

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

ORDER WR 2026-0009-EXEC

In the Matter of Water Right Application A032898

David Coddling

SOURCE: Unnamed Streams tributary to Jakes Creek thence Vasser Creek thence Coleman Creek thence the Russian River

COUNTY: Mendocino

**ORDER DENYING REQUEST FOR A CASE-BY-CASE EXCEPTION WITHOUT
PREJUDICE AND MAINTAINING DEFECTIVE STATUS FOR AN APPLICATION**

BY THE EXECUTIVE DIRECTOR:¹

1.0 INTRODUCTION

This order concerns water right application A032898 and a request for a case-by-case exception to the Policy for Maintaining Instream Flows in Northern California Coastal Streams (North Coast Instream Flow Policy or Policy) filed with the State Water Resources Control Board (State Water Board or Board) by David Coddling (Applicant). Application A032898 seeks approval to divert water to storage in a reservoir formed by an existing onstream dam located at unnamed streams tributary to Jakes Creek thence Vasser Creek thence Coleman Creek thence the Russian River in Mendocino County.

Due to the onstream dam, the Policy prohibits the Board from accepting this application for processing without granting a case-by-case exception request. The State Water Board's Division of Water Rights (Division) has assessed the Applicant's exception request, and the Deputy Director for the Division recommends denial of the request for

¹ State Water Board [Resolution 2023-0036](#) delegates to the Executive Director the authority to conduct and supervise the activities of the State Water Board.

the reasons set forth below. This order denies the exception request and maintains the defective status of the application if the Applicant submits a second case-by-case exception request which addresses the issues described herein within 120 days.

2.0 PROCEDURAL BACKGROUND

Division staff inspected the dam and reservoir on David Coddling's property on March 13, 2013, to determine the source of water for the reservoir and ascertain whether the diversion to storage was authorized under an existing right. During this inspection, Division staff found that the reservoir is located onstream to multiple surface stream channels and that the reservoir collects runoff during the wet season and holds it in storage during the dry season. The Division concluded that surface water was being diverted to storage without a basis of right, constituting a trespass, and notified the Applicant of this conclusion and potential civil liability by letter dated May 23, 2013. This letter directed the Applicant to, within 30 days, submit evidence to the Division that the reservoir was not subject to the State Water Board's permitting authority or submit a response indicating the Applicant's intended course of action regarding the unauthorized diversion. No response was received.

On August 15, 2017, Division staff conducted a re-inspection of the reservoir and determined that even with little to no consumptive use, the reservoir volume and depth are typically diminished at the end of the dry season, likely due to natural losses such as evaporation, seepage, and infiltration. Thus, at the beginning of the wet season each year, the dam prevents streamflow from making its way down the naturally existing stream channel and diverts the streamflow to seasonal storage as the reservoir first fills, then spills when full. The Division notified the Applicant on August 29, 2017, that to prevent additional trespasses, the Applicant must immediately cease unauthorized diversions to storage and requested that the Applicant take one of the following corrective actions: 1) seek authorization to appropriate water by applying to the Board for a water right permit, 2) provide evidence satisfactory to the Board demonstrating the reservoir does not store water, or 3) render the reservoir incapable of storing water. On November 13, 2017, the Applicant's agent informed the Division that the Applicant

intended to submit an application for a water right permit for diversion to storage in the reservoir.

3.0 WATER RIGHT APPLICATION

On January 10, 2018, the Applicant filed water right application A032898 with the Division. The application requests a permit to divert to storage up to 72.8 acre-feet per year of water from unnamed streams in Mendocino County, tributary to Jakes Creek, thence Vassar Creek, thence Coleman Creek, thence the Russian River. The proposed point of diversion and storage location are the existing onstream dam and reservoir with an estimated capacity of 72.8 acre-feet. Stored water would be used for the non-consumptive purposes of aesthetic, incidental recreation, and incidental fire protection uses. The application requests a season of diversion from January 1 to December 31.

4.0 NORTH COAST INSTREAM FLOW POLICY

The North Coast Instream Flow Policy became effective on February 4, 2014, and establishes principles and guidelines for maintaining instream flows for the protection of fishery resources, while minimizing water supply impacts on other beneficial uses, including irrigation, municipal use, and domestic use. The geographic scope of the Policy encompasses coastal streams from the Mattole River to San Francisco as well as coastal streams entering northern San Pablo Bay and extends to five counties: Marin, Sonoma, and portions of Napa, Mendocino, and Humboldt counties.

As application A032898 proposes to divert water from a source tributary to Jakes Creek in Mendocino County, it is within the geographic area of the Policy and is subject to the Policy's provisions.

The primary objective of the Policy is to ensure that the State Water Board administers water rights in a manner that maintains instream flows needed for the protection of fishery resources with a particular focus on anadromous salmonids and their habitat. It prescribes protective measures regarding the season of diversion, minimum bypass flow, and maximum cumulative diversion. The Policy also contains measures to restrict

approval of onstream dams to avoid adverse effects on instream flows needed for fishery resources.

An onstream dam is defined in Policy section 2.4 as “a structure in a stream channel that impedes or blocks the passage of water, sediment, woody debris, or fish.”

Onstream dams can impact salmonids by (1) preventing fish passage and blocking access to upstream spawning and rearing habitat; (2) intercepting and retaining spring and summer flows without providing continuous flow releases below the onstream dam (i.e., bypass flows); (3) intercepting and retaining sediments/gravels that would otherwise replenish downstream spawning gravels; (4) intercepting and retaining large wood that would otherwise provide downstream habitat structure; (5) causing loss of riparian habitat or wetlands and (6) creating slow-moving, lentic (lake-like) habitats that favor non-native species that may prey on anadromous salmonids or compete for food and shelter.

The Policy contains requirements for the permitting of onstream dams to address the adverse effects that onstream dams have on fish and their habitat. These requirements are specific to the stream classification where the onstream dam is located. Among these requirements, Policy section 2.4.2 generally prohibits the acceptance of new applications to divert water by means of an onstream dam on a Class 2 stream. Class 2 streams are characterized by the presence of seasonal or year-round habitat for aquatic non-fish vertebrates and/or aquatic benthic macroinvertebrates. The streams at the location of the Applicant’s reservoir are Class 2 streams.² Therefore, application A032898 is subject to this Policy section 2.4.2 prohibition.

The Policy also contains a provision that allows applicants to request a case-by-case exception to any Policy provision. Section 9.0 of the Policy provides that the Board may grant a case-by-case exception request where it determines that: (1) the exception will not compromise maintenance of instream flows in the Policy area; and (2) the public

² State Water Resources Control Board, Division of Water Rights. Site Visit and Stream Classification Recommendation for Application 32898 of David Codding for Appropriation of Water from Jakes Creek, Mendocino County. July 25, 2018.

interest will be served. A request for a case-by-case exception must include the following: (1) a detailed description of the reason for the request; (2) the Policy provisions that are involved; (3) documentation of the reasons why the exception will not compromise maintenance of instream flows in the Policy area; and (4) an explanation of how the public interest will be served by the exception. The Board's consideration of a case-by-case exception request is limited to the Policy provisions stated in the case-by-case exception request. The Policy places the burden on applicants to provide sufficient information for the Board to make the required findings and grant an exception request. Division staff have developed a checklist of suggestions for applicants specifically pursuing case-by-case exception requests for onstream dams on Class 1 or 2 streams to consider.³

The Division determined that Application A032898 was defective because it proposed the diversion of water by means of an onstream dam in the Policy area, and was therefore potentially subject to the Policy's prohibitions on accepting applications with onstream dams on Class 1 or Class 2 streams.⁴ By letter dated February 20, 2018, Division staff informed the Applicant of this status and the need to determine the stream classification for the application's point of diversion. The Division subsequently determined that the streams at the location of the Applicant's reservoir are Class 2 streams, and the Applicant accepted this determination on August 8, 2018.

In accordance with State Water Board [Order WR 2012-0011-EXEC](#),⁵ Division staff informed the Applicant by letter dated October 17, 2018, that the application would be

³ Technical Guidance Checklist for Case-By-Case Exception Requests for Applications Requesting Onstream Dams. Released February 3, 2026.
https://waterboards.ca.gov/waterrights/water_issues/programs/applications/docs/checklist-policy-exception.pdf.

⁴ Defective applications are those made in a bona fide attempt to conform to the Board's rules and regulations, and secure a priority of right as of the date of the application provided the application is perfected within 60 days or the time provided by the Board. Water Code sections 1270 and 1271 specify the process for perfecting defective applications.

