

DRAFT

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
WR ORDER 2004-__ DWR

**IN THE MATTER OF PERMITS 12947A, 12949, 12950, AND 16596
(APPLICATIONS 12919A, 15736, 15737, 19351)**

**Temporary Urgency Change in Permits 12947A, 12949, 12950, AND 16596
of Sonoma County Water Agency**

SOURCES: Dry Creek and Russian River

COUNTIES: Sonoma and Mendocino Counties

ORDER APPROVING TEMPORARY URGENCY CHANGE IN
PERMITS 12947A, 12949, 12950, AND 16596

1.0 SUBSTANCE OF PETITION

On June 29, 2004, SCWA filed a Petition with the State Water Resources Control Board (SWRCB) requesting approval of a Temporary Urgency Change to the subject permits pursuant to California Water Code section 1435. The Petition requests that from July 1 through December 31, 2004, minimum flows for Dry Creek and the Russian River be established based on dry-year criteria rather than normal-year criteria as defined in SWRCB Decision 1610. SCWA states “unusual hydrologic conditions in the Russian River this year warrant immediate State Water Board approval of this Petition to avoid the significant risks, particularly to adult Chinook salmon, that otherwise will occur from lower water levels in Lake Mendocino during the fall of 2004.”

2.0 BACKGROUND

SCWA’s Petition involves the following permits:

- Permit 12947A is for 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.

- Permit 12949 is for 20 cfs to be directly diverted year-round from the Russian River at the Wohler and Mirabel Park Intakes near Forestville.
- Permit 12950 is for 60 cfs to be directly diverted from the Russian River at the Wohler and Mirabel Park Intakes from April 1 through September 30 of each year.
- Permit 16596 is for year-round direct diversion of 180 cfs from the Russian River and storage of 245,000 afa in Lake Sonoma from October 1 of each year to May 1 of the succeeding year.

According to SCWA’s Petition, hydrologic conditions during Water Year 2002 caused Lake Mendocino storage levels to decline, thereby jeopardizing water supplies and listed Russian River salmonid fishery resources, particularly adult Chinook salmon, as well as severely impairing recreation at Lake Mendocino. Because of these problems, the Mendocino County Board of Supervisors declared a State of Emergency in 2002. SCWA asserts that Water Year 2004 presents similar risks.

SCWA requests that the 2004 water year be reclassified from a “normal year” to a “dry year” as defined in SWRCB Decision 1610 and included in SCWA’s permits.

Term 18 of SCWA’s Permit 12947A states:

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 cubic feet per second (cfs) at all times.
- (B) The following minimum flows in the Russian River between the East Fork Russian River and Dry Creek:
 - (1) During normal water supply conditions when the combined water in storage, including dead storage, in Lake Pillsbury and Lake Mendocino on May 31 of any year exceeds 150,000 acre-feet or 90 percent of the estimated water supply storage capacity of the reservoirs, whichever is less:

From June 1 through August 31	185 cfs
From September 1 through March 31	150 cfs
From April 1 through May 31	185 cfs

- (2) During normal water supply conditions and when the combined water in storage, including dead storage, in Lake Pillsbury and Lake Mendocino on May 31 of any year is between 150,000 acre-feet or 90 percent of the estimated water supply storage capacity of the reservoirs, whichever is less, and 130,000 acre-feet or 80 percent of the estimated water supply storage capacity of the reservoirs, whichever is less:

From June 1 through March 31	150 cfs
From April 1 through May 31	185 cfs

If from October 1 through December 31, storage in Lake Mendocino is less than 30,000 acre-feet	75 cfs
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- (3) During normal water supply conditions and when the combined water in storage, including dead storage, in Lake Pillsbury and Lake Mendocino on May 31 of any year is less than 130,000 acre-feet or 80 percent of the estimated water supply storage capacity of the reservoirs, whichever is less:

From June 1 through December 31	75 cfs
From January 1 through March 31	150 cfs
From April 1 through May 31	185 cfs

- (4) During dry water supply conditions 75 cfs

- (5) During critical water supply conditions 25 cfs

- (C) The following minimum flows in the Russian River between its confluence with Dry Creek and the Pacific Ocean to the extent that such flows cannot be met by releases from storage at Lake Sonoma under Permit 16596 issued on Application 19351:

- | | |
|---|---------|
| (1) During normal water supply conditions | 125 cfs |
| (2) During dry water supply conditions | 85 cfs |
| (3) During critical water supply conditions | 35 cfs |

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 redetermined monthly.
- (5) Cumulative inflow to Lake Pillsbury is the calculated algebraic sum of releases from Lake Pillsbury, increases in storage in Lake Pillsbury, and evaporation from Lake Pillsbury.
- (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.

Term 15 of both Permit 12949 and Permit 12950 require SCWA to allow sufficient water to bypass the points of diversion at the Wohler and Mirabel Park Intakes on the Russian River to maintain the following minimum flows to the Pacific Ocean:

- | | | |
|-----|---|---------|
| (1) | During normal water supply conditions | 125 cfs |
| (2) | During dry water supply conditions | 85 cfs |
| (3) | During critical water supply conditions | 35 cfs |

Term 13 of Permit 16596 sets forth the following minimum flows for Dry Creek and the Russian River:

- (A) The following minimum flows in Dry Creek between Warm Springs Dam and its confluence with the Russian River:
- (1) During normal water supply conditions:
 - 75 cfs from January 1 through April 30
 - 80 cfs from May 1 through October 31
 - 105 cfs from November 1 through December 30
 - (2) During dry or critical water supply conditions:
 - 25 cfs from April 1 through October 31
 - 75 cfs from November 1 through March 31
- (B) The following minimum flows in the Russian River between its confluence with Dry Creek and the Pacific Ocean, unless the water level in Lake Sonoma is below elevation 292.0 feet with reference to the National Geodetic Vertical Datum of 1929, or unless prohibited by the United States Government:
- (1) During normal water supply conditions 125 cfs
 - (2) During dry water supply conditions 85 cfs
 - (3) During critical water supply conditions 35 cfs

Note: Permits 12949, 12950, and 16596 use the same water-year classification definitions as those listed in Permit 12947A.

3.0 COMMENTS REGARDING THE PETITION

The Division of Water Rights (Division) received written comments from the National Marine Fisheries Service (NOAA Fisheries) and the California Department of Fish and Game (DFG) regarding the proposed temporary urgency change. These agencies agree that operating under dry year requirements for the remainder of 2004 is appropriate for the following stated reasons:

- This change in operations will allow SCWA to maintain greater storage levels in Lake Mendocino during the summer, which in turn will allow for cooler and more stable flows in the upper Russian River during the fall, when the listed fish species are most sensitive to flows and temperatures.
- If the next water year is a dry or critically dry year, extra storage in Lake Mendocino will be crucial for the continued survival of these fish during 2005.

- The reduction of instream flows in the lower Russian River will allow the sandbar at the river's mouth to remain closed during this summer and early fall and provide more stable and favorable conditions for fish in the Russian River Estuary, prevent undesirable early migrations of adult salmonids from the Pacific Ocean into the Russian River, and allow the agencies to evaluate water quality in the estuary.

The Division received comments from the Mendocino County Russian River Flood Control and Water Conservation Improvement District (Mendocino District) in support of the proposed temporary urgency change. The Mendocino District stated that reduced releases from Lake Mendocino are needed this water year to protect listed fish species and help maintain water supply conditions. The Mendocino District also referenced mechanical problems at Scott Dam (Lake Pillsbury) causing reduced flows to Lake Mendocino as further evidence that lower releases are needed.

