

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

DIVISION OF WATER RIGHTS

**In the Matter of Permit 12947B
(Application 12919B)**

Mendocino County Russian River Flood Control and Water Conservation Improvement District

ORDER APPROVING TEMPORARY URGENCY CHANGE

SOURCE: East Fork Russian River

COUNTIES: Mendocino

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF TEMPORARY URGENCY CHANGE PETITION

On August 8, 2014, Mendocino County Russian River Flood Control and Water Conservation and Improvement District (District) filed a Temporary Urgency Change Petition (TUCP) with the State Water Resources Control Board (State Water Board) requesting approval of changes to Permit 12947B pursuant to Water Code section 1435. The TUCP was subsequently revised and re-submitted on August 18, 2014. The revised August 18, 2014 TUCP is considered herein. The August 18, 2014 TUCP requests the following temporary changes: (1) addition of four drought emergency terms to compliment and support a TUCP filed by Sonoma County Water Agency (SCWA) on August 14, 2014, (2) changes to the place of use for irrigation to reflect the actual area served by the District, and (3) a 100-acre increase in the net acreage limitation within the gross place of use for irrigation purposes.

2.0 BACKGROUND

2.1 Water Right Permit 12947B

The District is authorized to divert up to 122,500 acre-feet to shared storage in Lake Mendocino and 53 acre-feet by direct diversion per year under Permit 12947B (Application 12919B). The District is limited to a combined diversion and rediversion of stored water under permit 12947B not to exceed 8,000 acre-feet per year. The season of diversion is January 1 to December 31 of each year, and the purposes of use are Recreation, Municipal, Industrial, Domestic, and Irrigation. Irrigation under Permit 12947B is limited to the place of use as shown on a map on file with the State Water Board and is subject to an annual net limitation of 4,096 acres within a larger gross area.

2.2 Background Information for the Petition for Temporary Urgency Change

The District submitted an attachment with the TUCP (attachment 3) describing current conditions at Lake Mendocino and in the District's service area. With respect to current conditions at Lake Mendocino, the attachment indicates that as of July 15, 2014, the volume of water stored in Lake Mendocino was approximately 42,326 acre feet, which is less than 39 percent of capacity. At current rates, releases from Lake Mendocino to maintain minimum flows, will reduce lake storage to less than 20,000 acre feet by November 1, 2014. Accordingly the District requests the addition of the four drought emergency terms to

Permit 12947B. These terms are included in attachment 1 to the TUCP and are intended to conserve storage in Lake Mendocino through water retention and demand reduction. The District describes these terms as complimenting and supporting the TUCP filed by SCWA on August 14, 2014, for temporary reductions in the instream flow requirements. SCWA holds water right Permit 12947A (Application 12919A), which also authorizes diversion to storage in Lake Mendocino. As a condition of Permit 12947A, SCWA must bypass or release water from Lake Mendocino in order to maintain minimum instream flows in the Russian River. One of the changes sought by SCWA's TUCP, which was filed and processed in coordination with the District's TUCP, is a reduction in the minimum instream flows required as a condition of Permit 12947A in order to conserve water stored in Lake Mendocino.

The District submitted a long term change petition on May 14, 2014, to request changes and corrections to the place of use for irrigation to reflect the actual areas served by the District. With respect to current conditions in the District's service area, attachment 3 indicates that the District has reached the maximum net acreage for irrigation purposes (4,096 acres). The District has identified lands within the service area boundaries that have no alternate source of water and vineyards which will die without an emergency supply of water in 2014. These lands are located outside of the permitted place of use for irrigation. Accordingly, the District requests temporary approval of the changes to the gross place of use for irrigation requested in the long-term change petition and a 100-acre increase to the net acreage limitation for irrigation in order to supply water stored under Permit 12947B to lands within the District on an emergency basis. According to the District, no more than 20 acre feet of water would be needed in 2014 to provide emergency water supplies to this land. Per the information in attachment 3, the District has water available for this emergency purpose because it imposed mandatory conservation upon all of its customers beginning in March of 2014. Through this mandatory conservation in 2014, the District's water use has been reduced on average over 27 percent than the District used in 2013. The demand requirement for the additional place of use (20 acre feet) represents less than 1 percent of the amount of water conserved thus far in 2014.

3.0 COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT

Ordinarily, the State Water Board must comply with any applicable requirement of California Environmental Quality Act (CEQA) prior to issuance of any order approving a TUCP pursuant to Water Code section 1435 (See Cal. Code Regs., tit. 23, § 805.) However, on April 25, 2014, Governor Edmund G. Brown, Jr. issued a Proclamation of a Continued State of Emergency, which included a directive to suspend the requirements of CEQA as applied to certain actions called for in the proclamation to allow those actions to take place as quickly as possible. This suspension applies to actions to immediately and expeditiously process requests to move water to areas of need as described in Directive 2 of the Governor's April 25, 2014 proclamation, and to actions to conserve water as described in Directive 3 of the proclamation.