⁵ Order WR 2012-0011-EXEC provides that when applications are subject to rejection

rejected due to the Policy's prohibition on acceptance of new applications for onstream dams on Class 2 streams, unless the Applicant submitted a request for case-by-case exception to this Policy prohibition within 30 days. On November 16, 2018, the Applicant filed a request for a case-by-case exception⁶ to the prohibition in Policy section 2.4.2.

The Division shared the exception request and related documentation with the California Department of Fish and Wildlife (CDFW), and requested scientific and technical comments from CDFW regarding the potential effects of the onstream dam on fish and habitat to sustain fish. In response, CDFW staff provided comments (CDFW Comments)⁷ recommending denial of the request because of the potential adverse effects of the onstream dam.

4.1 Case-by-Case Exception Request: Maintenance of Instream Flows

The following sections discuss the Board's evaluation of the exception request and CDFW Comments with respect to the maintenance of instream flows, organized by the list of potential impacts to salmonids contained in section 4.0 of this order. As discussed below, the onstream dam and reservoir in application A032898 as currently proposed have the potential to cause all six of the adverse impacts to salmonids, and accordingly may compromise instream flows.

4.1.1 Preventing Fish Passage and Blocking Access to Upstream Spawning and Rearing Habitat

The Applicant's onstream dam is located above the upper limit of anadromy, which the Policy defines as the upstream end of the range of anadromous fish that currently are,

due to the prohibitions in Policy sections 2.4.1 and 2.4.2, applicants should be afforded the opportunity to either contest the stream classification or request a case-by-case exception.

⁶ LACO Associates. Request for Exception, Water Right Application 32898 of David Coddling, Mendocino County. November 14, 2018.

⁷ California Department of Fish and Wildlife. Scientific and Technical Comments on Water Application A032898 to Appropriate Water from Jakes Creek, Tributary to Vassar Creek Tributary to Pieta Creek, Thence the Russian River, Mendocino County. February 15, 2019.

or have been historically, present year-round or seasonally, whichever extends the farthest upstream. A 2006 California Department of Fish and Game (now the California Department of Fish and Wildlife, CDFW) Stream Inventory Report⁸ and subsequent Division staff communication with the CDFW water rights liaison, indicate that the upper limit of anadromy is located at the “very steep” section of Jakes Creek approximately 1.2 miles downstream of the reservoir. Thus, the Applicant’s dam structure will not prevent anadromous fish passage at the point of diversion. However, the dam structure and associated diversion do have the potential to effect instream flows downstream of the dam, including flows for fish passage.

The exception request states that “the presence of the reservoir [...] does not appear to be the limiting factor in the downstream fishery.” In support of this statement, the exception request includes estimations of the percentage of mean annual runoff attributed to diversion demands at the point of diversion and the upper limit of anadromy and compares the resulting values to the thresholds contained in the 2002 Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversion in Mid-California Coastal Streams (2002 Draft Guidelines). These calculations do not align with the seasonally based formulas identified in the 2002 Draft Guidelines or the formulas and approaches for assessing cumulative effects described in the Policy.⁹

The Applicant did not propose permit conditions or project modifications to minimize impacts to instream flows such as a reduction in the currently proposed year-round diversion season or implementation of a bypass system. The exception request mentions a possible reduction in reservoir volume to 50 acre-feet from the 72.8 acre-feet requested in the application and also estimates the range of water lost from evaporation and seepage to be between 7.55 acre-feet per year and 16.25 acre-feet per year.

⁸ California Department of Fish and Game. Stream Inventory Report. Jakes Creek. Revised April 14, 2006.

⁹ As Application A032898 was filed on January 10, 2018, it is subject to all Policy provisions, and the Applicant must conduct cumulative effects analyses according to the Policy, not the 2002 Draft Guidelines. (Policy sections 2.3 and 3.3.1.)

Division staff have not received any further communication requesting amendment of the application to this effect.¹⁰

CDFW states that steelhead trout are present downstream of the Applicant's dam and reservoir in Jakes Creek. CDFW Comments assert that "the dam and reservoir alter the timing, duration, and quantity of natural flow and impede movement of aquatic species" and diversion of the requested amount has the potential to reduce flows needed downstream for fish passage. In addition CDFW states, "Jakes Creek hydrology is affected whenever the dam is not overflowing" and identifies altering the natural flow regime as harmful to vital ecological functions for steelhead trout such as maintaining pool connectivity and flow over riffle crest.

