

County Of Sonoma Agenda Item Summary Report

Clerk of the Board Use Only

Meeting Date

Held Until

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Agenda Item No:

Agenda Item No:

Department: Sonoma County Water Agency

4/5 Vote Not Required

Contact:
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Phone:
(707) 547-1934

Board Date:
9/22/2009

Deadline for Board Action:

AGENDA SHORT TITLE:

Petition to Modify Decision 1610 Minimum Instream Flow Requirements.

REQUESTED BOARD ACTION:

Resolution directing General Manager/Chief Engineer, in consultation with County Counsel, to:

- a. Petition the State Water Resources Control Board to permanently change minimum instream flows in the mainstem Russian River and Dry Creek to those required by the National Marine Fisheries Service's September 24, 2008 Russian River Biological Opinion and;
- b. Commencing in 2010, to file temporary urgency change petitions with State Water Resources Control Board as necessary to comply with the Biological Opinion mandates.

CURRENT FISCAL YEAR FINANCIAL IMPACT - None.

Explanation (if required): None.

Prior Board Action:

06/10/08: Authorizing the General Manager/Chief Engineer to execute an agreement for environmental services for Russian River Flow EIR/EIS, Phase 1 with Environmental Science Associates, and execute a contract for Support for Russian River Flow Project Stakeholder Assessment with California State University, Sacramento, Center for Collaborative Policy.

5/15/07: Directing the General Manager/Chief Engineer to initiate the process to ask the State Water Resources Control Board to amend D1610, including initiating a facilitated stakeholder group process and returning to the Board with a scope of work for a facilitator and developing scopes of work for feasibility studies for D1610 amendment alternatives.

Alternatives – Results of Non-Approval: The Agency would be in violation of the Russian River Biological Opinion issued by National Marine Fisheries Service in September 2008, exposing the Agency to liability under the federal Endangered Species Act.

Background:

The Sonoma County Water Agency (Agency) is required by its water rights permits, as amended by the State Water Resources Control Board's (SWRCB) 1986 Decision 1610 (D1610), to maintain certain minimum instream flows in the Russian River and Dry Creek. D1610 was decided before the listings of three Russian River watershed salmonid species under the Federal Endangered Species Act (ESA).

On September 24, 2008, the National Marine Fisheries Service (NMFS) issued a Biological Opinion (BO) under the ESA covering the Agency's operation and maintenance activities. The BO concludes that the instream flow requirements in D1610 are too high during certain times of the year for listed species and that reducing flows would improve habitat by lowering stream velocity and making it more likely the lagoon at the mouth of the Russian River would remain closed. To address this, the BO requires the Agency to follow a process to reduce the flows, commencing with petitioning the SWRCB by September 24, 2009 to change the Agency's water right permits to allow reduced flows.

After this filing, the BO requires the Agency to initiate preparation of a supporting California Environmental Quality Act/National Environmental Policy Act (CEQA/NEPA) document within six months. The BO also requires the Agency to seek annual temporary changes to D1610 (on the mainstem Russian River only), beginning in the year 2010 and continuing every year thereafter until the SWRCB approves permanent flow changes. The BO assumes the SWRCB will approve the annual mainstem changes and anticipates SWRCB hearings and approval of permanent changes by 2016. The BO also acknowledges that unforeseen issues could arise during the water rights and CEQA/NEPA processes and provides that the schedule may be modified in consultation with NMFS. See BO pages 243-247, attached (A1).

Although the BO requires that the Agency file petitions to change minimum streamflow requirements for both the mainstem and Dry Creek, the BO does not require any temporary annual petitions to amend Dry Creek minimum flow requirements, recognizing the significant water supply impacts that would result and acknowledging that Dry Creek habitat enhancements could prevent the need for such reductions and should be given a chance to work.

Under water rights law, after the SWRCB receives and issues notice of the petitions for permanent changes in D1610, interested parties have the opportunity to file protests. If the protests cannot be resolved, the SWRCB must schedule a hearing before taking any action. The Agency expects that this process will take several years.

The flow changes required by NMFS would change flows during "normal" years from 185 cfs to 125 cfs in the Upper and Middle Russian River from June 1 through October 31, and from 125 cfs to 70 cfs in the Lower Russian River. "Dry" year flows would be reduced from 85 cfs to 70 cfs in the Lower Russian River. Other "dry" and "critically dry" year minimum flows would remain the same. For Dry Creek, the NMFS required flows would reduce minimum flows from 80 cfs to 40 cfs from May 1 to October 31 during "normal" years. The BO leaves open the possibility that during the CEQA/NEPA processes, alternative minimum flow requirements could be developed that would be acceptable to NMFS. The Agency will return to the Board to initiate the CEQA process within six months, as directed by the BO.

Background:

This item also asks the Board to authorize the General Manager/Chief Engineer, in consultation with County Counsel, to file the annual temporary change petitions required by NMFS to reduce mainstem Russian River flows from 185 cfs to 125 cfs in the Upper and Middle Russian River from June 1 through October 31, and from 125 cfs to 70 cfs in the Lower Russian River (with the understanding that for compliance purposes the Agency will typically maintain about 85 cfs at the Hacienda gage). See BO page 247 (A1). The Agency will review the hydrology each spring and, if application of the existing provisions of D1610 would not result in the reductions in streamflow required by NMFS, will file the necessary temporary change petition. These petitions will be filed in the same manner as the temporary change petitions filed by the Agency in 2004, 2007 and 2009 and be subject to the same notice process.

The requested actions are necessary to comply with the express mandates in the BO.

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Attachments: Resolution (R1); BO cover sheet and pages 243-247 (A1)

On File With Clerk: 1) NMFS Russian River Biological Opinion; 2) SWRCB Decision 1610; and 3) Draft Petition for Modification of Water-Right Permits.

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Board Action (If other than "Requested")

Vote: