

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

**DIVISION OF WATER RIGHTS**

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In the Matter of License 9847 (Application 17913)

**City of Santa Cruz**

**ORDER RENEWING  
TEMPORARY URGENCY CHANGE ORDER**

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SOURCES: Newell Creek tributary to San Lorenzo River thence Monterey Bay

COUNTIES: Santa Cruz

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BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

**1.0 SUBSTANCE OF PETITION**

The City of Santa Cruz (right holder) requests that the State Water Resources Control Board (State Water Board) renew the Temporary Urgency Change Order (TUC Order) issued to right holder on February 14, 2014. The TUC Order temporarily authorized right holder to reduce the release or bypass amount required by License 9847 from a minimum flow of 1 cubic foot per second (cfs) to 0.2 cfs.

**2.0 BACKGROUND**

**2.1 Water Rights**

Right holder is authorized to divert up to 5,600 acre-feet of water per year from Newell Creek tributary to the San Lorenzo River thence Monterey Bay under License 9847 (Application 17913). The water is authorized for storage in Newell Creek Reservoir, formerly Loch Lomond Reservoir. The season of diversion is September 1 of each year through July 1 of the succeeding year, and the purposes of use are Municipal, Domestic, Industrial, Recreational and Fire Protection. License 9847 is subject to a release or bypass requirement of 1 cfs at Newell Creek Dam.

Right holder is also authorized under Permit 16123 to divert water from the San Lorenzo River, for the season of September 1 of each year through June 1 of the succeeding year, and under Permit 16601 to divert from the San Lorenzo River from October 1 of each year through June 1 of the succeeding year. Right holder also has two other licenses on the San Lorenzo River, as well as pre-1914 appropriative water rights on several small coastal streams.

**2.2 Petition for Temporary Urgency Change**

On January 31, 2014, right holder filed a Petition for Temporary Urgency Change requesting that the State Water Board temporarily reduce the release or bypass amount required by License 9847 from 1 cfs to 0.2 cfs. On February 14, 2014, the State Water Board issued the TUC Order approving the change subject to specific terms and conditions and subject to expiration on August 13, 2014.

On July 24, 2014, right holder filed a Petition for Temporary Urgency Change requesting renewal of the TUC Order for an additional 180 days.

### **2.3 Compliance with TUC Order**

Right holder has complied with all terms and conditions provided in the TUC Order. The three primary conditions of the TUC Order were to: 1) reduce water demand by 20% of normal water use by instituting water rationing and promoting conservation; 2) monitor the effects of the reduced release or bypass amount on fisheries resources and take all necessary steps to avoid harm to fish in Newell creek; and 3) submit a written report to the Deputy Director for Water Rights that summarizes all activities conducted to ensure compliance with the requirements of this Order and the amount of water use reduction achieved.

According to data submitted to the State Water Board by right holder, water use by right holder during 2014 has declined by 18.3%, 23% and 25% for the months of May, June and July during this year as compared to normal use. Monitoring data and observations from February 2014 to date by right holder indicate that the reduced release or bypass amount has not changed passage conditions in critical riffles nor created any areas of hydrologic discontinuity. In addition, on July 1, 2014, right holder submitted the required written report to the Deputy Director for Water Rights summarizing all activities conducted to ensure compliance with the requirements of the TUC Order.

### **3.0 PUBLIC NOTICE OF THE PETITION**

The State Water Board will issue, as soon as practicable, a notice of the right holder's petition to renew the TUC Order pursuant to Water Code section 1438, subdivision (a). Pursuant to Water Code section 1438, subdivision (b)(1), right holder is required to publish the notice in a newspaper having a general circulation and that is published within the counties where the points of diversion lie. The State Water Board will also mail or provide electronic copy of the notice to the interested parties who have requested notice of proposed temporary urgency changes and to other known interested parties. The State Water Board will post the notice of the Petition for Temporary Urgency Change and a copy of the petition (and accompanying materials) on its website.

### **4.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Pursuant to the California Environmental Quality Act (CEQA), right holder filed a Notice of Exemption (NOE) on August 7, 2014. Right holder has determined that the change is exempt from the CEQA because it is an emergency project, it is carried out consistent with a state of emergency proclaimed by the Governor on January 17, 2014, it is consistent with the statutory exemption criteria for an emergency project, and it is consistent with a categorical exemption for existing facilities. (Pub. Resources Code, § 21080, subd. (b)(3), (4); Cal. Code Regs., tit. 14, § 15269, subd. (a) & (c), 15301.) Right holder's basis for claiming the exemptions is that its water situation continues to be dire, and that its only source of stored water for drought protection is being depleted and must be protected to mitigate the effects of the drought emergency declared by the Governor and to prevent worse effects.

The State Water Board has reviewed the information submitted by the right holder and has made its own independent finding that the change is consistent with multiple exemptions under the CEQA. The proposed change is exempt from the CEQA because it is an emergency project that is being carried out consistent with a state of emergency as proclaimed by the Governor on January 17, 2014, and expanded upon in an April 25, 2014 proclamation, it is consistent with the statutory exemption criteria for an emergency project, and it is consistent with a categorical exemption for existing facilities. (Pub. Resources Code, § 21080, subd. (b)(3), (4); Cal. Code Regs., tit. 14, §§ 15269, subd. (a) & (c), 15301.)

## **5.0 CRITERIA FOR RENEWAL OF TUC ORDER**

Water Code section 1441 authorizes the State Water Board to renew a temporary urgency change order in accordance with the Water Code provisions for temporary urgency changes. 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 file a Petition for Temporary Urgency Change with the State Water Board. The State Water Board's regulations set forth the filing and other procedural requirements applicable to a Petition for Temporary Urgency Change. (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 procedural requirements that apply to changes in point of diversion, place of use, or purpose of use. (*Id.*, § 791, subd. (e).)