The purpose of the changes sought by the TUCP are to move water to areas of need and to conserve water consistent with Directives 2 and 3 of the Governor's proclamation. Accordingly, approval of those changes is not subject to CEQA.

4.0 PROCEDURAL REQUIREMENTS CONCERNING THE TEMPORARY URGENCY CHANGE PETITION

Pursuant to Water Code section 1438, the State Water Board may issue a temporary urgency change order in advance of the required notice. The State Water Board will issue and deliver to the District as soon as practicable a notice of the temporary urgency change order pursuant to Water Code section 1438, subdivision (a). Pursuant to Water Code section 1438, subdivision (b)(1), the District 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. In addition, the State Water Board will post the notice of the temporary urgency change order on its website, along with the TUCP (and accompanying materials). The State Water Board also will distribute the notice through an electronic notification system.

Any interested person may file an objection to a temporary urgency change. (*Id.*, subd. (d).) The State Water Board must promptly consider and may hold a hearing on any objection. (*Id.*, subd. (e).) State Water

Board Resolution 2012-0029 delegates to the Deputy Director for Water Rights the authority to act on a temporary urgency change petition if there are no objections to the petition. (Resolution 2012-0029, ¶ 4.4.1.)

The State Water Board exercises continuing supervision over temporary urgency change orders and may modify or revoke temporary urgency change orders at any time. (Wat. Code, §§ 1439, 1440.) Temporary urgency change orders expire automatically 180 days after issuance, unless they are revoked or an earlier expiration date is specified. (*Id.*, § 1440.)

5.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY URGENCY CHANGE

Water Code section 1435 provides that a permittee or licensee who has an urgent need to change the 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 regulations set forth the filing and other procedural requirements applicable to TUCP's. (Cal. Code Regs., tit. 23, §§ 805, 806.) The State Water Board's regulations also clarify that requests for changes to permit or license conditions other than changes in point of diversion, place of use, or purpose of use may be filed, subject to the same filing and procedural requirements that apply to changes in point of diversion, place of use, or purpose of use. (*Id.*, § 791, subd. (e).)

Before approving a temporary urgency change, the State Water Board must make the following findings:

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.

(Wat. Code, § 1435, subd. (b)(1-4).)

5.1 Urgency of the Proposed Change

Under Water Code section 1435, subdivision (c), an "urgent need" means "the existence of circumstances from which the board may in its judgment conclude 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"

An urgent need exists for the addition of the drought emergency terms in light of the predicted severe depletion of water supply storage in Lake Mendocino by November 1, 2014. Approval of the SCWA TUCP and the addition of the drought emergency terms pursuant to the District's TUCP will allow SCWA and the District to retain valuable surface water in storage.

An urgent need exists for the changes to the place of use and the 100-acre increase in the net acreage limitation within the gross place of use for irrigation purposes because the affected acreage has no other source of water in 2014 and, absent deliveries from the District, would experience damage or loss of permanent crops.

5.2 No Injury to Any Other Lawful User of Water

The addition of the drought emergency terms to Permit 12947B will have the effect of conserving storage in Lake Mendocino and therefore does not have the potential to injure any other lawful user of water.

The changes to the place of use and the 100-acre increase in the net acreage limitation within the gross place of use for irrigation purposes will be served under this order using water that was previously diverted to

storage in Lake Mendocino pursuant to the terms and conditions of Permit 12947B. No other lawful users of water are entitled to this water. Accordingly, the place of use adjustments will not result in injury.

5.3 No Unreasonable Effect upon Fish, Wildlife, or Other Instream Beneficial Uses

The addition of water conservation terms will not have any unreasonable effect upon fish, wildlife, or other instream beneficial uses. The terms will result in a greater amount of storage in Lake Mendocino and more efficient and consistent releases from storage by SCWA due to demand forecasting.

The changes to the place of use and the 100-acre increase in the net irrigable acreage within the gross place of use will be served under this order using water that was previously diverted to storage in Lake Mendocino pursuant to the terms and conditions of Permit 12947B. Accordingly, these changes will not result in a decrease in natural and abandoned flows in the Russian River. It is possible that these changes will reduce storage in Lake Mendocino, thereby affecting slightly the availability of stored water to support flows later in the summer and fall. The District has consulted with National Marine Fisheries Service and California Department of Fish and Wildlife and reported that both agencies are supportive of the District's TUCP. In addition, given the amount of water involved (20 acre-feet) is small as compared to the amount of water previously conserved by the District, and the amount of water that will be conserved due to the addition of the drought emergency terms. Under these circumstances, and taking into consideration the potential for loss of permanent crops, any effects to fish, wildlife, or other instream beneficial uses due to a slight decrease in storage is reasonable.