4.1.2 Intercepting and Retaining Spring and Summer Flows

The Application requests a year-round diversion season, thereby creating the potential to intercept and retain spring and summer flows. The Applicant did not submit substantive information demonstrating that the dam will not cause these impacts, nor did the Applicant propose conditions to minimize impacts to instream flows. The exception request states, "the reservoir is of sufficient age that the surrounding and downstream ecosystems have reached an equilibrium and adapted to the flow modulations caused by the reservoir." Supporting information was not included to substantiate this statement and it is not clear that the onstream dam increases habitat availability or quality over natural conditions that would otherwise exist. CDFW Comments point out that the year-long diversion season and lack of bypass system limits flows downstream in the low flow season, which can be particularly harmful to downstream steelhead trout. CDFW Comments also state that, given the Russian

¹⁰ The Board's regulations provide that an application for an amount of water clearly in excess of the amount reasonably necessary for the proposed use "will not be approved and shall be reduced." (Cal. Code Regs., tit. 23, § 698.) Additionally, Standard Permit Term 0000040 limits non-consumptive reservoir diversions after the initial filling to water necessary to keep the reservoir full. (See Cal. Code Regs., tit. 23, § 780 ["The [B]oard maintains a list of Standard Permit Terms, applicable portions of which are included in all permits."].)

River's Clean Water Act section 303(d) listing for temperature impairment, any reduction of cold tributary flows can have significant negative effects on adult and juvenile steelhead trout survival. While the exception request expresses an intent to work collaboratively with the Board and CDFW to establish a diversion season, such collaboration has not occurred.

4.1.3 Intercepting and Retaining Sediments/Gravels and Large Wood, Causing Loss of Riparian Habitat or Wetlands, and Creating Lentic Habitats

The exception request does not provide substantive information regarding the potential for the Applicant's onstream dam to intercept and retain sediments that would otherwise replenish spawning gravel beyond acknowledging the potential for the reservoir to impact sediments. CDFW Comments explain that reduced instream flows due to the dam and reservoir alter the natural movement of water and sediment, thereby inhibiting recruitment of spawning gravels.

The exception request also does not provide substantive information addressing the potential onstream dam impacts associated with intercepting and retaining large wood or loss of riparian habitat or wetlands. Photographs submitted with the application show riparian habitat along the flowpath and trees upstream of the reservoir, suggesting that large wood could potentially be retained by the Applicant's dam. CDFW Comments explain how reduced instream flows due to the dam alter the natural movement of wood and debris and the reservoir and dam, in addition to other diversions, are likely impacting native riparian vegetation as there are less available instream flows during critical periods to support aquatic and riparian resources in the unnamed tributary, Jakes Creek, and downstream.

The exception request does not address the potential onstream dam impacts associated with creating slow-moving lentic habitats. CDFW Comments identified specific concerns with non-native largemouth bass in the reservoir which "predate on native amphibians in the reservoir and on fish downstream in Jakes Creek" and the presence of largemouth bass was documented in the Stream Classification Survey prepared by the Applicant's consultant.¹¹

¹¹ LACO Associates. Stream Classification Survey Results High Valley Ranch Reservoir. April 13, 2018.

4.2 Case-by-Case Exception Request: Public Interest

The exception request asserts that granting the exception is in the public interest. In support of this assertion, the exception request contends that the reservoir may provide a public benefit by improvement of the downstream fishery via moderation of high flow events and increased dry season flows through seepage, the reservoir is a significant fire protection resource, and removal of the dam could cause short-term and long-term impacts to fishery resources as the ecosystem has adapted to the presence of the dam.¹²

The State Water Board has evaluated the Applicant's exception request with respect to the public interest. As noted in Policy section 2.1, the protection of fishery resources is in the public interest. As discussed in section 4.1 of this order, the onstream dam and reservoir in application A032898 as currently proposed have the potential to cause all six of the adverse impacts to salmonids. The exception request did not include substantive information to support the claim of improvement to the downstream fishery through moderation of high flow events or dry season seepage. CDFW Comments state, "CDFW's position is the Project does not serve the public interest and the Project has negative impacts to public trust resources, natural flow, geomorphology, hydrology, and beneficial uses including Cold Freshwater Habitat, Migration of Aquatic Organisms, Commercial and Sport Fishery, Rare, Threatened, or Endangered, Spawning Reproduction, and/or Early Development, and Wildlife Habitat."

The Division acknowledges the public interest benefit related to fire protection. Absent documentation clarifying the availability of other options such as offstream storage for maintaining stored water for fire protection with less impacts to fishery resources, however, it is not clear that this benefit is sufficient to overcome the impacts to instream flows and establish that an exception for the onstream dam is in the public interest.

¹² As discussed in section 4.1.2, the exception request did not include supporting information to substantiate the contention that the ecosystem has adapted to the presence of the dam and it is not clear that the onstream dam increases habitat availability or quality over natural conditions which would otherwise exist.

The exception request argues that removal of the onstream dam could incur various short- and long-term environmental impacts related to sediment and wood transport, riparian and riverine habitat, hydrology, and groundwater recharge. Short and long-term indirect environmental impacts of dam removal and dam modification were evaluated as a potential outcome prior to adoption of the Policy.¹³ This assessment concluded that short-term, temporary impacts associated with construction are followed by long-term benefits to riparian habitat, hydrology, and water quality—habitat improvements that benefit salmonids. Analyses of other dam removal projects have demonstrated that these long-term environmental benefits can outweigh short-term impacts of construction.¹⁴ The Board has also recognized other measures, such as dam modifications to render dams incapable of storage, as an effective means of ensuring onstream dams do not impact instream flows and serve the public interest. In light of the Policy’s goal of maintaining instream flows, the Board concluded that unless an applicant can establish that an existing, unauthorized onstream dam on a Class 1 or 2 stream can be operated to maintain instream flows, the public interest requires rendering it incapable of storage in a manner that minimizes any potential impacts of doing so.

In requesting and granting a case-by-case exception to the Policy, applicants must establish, and the Board must find, that an exception for the *proposed project* maintains instream flows and is in the public interest. Here, the Applicant has not provided information demonstrating that the proposed (or existing) project maintains instream flows, and speculative impacts associated with restoring the landscape to natural

¹³ Stetson Engineers, Inc. *North Coast Instream Flow Policy Potential Indirect Environmental Impacts of Modification or Removal of Existing Unauthorized Dams*. December 2007.

https://www.waterboards.ca.gov/waterrights/water_issues/programs/instream_flows/docs/draft_policy_2007/7e_app_e.pdf.

¹⁴ E.g., Stillwater Sciences. *Draft Environmental Impact Report for the Lower Klamath Project License Surrender Volume 1*. December 2018.

https://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/docs/lower_klamath_ferc14803_deir/vol_1.pdf.

conditions do not provide a sufficient basis for the Board to grant a case-by-case exception.

5.0 CONCLUSION

The Applicant's exception request expressed an intent to work collaboratively with the Board, described a potential reduction in requested amount and indicated some willingness to reduce the season of diversion. Absent any concrete commitments to make these changes, however, and given the limited information provided by the Applicant regarding the instream flow impact areas, the Board lacks sufficient information and basis to find that granting the exception request will not compromise the maintenance of instream flows. Therefore, the Applicant's request for case-by-case exception is denied.

This denial is without prejudice and does not preclude the Applicant from submitting a second exception request which meets the requirements of Policy section 9.0 for evaluation.¹⁵ Modifications to the application and project conditioning, in combination with substantive information related to the Policy's requirements for a passing cumulative effects analysis and onstream dam mitigation plans, as well as new supporting information from CDFW, may aid in demonstrating that granting an exception will not compromise the maintenance of instream flows and will serve the public interest. Application A032898 will be maintained in a defective status for 120 days. If a second exception request which addresses the issues described in this order is not submitted within 120 days of the date of this order, Application A032898 is subject to rejection.

¹⁵ Given consideration of new resources becoming available on the Division's website, the Applicant's expressed intent to work collaboratively with the Board, and description of potential reduction in reservoir capacity, this order grants additional time in lieu of rejecting the application.

ORDER

IT IS HEREBY ORDERED THAT:

- 1) The case-by-case exception request is denied without prejudice.
- 2) Within 120 days of the date of this order, the Applicant must submit a case-by-case exception request which addresses the issues described in this order or application A032898 is subject to rejection.

June 11, 2026

Dated



Eric Oppenheimer
Executive Director