Before approving a Petition for Temporary Urgency Change or a renewal thereof, the State Water Board must make the following findings (Wat. Code, § 1435, subd. (b).):

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.

A discussion of each finding and the information necessary to support each finding is provided below.

### **5.1 Continued Urgent Need for the Change**

The TUC Order reduced the release or bypass requirement for Newell Creek Reservoir from 1 cfs to 0.2 cfs in order to preserve the water remaining in storage so that there will be sufficient water to meet essential health and safety needs. Current inflow to Newell Creek Reservoir is 0.12 cfs, which is only 60 percent of the temporary fish release. As upstream flows inevitably recede further and evaporation and transpiration remove water from the reservoir, the gap between inflow and outflow will become greater. Therefore, the right holder's release of stored water pursuant to the 1957 agreement is depleting right holder's only source of stored water for drought protection.

During the effective period of the TUC Order, right holder has implemented Stage 3 (Water Shortage Emergency) water restrictions with a goal to reduce system-wide water use by 25 percent, and right holder is projecting that the goal was met in the month of July. This reduction in water use, combined with the reduction of the release or bypass amount, will help maintain Newell Creek Reservoir storage at or above 45 percent of its total capacity by the end of the season to ensure adequate carryover storage is available next year. The changes approved by the TUC Order have been critical to helping the right holder achieve its storage goal thus far. However, supply projections for end of season storage without a renewal of the TUC Order will be 539.6 feet or 41.2 percent of capacity. Consequently, without renewal of the TUC Order, right holder will fail to achieve its use reduction goal and reservoir storage will be inadequate to meet essential health and safety needs.

### **5.2 No Injury to Any Other Lawful User of Water**

According to the State Water Board records, the right holders downstream of Newell Creek Dam consist of seven riparian claims filed in Statements of Water Diversion and Use, and the appropriative rights held by right holder. Water being released from storage in Newell Creek for environmental purposes would not be available for diversion under the seven riparian claims.

### **5.3 No Unreasonable Effect Upon Fish, Wildlife, or Other Instream Beneficial Uses**

Right holder's petition to renew the TUC Order does not request any changes to the substance of the terms of the TUC Order, nor does it request the inclusion of additional terms. Consequently, all terms of the TUC Order requiring that right holder monitor the effects of the reduced release or bypass amount on fisheries resources and take all necessary steps to avoid harm to fish in Newell Creek will continue in effect.

### **5.4 The Proposed Change is in the Public Interest**

Since issuance of the TUC Order, right holder has implemented Stage 3 of its March 2009 *Water Shortage Contingency Plan*. If the current weather pattern continues, the volume of water available for health and safety purposes will continue to be threatened. Right holder estimates that the TUC Order has enabled the right holder to save approximately 80 million gallons of storage in the Newell Creek Reservoir during the first five months that it has been in effect, significantly benefiting right holder's ability to manage the current water shortage emergency. Continued conservation of the right holder's limited drought protection supply can be achieved through a combination of reductions in water use and the Newell Creek Dam release requirement.

### **6.0 STATE WATER BOARD AUTHORITY**

Resolution 2012-0029 delegates to the Deputy Director for Water Rights the authority to act on temporary urgency change petitions, and the Deputy Director for Water Rights has redelegated the authority.

### **7.0 CONCLUSIONS**

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1435, subdivision (b).

Based on the available information, the State Water Board finds that:

1. Right holder has an urgent need to make the proposed change;
2. The change may be made without injury to any other lawful user of water;
3. The change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses;
4. The change is in the public interest.

### **ORDER**

**NOW, THEREFORE, IT IS ORDERED THAT:** the Temporary Urgency Change Order issued by the State Water Board on February 14, 2014 is renewed for an additional 180 days.

All existing terms and conditions of License 9847 and the February 14, 2014 Order remain in effect, except that Condition 3 of the February 14, 2014 Order is rescinded and the following conditions are added to the February 14, 2014 Order:

1. The temporary change authorized by this Order is not effective unless right holder maintains a program to reduce water demand by a minimum of 20% consistent with its March 2009 *Water Shortage Contingency Plan*.

Right holder shall submit to the Deputy Director for Water Rights a written report within 15 days of the end of each month (monthly status update) that provides a summary of compliance with this term. The monthly status update shall, at a minimum, include a description of the right holder's actions to date to comply with the requirements of this term and the results of such actions, including but not limited to the amount of water demand reduction relative to baseline water demand. The data submitted for the amount of water demand reduction shall include both monthly and aggregate annual to date information and shall be compared to baseline water demand. When the monthly status update reflects that the right holder is not achieving the minimum water demand reduction the right holder shall also include additional actions the right holder has adopted and/or implemented to meet the demand reduction and identify the date when such additional actions will be fully implemented as part of the monthly status update.

Failure to achieve demand reduction may result in modification of this Order to limit the extent of the approved action at the discretion of the Deputy Director for Water Rights.

2. By February 15, 2015, right holder shall submit to the Deputy Director for Water Rights a written report that summarizes all activities conducted to ensure compliance with the requirements of this Order and the February 14, 2014 Order. The report shall, at a minimum, include the following:
  - a. The results of the fishery surveys completed in Newell Creek since February 14, 2014;
  - b. A description of the right holder's efforts to comply with the requirements of this Order since February 14, 2014; and
  - c. The amount of reduction of water use since February 14, 2014, including percentage of normal use, achieved as a result of the right holder's efforts to comply with the requirements of this Order.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:  
LES GROBER FOR

*Barbara Evoy, Deputy Director  
Division of Water Rights*

Dated: AUG 13 2014