According to the District, the place of use changes will not result in conversion of any land, but will be limited to continued historical uses on lands that are currently used for agriculture and irrigated within the boundaries of the District service area. Therefore, no effects to fish, wildlife, or other instream beneficial uses are anticipated as a result of the temporary changes in the place of use. To further ensure the place of use changes will not cause unreasonable effects, approval of the TUCP will be subject to terms limiting new service contracts during the term of this order to areas of permanent crops that have been historically irrigated for agriculture, prohibiting take of threatened and endangered species, and reserving State Water Board authority pursuant to Water Code Section 1439 to supervise diversion and use of water under this temporary change order.

5.4 The Proposed Change is in the Public Interest

The addition of drought emergency terms will help conserve stored water in Lake Mendocino. Conservation of stored water in Lake Mendocino is in the public interest and will insure that critical water supplies continue to be available through 2014. The changes to the place of use and the 100 acre increase in the net acreage limitation within the gross place of use for irrigation purposes will prevent the damage or loss of permanent crops. These changes will not result in injury to other legal of users of water or unreasonable effects to fish, wildlife, or other instream beneficial uses for the reasons stated above. Accordingly, these changes are also in the public interest.

6.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1435. The findings of this Order are based on unique circumstances created by the drought, and are intended to support only approval of the District's TUCP. Separate findings will need to be made to support approval of the long term change petition filed by the District on May 14, 2014 pursuant to Chapter 10 of Division 2 of Part 2 of the Water Code.

I conclude that, based on the available evidence:

1. The permittee has an urgent need to make the proposed changes;

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

ORDER

NOW, THEREFORE, IT IS ORDERED THAT: the Petition filed by Mendocino Russian River Flood Control and Water Conservation Improvement District for a temporary urgency change in Permit 12947B is approved and effective until 180 days from the date of this Order.

All existing terms and conditions of the subject permit remain in effect, except as temporarily amended by the terms set forth below. Provided that SCWA's TUCP filed on August 14, 2014 is approved and remains in effect, the District shall comply with the following three terms:

1. Provisions for Real Time Forecasts of Diversions

District is currently implementing real time metering of customer diversions. Although the District currently does not have the ability to forecast all diversions by its customers in real time, the District shall work with its customers to develop a real-time forecasting plan that will assist SCWA in managing releases of water from Lake Mendocino to meet minimum instream flow requirements with as small of an operational buffer as possible while this Order and the State Water Board Order approving the TUCP filed by SCWA on August 14, 2014 are in effect.

To develop this plan, the District shall hold a meeting of all of its customers within seven days after the date of this Order, and using the input from its customers that the District receives during this meeting, the District shall prepare a plan for providing real time one-day and three-day forward forecasts of its customers' diversions to SCWA. The goal of this plan shall be to provide these forecasts of diversions by the District's customers from the Russian River or its underflow with at least three-fourths of the total amount of water that is subject to the District's contracts.

The District shall file this plan with the State Water Board, and submit a copy of this plan to SCWA, within 14 days of the date of the State Water Board's approval of this Order. The District shall begin to implement this plan immediately after the District files it with the State Water Board. The District shall continue to implement this plan while this Order is in effect.

2. Plan for Reductions in Diversions

As additional information is received, the District shall provide copies of updated demand reduction tables to the State Water Board depicting demand reductions achieved pursuant to the mandatory 25 percent reduction in contract deliveries that the District has imposed.

The District shall hold a meeting of its customers within seven days after the date this Order, and, during the meeting and through written correspondence, provide its customers with information about the drought emergency and the District's TUCP, and request sufficient reductions in its customers' diversions to achieve at least 20 percent reductions in their diversions (using the baseline defined in Standard Permit Term U) while this Order is in effect.

The District shall implement the requirements imposed by State Water Board Standard Permit Term U in accordance with a Water Demand Reduction Plan that the District will prepare and file with the Deputy Director for Water Rights within 14 days of the date of this Order, for review and approval by

the Deputy Director for Water Rights. The plan shall be designed to ensure that all parties that beneficially use water diverted or stored under the District's water right Permit 12947B will implement actions to meet reductions in all of their diversions of at least 20 percent of their baseline water demands (as defined in Term U).

3. Long-Term Drought Contingency Plan

The District shall develop a long-term drought contingency plan in cooperation with SCWA. This plan will contain the following provisions (a) protocols for real-time one-day and three-day advance forecasts of total diversions by all of the District's customers under all bases of right, to facilitate SCWA's operations with releases of Lake Mendocino stored water with minimal operational buffers; (b) protocols for achieving reductions in the total diversions by each District contractor during future droughts; and (c) annual reporting to the State Water Board of the total monthly amounts of water diverted by each District contractor under its contract with the District (with the report for each year to be filed by June 30 of the following year). The District shall file this plan with the State Water Board within six months after the date of this Order.

