

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

**DIVISION OF WATER RIGHTS**

**ORDER WR 2021-0097-EXEC**

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In the Matter of Permits 5633, 9390, and 18546  
(Applications 9892, 14278, and 26242)

**Marin Municipal Water District**

**ORDER APPROVING TEMPORARY URGENCY CHANGES**

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SOURCE: Lagunitas Creek tributary to the Pacific Ocean

COUNTY: Marin County

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**BY THE EXECUTIVE DIRECTOR:**

**1.0 SUBSTANCE OF TEMPORARY URGENCY CHANGE PETITIONS**

On September 10, 2021, Marin Municipal Water District (District or Permittee or Petitioner) filed temporary urgency change petitions (TUCP) with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), requesting approval of temporary changes to water right Permits 5633, 9390, and 18546 (Applications 9892, 14278, and 26242) pursuant to California Water Code section 1435 et seq. The District filed the TUCPs due to unprecedented hydrologic conditions associated with the current drought. With the TUCPs, the District requested temporary modifications to minimum flow requirements for Lagunitas Creek that were included in Permits 5633, 9390, and 18546 pursuant to Conditions 1 and 2 of State Water Board Order WR 95-17 (Order WR 95-17). The District anticipates that it may be able to save approximately 2,000 acre-feet (af) of water with the changes proposed with the TUCPs, conserving that water for fish, wildlife, and municipal water uses from the remainder of 2021 through the summer of 2022.

## **2.0 BACKGROUND**

### **2.1 Lagunitas Creek Watershed**

Lagunitas Creek originates on the north slope of Mount Tamalpais and flows northwesterly for about 25 miles before its confluence with Tomales Bay and the Pacific Ocean. The Lagunitas Creek watershed, which encompasses approximately 103 square miles has four major tributaries, San Geronimo Creek, Devils Gulch, Nicasio Creek, and Olema Creek. Lagunitas Creek is an important coastal stream supporting three species that are Federally or State listed as threatened or endangered including coho salmon and California freshwater shrimp, both of which are State and Federally listed endangered species, and steelhead, which is a Federally listed threatened species.

The District operates five reservoirs within the Lagunitas Creek watershed to supply water to its service area: Lake Lagunitas, Bon Tempe Reservoir, Alpine Lake, Nicasio Reservoir, and Kent Lake<sup>1</sup>. Kent Lake, located on upper Lagunitas Creek, is the largest of its reservoirs and was last expanded in 1982 to a capacity of 32,895 af. Water is diverted to storage in Kent Lake at Peters Dam.

### **2.2 The District's Water Right Permits 5633, 9390, and 18546**

Permit 5633, issued pursuant to Application 9892, has a priority of May 9, 1940, and authorizes the direct diversion of up to 50 cubic feet per second (cfs), and diversion to storage of up to 30,000 acre-feet per annum (afa) from Lagunitas Creek. The season of diversion is from January 1 through December 31 of every year. Permit 5633 allows the District to store the 30,000 afa as follows: 1) up to 4,500 afa at Bon Tempe Dam/Reservoir; 2) up to 9,450 afa at Alpine Dam/Reservoir; and 3) up to 16,050 afa at Lower Lagunitas Reservoir (aka Peters Dam/Kent Lake). Water diverted under Permit 5633 may be used for: 1) municipal and domestic purposes within the District's service area; 2) incidental power purposes at Kent Lake Power Plant, Alpine Lake Power Plant, and Phoenix Lake Power Plant; and 3) recreational and fish and wildlife protection and enhancement purposes at Bon Tempe Lake, Alpine Lake, and Kent Lake.

Permit 9390, issued pursuant to Application 14278, has a priority of April 30, 1951, and authorizes the diversion to storage at Peters Dam/Kent Lake of up to 8,550 afa of water from Lagunitas Creek. The season of diversion is from January 1 through December 31 of every year. Permit 9390 also allows water to be rediverted at Alpine Lake and Bon Tempe Lake. Water diverted under Permit 9390 may be used for 1) municipal and domestic purposes within the District's service area; 2) incidental power purposes at Kent Lake Power Plant and Phoenix Lake Power Plant; and 3) recreational and fish and

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<sup>1</sup> The District also operates Phoenix and Soulajule Reservoirs which are not within the Lagunitas Creek watershed.

wildlife protection and enhancement purposes at Bon Tempe Lake, Alpine Lake, and Kent Lake.

Permit 18546, issued pursuant to Application 26242, has a priority of February 29, 1980, and authorizes the diversion to storage at Peters Dam/Kent Lake of up to 8,300 afa of water from Lagunitas Creek. The season of diversion is from November 1 of each year through April 30 of the succeeding year. Permit 18546 also allows water to be rediverted at Alpine Lake and Bon Tempe Lake. Water diverted under Permit 18546 may be used for 1) municipal and domestic purposes within the District's service area; 2) incidental power purposes at Kent Lake Power Plant and Phoenix Lake Power Plant; and 3) recreational and fish and wildlife protection and enhancement purposes at Bon Tempe Lake, Alpine Lake, and Kent Lake.

### **2.3 State Water Board Order WR 95-17**

In 1980, to facilitate the expansion of Kent Lake, the District filed water right Application 26242 and petitions for time extension for Permits 5633 and 9390. The State Water Board held a hearing on the protested application and petitions in December 1980 and January 1981. Following the hearing, on April 7, 1982, the State Water Board issued Decision 1582 (D-1582), which allowed the District to enlarge Kent Lake with the issuance of Permit 18546 and approval of the District's petitions on Permits 5633 and 9390.<sup>2</sup> D-1582 addressed concerns regarding water diversions under the water rights and the potential impacts to fishery resources in Lagunitas Creek by establishing interim instream flow standards for Lagunitas Creek and directed the District to conduct studies on fishery protection measures. The District subsequently filed suit with the Marin County Superior Court to set aside D-1582. On January 31, 1985, the court entered a stipulated judgment regarding D-1582 and established interim modified flow requirements, directed the District to conduct further studies, and remanded the matter back to the State Water Board for reconsideration and finalization of instream flow requirements. In 1990 following fishery studies conducted by the District and the Department of Fish and Wildlife (CDFW), both the District and CDFW requested a water right hearing before the State Water Board to resolve remaining issues and to determine final water permit conditions for the project. The hearing was conducted in 1992, and on October 26, 1995, the State Water Board issued Order WR 95-17, which established water right permit terms and other actions needed to protect fishery and other public trust resources.

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<sup>2</sup> Although not the subject of the TUCPs or this Order, D-1582 also approved a time extension for Permit 12800, which authorizes certain direct diversion from Nicasio Creek, as well as certain diversion to storage at Nicasio Reservoir and rediversion at Kent Lake, Alpine Lake, and Bon Tempe Lake.

For the protection of fishery resources in Lagunitas Creek, Order WR 95-17 subjected diversions under the District's Permits 5633, 9390, and 18546 to the following Conditions 1 and 2:

*Condition 1*

Instream Flow Requirement: Permittee shall make a metered release of at least one [cfs] directly below Peters Dam at all times and shall bypass or release sufficient water from Kent Lake to maintain the following minimum instream flow requirements, as measured in cfs at the [United States Geological Survey (USGS)] gage at [Samuel P.] Taylor State Park.

LAGUNITAS CREEK MINIMUM INSTREAM FLOW REQUIREMENTS

Normal Year Requirements

Time Period	Flow (cfs)
November 1/15* – December 31	20
January 1 – March 15	25
March 16 – March 31	20
April 1 – April 30	16
May 1 – June 15	12
June 16 – November 1/15*	8

Dry Year Requirements

Time Period	Flow (cfs)
November 1/15* – March 31	20
April 1 – April 30	14
May 1 – June 15	10
June 16 – November 1/15*	6

\*The minimum flow of 20 cfs in November shall begin following the first storm that produces a “trigger” flow of 25 cfs as measured at the USGS gage at Taylor State Park. In the absence of a storm causing a “trigger” flow, the 20 cfs flow requirement shall become effective on November 15 of each year.

*Condition 2*

Upstream Migration Flows: To provide for the upstream migration of anadromous fish, Permittee shall ensure that four upstream migration flows are provided between November 1 and February 3, as described below. An “upstream migration flow” is defined as a continuous flow of at least 35 cfs that exists for 3 days as measured at the USGS gage at Taylor State Park. A “trigger” flow is defined as a flow of 25 cfs between

November 1 and December 31, or a flow of 30 cfs between January 1 and January 31, as measured at the USGS gage at Taylor State Park. Permittee shall attempt to provide upstream migration flows that coincide with natural runoff from storm events.

- a. The first upstream migration flow shall be provided in conjunction with the first storm that occurs after November 1 that produces a trigger flow of 25 cfs at the park gage. The minimum spawning flow of 20 cfs shall then be maintained for the rest of the month. If no storm produces a trigger flow before November 15, Permittee shall release sufficient water from Kent Lake to provide an upstream migration flow beginning on November 15.
- b. A second upstream migration flow shall be provided in conjunction with a storm that occurs after November 4 that produces a trigger flow of 25 cfs at the park gage. If a second trigger flow of 25 cfs does not occur before December 1, Permittee shall release sufficient water from Kent Lake to provide an upstream migration flow beginning on December 1.
- c. A third upstream migration flow shall be provided in conjunction with a storm that occurs after December 4 that produces a trigger flow of 25 cfs at the park gage. If a trigger flow of 25 cfs does not occur before January 1, Permittee shall release sufficient water from Kent Lake to provide an upstream migration flow beginning on January 1.
- d. A fourth upstream migration flow shall be provided in conjunction with a storm that occurs after January 4 that produces a trigger flow of 30 cfs at the park gage. If a trigger flow of 30 cfs does not occur before February 1, Permittee shall release sufficient water from Kent Lake to provide an upstream migration flow beginning on February 1.

Condition 3 of Order WR 95-17 defines water year types as follows:

**Water Year Classification:** The water year classification shall be determined on January 1 and April 1 of each year, based on precipitation as measured at the Kent rain gage. The January 1 water year classification shall be based on the total precipitation measured during the preceding [15-month] period. If the total precipitation during this [15-month] period is less than 48 inches, Permittee shall maintain the dry-year flow requirements from January 1 through March 31. If the total precipitation during this [15-month] period is 48 inches or greater, Permittee shall maintain the normal year flow requirement from January 1 through March 31. The April 1 water year classification shall be based on the total precipitation during the preceding [six-month] period. If the total precipitation during this [six-month] period is less than 28 inches, Permittee shall maintain the [dry-year] flow requirement from April 1 to the first upstream migration flow in November. If the total precipitation during this six-month period is 28 inches or greater, Permittee shall

maintain the normal year flow standard from April 1 to the first upstream migration flow in November.

### **3.0 DROUGHT CONDITIONS**

#### *Drought Conditions and Actions within the District*

The District has stated that as of October 19, 2021, the previous 21 months were the driest on record in 143 years, and consequently District reservoir levels were at historic low levels. The recorded rainfall as measured at Lake Lagunitas from July 1, 2020 through June 30, 2021, was approximately 20.42 inches, which is 39 percent of average. As of October 25, 2021, the combined water supply storage level in the District's reservoirs was 34,535 af, which is approximately 43.4 percent of the total storage capacity and 49.5 percent of historical average for that date<sup>3</sup>.

Pursuant to Water Code section 10631, an Urban Water Management Plan (UWMP) is required to be prepared by each urban water supplier<sup>4</sup> every five years and is intended to support long-term resource planning to ensure that adequate water supplies are available to meet the supplier's existing and future water needs. Pursuant to Water Code section 10632, each UWMP must include a Water Shortage Contingency Plan (WSCP) which includes the stages of response to a water shortage caused by drought or other water supply interruptions. The District prepared a WSCP (updated in 2020) and has been implementing the plan during the current drought. The District Ordinances discussed below adopted water demand reduction actions from the WSCP that are based on increasing levels of water shortage within the District. As of the date of this Order, the District is in Shortage Level 4, which corresponds up to a 40 percent shortage of water. The District has adopted the majority of the water demand actions included in Table 6-1 of the WSCP, including all of the actions for Shortage Level 4 and several actions that correspond to Shortage Level 5 (up to 50 percent shortage). As of the date of this Order, the District has not yet adopted the WSCP's most stringent actions, which could potentially include a moratorium on new connections, implementing

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<sup>3</sup> Data obtained from the District's website, October 25, 2021. A significant storm event, which occurred from October 23 through October 25, 2021, resulted in an increase in reservoir storage levels from the lowest levels recorded earlier in October. On October 19, 2021, the District's combined storage levels had decreased to 25,712 af, approximately 32.3 percent of total storage capacity, and water storage in Kent Lake was the lowest since it expanded in 1983.

<sup>4</sup> Water Code section 10617 defines "urban water supplier" as a water supplier, either publicly or privately owned, providing water for municipal purposes either directly or indirectly to more than 3,000 customers or supplying more than 3,000 acre-feet of water annually.

water allotments, and prohibiting the use of potable water for any purpose other than human health and sanitation needs.

During 2021, the following drought-based resolution and ordinances were adopted by the District:

- On April 20, 2021, the District's Board of Directors approved Resolution 8630, which declared a water shortage emergency pursuant to Water Code sections 350 et seq. and 71640 et seq. On the same day, the District's Board also enacted Ordinance No. 449, which included a comprehensive set of mandatory water conservation measures intended to significantly reduce the consumption of water during the drought to extend existing water supplies within the District. Mandatory water use prohibitions included washing of vehicles; use of private fire taps for purposes other than providing water for fire protection; power washing of buildings and homes; and the use of potable water for dust control, compaction, sewer flushing, street cleaning, or any other use that can be met with recycled water.
- On May 4, 2021, the District's Board adopted Ordinance No. 450, requiring further mandatory conservation measures. These mandatory measures included limiting outdoor sprinkler irrigation system to two days per week and requiring all recreation pools and spas to be covered when not in use to reduce water lost through evaporation.
- On July 6, 2021, the District's Board adopted Ordinance No. 452, mandating more stringent irrigation measures for its customers. The mandatory measures included limiting overhead sprinkler irrigation systems to one day per week on a day designated by the District and limiting drip irrigation to two days per week.
- On July 20, 2021, the District's Board adopted Ordinance No. 453, prohibiting all new water service connections from use of potable water for landscape irrigation, and requiring new water service connections to postpone until after the water shortage emergency the installation of potable water irrigated landscaping.
- On September 21, 2021, the District's Board adopted Ordinance No. 454, establishing water use limits for certain types of water accounts within the District to curtail outdoor water use during the winter and summer service periods and to impose associated penalties that would apply to water use in excess of new water use limits. Ordinance No. 454 established a cap on water usage, and water accounts that exceed the cap will be charged a penalty based on each CCF (hundred cubic feet) of water exceeding the cap. The District determined it was necessary to adopt the additional measures to substantially reduce or eliminate water use for outdoor irrigation and preserve remaining water supply given the uncertainty of future supply conditions due to the drought.

- On October 19, 2021, the District's Board adopted Ordinance No. 455, prohibiting winter irrigation, prohibiting pool filling, and modifying time periods for enforcement of violations. Ordinance No. 455 prohibits irrigation starting December 1, 2021 continuing through May 31, 2022. Spot-watering by hand is exempt from this prohibition. Ordinance No. 455 also prohibits the refilling of a completely drained swimming pool and initial filling of any swimming pool for which application for a building permit was made after December 1, 2021. Additionally, Ordinance No. 455 modified enforcement periods for violations of water waste by allowing District staff to issue additional fines for repeated violation of the same category of water waste if the violation occurs within one year of the prior violation for which a fine was incurred.

According to the District's website, as of October 15, 2021, the District had experienced a 23 percent water savings since May 1, 2021, which the District attributed to its drought-related actions, a comprehensive outreach campaign by the District, and the launch of new incentives to drive conservation. The District also reported that indoor water use since April 1, 2021 dropped from approximately 41 gallons per capita per day (GPCD) to 33 GPCD as of September 26, 2021, which is a decrease of approximately 20 percent. The District stated that it is considering further actions on conservation measures, water use restrictions, fines, and penalties to ensure ongoing water savings aimed at preserving water stored in its reservoirs.

#### *Drought Conditions and Actions within Marin County and the State*

On May 18, 2021, the County of Marin approved Resolution 2021-27, which declared a local emergency regarding drought conditions throughout the county. Subsequently, on July 8, 2021, Governor Gavin Newsom proclaimed a state of an emergency in Marin County, as well as in eight other counties, for a total of 50 "Proclaimed Drought Counties" under emergency proclamations at that time, in response to the continuing dry conditions. The Governor's July 8, 2021 proclamation included the following directive in paragraph 4: "To ensure adequate, minimal water supplies in the Proclaimed Drought Counties for purposes of health, safety, and the environment, the State Water Resources Control Board (Water Board) shall consider modifying requirements for reservoir releases or diversion limitations to conserve water upstream later in the year in order to protect cold water pools for salmon and steelhead, enhance instream conditions for fish and wildlife, improve water quality, protect carry over storage, or ensure minimum health and safety water supplies. The Water Board shall require monitoring and evaluation of any such changes to inform future actions." The Governor's July 8, 2021 directive further clarified that it did not limit the effect of a substantially similar directive in paragraph 4 of the Governor's May 10, 2021 drought emergency proclamation.

On October 19, 2021, the Governor issued an additional drought emergency proclamation in California's remaining eight counties. Among other actions, the



October 19, 2021 proclamation also directs urban water suppliers statewide to update, if necessary, and execute their WSCPs “at a level appropriate to local conditions that takes into account the possibility of a third consecutive dry year.”

#### **4.0 CHANGES PROPOSED WITH TUCPs**

##### **4.1 District’s Proposed Changes to Lagunitas Creek Flow Requirements**

Changes proposed to Condition 1 requirements:

With the TUCPs, the District proposes to temporarily change the minimum flow requirements that are included in Permits 5633, 9390, and 18546 pursuant to Condition 1 of Order WR 95-17 by reducing the minimum instream flow requirement in Lagunitas Creek from the dry-year minimum flow requirement of 20 cfs down to 16 cfs from December 15, 2021 to April 1, 2022.

Specifically, the District has requested that the State Water Board make the following temporary changes to the minimum instream flow requirements for Lagunitas Creek in Permits 5633, 9390, and 18546:

##### November 2021 – April 2022 Lagunitas Creek Flow Requirements

Time Period	Flow (cfs)
November 1 – November 14	6
November 15 – November 30	6*
December 1 or 15** – March 31	16
April 1 – April 30	14

\*If a storm occurs during this period that results in a flow of 25 cfs or greater at the USGS streamgage at Taylor State Park, the District will release sufficient water to maintain a minimum flow of 10 cfs, measured at the same location, for a period of one week. During this one-week period, spawner surveys will be conducted. If coho salmon spawning is not observed, flows will be returned to the summer baseflow level of 6 cfs. If spawning is observed, flows will be increased to 16 cfs through March 31, 2022.

\*\*If a storm occurs during this period that results in a flow of 25 cfs or greater at the USGS streamgage at Taylor State Park, the District will increase releases to maintain the winter baseflow of 16 cfs. If no such storm occurs during this period, the winter baseflow of 16 cfs will begin on December 18, following the first three-day upstream migration flow release from December 15 – 17.

Changes proposed to Condition 2 requirements:

With the TUCPs, the District also proposes to temporarily change the 35-cfs upstream migration flow requirements that are included Permits 5633, 9390, and 18546 pursuant to Condition 2 of Order WR 95-17 by postponing the first upstream migration flow from the period of November 1 to 15 to December 1 to 15, and reducing the total number of upstream migration flows from four (4) to three (3).

#### **4.2 District's Proposed Monitoring and Adaptive Management Plan**

As discussed in the TUCPs, the District has developed the *Lagunitas Creek TUCP Monitoring and Adaptive Management Plan* (Monitoring Plan), dated August 26, 2021. The Monitoring Plan will be implemented throughout the TUCP approval period and requires that the District hold weekly meetings with CDFW, National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (USFWS), and the San Francisco Bay Regional Water Quality Control Board (San Francisco Bay Water Board) (hereinafter collectively referred to as the Resource Agencies) and monthly meetings with a subcommittee of the Lagunitas Technical Advisory Committee<sup>5</sup> (Lagunitas TAC). Pursuant to the Monitoring Plan, the District will provide weekly updates to the State Water Board, CDFW, NMFS, and the San Francisco Bay Water Board regarding the current hydrologic and water quality and fishery conditions in Lagunitas Creek. Further, pursuant to the adaptive management portion of the Monitoring Plan, if monitoring identifies unfavorable conditions as a result of the temporary flow changes requested in the TUCPs, the District will gradually increase stream flow releases and increase monitoring. The District's compliance with the Monitoring Plan is made a condition of this Order. Brief descriptions of the various components of Monitoring Plan follow.

##### **4.2.1 Monitoring**

The District proposes to monitor habitat conditions and hydrologic connectivity for the duration of the TUCP approval period. The District will monitor upper Lagunitas Creek (between Peters Dam and Tocaloma Bridge) and lower Lagunitas Creek (between Tocaloma Bridge and the Gallagher streamgauge near Pt. Reyes Station) in numerous locations at shallow riffles (i.e. critical riffles) to assess and document passage and habitat conditions for salmonids. The District will conduct the monitoring once every two weeks or, as conditions allows, at target flows of approximately 10, 15, 20, 25, 30, and

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<sup>5</sup> From the District's website: "The Lagunitas Creek TAC is a collaborative, multi-party forum that provides its members the opportunity to leverage resources to implement programs and projects that will provide multiple benefits for water resources in the Lagunitas Creek watershed. The TAC serves as the information-sharing forum for its members on fisheries, water quality and ecosystem restoration issues in the Lagunitas Creek watershed, and the TAC offers advice to all of its members on optimal approaches to benefit the environment of the watershed."

35 cfs. Water depth will be measured at regular intervals (i.e. approximately every 1–2 feet).

To monitor the effects on water quality and aquatic habitat, the District proposes to use electronic data loggers. Each logger will be anchored to the streambed in pool habitats with adequate mixing and will record continuous measurements of water temperature, dissolved oxygen, specific conductance, and turbidity. All data will be collected at one-hour intervals and will be downloaded every two weeks at minimum. The data loggers will be deployed in upper and lower Lagunitas Creek.

To monitor fisheries, the District proposes to conduct spawner surveys in main stem Lagunitas Creek according to existing protocols, which include counting live fish, mapping and measuring redds, and measuring and collecting tissue samples from carcasses. During the TUCP Order period, the District will note indicators of fish condition (e.g. presence of fungus or external injuries) and stress behaviors (e.g. gasping, unusual swimming patterns). Photographs will be taken of all redds encountered, and superimposition will be assessed using previous photographs for reference. The spawner surveys will be conducted in upper and lower Lagunitas Creek.

All monitoring conducted pursuant to the Monitoring Plan is in addition to the annual monitoring that the District conducts in accordance with the Lagunitas Creek Stewardship Plan<sup>6</sup> and Order WR 95-17.

#### **4.2.2 Reporting**

The District will hold weekly meetings with staff from the Resource Agencies. The District will provide notes from these meetings to agency staff within one week after their occurrence. At each meeting, the District will provide a written or tabular summary of monitoring results and operational conditions in relation to the TUCP approval order. This summary will include, but is not necessarily limited to the following information:

- reservoir storage status
- water conservation status
- rainfall/runoff totals within reporting period and to date
- streamflow record at USGS streamgages (Taylor State Park, Gallagher/Pt. Reyes Station)
- monitoring results relative to threshold values
- adaptive management actions taken and/or recommended
- rainfall and streamflow forecast for the upcoming 7-14 days

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<sup>6</sup> The Lagunitas Creek Stewardship Plan was approved by the District in 2011 and addressed actions that needed to be taken to benefit aquatic resource populations in Lagunitas Creek, specifically coho salmon, steelhead and California freshwater shrimp.

The District will also post to its website and provide a hyperlink to the State Water Board with any required TUCP hydrologic status updates. At the conclusion of the TUCP approval period, a summary report of monitoring activities and adaptive management measures associated with the TUCPs will be submitted to the Resource Agencies. This report will be publicly available from the District.

### **4.2.3 Adaptive Management**

#### Adaptive Management Thresholds

To determine whether adaptive management actions should be taken based on monitoring results, the District has proposed specific thresholds as detailed in the Monitoring Plan for each of the following:

- salmonid adult passage
- salmonid smolt passage
- salmonid juvenile passage
- water depth over redds
- water velocity over redds
- water temperature
- water quality
- fish condition and behavior

#### Adaptive Management Approach During Delayed Winter Base Flow Period

An adaptive management approach will be used during the delayed winter baseflow period from November 1 through December 15. In the event of unusually early or heavy rainfall during this period that results in a flow of greater than 25 cfs at the Taylor State Park gage, the District will release sufficient water to maintain increased base flows as detailed in the Monitoring Plan. Specifically, should a storm occur between November 15 through 30, the District will conduct spawner surveys to determine how long flows will be released. If a storm occurs between December 1 through 15, the District will increase releases to maintain the winter baseflow specified in the TUCP approval order. If no storm occurs from December 1 through 15, the winter baseflow will begin on December 18, following the first three-day upstream migration flow release from December 15-17.

#### Chain of Communication

Throughout the TUCP approval period, an adaptive management approach will be used to ensure that field monitoring results are informing stream flow release operations. The District will establish a chain of communication, whereby any adverse effects that may be observed or documented in the field are relayed to the appropriate managers and Resource Agencies for consideration and response.

### Adaptive Management Procedure

If monitoring identifies unfavorable conditions attributable to the TUCP flow release schedule, the District will increase stream flow releases in increments of approximately 1-2 cfs (within 24 hours) for a period of one week. During this one-week period, additional monitoring will be conducted, and conditions will be re-assessed in consultation with the Resource Agencies. If it is determined in coordination with the Resource Agencies that flow can be returned to its original level without adverse impacts, the District will return flow to the original level. The Resource Agencies will be notified of any such monitoring result and subsequent change in stream flow release.

If salmonid passage thresholds are not being met, the District will investigate whether critical riffles could be modified to provide passage. Based on previous experience, this may entail reorienting instream wood or other debris by hand to provide favorable hydraulics and achieve passage criteria. Any such modifications would be presented to the Resource Agencies for discussion prior to carrying them out.

## **5.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

The State Water Board must comply with applicable requirements of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) prior to issuance of any order approving a TUCP. (Cal. Code Regs., tit. 23, § 805, subd. (b).) The District determined that the requested changes are statutorily exempt under Public Resources Code, section 21080, subdivision (b)(4), and categorically exempt under CEQA Guidelines sections 15301, 15307, and 15308. The District filed a Notice of Exemption on August 31, 2021.