The Division received comments from an attorney representing the California Sportfishing Protection Alliance; Pacific Coast Federation of Fishermen's Associations; Friends of the Russian River; L. Martin Griffin, Jr., M. D.; City of Fairfax Mayor Frank Egger; and others requesting that an Initial Study under the California Environmental Quality Act (CEQA) be performed for the action proposed by SCWA's petition, and that an evidentiary hearing be held by the SWRCB for the presentation of formal testimony regarding flow management in the Russian River and consideration of alternatives to SCWA's proposal.

Finally, the SWRCB received a large number of phone calls and letters opposing the Petition and requesting that the SWRCB conduct a hearing to consider the Petition and receive public comments.

4.0 COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT

SCWA, as Lead Agency as defined in CEQA, is preparing a Notice of Exemption for this project. SCWA states in its petition "the proposed action is exempt from the California Environmental Quality Act under Classes 7 and 8 (Title 14, California Code of Regulations, sections 15307 and 15308), because it [the action proposed by the petition] would be taken to assure the maintenance of natural resources and to maintain and protect the environment. Because the instream-flow requirements for *Dry* water supply conditions are part of the SWRCB's water-rights Decision 1610 and regularly occur, this proposed action would not cause unusual circumstances under Title 14, California Code of Regulations sections 15300.2(c)."

As the Responsible Agency under CEQA, the SWRCB will issue a Notice of Exemption for the temporary urgency change.

5.0 PUBLIC NOTICE OF THE PETITION

The SWRCB issued and delivered to SCWA on July 13, 2004, a notice of the proposed change. Pursuant to Water Code section 1438(b)(1), SCWA was required immediately to publish the notice in a newspaper having a general circulation, that is published within the counties where

the points of diversion lie. The SWRCB mailed the notice to the interested parties who had requested notice of proposed temporary urgency changes and to other known interested parties. The SWRCB also posted (1) a notice of the temporary urgency change and of the July 22, 2004 workshop, (2) a copy of the petition for temporary urgency change, and (3) a draft of this order on its web site.

6.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY URGENCY CHANGE

Chapter 6.6 of Part 2, Division 2, of the Water Code, commencing at section 1435, provides that any permittee or licensee who has an urgent need to change a point of diversion, place of use, or purpose of use from that specified in the permit or license may petition for a conditional temporary change order. The SWRCB's regulation, at California Code of Regulations, title 23, section 791(e), provides that the SWRCB shall follow as nearly as possible the procedures for changes in point of diversion, place of use, or purpose of use when processing petitions for other types of changes in water right permits and licenses. Accordingly, the procedures under Water Code section 1435 are applicable to changes to terms and conditions of water right permits and licenses.

The SWRCB must make the findings specified in section 1435(b) when issuing a temporary change order pursuant to Chapter 6.6. The required findings are:

1. The permittee or licensee 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, including findings to support change order conditions imposed to ensure that the change is in the public interest, and may be made without injury to any other lawful user of the water, and without unreasonable effect upon fish, wildlife, and other instream beneficial uses.

6.1 Urgency of the Proposed Change

Under Water Code section 1435 (c), an urgent need to make a proposed change exists when the SWRCB concludes 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. Additionally, the SWRCB shall not find the need urgent if it concludes that the petitioner has failed to exercise due diligence in petitioning for a change pursuant to other appropriate provisions of the Water Code. In this case, an urgent need exists for the proposed change because Water Year 2004 is following a pattern similar to 2002, when hydrologic conditions caused the storage in Lake Mendocino to decline to low levels. At the low storage levels, water supplies to support survival of listed Russian River salmonid fisheries, particularly adult Chinook salmon, are threatened, and recreation at Lake Mendocino is impaired. Without the proposed change, SCWA would need to release additional stored water from Lake Mendocino, resulting in a reduction in cold water resources needed for fishery protection and for cooler and more stable flows in the upper Russian River during the

fall, when the listed fish species are most sensitive to flows and temperatures.

Further, if Water Year 2005 is a dry or critically dry year, extra storage in Lake Mendocino will be crucial for the continued survival of these fish during 2005.

6.2 No Injury to Any Other Lawful User of Water

The SCWA is required to maintain specific flows at various locations in the Russian River. Therefore, SCWA must compensate for the diversion of water by both lawful and unlawful water users. It is anticipated that all of the SCWA water contractors and other legal users of water will receive the water to which they are entitled during the reduced flows specified in this order.

6.3 No Unreasonable Effect Upon Fish, Wildlife, or Other Instream Beneficial Uses

SCWA's petition only provided substantial evidence of urgency regarding the need to reduce flows in the Russian River above Healdsburg to the dry-year specification under Decision 1610. Accordingly, releases from Lake Sonoma into Dry Creek should remain at normal-year levels, and the resultant flow below Healdsburg should remain as high as possible (no less than ___ cfs) so that instream beneficial uses, including recreation, will not be unreasonably impaired.

6.4 The Proposed Change is in the Public Interest

The proposed change will help conserve cold water in Lake Mendocino so that it can be released for listed Russian River salmonid fisheries are present in the Russian River during the summer months. It is in the public interest to preserve water supplies for these beneficial uses when hydrologic circumstances intervene to cause dangerous reductions in these water supplies. A dry spring and higher than normal air temperature this year resulted in early increases in irrigation and municipal demands.

This approval will help maintain the level in Lake Mendocino at or above the minimum pool of 30,000 acre-feet for a longer period of time. It is estimated that Lake Mendocino will reach minimum pool by the end of September 2004 if the "normal year" water releases remain in effect. According to analyses provided by SCWA, it is expected that the "dry year" release levels will maintain the volume of Lake Mendocino above 30,000 acre-feet until late October 2004.

7.0 CONCLUSIONS

The SWRCB 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 permittee has an urgent need to make the proposed change;

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

ORDER

NOW, THEREFORE, IT IS ORDERED THAT: the petition filed by SCWA for temporary change in Permits 12947A, 12949, 12950, AND 16596 is approved, in part.

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

1. From the date of this order until December 31, 2004, minimum flows in the Russian River and Dry Creek, as specified in Term 18 of Permit 12947A, Term 15 of Permits 12949 and 12950, and Term 13 of Permit 16596, shall be modified as follows:
 - a. Minimum flow in the Russian River between the East Fork Russian River and Dry Creek:

75 cubic feet per second (cfs)
 - b. Minimum flow in Dry Creek between Warms Springs Dam and its confluence with the Russian River:

75 cfs from January 1 through April 30
80 cfs from May 1 through October 31
105 cfs from November 1 through December 31
 - c. Minimum flow in the Russian River between its confluence with Dry Creek and the Pacific Ocean, unless the water level in Lake Sonoma is below 292.0 feet with reference to the National Geodetic Vertical Datum of 1929, or unless prohibited by the United States Government:

_____ cfs**

(** resultant flow predicted by SCWA hydrologic modeling)

(0140400)

2. SCWA shall submit a plan to the Division of Water Rights that outlines flow-ramping measures as is necessary for the protection of fish during the reduction of releases from Lake Mendocino to the Russian River, as allowed by this order. The flow-ramping plan must be approved by the Chief, Division of Water Rights, prior to any flow reductions otherwise allowed by this order.

(0400500)

3. SCWA shall submit a temperature-monitoring plan for Lake Mendocino and the Russian River within two weeks of the adoption of this order. The plan shall provide a detailed description of temperature-monitoring efforts necessary for determining the temperature impacts resulting from changes approved by this order.

(0400500)

4. This order does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a “take” will result from any act authorized under this order, the permittee shall obtain authorization for an incidental take permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary urgency change authorized under this order.

(0000014)

5. The SWRCB reserves jurisdiction to supervise the temporary urgency change 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.

(0000600)

6. The SCWA shall immediately notify the SWRCB if any significant change in storage conditions in Lake Mendocino occurs that warrant reconsideration of this order.

(0090500)

ORIGINAL SIGNED BY:

[BOARD MEMBER}

Dated: