

# Upper Russian River 2022 Voluntary Water Sharing Program

## UPPER RUSSIAN RIVER 2022 VOLUNTARY WATER SHARING PROGRAM

By signing this Voluntary Water Sharing Agreement (this “Agreement”), the participating water right holder (the “Participant”) commits to undertake the commitments required for participation in the Upper Russian River 2022 Voluntary Water Sharing Program (the “PROGRAM”) as described below.

### WHEREAS:

1. State Water Resources Control Board (the “State Water Board”) staff and interested parties on the Russian River north of its confluence with Dry Creek (the “Upper Russian River Watershed”) have been in discussions about water supply and demand projections since July 2020;
2. Since July 2020, State Water Board staff have encouraged water right holders to pursue voluntary agreements to address water supply and demand conditions that the State Water Board expects to be present in the Upper Russian River;
3. Hydrologic conditions on the Upper Russian River have been well below normal for the past two years, as have conditions on the entire Russian River as consistent with the Western United States is in a Mega Drought cycle, which is expected to continue;
4. On April 21, 2021, Governor Newsom proclaimed a state of emergency to exist in Mendocino and Sonoma counties due to drought conditions in the Russian River Watershed, and on March 28, 2022, Governor Newsom issued Executive Order N-7-22 confirming that such state of emergency persists (<https://www.gov.ca.gov/wp-content/uploads/2022/03/March-2022-Drought-EO.pdf>);
5. The Russian River Flood Control & Water Conservation Improvement District (“Flood Control”) and Sonoma County Water Agency (“SCWA”) are the only two water right holders which hold rights to divert water to storage behind Coyote Valley Dam (“Stored Water”), which dam creates Lake Mendocino;
6. In 2021, the State Water Board adopted emergency regulations to protect water supplies and threatened and endangered fish in the Russian River watershed which were codified in Title 23 of the California Code of Regulations, beginning with section 877 (the “2021 Emergency Regulations”);
7. The regulatory effect of the 2021 Emergency Regulations was to curtail all water right holders in the Upper Russian River Watershed, except to allow water right holders in the Upper Russian River Watershed to divert the minimum amount of water needed to meet minimum human health and safety needs;
8. The State Water Board temporarily suspended the curtailments as of October 23, 2021, and continues to analyze water supply conditions to determine whether reimposition of curtailments is warranted;
9. The 2021 Emergency Regulations remain in effect, and State Water Board staff have strongly indicated that (a) water right holders in the Upper Russian River Watershed can

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expect curtailment orders to re-issue under the 2021 Emergency Regulations, and (b) that State Water Board staff plan to propose re-adoption of the regulation for implementation in 2022 (the “Russian River Emergency Regulations”);

10. California Code of Regulations, Title 23, section 877.4, provides that, after State Water Board approval of this Agreement, participation in and compliance with the PROGRAM will operate as an exception to curtailment unless and until the Deputy Director for Water Rights announces such an exception no longer applies;
11. Given uncertainties regarding potential curtailments of water right holders in the Upper Russian River Watershed, there is a shared desire by the State Water Board and Participants in the PROGRAM to achieve, where possible, an organized effort to conserve water in the Upper Russian River to ensure that no Participant is unable to divert sufficient water to satisfy minimum needs through the current water year;
12. Participation in the PROGRAM is a voluntary effort on behalf of the State Water Board and Participants to balance rights to water under existing law with the various needs for water in the Upper Russian River Watershed during a time of limited water supply and a declared state of emergency due to drought, to drive toward improved regional water management and stewardship during such times, and to provide for an alternative form of water management that avoids complete cessation of diversions due to State Water Board curtailment actions;
13. The State Water Board and Participants intend the PROGRAM to provide Participants with water supply adequate to meet basic needs through the term of the PROGRAM, taking into account human health and safety needs, irrigation and agricultural needs, and regional economic concerns;
14. By entering this Agreement, the State Water Board and the Participants intend to create and participate in a voluntary program where certain Participants agree to forbear their respective diversion(s) of water to which they are legally entitled, thereby making available for other Participants water which would otherwise be unavailable for them to divert;
15. The State Water Board and the Participants acknowledge that effectiveness of the PROGRAM depends on participation by enough water right holders with water still available under their basis of right so that all Participants’ minimum water needs can be met;
16. The PROGRAM does not abrogate the State Water Board’s responsibilities and legal authorities, and does not operate to affect or change existing water rights or the water right priority system beyond the scope of the PROGRAM;
17. Water made available by reduced diversions pursuant to the PROGRAM would not be available but for the PROGRAM. Participants’ diversion of water made available by the PROGRAM therefore will not impact the availability of water for non-participating water right holders;

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18. PROGRAM participants shall have submitted to the State Water Board Annual Water Use Reports for the years of 2017, 2018, and 2019;
19. The State Water Board and the Participants recognize and acknowledge that the PROGRAM is preferable to water right enforcement actions, regardless of whether those actions are between water right holders or are brought by the State Water Board. The State Water Board and Participants intend the PROGRAM to inform future efforts to adaptively manage water and stewardship throughout the Russian River; and
20. Participation in the PROGRAM is an effort to avoid the contentious, expensive, and disruptive legal disputes over water rights in the Upper Russian River Watershed that could ensue in the PROGRAM's absence, and by participating, Participants intend not to challenge another Participant's water rights or exercise thereof for the duration of the PROGRAM.

### **NOW, THEREFORE:**

1. To participate in the PROGRAM, before June 20, 2022, (the "Enrollment Deadline"), Participants:
  - a. Shall provide the information identified in Exhibit A, which shall identify with specificity which water right(s) the Participant intends to dedicate to the PROGRAM; and
  - b. As may be necessary, shall provide the information identified in Exhibit A-1, which shall identify any sources of percolating groundwater or other alternate sources which the Participant intends to use to mitigate or offset the impacts of meeting Participant Commitments as defined in Paragraph 2 and Exhibit B, whether its own or those of another Participant; and
  - c. By signing and delivering this Agreement to the State Water Board, commit to reduce their surface water diversions for the water rights identified in Exhibit A and in accordance with the forbearance thresholds identified in Exhibit B (the "Forbearance Thresholds"), except for quantities of water necessary for minimum human health and safety needs as defined in California Code of Regulations, Title 23, section 877.1, using the monthly average of their diversions reported in their Annual Water Use Reports or Statements of Diversion and Use for the years 2017 – 2019 as a baseline. Nothing in this Agreement shall prejudice any Participant's or the State Water Board's position with respect to possible forfeiture, waiver, relinquishment, modification, or change in the Participant's water rights identified in Exhibits A and A-1, nor with respect to the applicability or authority of State Water Board emergency regulation actions on pre-1914 or riparian water rights.
2. As used in this Agreement, "Participant Commitments" shall mean the specific monthly Forbearance Threshold and compliance criteria applicable to each priority class for the duration of the PROGRAM.
  - a. The Forbearance Thresholds identified in Exhibit B, and as may be amended, will be prepared on a monthly basis for the duration of the PROGRAM by the State Water Board with the advice of the Upper Russian River Drought Response Steering Committee, and will be based on the number of Participants in the PROGRAM, the water right priorities of participants, and the projected amounts

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of natural and Potter Valley Project (“PVP”) supplies available to satisfy the water right priority classes identified in Exhibit B. The State Water Board will publish the Forbearance Thresholds no later than June 30, 2022. The Forbearance Thresholds will take effect July 1, 2022, and shall remain in effect at least through July 2022. Subsequently, any update to the Forbearance Thresholds will be published no later than the 25<sup>th</sup> of the month prior to the month any update to the Forbearance Thresholds is to take effect. Any update to the Forbearance Thresholds shall only take effect on the first day of a given month.

- b. Water available to a class of water right priority for the purpose of this Agreement will be based on the 2017 through 2019 average monthly demand relative to available supplies, as described in Exhibit B, as may be amended. Excepting the ability to divert water to meet minimum human health and safety needs as provided for in the 2021 and 2022 Emergency Regulations, any Participant of a priority class with insufficient supply to meet their demand may not divert except to the extent water is made available through the forbearance actions of other Participants. The Forbearance Thresholds identified in Exhibit B, as may be amended, reflect the extent to which water has been made available for those water right classes experiencing a supply shortage. The maximum water use reductions in Exhibit B shall not be amended. The availability of water identified in Exhibit B will be periodically reviewed and, as necessary, updated by the end of each month to reflect any projected changes in water supply, such as may be due to precipitation or PVP flows.
3. While the PROGRAM remains in effect, Participants shall provide monthly written reports (the “Monthly Program Report”) through the reporting process included as a part of the same online form used to enroll in the PROGRAM by the 10<sup>th</sup> of the subsequent month, reporting the amount of water diverted under the respective water right for that month (for example, June’s Monthly Program Report is due July 10<sup>th</sup>, 2022).
  4. Participants may reduce their diversions more than required by their Forbearance Thresholds to facilitate another Participant meeting its Forbearance Thresholds and Participant Commitments. Any such arrangement shall be identified in accordance with Exhibit C, to include information explaining how the Participants are meeting their Commitments.
  5. Participants agree not to challenge any water rights which a Participant has enrolled in the PROGRAM, or the Participant’s exercise thereof, for the duration of the PROGRAM. Nothing in this Agreement shall modify or prejudice any right or claim of any Participant or the State Water Board relating to the nature and/or extent of any rights to water identified in Exhibits A and A-1, including, but not limited to, the applicability or authority of State Water Board emergency regulation actions on pre-1914 or riparian water rights. Nothing in this Agreement or any action taken under the PROGRAM may be construed or used as an admission of any issue, fact, wrongdoing, liability, or violation of any law, rule, or regulation whatsoever.
  6. The Participant’s failure to substantially comply with the Participant commitments in this Agreement may result in exclusion from the PROGRAM. A water supplier Participant shall be in substantial compliance with Participant Commitments so long as it has implemented a drought conservation program by the Enrollment Deadline and taken

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reasonable steps to achieve the prescribed Forbearance Threshold. Upon being excluded from this Agreement, a Participant shall be subject to the requirement to curtail in accordance with any curtailment order it has received and the updated curtailment status list.

7. The State Water Board staff shall convene a virtual monthly meeting available to PROGRAM Participants in an effort to continue to report and analyze data on water supply and demand in the Upper Russian River. The monthly meeting may include discussions with State Water Board staff on the status of Monthly Program Reports and management strategies to adapt to any changed or unforeseen hydraulic or hydrologic conditions on the Upper Russian River Watershed.
8. Program participants will rely on a representative group titled The Upper Russian River Drought Response Steering Committee to prepare a final written report to be presented to the State Water Board by January 31<sup>st</sup>, 2023, (the "Implementation Report") that synthesizes information gathered during implementation. The Implementation Report will identify lessons learned, impacts, and information gaps, and will provide recommendations to improve future implementation of the program. Recommendations may address such issues as defining baseline water use, increasing gauge monitoring to accurately understand the water losses from diverters, the structure of conservation stages, the extent to which instream needs should be included, local options for administration of the program, and improved methods for determining water availability. Identified impacts may include categories such as: impacts to listed species and designated critical habitat; agricultural impacts such as crop yields or losses; economic impacts such as lost tax revenue, local and regional business closures; immigration and emigration data; housing data; communal impacts such as community events and programs.
9. Recognizing that participation in the PROGRAM is a voluntary effort on behalf of the State Water Board and Participants to balance rights to water under existing law with the various needs for water in the Upper Russian River Watershed in a time of limited water supply and declared emergency due to drought, to drive toward improved regional adaptive water management and stewardship, and to secure assurances regarding potential State Water Board curtailment actions, the Participants and the State Water Board commit to continue to move forward in good faith.
10. Each and every Participant agrees that their participation in the PROGRAM is essential to the PROGRAM's success and the ability of the PROGRAM to provide assurances to each Participant regarding the amount of water Participants may divert under the PROGRAM and the avoidance of curtailment. Each and every Participant therefore understands that every Participant is relying on every Participant's performance in the PROGRAM. Participants may withdraw from the PROGRAM; *provided*, that, and excepting the first 15 (fifteen) calendar days after the State Water Board publishes the initial Forbearance Thresholds during which time any Participant's withdrawal shall be effective immediately, withdrawal shall only take effect on the first day of any given month. For withdrawal to be effective, Participants shall provide written notice to the Deputy Director of the Division of Water Rights (the "Deputy Director") of the Participant's intent to withdraw from the PROGRAM; *provided*, that any such withdrawal shall not take effect any earlier than fifteen (15) calendar days of the date the Deputy

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Director receives the notice of withdrawal. Participants understand and acknowledge that, upon withdrawal, any withdrawn Participant shall no longer benefit from the exemption from curtailment participation in the PROGRAM provides in accordance with Paragraph 5 of this Agreement and California Code of Regulations, Title 23, section 877.4.

