

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 the San Lorenzo River thence Monterey Bay

COUNTY: 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 the right holder on February 14, 2014 and subsequently renewed on August 13, 2014 and February 10, 2015. The TUC Order temporarily authorized the 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 CALIFORNIA'S ONGOING DROUGHT CONDITIONS**

**2.1 Governor's Proclamations of a Drought State of Emergency**

On January 17, 2014, the Governor of the State of California proclaimed a State of Emergency and directed State officials to take all necessary actions to make water immediately available. On April 25, 2014, the Governor proclaimed a Continued State of Emergency and issued an executive order to speed up actions necessary to reduce harmful effects of the drought, and he called on all Californians to redouble their efforts to conserve water. On December 22, 2014, the Governor issued an executive order citing the previous order and extending the operation of provisions through May 31, 2016. Most recently, on April 1, 2015, the Governor issued Executive Order B-29-15, which included key provisions such as: (1) ordering the State Water Board to impose restrictions to achieve a 25 percent reduction in potable urban water usage through February 28, 2016; (2) directing Department of Water Resources (DWR) to lead a statewide initiative, in partnership with local agencies, to collectively replace 50 million square feet of lawns and ornamental turf with drought tolerant landscapes; and (3) directing the California Energy Commission to implement a statewide appliance rebate program to provide monetary incentives for the replacement of inefficient household devices.

Pursuant to the Governor's April 1, 2015 executive order, the orders and provisions in the January 17, 2014 and April 25, 2014 Proclamations and Executive Orders B-26-14 and B-28-14 remain in full force and effect except as modified in the April 2015 Executive Order.

## **2.2 State Water Board's Emergency Regulation for Statewide Urban Water Conservation**

The Governor's April 1, 2015 executive order directs the State Water Board to impose restrictions resulting in a 25 percent savings in potable urban water usage through February 2016. On May 5, 2015, the State Water Board adopted emergency regulations pursuant to sections 11346.1 and 11349.6 of the Government Code and section 1058.5 of the Water Code (hereafter, conservation emergency regulations). On May 18, 2015 the Office of Administrative Law approved the conservation emergency regulations and they are currently in effect. In accordance with the conservation emergency regulations for urban water suppliers, the conservation standard for the City of Santa Cruz is 8 percent. To avoid duplicative requirements, this Order allows the right holder to report on its compliance with the conservation emergency regulations.

## **3.0 BACKGROUND**

### **3.1 Water Rights**

The 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.

The 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. The right holder also has two other licenses on the San Lorenzo River, as well as pre-1914 appropriative water right claims on several small coastal streams.

### **3.2 Petition for Temporary Urgency Change**

On January 31, 2014, the 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 a TUC Order approving the change subject to specific terms and conditions and was subject to expiration on August 13, 2014.

On July 24, 2014, the right holder filed a Petition for Temporary Urgency Change requesting renewal of the TUC Order for an additional 180 days. On August 13, 2014, the State Water Board issued a TUC Order that renewed the original TUC Order approving the change subject to specific terms and conditions and was subject to expiration on February 9, 2015.

On February 3, 2015, the right holder filed a Petition for Temporary Urgency Change requesting renewal of the TUC Order for an additional 180 days. On February 10, 2015, the State Water Board issued a TUC Order that renewed the original TUC Order approving the change subject to specific terms and conditions and is subject to expiration on August 9, 2015.

On July 31, 2015, the right holder filed a Petition for Temporary Urgency Change requesting renewal of the TUC Order for an additional 180 days.

### **3.3 Compliance with Temporary Urgency Change Order**

The right holder has substantially 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 percent 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 the right holder, the monthly water use by the right holder since issuance of the TUC Order on February 14, 2014 has been reduced by an average of 24.8 percent as compared to baseline water demand, with January 2015 through March 2015 being the only months where the 20 percent reduction target was not achieved. From early December 2014 to early April 2015, the right holder suspended penalties associated with water rationing due in part from somewhat improved water conditions and the Stage 3 water rationing program being designed to provide 95 percent of indoor residential demand and 33 percent of outdoor demand. As little to no irrigation occurs in winter, penalty rates to reduce such demand were irrelevant and were suspended during such time. Monitoring data and observations from February 2014 to date by the 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, the right holder has submitted the required written reports to the Deputy Director for Water Rights summarizing all activities conducted to ensure compliance with the requirements of the TUC Order.

#### **4.0 PUBLIC NOTICE OF THE PETITION**

The State Water Board issued a notice of the right holder's petition to renew the TUC Order pursuant to Water Code section 1438, subdivision (a) on August 5, 2015. Pursuant to Water Code section 1438, subdivision (b)(1), the 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 are located. The State Water Board also mailed or provided 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 posted the notice of the Petition for Temporary Urgency Change and a copy of the petition (and accompanying materials) on its website.

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

Pursuant to the California Environmental Quality Act (CEQA), the right holder filed a Notice of Exemption (NOE) on July 24, 2015. The right holder has determined that the change is exempt from the CEQA because it is an emergency project, it is carried out in accordance with the 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.) The 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.)

## **6.0 CRITERIA FOR RENEWAL OF A TEMPORARY URGENCY CHANGE 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.

### **6.1 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 would be sufficient water to meet essential health and safety needs. During the effective period of the TUC Order, the right holder implemented Stage 3 (Water Shortage Emergency) water restrictions with the goal to reduce system-wide water use by 25 percent. A minimum 20 percent reduction in water use was achieved from May 2014 through December 2014 and April 2015 to present. This reduction in water use, combined with the reduction of the release or bypass amount since the February 14, 2014 TUC Order, helped to maintain adequate storage capacity of Newell Creek Reservoir. The changes approved by the TUC Order have been critical to helping the right holder achieve its storage goal thus far.

