



File: CF/42-0-9 Water Agency Current Permits and Applications; CF/ 42-4.1-1 District Applications 15736, 15737, 15779 (Permits 12949, 12950, 16596); CF/42-4.1-1 District Applications 12919A and 12920A

Hand Delivered

September 23, 2009

Vicky Whitney, Chief
State Water Resources Control Board
Division of Water Rights
PO Box 2000
Sacramento, CA 95812-2000

Re: Petition for Modification of Water-Right Permits

Dear Ms. Whitney:

The Sonoma County Water Agency (Agency) hereby submits the enclosed petition for an order modifying water-right Permits 12947A, 12949, 12950, and 16596 to change the minimum instream flow requirements specified for the Russian River and Dry Creek. Exhibit 1 accompanies the petition for modification and identifies for each water-right permit the specific requested changes to the permit terms.

I hope that you will find the enclosed information clear and satisfactory. If you should have any questions or comments, please feel free to Todd Schram at (707) 524-1173.

Sincerely,

Pamela Jeane for
Randy Poole
General Manager/Chief Engineer

Enclosures: 1) Petition for Modification, 2) Exhibit 1

cc Pam Jeane, Erica Phelps - Sonoma County Water Agency
Steve Shupe - Sonoma County Counsel
Alan Lilly - Bartkiewicz, Kronick & Shanahan

\\Fileserver\data\CL\pinks\week092109\Modification to Permits.docx

State of California
State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O. Box 2000, Sacramento, CA 95812-2000
Info: (916) 341-5300, FAX: (916) 341-5400, Web: <http://www.waterrights.ca.gov>

PETITION FOR MODIFICATION OF WATER-RIGHT PERMITS
(Cal. Code Regs., title 23, §791(e))

Application Nos. 12919A, 15736, 15737, & 19351 Permit Nos. 12947A, 12949, 12950, & 16596

Present Holder and User of Water-Right Permits

<u>Sonoma County Water Agency</u>	<u>Randy D. Poole</u>	<u>(707) 526-5370</u>
<i>Company Name</i>	<i>Contact Person</i>	<i>Telephone No.</i>
<u>404 Aviation Boulevard</u>	<u>Santa Rosa</u>	<u>CA</u>
<i>Address</i>	<i>City</i>	<i>State</i>
		<u>95403-9010</u>
		<i>Zip Code</i>

Authorized Agents

Randy D. Poole, General Manager/Chief Engineer
Sonoma County Water Agency
404 Aviation Boulevard
Santa Rosa, CA 95403-9010
Telephone: (707) 526-5370
Fax: (707) 544-6123
E-Mail: rdp@scwa.ca.gov

Alan B. Lilly
Bartkiewicz, Kronick & Shanahan, P.C.
1011 22nd Street
Sacramento, CA 95816-4907
Telephone: (916) 446-4254
Fax: (916) 446-4018
E-mail: abl@bkslawfirm.com

Petition for Modification of Water-Right Permits

The Sonoma County Water Agency (Agency) hereby petitions the State Water Resources Control Board (State Board) under the provisions of California Code of Regulations, title 23, section 791(e) for an order modifying the water-right permits listed above by making changes to the minimum instream flow requirements in these permits that are shown in the attached Exhibit 1.

The Agency requests that the State Board's order approving these changes find that implementing these changes will provide rearing habitat for salmonids and steelhead in the Russian River watershed that will be superior to that which occurs with the present minimum instream flow requirements, which were adopted by the State Board's Water Right Decision 1610 (D1610) in 1986.

The Agency requests that the State Board make these changes to the minimum instream flow requirements in the Agency's water-right permits to implement the reasonable and prudent alternative (RPA) specified by the

National Marine Fisheries Service (NMFS) in its *Biological Opinion for Water Supply, Flood Control Operations, and Channel Maintenance conducted by the U.S. Army Corps of Engineers, the Sonoma County Water Agency, and the Mendocino County Russian River Flood Control and Water Conservation Improvement District in the Russian River watershed*, which was issued on September 24, 2008. The Biological Opinion was issued after a formal consultation by NMFS on the actions carried out by the U.S. Army Corps of Engineers, the Agency, and the Mendocino County Russian River Flood Control and Water Conservation Improvement District under section 7(a)(2) of the federal Endangered Species Act of 1973.

In its Biological Opinion, NMFS concluded that present activities in the Russian River watershed jeopardize the survival of the Central California Coast Steelhead (*Oncorhynchus mykiss*) and Central California Coast Coho Salmon (*Oncorhynchus kisutch*), and that implementation of the RPA is necessary to avoid this jeopardy. Specifically, NMFS concluded that, with current minimum instream flow requirements, the flow management for water supply during the late spring, summer, and fall that was proposed by the Corps to NMFS would continue to have an adverse effect on rearing habitat. The artificially elevated flows in the Russian River that are required by the current minimum instream flow requirements result in high water velocities that contribute to limiting the quality and quantity of the rearing habitat. Additionally, maintaining these flows disrupts lagoon formation in the Russian River estuary, and allowing this lagoon to develop would likely enhance juvenile steelhead and salmon habitat.

In its D1610, the State Board amended the Agency's water-right permits and also reserved jurisdiction to ". . . modify, delete or add minimum flow requirements or related criteria for the protection of fish and wildlife and the maintenance of recreation in the Russian River should (1) additional fishery studies be conducted in the Russian River, . . ." This reservation of jurisdiction is specified in the Agency's amended water-right permits. (See Amended Permit 12947A, p. 8, term 31; Amended Permit 12949, p. 5, term 19; Amended Permit 12950, p. 5, term 19; Amended Permit 16596, pp. 5-6, term 22.) The NMFS Biological Opinion is such a fisheries study, and, through this petition, the Agency asks the State Board to exercise this reserved jurisdiction.