11. Participation in the PROGRAM shall automatically terminate upon a written determination by the Deputy Director of the existence of precipitation sufficient to alleviate all supply water shortages in the Upper Russian River, the rescission of the Drought Emergency Proclamations of April 21, 2021 and May 10, 2021, or any subsequently issued Drought Emergency Proclamations or December 31, 2022, whichever is earlier. Alternatively, the PROGRAM shall terminate upon a written determination by the Deputy Director either that the PROGRAM is adversely affecting or threatens to adversely affect the availability of water for non-Participants. Prior to terminating the PROGRAM, the Deputy Director will consider any recommendations or findings from the Upper Russian River Drought Response Steering Committee to the extent they are made available within a reasonable time.

Participating Water Right Holder (Name of Person or Entity):

\_\_\_\_\_

By signing below, the signatory warrants they hold the water right(s) named above and commit to the terms of this Agreement or warrants they have the authority from the water right holder named above to commit the water right holder to the terms of this Agreement.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Signatory (If other than the Water Right Holder named above)

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**Exhibit A: List of Rights Participant is Applying to the PROGRAM**

Water Right Statement / Application Number: \_\_\_\_\_

Water Right Statement / Application Number: \_\_\_\_\_

Water Right Statement / Application Number: \_\_\_\_\_

Water Right Statement / Application Number: \_\_\_\_\_

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Water Right Statement / Application Number: \_\_\_\_\_

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### Exhibit A-1: Identified Alternate Source(s)

If you plan to use alternative sources (recycled water, contract water, percolating ground water, previously stored water, etc.) of water during the duration of the water sharing program, please identify the alternative source(s) by water right below.

(Yes / No)

Groundwater \_\_\_\_\_

Recycled Water \_\_\_\_\_

Stored water on property \_\_\_\_\_

Water available through contract \_\_\_\_\_

Water available through the 10,000 acre-feet reservation in Lake Mendocino \_\_\_\_\_



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## Exhibit B: Assumptions and Analysis for Thresholds

### WATER RIGHTS DEMAND

- Demand includes all users in the Upper Russian River watershed except Potter Valley Irrigation District (PVID).
- Stage is analyzed at a monthly time step
- Monthly demand based on average of volumes reported through annual water right use reports from 2017 through 2019. Monthly demands for riparian users will be updated if new demand data is received by the State Water Board pursuant to regulation section 877.3.
- Reported diversion demand for Sonoma County Water Agency's (SCWA) Lake Mendocino permit is zero for 2017 to 2019. Diversions under SCWA's other permits occur in the Lower Russian River.
- Demand associated with (Russian River Flood Control District (RRFCD) license is included.
- PVID license demand from Powerhouse Canal is not part of the total demand. PVID's license is one of most upstream in system and is senior to RRFCD and SCWA. A significant portion of the available PVP flow is a result of return flows after diversion and use by PVID. This exclusion also allows evaluation of Potter Valley Project (PVP) availability as an inflow to Lake Mendocino, rather than parsing PVID contract diversions from PVID license diversions, and the associated return flows of each.
- Demand will be aggregated to the following priority levels:
  1. Riparian
  2. Pre-1914
  3. Pre-1949 and rights with a priority date in 1949
  4. RRFCD and SCWA
  5. 1950 to 1952
  6. 1953 to 1954
  7. 1955 to 1957
  8. 1958 to 1959
  9. 1960 to 1970
  10. 1971 to present

### AVAILABLE SUPPLY

- Natural flow will be estimated using the PRMS hydrologic model being used to support implementation of the current emergency regulation. The model shall estimate natural flow accumulating across the Upper Russian River watershed.
- Natural flow can be forecasted as a monthly volume to compare against monthly demand.
- PVP flows forecast based on following assumptions:
  - Drought variance implemented starting July 1, resulting in a minimum instream flow requirement of either 5 to 25 cfs. Until variance is filed, PVP flow will be based on 75 cfs minimum instream flow plus a 5 cfs buffer (80 cfs).
  - PVID contract deliveries will be similar to 2020 monthly averages, resulting in a monthly average return flow of 10 cfs.
  - Available PVP flow would be inflows to Lake Mendocino from instream flow requirement plus return flows from PVID.

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- Evaporative loss from the mainstem and riparian corridor will be removed from the available supply before comparing supply against water rights demand. Based on the following assumptions:
  - Evaporative volumes will be similar to 2021.
  - A riparian corridor width of 35 meters on either side of the mainstem, comprised of a 30-meter-wide Open Water area and a 40-meter-wide area of Riparian Vegetation. Evaporative losses will be based on values from Cal-SIMETAW, as described in the Informative Digest for the 2022 regulation. This results in monthly estimated losses of 1,250; 1,310; 1,100; 817; and 473 acre-feet per month for the months of June through October.
  - Evaporative loss will be reduced equally from the monthly natural supply, the PVP supply, and storage releases. If there is remaining evaporative loss after subtracting from the natural supply, it will be removed from the monthly PVP volume.
- A flow of three cfs will be reserved for minimum human health and safety based on amounts certified and petitioned (excluding fire protection needs, which are variable water demands) from implementation of the 2021 emergency regulation.

### ANALYSIS OF SUPPLY AND DEMAND TO DETERMINE SHORTAGE LEVEL

- Once natural supply, PVP supply, and total water rights demand for each month has been determined, the available supplies will be attributed to each level of water right priority until supply has been depleted to zero.
- Natural flows will first be available to riparian users then to appropriate water right holders in order of priority. PVP flows will not be available to riparian users.
- If there is any shortage within a priority level, then all water right holders in that level will be considered in shortage for the purposes of the agreement. For example, if in the 1950 to 1952 level there is enough water to support diversions a 1951 right holder but not a 1952 right holder, then the 1950 to 1952 level is in shortage.

### ESTABLISHING FORBEARANCE THRESHOLDS

- The percent reduction in water use will be a reduction from average monthly demand reported through water right annual use reports from 2017 to 2019.
- Except for pre-1914 water right holders, the maximum required percent water use reduction for a priority level that has water available (i.e., is not experiencing shortage) will be 30%. The maximum required water use reduction for pre-1914 water right holders will be 20%. All priority levels in shortage will have the same water use reduction percentage. Participants may elect to further reduce their water use under water rights identified through the process provided in Exhibit C.
- The minimum percent water use reduction for a priority level that does not have water available (i.e., is experiencing shortage) will be 40% and a maximum of percent water use reduction of 75%.
- 20% will be the default reduction threshold for all priority levels that have water available. The threshold will be reduced or increased by priority level in increments of 10%, in order of priority, if the threshold for those in shortage is less than 40% or greater than 75%.
- Forbearance thresholds will be in effect during any month where the Pre-1914 or the Pre1949/1949 priority levels are experiencing a water supply shortage.

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### **Exhibit C: Aggregated Forbearance Threshold Commitments**

Participants may reduce their diversions more than required by their Forbearance Thresholds to facilitate another participant meeting its Forbearance Thresholds and Participant Commitments. (Example A, a transfer agreement between participants).

Participants may reduce diversions under one participating water right to benefit another participating water right. (Example B: one participant could increase the forbearance percentage on one water right to provide additional water to another participating water right under the same ownership).

Any such arrangement shall be identified below to include information explaining how the participants are meeting their commitments. (For example, participant A has a water right with a forbearance threshold of 10% and they increase it to 20% to provide the additional water to identified participant(s)).

If you choose to participate in this option, please identify what percentage of your water right you are willing to forebear beyond the current program requirement and which other water rights(s) you are providing this additional water to.

Is participant planning to meet forbearance thresholds commitments through aggregating water use reduction across multiple water rights enrolled in the program? (Yes/No)