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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2021-

TO ADOPT DROUGHT-RELATED EMERGENCY REGULATION TO ADDRESS SEVERE WATER SHORTAGES IN THE RUSSIAN RIVER WATERSHED

WHEREAS:

1. On April 21, 2021, Governor Gavin Newsom declared a drought state of emergency in Mendocino and Sonoma counties due to drought conditions in the Russian River watershed ([April 2021 Proclamation](#)). The April 2021 Proclamation finds that it is necessary to act expeditiously to mitigate the effects of drought conditions in the Russian River watershed, both to ensure the protection of health, safety, and the environment and to prepare for potential sustained drought conditions. The April 2021 Proclamation directs the State Water Board to address the acutely dry conditions in the Russian River watershed and to consider (a) modifying requirements for reservoir releases or diversion limitations in the watershed to ensure adequate, minimal water supplies for critical purposes; and (b) adopting emergency regulations to curtail water diversions when water is not available at water rights holders' priority of right or to protect releases of stored water. As it pertains to these emergency regulations, the April 2021 Proclamation suspends the California Environmental Quality Act (CEQA) to the extent necessary to address the impacts of the drought in the Russian River watershed;
2. The Russian River watershed is experiencing extremely dry drought conditions in 2021, which is its second consecutive year of drought conditions. Cumulative rainfall in the watershed, as measured at the Ukiah Municipal Airport since the beginning of the water year on October 1, 2020, is just 13.12 inches. This cumulative precipitation is the lowest recorded at this location, which has an average of approximately 35 inches of cumulative rainfall by June 1. As of May 27, 2021, Lake Mendocino held just 35,562 acre-feet of its authorized storage capacity of 122,500 acre-feet, its lowest storage level ever recorded at this time of year. As of May 27, 2021, Lake Sonoma, which has an approximate capacity of 381,000 acre-feet, also recorded its lowest storage level ever for this time of year at 141,219 acre-feet. On April 20, 2021, the Mendocino County Board of Supervisors declared a local emergency and imminent threat of disaster due to drought conditions, and the Sonoma County Board of Supervisors declared a drought emergency on April 27, 2021;

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3. There is an urgent need to address severe water shortages in the Russian River watershed to ensure continued human health and safety supplies. There are twenty-five community water systems regulated by the State Water Board's Division of Drinking Water that serve a reported population of 61,000 users. Of these systems, twenty have domestic water sources on or within immediate proximity of the river's mainstem. Additionally, Sonoma County Water Agency (Sonoma Water) acts as a wholesale water system that supplies domestic water to eight cities and districts serving over 600,000 people. The California Water Code declares water supplies for consumption, sanitation, and cooking as a human right (Wat. Code, § 106.3); that domestic use is the highest priority of water use (Wat. Code, § 106); and provides water suppliers with authority to declare a water shortage emergency to allow sufficient water for human consumption, sanitation, and fire protection. (Wat. Code, § 350.) Additional efforts are needed in the Russian River watershed this year to ensure that these suppliers are able to continue to access water for these statutorily defined uses under critical drought conditions.
4. Sonoma Water holds water rights authorizing the storage, diversion and use of water impounded at Coyote Valley Dam, the dam that creates Lake Mendocino. State Water Board Decision 1610 requires Sonoma Water to release water from Lake Mendocino to ensure that specified flow requirements are met along the mainstem of the Upper Russian River until its confluence with Dry Creek. Decision 1610 requires maintenance of a minimum flow 25 cfs below Coyote Valley Dam on the East Fork of the Russian River and a minimum flow of 25 cfs during critical water supply conditions in the Russian River between the East Fork Russian River and the Upper Russian River's confluence with Dry Creek.
5. Central California Coast (CCC) coho salmon (*Oncorhynchus kisutch*) are listed as endangered under the state and federal Endangered Species Acts, and CCC steelhead (*Oncorhynchus mykiss*) (CCC steelhead) are listed as threatened under the federal Endangered Species Act. Since being listed, CCC coho salmon populations have continued to decline and the California Department of Fish and Wildlife (CDFW) and the National Marine Fisheries Service (NMFS) consider CCC coho salmon to be among the species at highest risk of extinction in the country.
6. Water supply and flood control operations in the Russian River watershed are subject to a 2008 Biological Opinion by the National Marine Fisheries Service (NMFS) to promote the survival and recovery of CCC steelhead, CCC coho salmon, and CCC Chinook salmon. Although the Biological Opinion included a Reasonable and Prudent Alternative directing Sonoma Water to petition the State Water Board to change the minimum flows required by Decision 1610 under normal water supply conditions, it did not find a need to change the 25 cfs flow required by Decision 1610 during critical water supply conditions.