The closest weather station to Newell Creek Reservoir is located in the town of Ben Lomond. According to data recorded at that station, the total precipitation for the period of February 10, 2015 through July 31, 2015 is at 19.3 percent of the historical average. The end-of-month storage capacity for Newell Creek Reservoir for June 2015 was approximately 82 percent. The inflow to Newell Creek Reservoir on July 30, 2015 was 0.1 cfs, which is only 10 percent of the 1 cfs release or bypass amount that is normally required by License 9847. Current flow at the Big Trees USGS gage (which has the longest term record in the San Lorenzo watershed, and which Newell Creek is tributary to) is significantly less than the 25<sup>th</sup> percentile flow at this time. The United States Drought Monitor indicates that the Newell Creek watershed is in a condition of extreme drought, a condition that likely will persist or intensify.

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 the right holder's only source of stored water for drought protection. Consequently, without renewal of the TUC Order, the right holder will fail to maintain adequate reservoir storage to meet essential health and safety needs.

## **6.2 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 the right holder. Water being released from storage in Newell Creek for environmental purposes would not be available for diversion under the seven riparian claims.

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

The 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. California Department of Fish and Wildlife and National Marine Fisheries Service both give their concurrence regarding the right holder's petition to renew the TUC Order. Consequently, all terms of the TUC Order requiring that the 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.

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

Since the last renewal of the TUC Order approved on February 10, 2015, the State Water Board issued on May 5, 2015 Resolution No. 2015-0032 adopting Emergency Conservation Regulations per California Code of Regulations Title 23 Section 863, 864, 865, 866. As part of these conservation emergency regulations, the right holder is required to prepare and submit to the State Water Board by the 15<sup>th</sup> of each month a monitoring report documenting the amount of potable water produced compared to the amount produced in the same calendar month in 2013 and provide statistics on water conservation compliance and enforcement efforts. The previous TUC Order has required that the right holder maintains a program to reduce water demand by a minimum 20 percent. The right holder is now required to meet the water use reductions as set forth in the conservation emergency regulations, thus the term requiring implementation of a program to reduce water use by 20 percent is duplicative. The right holder will instead provide copies of reporting provided under Water Code Section 865 subdivision (b)(2).

The right holder has implemented Stage 3 of its March 2009 *Water Shortage Contingency Plan* as part of their December 2010 *Urban Water Management Plan*. If the current weather pattern continues, the volume of water available for health and safety purposes will continue to be threatened. The right holder estimates that the TUC Order has enabled the right holder to save approximately 275 million gallons of storage in the Newell Creek Reservoir since it has been in effect, significantly improving the 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.

## **7.0 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.

## **8.0 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. The 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, and subsequently renewed by Orders dated August 13, 2014 and February 10, 2015, is renewed for an additional 180 days.

All conditions from the TUC Orders dated February 14, 2014, August 13, 2014 and February 10, 2015 are rescinded. All existing terms and conditions of License 9847 remain in effect, except as temporarily amended by the following additional terms:

1. Notwithstanding the provisions of the Stipulation and Agreement, received by the State Water Board on September 15, 1958 and in effect between the California Department of Fish and Wildlife and the City of Santa Cruz, Right holder shall at all times release or bypass from or through Newell Creek Reservoir Dam into the natural streambed of Newell Creek immediately below said dam the following minimum amount: 0.2 cubic foot per second
2. Right holder shall monitor the effects of the amended release or bypass amount on fisheries resources and shall take all necessary steps to avoid harm to fish in Newell Creek. Right holder shall conduct surveys along Newell Creek during the period of the change in order to: (1) identify areas where hydrologic continuity does not exist and (2) conduct thalweg depth surveys at critical riffles. In the event that hydrologic continuity is interrupted or critical riffle depths are inadequate, Right holder shall immediately take all reasonable steps to avoid harm to fish in Newell Creek, including but not limited to an increase in the rate of water released from Newell Creek Reservoir above 0.2 cfs if required.

Right holder shall continue to implement and comply with the fisheries monitoring plan as submitted to the State Water Board on February 28, 2014.

3. Use of water under this temporary urgency change order is contingent on compliance with the following: (a) the Urban Water Management Planning Act (Wat. Code, § 10610 et seq.), and (b) the May 5, 2015 State Water Resources Control Board Resolution No. 2015-0032 adopting Emergency Conservation Regulations per California Code of Regulations Title 23 Section 863, 864, 865, 866.

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 including copies of reporting provided under Water Code Section 865 subdivision (b)(2).

4. By March 1, 2016, the 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 TUC Orders issued on February 14, 2014, August 13, 2014, and February 10, 2015. 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.
5. Right holder shall immediately notify the State Water Board if any significant change in storage conditions in Newell Creek Reservoir occurs that warrants reconsideration of this Order.
6. This Order does not authorize any act that results in the taking of a 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 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 Right holder shall obtain authorization for an incidental take permit prior to construction or operation. Right holder shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary urgency change authorized under this Order.

The State Water Board 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.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:  
LESLIE F. GROBER, FOR

*Barbara Evoy, Deputy Director*  
*Division of Water Rights*

Date: AUG 10 2015