

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, and 19351)**

Sonoma County Water Agency

ORDER APPROVING TEMPORARY URGENCY CHANGE

SOURCES: 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 April 19, 2024, 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 Water Code section 1435. The TUCPs request modification to conditions imposed pursuant to State Water Board Decision 1610 (Decision 1610). Specifically, Sonoma Water requests modifications to Russian River minimum instream flow requirements to conform those requirements to a September 24, 2008, National Marine Fisheries Service (NMFS) Biological Opinion for Water Supply, Flood Control Operations, and Channel Maintenance (2008 Biological Opinion) conducted by the U.S. Army Corps of Engineers (USACE), Sonoma Water, and the Mendocino County Russian River Flood Control and Water Conservation Improvement District, in the Russian River watershed. The requested changes to Decision 1610 minimum instream flows are as follows:¹

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

- Reduce instream flow requirements for the upper Russian River² from 185 cubic feet per second (cfs) May 1 through August 31, 2024, and from 150 cfs September 1 through October 15, 2024, to 125 cfs May 1 through October 15, 2024.
- From May 1 through October 15, 2024, reduce instream flow requirements for the lower Russian River³ from 125 cfs to 70 cfs.⁴

Sonoma Water also requested that the minimum instream flow requirement for the Russian River be implemented as a 5-day running average of average daily stream flow measurements, with the stipulation that instantaneous stream flows will be no less than 110 cfs on the upper Russian River and no less than 60 cfs on the lower Russian River.

The requested modifications will allow Sonoma Water to manage stream flows with a smaller operational buffer, thereby facilitating the attainment of the flow conditions that the 2008 Biological Opinion concluded are conducive to the enhancement of salmonid habitat. The TUCPs also request changes to specific terms in Sonoma Water's permits, which are described in the next section.

2.0 BACKGROUND

2.1 Sonoma Water's Water Right Permits

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

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

² The upper Russian River refers to the Russian River from its confluence with the East Fork of the Russian River to its confluence with Dry Creek.

³ The lower Russian River refers to the Russian River downstream of its confluence with Dry Creek to the Pacific Ocean.

⁴ Although the petition seeks approval of changes beginning May 1, 2024, this order approves changes beginning on the effective date of this Order.

2.2 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 the TUCPs and the effects of the proposed changes.

CDFW submitted a letter on April 26, 2024, 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. Consistent with CDFW's recommendation, terms and conditions are included in this Order to assist in preventing unreasonable effects on fish and wildlife.

On May 2, 2024, the NMFS submitted a letter in support of Sonoma Water's TUCPs.

2.3 Requirements of State Water Board Decision 1610

Sonoma Water controls and coordinates water supply releases from Lake Mendocino (Coyote Valley Dam) and Lake Sonoma (Warm Springs Dam) to implement the minimum instream flow requirements defined in Decision 1610 and for rediversion by authorized users. Decision 1610 set minimum instream flows in the Russian River to "preserve the fishery and recreation in the river and in Lake Mendocino to the greatest extent possible while serving the needs of the agricultural, municipal, domestic, and industrial uses which are dependent upon the water." (Decision 1610, p. 21.)

Decision 1610 established water year classifications of *Normal*, *Dry*, and *Critical*, which are based on cumulative inflow into Lake Pillsbury (in the adjacent Eel River Watershed) beginning October 1 of each year.⁵ Decision 1610 further identifies two variations of the *Normal* water supply condition, *Dry Spring 1* and *Dry Spring 2*. These conditions provide for lower required minimum flows in the Upper Russian River during times when the combined storage in Lake Pillsbury and Lake Mendocino on May 31 is unusually low.

From October 1, 2023 to April 12, 2024, the cumulative inflow into Lake Pillsbury was 432,215 af. Pursuant to Decision 1610, the water supply condition would be categorized as *Normal* for the remainder of the year. As such, the following conditions are required pursuant to Decision 1610:

- Term 20 of Permit 12947A requires Sonoma Water to pass through or release from storage at Lake Mendocino sufficient water to maintain instream flows of 185 cfs for the upper Russian River through August 31, after which date it is reduced to 150 cfs through March 31, and 125 cfs for the lower Russian River.
- Term 17 of both Permits 12949 and 12950 requires Sonoma Water to allow sufficient water to bypass the points of diversion on the Russian River to maintain 125 cfs to the Pacific Ocean.

⁵ Permits 12947A, 12949, 12950, and 16596 use the same water-year classification definitions. (Decision 1610, pp. 47-48, 53, 57-58, 60.)

- Term 13 of Permit 16596 requires Sonoma Water to maintain 125 cfs in the lower Russian River 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 federally prohibited by the United States Government.

2.4 2008 Biological Opinion

Central California Coast (CCC) steelhead, CCC coho salmon, and California Coastal (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 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 the 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 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 CCC steelhead, CCC coho salmon, and CC Chinook salmon, 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 April 23, 2024, the State Water Board issued and delivered to Sonoma Water a notice of the temporary urgency change order pursuant to Water Code section 1438, subdivision (a). Pursuant to Water Code section 1438, subdivision (b)(1), Sonoma Water is required to publish the notice in a newspaper having a general circulation, and that is published within the counties where the points of diversion lie within 20 days from the date of issuance of the notice by the State Water Board. Sonoma Water published the notice in the *Ukiah Daily Journal* and *The Press Democrat* on April 28, 2024. In addition, the State Water Board posted the notice of the temporary urgency change order 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 May 23, 2024. As stated above, CDFW 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 supporting approval of the TUCPs.

The State Water Board also received one comment letter from Russian River Keeper (RRK). RRK expresses concern over the uncertainties of the Potter Valley Project (PVP) and length of time it may take to finalize the permanent water right changes to Decision 1610 as required under the 2008 Biological Opinion. RRK also calls into question Sonoma Water's diligence in pursuing the necessary amendments to Decision 1610. When the changes to the PVP are combined with the effects of climate change, RRK believes neither Decision 1610 nor the Biological Opinion adequately reflect changes occurring in the

watershed. Further, RRK believes the use of TUCPs in lieu of permanent water right changes skirts environmental review.

RRK requests the State Water Board expand its required conservation measures for all water users in the watershed to protect water supply, particularly in the event of future drought conditions. In addition, RRK requests the State Water Board assist Sonoma Water in increasing the efficiency of releases to minimize unnecessary water releases, and support expansion of new and existing storage areas, although no specifics were shared on how that could be achieved.

RRK supports the continued modification of any flow regime necessary for flow pulses being ramped up or down to trigger important salmonid migration periods, and consultation with necessary resource agencies informing that need.

The Division requested Sonoma Water respond to RRK's comment, and Sonoma Water submitted a response on May 29, 2024. Sonoma Water states it has been actively working to address changing conditions in the Russian River watershed resulting from reduced transfers of water from the PVP as well as climate-induced changes. Sonoma Water indicates the TUCP actions have been taken to protect the environment, including improving steelhead rearing habitat and conditions for fall migration of chinook salmon, as well as improving the reliability of the Lake Mendocino cold water pool through the rearing season.

The State Water Board has considered RRK's comment and the concerns raised by RRK are discussed further in Section 4.

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(c), an “urgent need” means “the existence of circumstances from which the board may in its judgment conclude that the proposed temporary change is necessary to further the constitutional policy that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented

The changes requested by Sonoma Water for conformance with the 2008 Biological Opinion would improve habitat for listed salmonids by reducing flows and enabling increased storage for later fishery use, without unreasonable effects on other beneficial uses. Moreover, given the status of salmonids under the federal Endangered Species Act, there is a need for prompt action. In this case, there has been an extensive analysis of the needs of the fishery and experts have agreed that instream flows appear to be too high. The change will not affect the ability of Sonoma Water to deliver water for approved beneficial uses in its service area.

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 the provisions governing temporary, urgency changes, or in pursuing changes pursuant to those provisions. In this case, Sonoma Water has submitted petitions pursuant to Water Code section 1700 et seq. to modify the conditions imposed by Decision 1610 (the long-term petitions), including but not limited to a proposal to modify 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 comply with CEQA by completing a revised draft of an Environmental Impact Report for the Fish Habitat Flows and Water Rights Project (Fish Flow Project EIR) to support consideration of long-term changes to Sonoma Water’s permits. Sonoma Water has stated development of the Fish Flow Project EIR is contingent on the disposition of Pacific Gas and Electric Company’s PVP. The ongoing uncertainty regarding the future of Eel River water diversions through the PVP complicates Sonoma Water’s ability to model appropriate future conditions for the Russian River. Sonoma Water also has indicated that a new Russian River Biological Opinion is anticipated to be issued by NMFS in late August 2024 and Sonoma Water is anticipating new information or requirements related to water rights will be incorporated. Long-term actions should be informed by the new Biological Opinion’s requirements.

In light of the delay in processing the long-term petitions, Sonoma Water has been working with the State Water Board on alternatives to filing TUCPs, including a proposal to file interim change petitions that would move the hydrologic index assessment location from the Eel River watershed to the Russian River watershed for a period of up to seven years. This interim change would align the applicable streamflow requirements with the Russian River watershed's hydrology and limit the need for filing TUCPs pending the completion of the Fish Flow Project EIR. During that seven-year period, Sonoma Water anticipates it will be able to complete the Fish Flow Project EIR for the long-term petitions and incorporate changes in watershed conditions that have resulted from changes in PVP operations.

Given Sonoma Water's efforts to obtain approval of long-term changes to Decision 1610 requirements, the factors outside Sonoma Water's control that have contributed to the delay in evaluating the long-term changes, and Sonoma Water's progress in evaluating interim change petitions, the State Water Board finds that Sonoma Water 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 Order. Moreover, there is no evidence to suggest the Order will alter water quality such that it could cause injury to another water right holder. The water quality monitoring required as a condition of this Order, in conjunction with the Board's continuing authority to supervise and modify this Order, will ensure injury related to changes in water quality will be avoided.

In addition, with the possible exception of some Permittees and Licensees in Sonoma County in the Russian River Valley, other legal users of water will not be injured to the extent that releases of previously stored water are reduced because as a general rule water released from storage is not available for diversion by downstream water right holders. (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].)

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 Order for the protection of all other lawful users of water and instream beneficial uses.

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 based upon the analysis contained in the 2008 Biological Opinion, which was issued primarily for improving conditions for fishery resources in the Russian River. Improved conditions that result from the temporary urgency changes are threefold. First, the reduction in minimum instream flows will result in improved salmonid rearing habitat in the Russian River. Secondly, reducing instream flows will result in conservation of a cold water pool in Lake Mendocino which would allow for cooler water temperatures in the upper Russian River, improved freshwater rearing habitat quality, and enhanced management of the flows in early fall for the benefit of fish migration. Thirdly, the reduction in minimum flow requirements may encourage formation of a closed or perched lagoon at the mouth of the Russian River and therefore enhance estuarine rearing habitat for salmonids.

With the conditions imposed by this Order, including 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 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.

It is possible that reduced flows in the Russian River could impair some instream beneficial uses, principally recreational uses. However, 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 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.

4.4 The Proposed Change is in the Public Interest

As discussed above, the sole purpose of the TUCPs is to improve conditions for listed salmonids in the Russian River. Approval of the request to temporarily reduce minimum instream flows to benefit the fishery will also maintain storage levels in Lake Mendocino for a longer period of time so that water is available in the fall for fisheries purposes. Given these benefits, the proposed changes are in the public interest.

5.0 COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT

The State Water Board must comply with any applicable requirements of 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 16, 2024. 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.

RRK asserts that the State Water Board’s “pattern and practice” of granting TUCPs since 2004 constitutes the piecemeal approval of Sonoma Water’s long-term petitions in violation of CEQA. As stated in Sonoma Water’s response, however, not all of the TUCPs filed by Sonoma Water and conditionally approved by the State Water Board in the past 20 years were filed for the same purpose. Some were filed in accordance with the Biological Opinion and others were filed in response to drought conditions. Moreover, each TUCP was independently reviewed and conditionally approved, and none of the approvals were dependent on or a precondition for other approvals. In addition, as stated by Sonoma Water, the purpose of the TUCPs filed in accordance with the Biological Opinion was to protect threatened or endangered fish. Finally, Sonoma Water is not attempting to minimize or avoid disclosure of any potential environmental impacts of changes to minimum instream flow requirements, which will be evaluated together with other long-term changes to Sonoma Water’s permits in the Fish Flow Project EIR. Accordingly, separate environmental review of the TUCPs does not constitute improper piecemealing.

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 County Water Agency (Sonoma Water) for temporary urgency changes in Permits 12947A, 12949, 12950, and 16596 are approved and effective from the date of this Order until October 15, 2024.

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 in the Russian River, as specified in Term 20 of Permit 12947A, Term 17 of Permits 12949 and 12950, and Term 13 of Permit 16596, shall be modified as follows:
 - a. Minimum instream flow in the upper Russian River shall remain at or above 125 cubic feet per second (cfs);
 - b. Minimum instream flow in the lower Russian River shall remain at or above 70 cfs.

For purposes of compliance with this term, the minimum instream flow requirements shall be measured based on a 5-day running average of average daily stream flow measurements, provided that instantaneous flows shall be no less than 110 cfs in the upper Russian River and no less than 60 cfs in the lower Russian River.

2. Sonoma Water shall conduct the following fisheries monitoring tasks and associated recording and reporting requirements. A summary report of the fisheries monitoring tasks described below shall be submitted to the Deputy Director for Water Rights by February 1, 2025, in accordance with the National Marine Fisheries Service (NMFS) and California Department of Fish and Wildlife (CDFW) annual reporting requirements as more fully described in the 2008 Biological Opinion.
 - a. Beginning no later than September 1, 2024, and continuing through the duration of this Order, Sonoma Water shall monitor and record daily numbers of adult salmon and steelhead moving upstream past the Mirabel fish ladder. Mirabel fish ladder numbers shall be provided every two weeks in accordance with Term 4.
 - b. Beginning October 1, 2024, if adult salmon and steelhead can enter the Russian River estuary and suitable water clarity allows snorkel surveys, Sonoma Water shall monitor numbers of adult salmon and steelhead in representative deep pools in the lower Russian River downstream of the Mirabel inflatable dam. Monitoring shall occur on a weekly basis continuing through the duration of this Order or until sustained flows at the United States Geological Survey (USGS) gage at Hacienda (No.11467000) are above 110 cfs.

- c. Prior to October 15, 2024, or after a cumulative seasonal total of 100 adult salmon and steelhead move upstream past the counting station at the Mirabel fish ladder, whichever is earlier, Sonoma Water shall consult with NMFS and CDFW regarding the possibility of increasing the instream flow at the gage at Hacienda to a level not to exceed 110 cfs. Consultations shall occur every two weeks and a summary report of consultation details and any increases to the minimum flows shall be submitted to the Deputy Director for Water Rights within one week of each consultation meeting.

Sonoma Water shall consult with NMFS and CDFW regarding any necessary revisions to this term. A summary report of consultation details shall be submitted to the Deputy Director for Water Rights within one week of any consultation meeting. Upon consultation with NMFS and CDFW, any necessary revisions to this term shall be made upon approval by the Deputy Director for Water Rights.

3. Monitoring shall be conducted from the Date of this Order through October 15, 2024, to determine the effects on water quality as follows. The monitoring period may be extended if the Executive Officer of the North Coast Water Board identifies water quality effects that may continue beyond the effective period of the Order.
 - 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 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 site 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.
4. Sonoma Water shall report to the Deputy Director for Water Rights, 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 3. Fish counts shall also be reported every two weeks. Sonoma Water shall make each report available on a publicly accessible website.
5. By July 12, 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 3, 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 3.
 6. 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 G. Code, § 2050 et seq.) or the federal Endangered Species Act (16 U.S.C.A. § 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.
 7. 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.

8. To protect against stranding of fish when flow in the East Fork Russian River immediately below Coyote Dam is less than 250 cfs and releases from Lake Mendocino are reduced, flow in the East Fork Russian River immediately below Coyote Dam shall not be reduced by more than 12 cfs per hour, up to a maximum of 24 cfs per day. Down ramping rates specified in this term may be revised upon consultation with NMFS and CDFW and approval of the Deputy Director for Water Rights. Sonoma Water shall submit a summary report of consultation details to the Deputy Director within one week of each consultation meeting.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY

*Erik Ekdahl, Deputy Director
Division of Water Rights*

Dated: JUN 6, 2024