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7. In a Temporary Urgency Change Petition (TUCP) filed by Sonoma Water on May 14, 2021, Sonoma Water stated that preserving 20,000 acre-feet in storage by October 1 is the minimum storage level to best ensure adequate supply for human health and safety needs and to meet minimum instream flow requirements, should dry conditions persist through the end of the year. Modeling projections prepared by Sonoma Water show that, should current hydrologic conditions and typical losses from the river related to diversions, evaporation, and seepage persist until October 1, Lake Mendocino would empty at some point in the next year in 10 out of the 108 years of historical conditions used to simulate potential future conditions. This status quo presents an unacceptable risk given Lake Mendocino's role in supplying water necessary for both minimum human health and safety and protected fisheries along the Russian River upstream of the confluence with Dry Creek. 20,000 acre-feet remaining in storage by October 1 is a reasonable storage target to reduce the likelihood of Lake Mendocino emptying.
8. Sonoma Water's Permit 12947A requires that it release water from Coyote Valley Dam to meet the demands of junior appropriators in the Russian River Valley in Sonoma County not to exceed 10,000 acre-feet per year, except to the extent that retention of stored water is necessary to ensure satisfaction of the minimum streamflows required by the permit. Given the severe shortage in Lake Mendocino storage levels, the entirety of the 10,000 acre-feet reservation is unavailable for junior appropriators because the stored water is necessary to insure satisfaction of the instream flow requirements.
9. Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations in certain drought years in order to "prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter's priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports";
10. Article X, section 2 of the California Constitution declares that the water resources of the state must be put to beneficial use in a manner that is reasonable and not wasteful. Relevant to the current drought conditions, the California Supreme Court has clarified that "what may be a reasonable beneficial use, where water is present in excess of all needs, would not be a reasonable beneficial use in an area of great scarcity and great need. What is a beneficial use at one time may, because of changed conditions, become a waste of water at a later time." (*Tulare Dist. v. Lindsay Strathmore Dist.* (1935) 3 Cal.2d 489, 567.) In applying the reasonableness doctrine, the State Water Board has a duty to consider the state's public trust resources, including fisheries. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.) The reasonable use

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doctrine applies to the diversion and use of both surface water and groundwater, and it applies irrespective of the type of water right held by the diverter or user. (*Peabody v. Vallejo* (1935) 2 Cal.2d 351.) Accordingly, this regulation is in furtherance of article X, section 2 during this drought emergency;

11. On March 22, 2021, the State Water Board mailed [Letters Regarding Ongoing Dry Conditions in Most California Watersheds](#) to all water right holders and agents regarding ongoing dry conditions in most California watersheds. These letters encouraged water right holders to plan and prepare for potential water shortages later this year. The letters also notified water right holders that accurate and timely reporting of water use data will help to provide critical information needed to manage the state's water resources;
12. On May 25, 2021, the State Water Board issued [Notices of Water Unavailability](#) for 2021 to all post-1914 water right holders in the Russian River watershed upstream of the confluence of Dry Creek and the Russian River, referred to as the Upper Russian River. The notices were developed by compiling water rights demand data from annual water use reports submitted to the State Water Board and comparing those demands against available supplies. The comparison of available and forecasted supplies against water rights demands allows a determination of which water rights priorities will not be satisfied during times of shortage. The State Water Board also issued [letters to all pre-1914 appropriative right holders and riparian right holders](#) upstream of the Dry Creek confluence warning of dry conditions, encouraging conservation of water, and stating that the State Water Board is developing emergency regulations that may affect their water rights;
13. Under present conditions, Lake Mendocino storage releases comprise virtually all water flowing in the mainstem of the Upper Russian River. What little natural flow exists is not sufficient to support even the most senior water rights.¹ Meanwhile, Sonoma Water has had to increase its releases from Lake Mendocino to offset reductions in Russian River stream flows due to diversions by other water users whose rights are to natural flow. These releases are emptying Lake Mendocino more rapidly at a time when its storage levels already are dangerously low.

¹ Basin-Wide Estimate of Monthly Supply vs. Demand – Upper Russian River 2021, https://www.waterboards.ca.gov/drought/north_coast/.

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14. Adoption of an emergency regulation is necessary to address the immediate and dire water shortages in the Russian River watershed. An emergency regulation will ensure the State Water Board can act in a timely manner to enforce the water right priority system with respect to all water right holders and safeguard the human right to water for residents of Sonoma and Mendocino Counties. While the entire watershed is experiencing unprecedented drought conditions, the severity of present and anticipated storage levels in Lake Mendocino warrant requiring all natural and abandoned flows in the watershed to support instream flows along the mainstem of the Russian River to reduce the extent to which releases of stored water must be made to maintain minimum flows to protect public trust resources. These actions will preserve water stored in Lake Mendocino to the extent possible in the event conditions remain dry in 2022.
15. Although Lake Sonoma is not at immediate risk of emptying, storage levels are at unprecedented lows for this time of year. Given the low cumulative precipitation in the watershed, emergency regulations to support and enforce findings that supplies are insufficient to meet demands in the Russian River downstream of Dry Creek, and in the Dry Creek watershed, are also necessary to ensure protection of senior water right holders and public trust resources.
16. The State Water Board is adopting the emergency regulation due to severe emergency drought conditions and the need for prompt action;
17. Emergency regulations adopted under Water Code section 1058.5 remain in effect for up to one year; and
18. Pursuant to Water Code section 7, the State Water Board is authorized to delegate authority to staff.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board adopts California Code of Regulations, title 23, sections 877, 877.1, 877.2, 877.3, 877.4, 877.5, 877.6, 878, 878.1, 878.1, 879, 879.1, and 879.2, as appended to this resolution as an emergency regulation;
2. The State Water Board staff will submit the regulation to Office of Administrative Law (OAL) for final approval;
3. If, during the approval process, State Water Board staff, the State Water Board, or OAL determines that minor corrections to the language of the regulation or supporting documentation are needed for clarity or consistency, the State Water Board Executive Director, the Deputy Director for the Division of Water Rights, or their designees may make such changes; and

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4. This regulation shall remain in effect for one year after filing with the Secretary of State unless the State Water Board determines that it is no longer necessary due to changed conditions, or unless the State Water Board renews the regulation due to continued drought conditions as described in Water Code section 1058.5.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 15, 2021.

Jeanine Townsend
Clerk to the Board