4. The description of the place of use for irrigation in Term 3 of Permit 12947B is modified as follows:

The place of use for irrigation purposes shall be represented by the map filed with the State Water Board entitled Proposed Change in Place of Use for Irrigation dated December, 2013. The net limitation within the gross place of use for irrigation shall be increased to 4,196 acres.

5. Standard Permit Term U:

The temporary changes authorized by term 4 of this Order are not effective unless District is operating in accordance with a Water Demand Reduction Plan (Plan) satisfactory to the Deputy Director for Water Rights. The Plan shall be designed to ensure that all parties that beneficially use water diverted and/or stored under this right implement actions to meet a water demand reduction of a minimum of 20 percent of the baseline water demand. The Plan shall define baseline water demand as appropriate for the District's situation based on considerations such as weather, economy, wholesale supplier allocations or other relevant information. For the purpose of compliance with this term, if the Plan does not define baseline water demand, it is assumed to be the average water demand: 2013.

The Plan shall include, at a minimum, the following components:

- a. All parties that beneficially use water diverted and/or stored under this right and/or parties otherwise subject to the temporary change(s) authorized by this Order;
- b. Baseline water demand for all parties included in (1) above;
- c. Existing actions and additional actions planned by each party included in (1) above to reduce water use in order to meet the water demand reduction required by this term, including a description of how such actions can be expected to meet the demand reduction. The Plan shall also identify additional actions to be implemented, in the event that the District does not attain the amount of water use demand reduction relative to baseline water demand;

Additional actions to be considered include, at a minimum, those recommended in any applicable Governor's Drought Proclamation as applicable to the Districts operations, and determine if implementation of such action(s) may increase conservation of their water supply. If so, the District will either implement the recommendation(s) or provide documentation as to why such action is not reasonable for the District's situation. Actions to evaluate include, but are not limited to, 1) Avoid using water to clean sidewalks, driveways, parking lots and other hardscapes; 2) Turn off fountains and other decorative water features unless recycled or grey water is used for those water features, 3) Limit vehicle washing at home by patronizing local

carwashes that use recycled water; 4) Limit outdoor watering of lawns and landscaping to no more than two times a week; 5) Recreational facilities, such as city parks and golf courses, and large institutional complexes, such as schools, business parks and campuses, should immediately implement water reduction plans to reduce the use of potable water for outdoor irrigation; 6) Commercial establishments such as hotel and restaurants should take steps to reduce water usage and increase public awareness of the drought through measures such as offering drinking water only upon request and providing customers with options to avoid daily washing of towels or sheets; 7) Professional sports facilities, such as basketball arenas, football, soccer, and baseball stadiums, and hockey rinks should reduce water usage and increase public awareness of the drought by reducing the use of potable water for outdoor irrigation and encouraging conservation by spectators.;

Additional actions to be considered include, but are not limited to, those associated with on farm conservation, such as irrigation scheduling, tailwater recovery systems, and irrigation system improvements, and irrigation district system improvements, such as canal lining, canal structure improvements, and remote measurement, monitoring and control. District shall determine if implementation of such action(s) may increase conservation of water supply. The District will either implement action(s) or provide documentation as to why such action is not reasonable for the District's situation.;

- d. For parties included in (1) above over which the District has the authority or other ability to impose the listed water demand reduction actions, a list of such parties and a description of such authority or other ability over each party;
- e. For parties included in (1) above over which the District does not have the authority or other ability to impose the listed water demand reduction actions, a list of such parties, a description of the efforts of the District to coordinate with each of the listed parties to ensure that each party take appropriate action to reduce water demand, and a description of such actions for each party;
- f. A detailed schedule with planned completion dates for key events.

District 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 District'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 District is not achieving the minimum water demand reduction of this term, the District shall also include additional actions the District 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.

- 6. No water shall be served to new customers in the place of use areas added under the temporary changes authorized by this order unless the District has submitted documentation verifying the use will be consistent with the conditions described in the TUCP. These conditions limit new service to existing permanent crops. At a minimum, verification documentation shall include, but is not limited to, photographic evidence of permanent crops, descriptions of previous water supply, and signed statements by the customer(s) committing to limit irrigation under Permit 12947B to existing permanent crops.

7. This Order does not authorize any act that results in the taking of a candidate, 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 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 of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary urgency change authorized under this Order.
8. 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

*Barbara Evoy, Deputy Director
Division of Water Rights*

Dated: