

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

**In the Matter of Permit 12947A
(Application 12919A)
Sonoma County Water Agency
ORDER APPROVING TEMPORARY URGENCY CHANGE**

SOURCE: Russian River

COUNTIES: Sonoma and Mendocino Counties

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF TEMPORARY URGENCY CHANGE PETITION

On January 13, 2021, Sonoma County Water Agency (Sonoma Water) filed a Temporary Urgency Change Petition (TUCP) with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), requesting approval of a change pursuant to California Water Code section 1435. The TUCP requests implementation of an alternative hydrologic index based on Lake Mendocino storage values starting January 28, 2021 (proposed hydrologic index). The proposed hydrologic index is requested in lieu of the hydrologic index based on cumulative Lake Pillsbury inflow (the current hydrologic index). The hydrologic index is used to determine which minimum instream flow requirements in Term 20 of Permit 12947A will apply to the upper Russian River (from its confluence with the East Fork Russian River to its confluence with Dry Creek; Term 20.B). The proposed hydrologic index is as follows:

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

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

Normal water supply conditions exist in the absence of defined Dry or Critical water supply conditions.

This temporary change is requested in response to 2020's extremely dry conditions, severely low storage levels in Lake Mendocino, and the current hydrologic index not aligning with observed hydrologic conditions in the Russian River watershed. No changes are requested in this petition for how minimum instream flow requirements are determined for Dry Creek or the lower Russian River (from its confluence with Dry Creek to the Pacific Ocean, Term 20.C).

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 and Decision 1610, which the State Water Board adopted on April 17, 1986. Decision 1610 specifies minimum instream flow requirements for the upper Russian River, Dry Creek, and the lower Russian River. These minimum instream flow requirements vary based on water supply conditions specified in Decision 1610. The Decision 1610 requirements for the upper Russian River are contained in Term 20 of Sonoma Water's water right Permit 12947A (Application 12919A). Sonoma Water's operations are also subject to the National Marine Fisheries Service (NMFS) Russian River Biological Opinion issued in 2008.

2.1 Sonoma Water's Water Right Permit

The TUCP involves Permit 12947A, which authorizes direct diversion of 92 cubic feet per second (cfs) from the East Fork Russian River and storage of 122,500 acre-feet per annum (afa) in Lake Mendocino from January 1 through December 31 of each 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:*

For the purposes of the requirements in this term, the following definitions shall apply:

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 predetermined 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.*

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, 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

During 2020, the Russian River Watershed experienced the third driest year in the past 127 years of record. Sonoma Water filed TUCPs with the State Water Board in June 2020, and the State Water Board issued an order approving temporary urgency changes to the Decision 1610 instream flow requirements for Permits 12947A, 12949, 12950, and 16596. These changes, along with water conservation efforts throughout the region, preserved storage in Lake Mendocino above the target water supply storage levels, thereby avoiding the need to further reduce flows. On December 27, 2020, the State Water Board's temporary urgency change order expired, and minimum instream flow requirements reverted to "Dry" water supply conditions for the remainder of 2020. On January 1, 2021, cumulative inflow into Lake Pillsbury between October 1, 2020 and December 31, 2020 exceeded the threshold criterion of 8,000 acre-feet, resulting in a "Normal" water supply condition for the Russian River. This water supply condition is reassessed at the beginning of each month through June under Decision 1610, including as specified in Term 20 of Permit 12947A.

As of January 6, 2021, the water supply storage level in Lake Mendocino was 28,206 acre-feet. This storage level is approximately 41 percent of the available water conservation pool for this time of year. The current low storage level is the result of the severe drought of 2020 and low rainfall in the region since January 1, 2020. As measured at Ukiah, recorded rainfall for 2020 was 11.32 inches, which amounts 31% of the average rainfall (37.01 inches) and the second lowest recorded rainfall since 1893. Furthermore, Pacific Gas & Electric (PG&E) has indicated that it intends to file a request with the Federal Energy Regulatory Commission (FERC) for a temporary variance to reduce its minimum instream flow requirements for the Potter Valley Project (PVP). The temporary variance would reportedly reduce the transfer of Eel River water through the PVP to the Russian River watershed from 45 cfs to 15 cfs if storage in Lake Pillsbury falls below 18,000 acre-feet and would expire once storage in Lake Pillsbury exceeds 30,000 acre-feet. The storage in Lake Pillsbury was 17,292 acre-feet at the end of December 2020. The temporary variance would result in a substantial reduction to inflow into Lake Mendocino from the PVP.

Sonoma Water's recent analysis of the current drought conditions indicates that unless additional mitigation measures are taken soon, there is a risk that Lake Mendocino could decline to critically low levels. Sonoma Water's projection based on modeled simulations using hydrology data from 1908 to 2017 indicates that Lake Mendocino storage levels could potentially decline below 20,000 acre-feet at the end of the current water year. The very low storage levels in Lake Mendocino would significantly impact the availability of water supplies for supporting survival of listed Russian River salmonid fisheries, agricultural and municipal uses, and recreation in the late summer and following water year. Additionally, the low storage levels may result in disturbance of sediment at the bottom of Lake Mendocino that may cause additional adverse impacts on water quality in Lake Mendocino and the Russian River.

The "Normal" water supply conditions designated by the current hydrologic index does not accurately reflect the severe drought conditions in the upper Russian River. Sonoma

Water's proposed temporary urgency change would maintain the logic 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 Term 20.B of Permit 12947A 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

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, subd. (b).) Sonoma Water determined that the requested change is statutorily and categorically exempt under CEQA, as the change is an action to prevent or mitigate an emergency. Sonoma Water determined that the requested change also meets the Class 1, 7, and 8 categorical exemption criteria set forth in the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.). Sonoma Water filed a Notice of Exemption on January 8, 2021. The State Water Board has reviewed the information submitted by Sonoma Water and has made its own independent finding that the requested temporary urgency changes to Permit 12947A are statutorily and categorically exempt from CEQA.

The changes sought by Sonoma Water in its January 13, 2021 TUCP are consistent with the following statutory and categorical CEQA exemptions for the following reasons:

- 1) Information provided by Sonoma Water demonstrates that continued releases of water pursuant to the current hydrologic index in Term 20 of Permit 12947A as it applies to the upper Russian River could cause storage levels in Lake Mendocino to decline to unsafe levels. Extensive drought conditions in the Russian River watershed throughout 2020 and extending into 2021 have resulted in already low storage conditions in Lake Mendocino. Drought conditions that may persist through 2021 will result in continued low storage levels in Lake Mendocino. As discussed in this Order, if storage in Lake Mendocino is further depleted, there will be serious impacts to human health and welfare, and water will not be available to protect aquatic life, including threatened and endangered species in the Russian River. Approval of the TUCP is therefore necessary to respond to drought conditions and prevent and mitigate loss of, or damage to, the environment, fishery resources, property, public health, and essential public services. Accordingly, the project is statutorily exempt from CEQA because it is necessary to prevent or mitigate an emergency. (Pub. Resources Code, § 21080, subd. (b)(4); Cal. Code Regs., tit. 14, § 15269, subd. (c).)
- 2) A Class 1 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.

- 3) A Class 7 exemption “consists of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment.” (*Id.*, § 15307.) The proposed action will ensure the maintenance of a natural resource (i.e., the instream resources of the Russian River) by increasing availability and improving the quality of salmonid rearing habitat in the upper Russian River and more closely mimicking natural inflow to the estuary, thereby enhancing the potential for maintaining a seasonal freshwater lagoon that could support increased production of juvenile steelhead. Accordingly, these changes are categorically exempt from CEQA pursuant to a Class 7 exemption.

A Class 8 exemption “consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment.” (*Id.*, § 15308.) The proposed action will ensure the maintenance of the environment (i.e., the instream environment of the Russian River) in the same way as stated for the Class 7 exemption.

4.0 PROCEDURAL REQUIREMENTS CONCERNING THE TEMPORARY URGENCY CHANGE PETITION

On January 19, 2021, 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 published the notice in *Ukiah Daily Journal* and *The Press Democrat* on January 19, 2021. 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. (*Id.*, subd. (d).) The State Water Board must promptly consider the objection and may hold a hearing on any objection. (*Id.*, subd. (e).) Pursuant to Water Code section 1438, the State Water Board may issue a temporary urgency change order in advance of the required notice. It was indicated in the public notice that the State Water Board may issue an order approving or denying the TUCP before the end of the notice period. The State Water Board will promptly consider all objections received, and may issue an amended order if necessary to address objections. This Order reflects consideration of all correspondence regarding the TUCP received by January 29, 2021; no objections were received as of this date. Any objections received will be considered in a separate memorandum or, if appropriate, an amended order.