The District determined that the changes requested in the TUCPs are statutorily exempt from CEQA since the changes consist of specific actions necessary to prevent or mitigate an emergency. (Pub. Resources Code, § 21080, subd. (b)(4).) The District stated that the County of Marin is, as much of California, facing an extreme drought. As discussed in Section 3.0 of this Order, the District, Marin County, and the State of California have all recognized the extreme drought conditions in Marin County. Further, the Governor's July 8, 2021 drought emergency proclamation suspended environmental review by state and local agencies to the extent necessary to carry out actions related to drought response and mitigation, specifically including under paragraph 4. As discussed previously in this Order, the District's reservoirs are storing less than 44 percent capacity as of October 25, 2021. Further, the District typically receives about 25 percent of its supply from Sonoma County Water Agency (SCWA), which is experiencing similar drought conditions and water storage shortfalls. As a result of the drought and related plans and regulatory actions, SCWA has reduced the amount of water available to its contractors and purchasers by at least 20 percent compared to 2020. Consequently, the District's supply from SCWA has been reduced by 50 percent.

Without the changes proposed with the TUCPs, current minimum instream flow requirements would require releases of water from Kent Lake that would risk significant depletions of storage and potential reduction or elimination of water supplies for uses in the District's service area during the winter and spring of 2022. Such depletions in storage and reductions or eliminations of water supplies would cause serious impacts to human health and welfare and reduce water supplies and for fishery protections and stable flows in Lagunitas Creek in summer 2022. The District found that the changes requested in the TUCPs to be statutorily exempt from CEQA because it is necessary to prevent or mitigate an emergency due to the drought that poses a clear and imminent danger.

The District also found that the changes requested in the TUCPs are also consistent with the following Categorical CEQA exemptions as described below:

- A Class 1 categorical exemption “consists of the operation, repair, maintenance, permitting, leasing, licensing or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.” (Cal. Code Regs., tit. 14, § 15301.)
- A Class 7 categorical exemption “consists of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment.” (Cal. Code Regs., tit. 14, § 15307.)
- A Class 8 categorical exemption “consists actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment.” (Cal. Code Regs., tit. 14, § 15308.)

The District stated that proposed action consists of the operation of existing facilities involving negligible or no expansion of use beyond that existing, and, accordingly, is categorically exempt from CEQA under a Class 1 exemption.

The District stated that the proposed temporary urgency water right changes, and the State Water Board's approvals thereof, would conserve water in the District's reservoirs to support beneficial uses downstream of Kent Lake, including critical life stages and habitat for listed threatened and endangered species in Lagunitas Creek, and, therefore, the proposed actions are categorically exempt from CEQA pursuant to Class 7 and Class 8 exemptions.

The State Water Board has reviewed the information submitted by the District and has made its own independent finding that the requested temporary urgency changes to Permits 5633, 9390, and 18546 are statutorily and categorically exempt from CEQA. In conjunction with issuing this Order, the Division will file a Notice of Exemption in accordance with the California Code of Regulations, title 14, section 15062. Pursuant to the Governor's drought emergency proclamations, the State Water Board will also add this Order to its list of activities or approvals for which the provisions of CEQA are suspended.

## **6.0 PROCEDURAL REQUIREMENTS CONCERNING THE TUCPs**

On September 15, 2021, the State Water Board issued a public notice of the District's TUCPs pursuant to Water Code section 1438, subdivision (a). Pursuant to Water Code section 1438, subdivision (b)(1), the public notice was also published in the *Marin Independent Journal* on September 24, 2021, by the District. In addition, the State Water Board distributed the notice through its electronic notification system. Pursuant to Water Code section 1438, subdivision (d), any interested person may file an objection to the temporary changes by the end of the noticing period, which was September 30, 2021. The State Water Board must promptly consider any objections and may hold a hearing on any objections. (*Id.*, subd. (e).)

The Division received objections to the District's TUCPs from Mr. Richard Morat and Mr. Stephen Owens. Comments on the TUCPs were provided by CDFW and the Environmental Action Committee of West Marin. The District responded to the comments and objections by email to the Division on October 15, 2021. The objections and comments are discussed below.

### **6.1 Comments of CDFW**

By letter dated September 14, 2021, CDFW provided comments on the District's TUCPs. CDFW stated that the District's Flow Study methods and results were reviewed by Resource Agencies and stakeholders throughout the process and the subsequent feedback was incorporated into the TUCPs. CDFW supported the District's TUCPs, provided certain monitoring, reporting, and adaptive management conditions were included or reflected in any TUCP approval order. CDFW stated that its conditional support of the District's TUCPs does not authorize any act that results in the "take" of 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 & G. Code, § 2050 et seq.) or the Federal Endangered Species Act (16 U.S.C.A. §1531 et seq.). CDFW stated that if "take" will result from any act authorized under a TUCP approval order, the District shall obtain an Incidental Take Permit from CDFW prior to continuing operation of the project. CDFW also indicated that the District should be responsible for meeting all applicable requirements of the state and Federal

Endangered Species Act for the temporary urgency changes authorized under a TUCP approval order.

*District Response*

The District responded that it will continue to work with the Resource Agencies and Lagunitas TAC through the TUCP monitoring period and will carry out the District's Monitoring Plan which was developed with CDFW and referenced in CDFW's comments.

*State Water Board Response*

Summaries of the monitoring, reporting, and adaptive management conditions CDFW requested are discussed in Section 4.2 of this Order and are detailed in the District's Monitoring Plan. The District will be required to comply with the final Monitoring Plan dated August 26, 2021. Further, this Order is conditioned on the proposed temporary urgency changes not resulting in any incidental take and meeting all applicable California and Federal Endangered Species Act requirements.