Based on the findings in the NMFS Biological Opinion, the modifications to the minimum instream flow requirements that are requested in this petition are necessary to avoid the likelihood of jeopardy to the steelhead and coho salmon. Specifically, the RPA describes the need to reduce the minimum flows now required by D1610 to augment usable rearing habitat, to improve salmonid population growth rates and to improve the spatial structure of the populations. For these reasons, the requested changes to the present minimum instream flow requirements will provide a level of protection for fish that will be superior to that provided by the present requirements. Because the Russian River mainstem and Dry Creek still will be maintained as perennial live streams, water still will be available for diversions to the extent authorized by other water rights, and the requested changes therefore will not injure any legal user of water.

The Agency is the lead agency under the California Environmental Quality Act (CEQA), and the State Board will be a CEQA responsible agency, for this petition. As the Agency prepares its CEQA document for this petition, the Agency will provide the notices and submissions to the State Board that are required by CEQA.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: 9/23/09, at Santa Rosa, California.

By: Randy D. Poole for

Randy D. Poole, General Manager/Chief Engineer, Sonoma County Water Agency

Exhibit 1

Requested Changes to the Sonoma County Water Agency Amended Permits 12947A, 12949, 12950, and 16596 (all amended permits issued on August 30, 2006)

Term 13 on pages 4-5 of Amended Permit 16596:

"For the protection of fish and wildlife in Dry Creek and the Russian River and for the maintenance of recreation in the Russian River, permittee shall pass through or release from storage at Lake Sonoma sufficient water to maintain:

A) The following minimum flows in Dry Creek between Warm Springs Dam and its confluence with the Russian River:

1) During normal water supply conditions:

75 cfs* from January 1 through April 30
~~80~~40 cfs from May 1 through October 31
105 cfs from November 1 through December 30

2) During dry or critical water supply conditions:

25 cfs from April 1 through October 31
75 cfs from November 1 through March 31

* cubic feet per second

B) The following minimum flows in the Russian River between its confluence with Dry Creek and the Pacific Ocean, unless the water level in Lake Sonoma is below elevation 292.0 feet with reference to the National Geodetic Vertical Datum of 1929, or unless prohibited by the United States Government:

- 1) During normal water supply conditions - ~~125~~70 cfs
- 2) During dry water supply conditions - ~~85~~70 cfs
- 3) During critical water supply conditions - 35 cfs

... "

Term 20 on pages 5-6 of Amended Permit 12947A:

"For the protection of fish and wildlife, and for the maintenance of recreation in the Russian River, permittee shall pass through or release from storage at Lake Mendocino sufficient water to maintain:

A. A continuous streamflow in the EFRR from Coyote Dam to its confluence with the Russian River of 25 cfs at all times.

B. The following minimum flows in the Russian River between the EFRR and Dry Creek:

1. During normal water supply conditions and when the combined water in storage, including dead storage, in Lake Pillsbury and Lake Mendocino on May 31 of any year exceeds 150,000 acre-feet or 90 percent of the estimated water supply storage capacity of the reservoirs, whichever is less:

From June 1 through August 31	185-125 cfs
From September 1 through March October 31	150-125 cfs
From November 1 through March 31	150 cfs
From April 1 through May 31	185 cfs

2. During normal water supply conditions and when the combined water in storage, including dead storage, in Lake Pillsbury and Lake Mendocino on May 31 of any year is between 150,000 acre-feet or 90 percent of the estimated water supply storage capacity of the reservoirs, whichever is less, and 130,000 acre-feet or 80 percent of the estimated water supply storage capacity of the reservoirs, whichever is less:

From June 1 through March October 31	125-150 cfs
From November 1 through March 31	150 cfs
From April 1 through May 31	185 cfs

If from October 1 through December 31, storage in Lake Mendocino is less than 30,000 acre-feet 75 cfs

3. During normal water supply conditions and when the combined water in storage, including dead storage, in Lake Pillsbury and Lake Mendocino on May 31 of any year is less than 130,000 acre-feet or 80 percent of the estimated water supply storage capacity of the reservoirs, whichever is less:

From June 1 through December 31	75 cfs
From January 1 through March 31	150 cfs
From April 1 through May 31	185 cfs

4. During dry water supply conditions 75 cfs
5. During critical water supply Conditions 25 cfs

C. The following minimum flows in the Russian River

between its confluence with Dry Creek and the Pacific Ocean to the extent that such flows cannot be met by releases from storage at Lake Sonoma under Permit 16596 issued on Application 19351:

1. During normal water supply conditions 125-70 cfs
2. During dry water supply conditions 85-70 cfs
3. During critical water supply conditions 35 cfs

... "

Term 17 on pages 4-5 of Amended Permit 12949:

"For the protection of fish and wildlife, and the maintenance of recreation in the Russian River, permittee shall allow sufficient water to bypass the points of diversion to maintain the following minimum flows to the Pacific Ocean:

- (1) During normal water supply conditions 125-70 cfs*
- (2) During dry water supply conditions 85-70 cfs
- (3) During critical water supply conditions 35 cfs

*cubic feet per second

... "

Term 17 on pages 4-5 of Amended Permit 12950:

"For the protection of fish and wildlife, and the maintenance of recreation in the Russian River, permittee shall allow sufficient water to bypass the points of diversion to maintain the following minimum flows to the Pacific Ocean:

- (1) During normal water supply conditions 125-70 cfs*
- (2) During dry water supply conditions 85-70 cfs
- (3) During critical water supply conditions 35 cfs

*cubic feet per second

... "