



Linda S. Adams
*Secretary for
Environmental Protection*

State Water Resources Control Board

Division of Water Rights

1001 I Street, 14th Floor ♦ Sacramento, California 95814 ♦ 916.341.5426
Mailing Address: P.O. Box 2000 ♦ Sacramento, California 95812-2000
FAX: 916.341.5400 ♦ www.waterrights.ca.gov



Arnold Schwarzenegger
Governor

NOTICE OF STATE WATER RESOURCES CONTROL BOARD ORDER APPROVING A TEMPORARY URGENCY CHANGE PETITION BY SONOMA COUNTY WATER AGENCY REGARDING PERMITS 12947A, 12949, 12950, AND 16596 (APPLICATIONS 12919A, 15736, 15737, 19351)

BACKGROUND

On May 10, 2007 the Division of Water Rights (Division) issued Order WR 2007-0015-DWR approving Sonoma County Water Agency's (SCWA) April 27, 2007 petition for a Temporary Urgency Change to the subject permits. SCWA submitted the petition pursuant to California Water Code section 1435. The Order approves the reduction in minimum instream-flow requirements for the Upper Russian River from 185 cfs as follows:

From May 1 through May 31: 100 cubic feet per second (cfs) at the confluence of the West Fork and East Fork Russian River; and (2) 125 cfs at the United States Geological Survey (USGS) Gage No. 1146200 located on the Russian River, north of Hopland.

From June 1 through October 28, 2007: 75 cfs, except that the flow shall be not less than 125 cfs at the USGS gages at both Hopland (No. 11462500) and Healdsburg (No. 11464000) on the Russian River, after a cumulative seasonal total of 200 adult Chinook salmon move upstream past the SCWA Mirabel inflatable dam.

Minimum instream flow requirements in the Russian River between its confluence with Dry Creek and the Pacific Ocean will be reduced from 125 cfs from May 1 through October 28, 2007 as follows:

- 85 cfs - instantaneous flow, as measured at the Hacienda Bridge near Guerneville.
- 125 cfs - instantaneous flow at the USGS gage on the Russian River at Healdsburg, within seven days after a cumulative seasonal total of 200 adult Chinook salmon move upstream past the SCWA Mirabel inflatable dam.

The Order, in effect, reduces minimum flows for the Russian River from normal-year criteria to dry-year criteria as defined in State Water Resources Control Board (State Water Board) Decision 1610.

California Environmental Protection Agency

No changes to the instream flow requirements for Dry Creek were requested. SCWA requested the change to prevent storage in Lake Mendocino from dropping to very low levels by the end of summer. SCWA states such low levels could severely impact threatened or endangered Russian River fish species, create serious water-supply impacts in Mendocino County and in Sonoma County's Alexander Valley, and harm Lake Mendocino and Russian River recreation.

SCWA submitted with the petition a document prepared by its staff titled, "Hydrologic Analysis of Lake Mendocino Storage Under Dry Spring Conditions" (Hydrologic Analysis) dated April 2007. The Hydrologic Analysis states that projections for Lake Mendocino water levels in 2007 are far more severe than water levels for water year 2002. During water year 2002, hydrologic conditions in the Eel River and Russian River watersheds caused Lake Mendocino storage levels to decline to dangerously low levels by the end of the dry season. Recreation at Lake Mendocino was severely impaired, and serious risks existed for water supply and state and federally listed Russian River salmonid fishery resources, particularly adult Chinook salmon. The Mendocino County Board of Supervisors declared a state of emergency. The storage levels in Lake Mendocino dropped to a low of 24,400 acre-feet in December 2002. Water year 2004 presented similar risks that were mitigated by SCWA filing for, and the State Water Board approving, a temporary urgency change petition that reduced the minimum instream flow requirements on the Russian River, thereby allowing more water to remain in Lake Mendocino for a longer period of time. Even though the lake levels in 2002 and 2004 were similar at the start of the irrigation season, end-of-season storage levels were approximately 14,000 acre-feet higher in 2004, largely due to the State Water Board's approval of the reductions in the instream flow requirements to conserve stored water.

In June 2004, the Federal Energy Regulatory Commission directed Pacific Gas and Electric Company to reduce the amount of water diverted through the Potter Valley Project (PVP) tunnel into the Russian River, further reducing inflow to Lake Mendocino. Additionally, structural damage to the PVP fish screens has resulted in an inability to operate the PVP at its full capacity. Since October 2007, approximately 50,000 acre-feet less has flowed through the PVP Tunnel than during the same period in 2002.

Without the requested reductions in the instream flow requirements, Lake Mendocino storage is predicted to drop to 8,000 acre-feet during October 2007 according to SCWA's Hydrologic Analysis. Lake Mendocino has never dropped below 12,000 acre-feet since it was first filled in 1959, and it is uncertain whether water could continue to be released from Lake Mendocino into the East Fork Russian River if lake storage were to drop to 8,000 acre-feet. If water cannot be released from Lake Mendocino during October and November 2007, there most likely will be severe impacts on the fishery and recreation resources that depend on the upper Russian River, and on water users that rely on the upper Russian River for their water supplies.

The California Department of Fish and Game and the National Marine Fisheries Service have submitted comment letters supporting SCWA's petition, with the addition of certain conditions.

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 collected from October 1 of each year to May 1 of the succeeding year.

Following is the language contained in SCWA's permits regarding minimum instream flow requirements:

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:

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|---|---------|
| (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:

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|-----|---|---------|
| (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 definitions of water year classification as those listed in Permit 12947A.

CEQA COMPLIANCE

SCWA, as Lead Agency as defined in the California Environmental Quality Act (CEQA), is proposing to prepare 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 State Water Board'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)"

The State Water Board has reviewed the information on record submitted by the SCWA and has determined that the petition qualifies for an exemption under CEQA. 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." (Title 14, California Code of Regulations, section 15307) The proposed action will assure the maintenance of a natural resource, i.e., the instream resources of the Russian River. 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." (Title 14, California Code of Regulations, section 15308) The proposed action will assure the maintenance of the environment, i.e., the instream environment of the Russian River. The State Water Board will issue a Notice of Exemption for the temporary urgency change.

STATE WATER BOARD'S STATUTORY PROVISIONS

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 State Water Board's regulation, at California Code of Regulations, title 23, section 791(e), provides that the State Water Board 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 State Water Board must make the findings specified in Water Code 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.

Any interested person may file an objection to the temporary urgency change. The State Water Board will give prompt consideration to any objection, and may hold a hearing after notice to all interested persons. Comments/objections and other items filed in response to this notice should focus on the issues that the State Water Board must evaluate, as set forth above. This notice, SCWA's petition, and Order WR 2007-0035-DWR can be viewed at <http://www.waterrights.ca.gov/application/petnot.htm>

Comments/objections and other items filed in response to this notice shall be submitted to the persons listed below. To be fully considered by the State Water Board, the comments/objections and other items must be received by 12:00 p.m. on Thursday, May 24, 2007.

Send any comments/objections and information to both:

Song Her
Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Randy Poole
General Manager/Chief Engineer
Sonoma County Water Agency
P. O. Box 11628
Santa Rosa, CA 95406

Email: commentletters@waterboards.ca.gov

Telephone comments or inquiries can be directed to the Division of Water Rights hotline for the SCWA petition at (916) 341-5426.

STEVEN HERERRA, CHIEF
Water Right Permitting Section

DATED: May 10, 2007