water quality monitoring activities if any water quality issues of concern are observed. This information will assist the State Water Board in determining whether additional actions or modifications to this Order are necessary.

### **5.3.2 CONSERVATION**

Sonoma Water is actively engaged in water conservation to reduce demands on water stored in Lake Mendocino and Lake Sonoma 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-Marin 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.

As stated in the TUCPs, Sonoma Water, its water contractors, and other members of the Partnership continued implementing an aggressive water saving outreach campaign since winter 2020. The campaign started as a paid social media campaign in winter and expanded in spring to become a broader multi-media effort. To increase drought awareness and encourage further water savings from efficiency upgrades, the Partnership held three regional giveaway events on June 12, August 21, and October 9, in addition to several other outreach efforts. Sonoma Water's contractors also spent additional funds for outreach beyond what is being coordinated by the Partnership and through Sonoma Water.

As part of its Urban Water Management Plan, Sonoma Water has also implemented a Water Shortage Contingency Plan (WSCP) that will, in certain water shortage circumstances, require a 20%, 30%, 40%, or greater percentage reduction in diversions. This plan has reportedly been incorporated into Section 3.5 of the Restructured Agreement for Water Supply with its contractors and similarly applied to its other wholesale customers. In addition to the declared drought emergency within the Russian River Watershed and the water shortage conditions noted by Sonoma Water, the Governor's October 19, 2021 drought emergency proclamation directed local water suppliers to execute their WSCPs and agricultural Drought Plans "at a level appropriate to local conditions that takes into account the possibility of a third consecutive dry year." Sonoma Water states that, as of the time of its filing the TUCPs on November 17, 2021, all members of the Partnership "continue to implement [WSCP] stages consistent with achieving a 20 percent or greater reduction in water use."

To ensure implementation of the Governor's October 19, 2021 proclamation, this Order includes a condition that requires Sonoma Water to report, within 30 days of the Order's issuance, on the status of implementation of its WSCP and the WSCPs of its contractors and other wholesale customers, consistent with the distinct possibility that drought conditions will persist or worsen in 2022. Sonoma Water shall provide monthly summaries to the State Water Board of reduction in total diversions by Sonoma Water and reduction in monthly deliveries to its water contractors and other wholesale customers as compared to the 2013 water use benchmark.

With the conditions imposed by this Order, including ongoing efforts to support water conservation and regular monitoring and reporting 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. The State Water Board will review the monthly conservation efforts of Sonoma Water and will continue to evaluate whether additional conservation measures are

necessary to respond to dry conditions in the Russian River Watershed and/or low storage in Lake Mendocino and Lake Sonoma.

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

Approval of the TUCPs to temporarily change the hydrologic index will help conserve stored water in Lake Mendocino and Lake Sonoma to meet human health and safety needs, and to protect endangered and threaten species in the Russian River. Without the proposed changes, the resulting elimination of stored water in Lake Mendocino and the depletion of stored water in Lake Sonoma to unsafe levels will put residents in the counties of Mendocino, Sonoma, and Marin at risk should dry conditions persist into 2022. 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 Order or modify its terms and conditions 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, 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 December 11, 2021, 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:

40,000 acre-feet as of January 1  
59,000 acre-feet as of February 1  
68,000 acre-feet as of March 1  
69,500 acre-feet as of March 16  
71,000 acre-feet as of April 1  
70,000 acre-feet as of April 16  
69,000 acre-feet as of May 1  
67,500 acre-feet as of May 16  
65,000 acre-feet as of June 1

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

31,000 acre-feet as of January 1  
36,000 acre-feet as of February 1  
52,000 acre-feet as of March 1  
53,000 acre-feet as of March 16  
54,000 acre-feet as of April 1  
53,000 acre-feet as of April 16  
52,000 acre-feet as of May 1  
51,000 acre-feet as of May 16  
50,000 acre-feet as of June 1

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

2. From December 11, 2021, through April 30, 2021, and as water clarity and safety considerations allow, Sonoma Water shall conduct monitoring to evaluate accessibility to spawning habitat by adult salmonids in the following manner at the following locations:

- a. Upper mainstem Russian River

If flow at the USGS Hopland gage (station number 11462500) falls below 100 cfs, Sonoma Water shall conduct on a biweekly<sup>3</sup> basis walking surveys of riffles between the confluence of the East Fork Russian River and West Fork Russian River (the Forks) and the confluence of Dry Creek and Russian River in Healdsburg. Proposed reaches include below the Forks, Leaping Lady Rock, Commisky Station Road, downstream of Crocker Road, downstream of Washington School Road, and Alexander Valley. A count of salmonid redds, live adult salmonids, and adult salmonid carcasses shall be documented for each riffle surveyed. In reaches with major tributaries, tributary connectivity to the mainstem shall be assessed with photo documentation and a written description of prevailing conditions as they relate to tributary access by adult salmonids. If tributary stream gage information is available, tributary stage and/or flow at the time of documentation shall also be noted. Proposed tributary confluences include West Fork Russian River, Pieta Creek, Cumiskey Creek, and Big Sulphur Creek.

- b. Lower mainstem Russian River

If flow at the USGS Hacienda gage (station number 11467000) falls below 125 cfs, Sonoma Water shall conduct on a biweekly basis walking surveys of riffles to evaluate access to spawning habitat by adult salmonids between the confluence of Dry Creek and Russian River in Healdsburg and the upstream end of the Russian River estuary in Duncans Mills. Proposed reaches include Monte Rio, Vacation Beach, Hulbert Creek, and Steelhead Beach. At each site, Sonoma Water staff shall measure riffle length, width, depth, and document the site with photographs. Sonoma Water shall conduct visual surveys of likely holding pools located near riffle sites to document whether adult salmonids are congregating in pools.

- c. Dry Creek

If flow at the USGS Hopland gage (station number 11462500) falls below 100 cfs, Sonoma Water shall conduct on a biweekly basis walking surveys of riffles in Dry Creek between Warm Springs Dam and Lambert Bridge. Proposed reaches include upstream of Yoakim Bridge and at Board

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<sup>3</sup> Biweekly means once every two weeks throughout this Order.

Bridge. A count of salmonid redds, live adult salmonids, and adult salmonid carcasses shall be documented for each riffle surveyed.

3. Ramping

- a. To protect against stranding of fish when minimum instream flow requirements are reduced due to dry or critical water supply conditions as defined under this Order, Sonoma Water shall consult with NMFS Santa Rosa Office (North Coast team) and CDFW to determine the appropriate ramping rate and timing for flow reduction. Sonoma Water shall submit to the Deputy Director for Water Rights (Deputy Director) a summary report of consultation details and documentation showing NMFS and CDFW concurrence regarding the ramping rates.
  - b. To assist hatchery smolt releases from Coyote Valley Fish Facility, Sonoma Water shall consult with CDFW on the timing and level of temporary and periodic flow increases from Lake Mendocino to be made between March 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.
4. Sonoma Water shall continue ongoing monitoring in coordination with the USGS at the existing multi-parameter water quality sonde sites on the Russian River. By April 22, 2022, Sonoma Water shall consult with the North Coast Water Board to discuss possible water quality impacts if critical or dry water supply conditions occur 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 continuous monitoring or water sampling required by this Order, 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 the consultation. Any necessary revisions to this Condition may be made following consultation with the North Coast Water Board and approval by the Deputy Director.
5. Sonoma Water shall continue to consult with NMFS, CDFW, and the North Coast Water Board on a weekly basis for fishery and water quality monitoring updates and any concerns relative to water quality and hydrologic condition of the Russian River. Sonoma Water shall submit a summary report of consultation details to the Deputy Director upon request.

6. Sonoma Water shall report to the Deputy Director, the North Coast Water Board, CDFW, and NMFS on a weekly basis regarding the current hydrologic condition of the Russian River system, including current reservoir levels and reservoir storage hydrographs for Lake Mendocino and Lake Sonoma, a 16-day cumulative rainfall forecast, current inflow from the PVP, and a summary of the available water quality data. Sonoma Water shall also make each report available on a publicly accessible website.
7. By August 1, 2022, Sonoma Water shall submit to the Deputy Director, CDFW, NMFS, and the North Coast Water Board a summary report of the fishery monitoring activities required by Condition 2 of this Order and water quality monitoring activities required by Condition 4 of this Order. The summary report shall include an evaluation of whether, and to what extent, the change in water supply conditions authorized by the Order caused any impacts to water quality, including any water quality impacts affecting the availability of aquatic habitat for salmonids.
8. Within 30 days of the issuance of this Order, Sonoma Water shall report on the status of implementation of its WSCP and the WSCPs of its contractors and other wholesale customers. The report shall include an explanation of whether the WSCPs' currently implemented water shortage levels and response actions reflect the possibility or likelihood of dry conditions continuing in 2022 and, to the extent they do not, a timeline for when the remaining WSCPs' water shortage levels and response actions will be adjusted and implemented. Sonoma Water shall provide monthly summaries to the State Water Board of reduction in total diversions by Sonoma Water and reduction in monthly deliveries to its water contractors and other customers as compared to the 2013 water use benchmark.
9. 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 & G. Code, § 2050 et seq.) or the federal Endangered Species Act (16 U.S.C. § 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.
10. 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.

11. Sonoma Water shall immediately notify the Deputy Director if any significant change in storage conditions in Lake Mendocino or Lake Sonoma occurs that warrants reconsideration of this Order.
12. Based upon the methodology for characterizing Lake Mendocino and Lake Sonoma water inflows, releases, and diversions specified by 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 submit weekly reports of daily average release rates and characterization of those releases. Sonoma Water shall also make each report available on a publicly accessible website. Any amendments to either methodology requested by the Deputy Director shall be implemented within 15 days.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

*Erik Ek Dahl, Deputy Director*  
*Division of Water Rights*

Date: DEC 10 2021