By January 29, 2021, the Division has received letters from Mendocino County Russian River Flood Control and Water Conservation Improvement District (RRFC), the North Coast Regional Water Quality Control Board (North Coast Water Board), NMFS, and Russian Riverkeeper (RRK) in support of Sonoma Water's TUCP. Details of support of the North Coast Water Board and NMFS are included in Section 5 of this Order.

RRFC indicated in its letter submitted on January 8, 2021 that the severely low water levels in Lake Mendocino and the reclassification of water supply condition of the Russian River from Dry to Normal cause great concerns to RRFC and representatives of municipalities, agricultural users, and other water users of the Russian River. RRFC stated that Sonoma Water's TUCP clearly outlines the urgency and necessity of the proposed changes, and RRFC and Sonoma Water have increased communications to improve water resource management for the upper Russian River and to implement necessary steps to address impacts of the prolonged drought in the region.

On January 28, 2021, RRK submitted a comment letter supporting Sonoma Water's request of using the alternative hydrologic index to better conserve water stored in Lake Mendocino. RRK indicated modification of Term 20 would allow minimum flows in the Russian River to reflect more accurately the realities of available water supply within the Russian River watershed. RRK also noted the risk of water not being available for local municipal, agriculture, and environmental uses due to the extended drought if the TUCP is not approved. Additionally, RRK indicated that the TUCP and any subsequent order must consider: (1) the protection of public trust resources, (2) what RRK believes to be the continued allowance of waste and unreasonable use, and (3) requirements of CEQA.

Specifically, RRK requested the State Water Board: 1) require mandatory conservation measures by Sonoma Water Agency; 2) require mandatory conservation measures for other users in the Russian River watershed and/or use the established broad authority to curtail users to prevent waste and unreasonable use; 3) establish carry-over storage targets with an adequate margin of safety to prevent managing the River in a perpetual state of drought; 4) require updates to the Decision 1610 hydrologic index and Decision 1610 in its entirety, by expedited dates; 5) conduct CEQA review to mitigate and avoid the significant effects of Sonoma Water's and State Water Board's purported pattern and practice of TUCP approvals; and 6) establish a stakeholder committee comprised of both upper and lower Russian River users to develop a Drought Action Plan with additional emergency conservation measures for when storage or Eel River diversions drop below minimum thresholds to prevent deep cuts to flow in the next dry year.

The State Water Board has considered RRK's comments.

This Order includes terms and conditions that require Sonoma Water to report periodically on conservation activities and programs being implemented by Sonoma Water and its water contractors. The State Water Board will monitor the conservation efforts of Sonoma Water and will continue to evaluate whether additional conservation measures are necessary if dry conditions persist in the Russian River watershed during the period the Order is applicable.

RRK comments that both Sonoma Water and the State Water Board may not lawfully rely on statutory or categorical exemptions to CEQA when undertaking the proposed temporary urgency action. Apparently based upon prior orders for temporary urgency change, RRK's comment letter presupposes that the State Water Board will not make adequate findings in this Order. Although RRK recognizes that there exists an "actual, urgent need to protect the dwindling water supply at Lake Mendocino," RRK asserts that the emergency statutory exemption, discussed above, does not apply.

RRK appears to primarily argue that the clear and imminent danger to the environment, fishery resources, property, public health, and essential public services was not sudden or unexpected and, therefore, should not have required immediate action to prevent or mitigate such losses. RRK indicates that the emergency exemption is narrow, and it erroneously suggests that severe water supply shortage, whether due to infrastructure failure or hydrologic conditions, cannot constitute an emergency. RRK also states that the Class 1, Class 7, and Class 8 categorical exemptions do not apply in this instance due to alleged but unspecified potentially significant environmental impacts, including the alleged cumulative impacts of Sonoma Water's successive temporary urgency water right changes, that RRK states must be mitigated through, among other measures, additional mandatory water conservation requirements for Sonoma Water and other parties within the Russian River watershed.

RRK does not specify the alleged potentially significant impacts or effects of this temporary urgency change, alone or in conjunction with previous temporary urgency changes. RRK's assertions that "there is zero guarantee that there will be any flow" in the Russian River is contrary to the enforceable minimum instream flow requirements of Permit 12947A and this Order. Although Sonoma Water's TUCP and this Order address an urgent and emergency situation, the proposed temporary changes to Sonoma Water's existing operations remain comparatively minor, unless conditions remain dry or worsen to critically dry in the Russian River watershed while remaining normal in the Eel River watershed. Furthermore, contrary to RRK's assertion, maintenance, restoration, enhancement, or protection actions need not benefit natural resources or the environment immediately or "right now" to be effective.

In conjunction with RRK's arguments that successive temporary urgency changes to Sonoma Water's water rights permits are cumulative projects under CEQA, RRK alleges that Decision 1610 has "long standing and well-known inadequacies" that should have been addressed comprehensively through permanent changes. RRK's requests prompt revision of the Decision 1610 hydrologic index. When referring to a "flawed Biological Opinion," the uncertainty of future PVP operations, and the nascent Two-Basin Partnership in its comment letter, RRK also explicitly acknowledges some of the very complexities that have hindered comprehensive environmental review of and water right changes pursuant to any proposed amendment of Decision 1610. As RRK notes, Sonoma Water has filed long-term change petitions to modify the hydrologic index and other portions of Decision 1610. But many details of its actual proposal and the means by which the crucial issues referenced above, among other concerns, may be adequately addressed and resolved for this long-term change petition remain materially uncertain. This Order is conditioned on Sonoma Water's submitting a report detailing a schedule of milestones and completion

dates for additional activities necessary for the State Water Board's consideration of, and potential action on, Sonoma Water's pending petitions to permanently change Permit 12947A and other related water rights.

Regarding RRR's urging the State Water Board to take various action on water diversions and uses under rights not held by Sonoma Water – both upstream and downstream of Lake Mendocino, in both the Russian River and Eel River watersheds – this falls outside the scope of what is being requested in the TUCP or may be included as a condition of this temporary urgency change approval. However, to improve information regarding and understanding of the dynamics of Russian River flows and water uses and to facilitate possible future action, if warranted, under other authorities held by the State Water Board, Condition 11 of this Order contains a condition requires Sonoma Water to develop an accounting methodology characterizing its inflows to and releases from Lake Mendocino.

5.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY URGENCY CHANGE PETITION

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 Board. (Wat. Code, § 1440.)

5.1 Urgency of the Proposed Change

Under Water Code section 1435, subdivision (c), an “urgent need” means “the existence of circumstances from which the board may in its judgment conclude that the proposed temporary change is necessary to further the constitutional policy that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented”

In this case, an urgent need exists for the proposed change in the hydrologic index for determining minimum instream flow requirements in the upper Russian River because, as described in the TUCP, cumulative inflow into Lake Pillsbury does not reflect hydrologic or water supply conditions in the Russian River watershed; storage levels in Lake Mendocino are currently extremely low for January, but the current hydrologic index indicates conditions are normal. The changes in PVP operations since 2004, the FERC temporary variance anticipated to be sought by PG&E for the PVP, and the severe drought conditions that occurred in 2020 in the Russian River watershed further compound the urgency.

Without the proposed change, Permit 12947A's applicable minimum instream flow requirements may require releases of water from Lake Mendocino at levels that would risk significant depletions of reservoir storage and potential elimination of water supplies for water users in Mendocino County and northern Sonoma County (above the confluence with Dry Creek) during the summer and fall of 2021. Such depletions in storage and reductions or eliminations of water supplies would risk water supplies needed for fishery

protection, municipal and agricultural supplies, and recreation use in the upper Russian River. 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. In this case, Sonoma Water has submitted petitions pursuant to Water Code section 1700 et seq. to modify Decision 1610 (the long-term petitions), including but not limited to modifying the hydrologic index that establishes water year type for Permit 12947A. Sonoma Water continues to work on those pending long-term petitions, including efforts to meet the requirements of CEQA and to develop more certainty regarding the future of PVP operations and Biological Opinions affecting the Russian River watershed. Given the circumstances discussed in this Order, the State Water Board finds that Sonoma County has exercised due diligence to this point and that there is an urgent need for the petitioned temporary change to Permit 12947A. To assist State Water Board staff in determining whether Sonoma Water continues to pursue its long-term petitions with due diligence, this Order requires Sonoma Water to submit a schedule of milestones related to completion of CEQA documents related to the long-term petitions, and any related concurrent or subsequent activities necessary for State Water Board action on Sonoma Water's long-term petitions.

The actual hydrologic conditions in the upper Russian River watershed and the aforementioned issues that could otherwise occur in the late summer and fall create an urgent need for avoidance and mitigation actions now. Specifically, Sonoma Water has demonstrated an urgent need to preserve Lake Mendocino storage through temporarily adjusting the hydrologic index applicable to the upper Russian River under Permit 12947A.

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, specifically for upper Russian River minimum instream flows under Permit 12947A, temporarily changes the circumstances under which "dry" or "critical" water supply conditions will apply. Because minimum instream flows will continue to be maintained under this Order consistent with hydrologic conditions within the upper 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 temporary urgency change order. Other legal users of water will not be injured by reduction in releases of previously stored water because water released from storage is not available for diversion by downstream users with an independent basis of right. (See, e.g., *North Kern Water Storage Dist. v. Kern Delta Water Dist.* (2007) 147 Cal.App.4th 555, 570 [when the stored water is released for use, it is not part of the river's natural flow and redirection of this water does

not count toward the appropriator's current allocation of river water]; *State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 737-745 [a riparian or appropriator has no legally protected interest in other appropriators' stored water or in the continuation of releases of stored water].)

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

5.3 No Unreasonable Effect upon Fish, Wildlife, Or Other Instream Beneficial Uses

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

Relying on Lake Mendocino storage thresholds to define the water supply conditions for determining upper Russian River minimum instream flow requirements may result in lower instream flows in the upper Russian River than might otherwise occur under the current hydrologic index in Term 20 of Permit 12947A. However, preservation of stored water in Lake Mendocino for subsequent releases is crucial to ensure sufficient water supply for municipal and agricultural uses, fish and wildlife, and other instream beneficial uses. It is possible that such reduced flows may impair instream beneficial uses, such as fish and wildlife, and recreational uses, in the upper Russian River, given that the temporary urgency changes approved under order will extend into the summer. However, any effects associated with such flow reductions would not be unreasonable, considering the potential impacts to fish, wildlife and other instream beneficial uses that could occur if dry conditions persist and reliance on the current hydrologic index led to reduced storage in Lake Mendocino or the dewatering of the upper Russian River later in the year.

5.3.1 Consultation with Other Agencies

Sonoma Water has consulted with the California Department of Fish and Wildlife (CDFW), NMFS, and North Coast Water Board regarding filing the TUCP and the effects of the proposed change.

On January 20, 2021, the North Coast Water Board submitted a letter supporting Sonoma Water's TUCP. The North Coast Water Board staff agreed with the need to reduce flow releases from Lake Mendocino to avoid adverse impacts to beneficial uses resulting from poor water quality conditions that occur when the reservoir reaches low storage levels. Specifically, the North Coast Water Board noted that reservoir sediments may be entrained into the reservoir's discharge as the water elevation declines, which would result in elevated turbidity and suspended sediment concentrations released downstream. Among other things, such discharges can cause impacts to downstream spawning gravels from settleable solids, and could be further complicated by the fact that Lake Mendocino is listed on the list of impaired waterbodies under Clean Water Act section 303(d) (303(d) list) due to mercury. While storage levels lower than current conditions have been experienced during droughts, there is the possibility of Lake Mendocino storage levels decrease to unprecedented levels and it is unclear how water quality, including mercury levels, may change at such unprecedented conditions. This uncertainty is addressed by conditions in this Order requiring Sonoma Water to conduct ongoing monitoring and to confer with the North Coast Water Board if conditions indicate additional monitoring or changes to the Order are necessary.

The North Coast Water Board also noted concerns about harmful algal blooms of cyanobacteria (cyanoHABs) and elevated pathogen concentrations that occur when low stream flow conditions coincide with warm weather in the Russian River and its tributaries. The Russian River is listed as impaired on the 303(d) list for pathogen conditions, leading to the North Coast Water Board's adoption of the Action Plan for the Russian River Watershed Pathogen Total Maximum Daily Load in August 2019. These conditions often pose a threat to public health and have resulted in public health advisory postings on the Russian River in recent years. The North Coast Water Board notes that past streamflow monitoring in the lower Russian River indicates that high rainfall following a dry year is not adequate to restore baseflows in the late summer. Given that the 2020 water year (Oct. 1, 2019-Sept. 30, 2020) was exceptionally dry, late summer baseflows are likely to be critically low in 2021 even if rainfall occurs in the coming months, further supporting the rationale for ongoing monitoring and coordination between Sonoma Water, the North Coast Water Board, and the State Water Board.

NMFS submitted a letter on January 22, 2021 in support of Sonoma Water's plan to conserve water storage in Lake Mendocino for its potential benefits to listed salmonids. NMFS's 2008 Biological Opinion calls for Sonoma Water to annually petition the State Water Board to reevaluate the minimum flow requirements in Decision 1610, and specifically to lower the minimum flow requirement at Healdsburg and Guerneville to 125 cfs and 70 cfs, respectively, during summer months. NMFS has requested additional terms and conditions be included to any order issued by the State Water Board to provide water needed to protect the adult and juvenile fall Chinook salmon, winter steelhead, and coho salmon in the Russian River. NMFS's requested terms and conditions in the January 22, 2021 letter are included in this Order to prevent unreasonable effects on fish and wildlife while preserving water needed for protecting salmonid species in the Russian River.

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 and provide weekly updates on fishery conditions. 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 for municipal supply. Sonoma Water and its water contractors have continued implementing water use efficiency programs to comply with the California Water Conservation Act since the establishment of the Sonoma-Marín Water Saving Partnership (Partnership) in 2010. The Partnership represents twelve North Bay water utilities in Sonoma and Marin counties that have joined to provide regional solution for water use efficiency.

In summer 2020, the Partnership conducted a successful multi-media public outreach campaign from June through September called “Saving Water Ensures Water for What You Love” which emphasized the importance of water conservation for long-term water supply reliability, fisheries, and summertime recreation in the Russian River. This campaign was a contributing factor in the successful preservation of storage in Lake Mendocino and the avoidance of further reduced flows in the Russian River this past summer. In addition to public outreach, the Partnership continued to offer a wide variety of water-use-efficiency incentive programs, workshops, trainings, school classes, and other resources for customers in spite of limitations and restrictions on in-person activities during the ongoing novel coronavirus (COVID-19) pandemic. The Partnership members also continue winter water savings messaging to customers using advanced metering infrastructure (AMI) billing software, more traditional bill inserts, website posts, E-news, local radio, and direct customer outreach, in addition to social media advertisement.

Should dry conditions persist, the Partnership will implement a further escalation of the winter outreach campaign, along with consideration to include a regional reduction target aligned with needed savings.

To ensure continuation of these conservation activities, this Order includes a condition that requires Sonoma Water to provide monthly updates to the Board when the Order results in lower minimum instream flows than would have been required pursuant to the Lake Pillsbury cumulative inflow index regarding conservation activities and programs being implemented by Sonoma Water and its water contractors.

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. 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.

5.4 The Proposed Change is in the Public Interest

During ongoing review of information submitted by Sonoma Water throughout operations under the State Water Board's temporary urgency change order issued July 28, 2020 and expiring December 27, 2020, State Water Board staff observed that the Russian River appeared to experience significant losses of water downstream of Lake Mendocino. A comparison between the flowrates of water that were released from Lake Mendocino or Lake Sonoma and the flows measured at downstream gages following these releases suggests that some or all of the diminishing flows is the result of diversions by other users downstream of the reservoirs. As noted above, water released from reservoir storage is not natural flow and is not available for diversion by downstream users with an independent basis of right.

Diversions of water released from storage by Sonoma Water exacerbate the low flow conditions in the Russian River watershed and the risks to future water supply that this Order is — and the July 28, 2020 order was — intended to address. In addition to potentially injuring Sonoma Water, the diversions would be unreasonable given that they contribute to the risks of low storage in Lake Mendocino. The diversions may also be unauthorized diversions. The State Water Board has authority to take all appropriate actions to prevent injury to water users or public trust resources, or to prevent unreasonable diversion or use of water. (See, e.g., Cal. Const., art. X, § 2; Wat. Code, §§ 100, 183, 275, 1058.5, & 1831.) North Coast Water Board staff have also expressed support for actions to address diversions of other users in the watershed that contribute to low flow conditions and the resulting potential water quality impairments.

However, in order to issue notices of a potential lack of available water to diverters, or to take action to prevent unauthorized diversions, State Water Board staff need more specific information from Sonoma Water on the source and basis of right of water released from Lake Mendocino and how Sonoma Water's water rights are exercised. This Order requires Sonoma Water to provide an accounting methodology and subsequent ongoing information on what water is released from Lake Mendocino so that State Water Board staff are better equipped to take actions to respond to continued drought conditions, and ensure downstream diversions are not contributing to a risk to water supplies and listed Russian River salmonid fishery species that this Order is addressing. This Order requires Sonoma Water to report on diversion and rediversion activities with more specificity in the event drought conditions persist.

State Water Board staff also observed that the program of real-time 3-day advance forecasts of diversions by irrigation and municipal users within Mendocino County Russian River Flood Control and Water Conservation Improvement District (District) required by

Condition 11 of the July 28, 2020 temporary urgency change order often resulted in demand forecasts that differed from estimates of actual diversions. Given that diversion data would assist in reducing unnecessary releases from Lake Mendocino and thereby assist in preserving storage, this Order includes a condition directing Sonoma Water to present recommendations on what additional diversion data could be collected should dry conditions persist into the summer. The recommendations will assist the State Water Board in ensuring the public interest is adequately served during implementation of this Order. Based on Sonoma Water's recommendations and State Water Board staff's independent research and oversight, the State Water Board will evaluate whether other information gathering authorities may be relevant to ensuring the adverse impacts of low storage levels in Lake Mendocino are avoided to the extent feasible.

This Order will likely help conserve stored water in Lake Mendocino. If drought conditions persist, stored water can be released to maintain instream flows for the benefit and protection of all uses of the Russian River, including the salmonid fisheries and recreation as well as consumptive uses. It is in the public interest to preserve water supplies for these beneficial uses given the extreme hydrologic circumstances and reasonable possibility of reduced water supplies within the Russian River.

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

6.0 CONCLUSIONS

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

I conclude that, based on the available evidence:

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

ORDER

NOW, THEREFORE, IT IS ORDERED THAT: the petition filed by Sonoma Water for a temporary urgency change in Permit 12947A is approved and effective from the date of this Order until July 26, 2021.

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

1. The minimum instream flow requirements for the upper Russian River (from its confluence with the East Fork of the Russian River to its confluence with Dry Creek) will be established using a hydrologic index based on water storage in Lake Mendocino. The definitions included in Term 20 of Permit 12947A shall be modified as follows as the definitions apply to the upper river:

- 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

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

- b. Normal water supply conditions exist in the absence of defined dry or critical water supply conditions.
2. During each week or partial week that water supply conditions result in lower minimum instream flows per this Order than would have been required pursuant to the Lake Pillsbury cumulative inflow index (Term 20 of Permit 12947A), Sonoma Water shall conduct the following fisheries monitoring tasks and associated recording and reporting requirements. A summary of the fisheries monitoring tasks described below shall be submitted to the State Water Board's Deputy Director for Water Rights (Deputy Director), CDFW, and NMFS by October 1, 2021 in accordance with NMFS and CDFW annual reporting requirements as more fully described in the NMFS Russian River Biological Opinion.
 - a. If flow conditions allow, Sonoma Water shall continue monitoring and recording daily numbers of adult salmon and steelhead moving upstream past the life cycle monitoring station at the Mirabel Dam fish ladder. The Mirabel Dam fish ladder and video counting station only functions when Mirabel Dam is in operation. Adult salmonid monitoring at this location can cease if high river flow necessitates deflation of Mirabel Dam. Mirabel fish ladder numbers shall be included in weekly the hydrologic status reports submitted to the Deputy Director, CDFW, NMFS, and the North Coast Water Board pursuant to Condition 4 of this Order.
 - b. If suitable water clarity allows redd and spawning surveys, Sonoma Water shall monitor the spawning activity of adult salmon and steelhead in representative reaches in Dry Creek, Alexander Valley, and the Upper River.
 - c. Sonoma Water shall provide fisheries status updates with the weekly reports described in Condition 4 of this Order. Sonoma Water shall consult at least biweekly with NMFS and CDFW. During consultation meetings, Sonoma Water shall share all relevant ongoing fisheries data including information gathered pursuant to the NMFS Biological Opinion and CDFW Coastal Monitoring Plan. Sonoma Water shall submit a summary report of consultation details to the Deputy Director within one week of each consultation meeting.

- d. To protect against stranding of fish when releases from Lake Mendocino are reduced under this Order, flow in the East Fork Russian River immediately below Coyote Dam shall not be reduced by more than 12 cfs/hr., with a minimum of 4 hours between the end of each flow reduction. Flow reduction shall not exceed 24 cfs per day. NMFS Santa Rosa Office (North Coast team) and CDFW shall be notified by email 48 hours in advance of ramping events that will reach 24 cfs per day. Ramping rates specified in this term may be revised upon consultation and concurrence with NMFS and CDFW and approval by the Deputy Director. If seeking such a revision, Sonoma Water shall submit to the Deputy Director a summary report of consultation details and documentation showing NMFS and/or CDFW concurrence that the Order should be amended to incorporate the revised ramping rates.
3. Sonoma Water shall continue ongoing monitoring in coordination with the United States Geological Survey (USGS) at the existing multi-parameter water quality sonde sites on the Russian River. By April 16, 2021, Sonoma Water shall consult with the North Coast Water Board to discuss possible water quality impacts of the reduced flows 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 additional consultation with the North Coast Water Board. 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 the terms and conditions of this Order may be made following consultation with the North Coast Water Board and approval by the Deputy Director.
4. During each week or partial week that water supply conditions result in lower minimum instream flows per this Order than would have been required pursuant to the Lake Pillsbury cumulative inflow index (Term 20 of Permit 12947A), Sonoma Water shall report, or make available on a publicly accessible website, 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 Lake Mendocino reservoir level, the rate of decline for Lake Mendocino, a 16-day cumulative rainfall forecast, current inflow from the Potter Valley Project, and Mirabel fish ladder numbers, and a summary of the available water quality data.
5. 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.

6. 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.
7. By April 1, 2021, Sonoma Water shall submit to the Deputy Director a report detailing a schedule of milestones and completion dates for additional activities necessary for the State Water Board's consideration of, and potential action on, Sonoma Water's pending petitions to permanently change Permit 12947A and other interrelated water rights. Such activities detailed in the report shall include, but are not limited to, Sonoma Water's completion of review, analysis, and documentation to meet the requirements of the California Environmental Quality Act.
8. Sonoma Water shall immediately notify the Deputy Director if any significant change in storage conditions in Lake Mendocino occurs that warrants reconsideration of this Order.
9. If the hydrologic index described by Condition 1 of this Order indicates conditions are Dry or Critically Dry following March 1, Sonoma Water shall submit to the Deputy Director a monthly Water Conservation Status Report for Sonoma Water's service area and other areas served by Lake Mendocino for the preceding month, starting April 1, 2021, and continuing until the expiration of this Order (July 26, 2021). The report shall specify the water conservation measures being implemented in the areas served by Lake Mendocino, and shall specify the water savings resulting from the measures during the term of this Order. Sonoma Water shall submit a final Water Conservation Report no later than August 31, 2021.
10. If the hydrologic index described by Condition 1 of this Order indicates conditions are Dry or Critically Dry following March 1, to facilitate releases of Lake Mendocino stored water with minimal operational buffers, Sonoma Water shall provide to the Deputy Director recommendations on what additional diversion information from other water users in the watershed may support improved real-time demand forecasts and reduced operational buffers for Lake Mendocino. Sonoma Water shall coordinate with the Mendocino County Russian River Flood Control on developing the recommendations and shall submit the recommendations by April 1, 2021.
11. Sonoma Water shall submit a proposed accounting methodology to the Deputy Director that characterizes the source and basis of right of water flowing into (inflow) and released from Lake Mendocino and the subsequent redirection of this water by Sonoma Water or its contractors. The accounting methodology shall be sufficient to define, distinguish, and quantify the following:
 - a. Inflows from water native to the watershed and flows originating from the Potter Valley Project (PVP) or the Eel River.
 - b. Releases from Lake Mendocino that constitute bypass of water native to the watershed, bypass of water from the Eel River or PVP, water released from

storage for downstream deliveries, or water released from storage to maintain instream flows.

- c. Releases from Lake Mendocino that are rediverted by Sonoma Water or its contractors.
- d. Sonoma Water may choose to include additional inflow or outflow categories not listed under a, b, and c in the accounting methodology. Explanations for each category and how it is defined shall be included in the proposed accounting methodology.

The proposed methodology shall be submitted by April 1, 2021, and any revisions requested by the Deputy Director shall be incorporated within 30 days of being provided to Sonoma Water. If the hydrologic index described by Condition 1 of this Order indicates conditions are Dry or Critically Dry following May 1, 2021, Sonoma Water shall submit, or make available on a publicly accessible website, weekly reports of daily average release rates and characterize those releases based on the accounting methodology approved by the Deputy Director.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

Erik Ekdahl, Deputy Director
Division of Water Rights
Date: FEB 04 2021