**6.2 Comments of Richard Morat**

By letter dated September 29, 2021, Richard Morat provided comments on the District's TUCPs. Mr. Morat stated that he objected to the changes proposed with the TUCPs and suggested that terms be added to any order issued approving the TUCPs that would both lessen adverse impacts to endangered salmonids and motivate the District to operate such that similar TUCPs will not be filed in the future.

Mr. Morat stated that his objection is based on whether the District is effectively managing its water supply. Mr. Morat claimed that the risks being taken for water supply are out of balance with the risks being levied on salmonids in Lagunitas Creek. Mr. Morat requested terms be included in any order approving the TUCPs as follows: 1) within one year, the District should be required to develop a water management plan for future years that projects and tracks the intended water deliveries and has an enforceable plan to recoup over-deliveries within the following month; 2) hydrology should be monitored weekly, and approval of the TUCPs should be rescinded if it is determined that the temporary changes have become "inappropriate and unreasonable" due to reassessment of water supply and fishery conditions; 3) at the end of the TUCP approval period, the District should be required to report the total quantity of water that remained in storage (i.e. was not released into Lagunitas Creek) as a result of the temporary urgency changes to minimum instream flows under Order WR 95-17; and 4) within two years, the District should be required to prepare and submit to the Division a conceptual plan of its water sources and supply limits that will obviate the need to file similar TUCPs in the future.



### District Response

The District responded that it is currently in the process of developing restoration designs for Lagunitas Creek with the focus on enhancing habitat to support coho, steelhead, and freshwater shrimp, and the District will use a habitat suitability model to help inform restoration designs. The District's Board of Directors is also working diligently to identify additional water sources including an intertie with East Bay Municipal Utility District to facilitate transfers, potential options for temporary desalination, infrastructure for recycled water, and long-term water conservation measures.

Relative to rescinding the TUCP approval if significant rainfall this rainy season obviates the need for the temporary changes, the District stated that given current conditions, recovery of the reservoirs will require a significant amount of rainfall beyond an average year to make up for the current deficiency in the system. The District has indicated that if rainfall is sufficiently abundant to fully restore reservoir levels prior to the end of the TUCP period, the District would review restoring flows consistent with the rainfall year.

### State Water Board Response

The State Water Board's responses to Mr. Morat's four requested conditions are as follows:

- 1) As discussed in Section 3.0, the District has already developed and is currently operating under a UWMP, including a WSCP with specified water demand management, reduction, and enforcement actions in response to a range of water supply shortage conditions. However, the monitoring and reporting required under this Order may produce additional information that will inform both the District and the State Water Board regarding water management and water rights administration under Order WR 95-17 in 2022 and beyond.
- 2) The adaptive management component of the District's monitoring program addresses modification of the requested minimum flows in the TUCPs should early or heavy rainfall occur from November 1 through December 15.
- 3) & 4) Following expiration of this Order, the District will provide the State Water Board a summary report regarding operations that occurred during the TUCP approval period including information regarding the total quantity of water that remained in storage in Kent Lake as a result of the temporary changes. As required by Condition 4(h) of this Order, the report will also include a discussion of the effectiveness of conservation actions taken by District during the current drought and propose changes as necessary to the conservation actions that could minimize the need for similar TUCPs in future years.

### **6.3 Comments of the Environmental Action Committee of West Marin**

By letter dated September 30, 2021, Environmental Action Committee of West Marin (EAC) provided comments on the District's TUCPs. Overall, the EAC provided its concerns about significant potential impacts to coho salmon. The EAC indicated that while the District is conserving a considerable amount of water, other districts in the region are achieving more significant conservation goals. EAC claimed that the District's lack of conservation efforts necessitated in large part filing the TUCPs. The EAC noted that the District recently failed to meet the deadline to submit conservation monitoring reports to the State. The EAC also indicated its support for the District's monitoring and adaptive management plan including the conditions that were recommended by CDFW and NMFS but questioned whether the monitoring plan was feasible. The EAC also noted that the drought does not relieve the District of its obligation under the Endangered Species Act to ensure that no take of federally listed species occurs as a result of the changes proposed with the TUCPs. The EAC indicated that if the District's TUCPs are approved, the EAC intends to participate in monitoring results through the Lagunitas TAC.

#### *District Response*

The District stated that since May 1, 2021, District customers have achieved a cumulative water conservation savings of 23 percent. The District stated that in response to below-normal rainfall and declining storage levels this year, a water conservation target for customers of 40 percent was set, and the District began enacting water use restrictions and new incentive programs to enhance water conservation measures. The District indicated that it has continued to adopt more stringent water use limits and penalties for District customers to encourage continued conservation. Relative to the District failing to meet the deadline to submit conservation monitoring reports to the State, the District stated that it has worked collaboratively with the State Water Board to correct reporting procedures. Regarding whether the proposed Monitoring Plan is practically feasible, the District stated that it worked with the Resource Agencies to develop a monitoring plan that could be carried out during the TUCP period. The District acknowledged that the proposed Monitoring Plan significantly expands currently required monitoring activities. The District has added seasonal staff and is contracting with consultants to implement the Monitoring Plan during the TUCP period.

#### *State Water Board Response*

The State Water Board will require the District comply with the Monitoring Plan. The Monitoring Plan includes consultation with the Lagunitas TAC, as discussed in Section 4.2 of this Order. Section 3.0 of this Order details the extensive and ongoing conservation actions being undertaken by the District consistent with its WSCP.

#### **6.4 Comments of Stephen Owens**

By email dated September 30, 2021, Stephen Owens provided a letter objecting to the District's TUCPs. Mr. Owens acknowledged that since issuance of Order WR 95-17, the District has been widely regarded as 'an outstanding steward of the Lagunitas Creek Watershed'. Mr. Owens also stated that the District's active monitoring of the watershed's wildlife resources has provided valuable information to restoration projects within the watershed.

Mr. Owens argued that the data shown in the Flow Study does not endorse delaying the November 15 pulse flow as the data may have been misleadingly represented by the authors of the study. Mr. Owens also claimed that the reduction of the base flow from 20 cfs to 16 cfs and the resulting reduction in spawning habitat are unreasonable. Mr. Owens also asserted that if the District discontinues its practice of a minimum 4.5 cfs flow release from Peters Dam during the TUCP period, habitat will be further impacted.

Mr. Owens argued whether the adaptive management plan criteria ensuring critical riffle passage a minimum of 3 days per month is adequate to protect salmonid spawning. However, Mr. Owens stated that the Monitoring Plan is robust in most ways and recommended additional monitoring options for the District to include in the plan.

Mr. Owens believes that the District should increase its efforts in conservation and identifying alternative water supplies. Mr. Owens claimed that sufficient water existed in Marin County reservoirs early this year to comply with dry year flow requirements, but he believes the District sold its water instead of conserving it. Mr. Owens believes there should be offramps in approval of the TUCPs in the event of average or wet hydrology. Mr. Owens claimed the changes proposed with the TUCPs will result in unreasonable effects on fishery resources and the TUCPs are not in the public interest.

#### **District Response**

The District provided responses to Mr. Owen's comments by email on October 15, 2021. The responses emphasize 1) aspects of the technical information developed to support the TUCP, 2) the Monitoring Plan, and 3) the adaptive management strategy.

#### **State Water Board Response**

Mr. Owens comments have been considered by the State Water Board, however none of the information presented precludes the State Water Board from making the findings, described in Section 7.0 of this Order, required for approval of a TUCP. Sections 7.1 through 7.4 of this Order describe the State Water Board's basis for making each of these findings. The comments provide several criticisms of the technical information

submitted with the TUCP, but do not present alternative information specific to the watershed for the State Water Board to consider. Concerns related to limited critical riffle passage are addressed by the monitoring and adaptive management plan. The critical riffle passage requirement of three days per month is not a condition modification requested with the TUCPs and has been in place since the State Water Board's issuance of Order WR 95-17. Several of the issues raised, such as discussion of potential monitoring options or planning activities, appear to be best raised through the ongoing meetings this Order requires the District to convene with the Resource Agencies and the Lagunitas TAC. The summary of conservation actions taken by the District and implementation of the District's WSCP provided in Section 3.0 of this Order address Mr. Owen's criticism that the District should be undertaking more conservation actions. Pursuant to Water Code section 1439, the State Water Board shall supervise diversion and use of water under this temporary change order for the protection of all other lawful users of water and instream beneficial uses.

## **7.0 CRITERIA FOR APPROVING THE TUCPs**

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 TUCPs. (See Cal. Code Regs., tit. 23, §§ 805, 806.) The State Water Board's regulations also clarify that requests for changes to permits or licenses 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 under Water Code section 1435, the State Water Board must make the following findings (Wat. Code, § 1435, subd. (b)(1-4)):

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.

### **7.1 Urgency of the Proposed Changes**

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 changes are 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....” However, the State Water Board shall not find the need urgent if it concludes that the petitioner has failed to exercise due diligence in petitioning for a change pursuant to other appropriate provisions of the Water Code.

In this case, and as discussed in Sections 3 and 5 of this Order, there is an urgent need for the proposed changes because of the current drought conditions resulting in extremely low water storage levels in the District’s reservoirs. Further, SCWA is restricting allocations to the District due to its own low reservoir storage levels. The District stated that without the proposed changes, the subject minimum instream flow requirements will require releases of water from Kent Lake that would risk significant depletions of storage and potential elimination of water supplies for fish and wildlife and for water users in the District’s service area during the summer or fall of 2022. Even with mandatory water restrictions that are currently in place within the District, the District’s modeling indicates that its reservoir storage levels could be below 10,000 af in late summer or early fall of 2022 if drought conditions persist and the District operates strictly under Order WR 95-17. The District stated that it has never operated its reservoirs at that level, and the District is uncertain if it would be able to continue to meet its water supply obligations and maintain instream flows at that level. The District stated that the potential depletions in storage and resulting reductions of water supplies would cause serious impacts to human health and welfare with the District’s service area, and would jeopardize storage and water supplies needed for adequate flow for fisheries in Lagunitas Creek in summer and fall of 2022.

## **7.2 No Unreasonable Effect or Injury to Any Other Lawful User of Water**

The District claimed that because it will maintain specific minimum flows in Lagunitas Creek, all other legal users of water will still be able to divert and use the quantity of water they may legally divert and use. Further, the District indicated that it has been coordinating with the largest downstream diverter, North Marin Water District, through the Lagunitas TAC subcommittee and in individual meetings to discuss the changes proposed with the TUCPs.

However, the District’s release of previously stored water to maintain minimum flows for fishery purposes is not water that can be legally diverted by downstream water right holders. Therefore, changes to the District’s releases from Kent Lake cannot injure other lawful users of water, as the previously stored water is not considered natural flow to Lagunitas Creek at the time it is released and cannot be legally diverted by downstream riparian or appropriative water right holders.

Accordingly, granting the changes proposed with the TUCPs will not result in unreasonable effect or injury to any other lawful user of water. Pursuant to Water Code

section 1439, the State Water Board shall supervise diversion and use of water under this temporary change order for the protection of all other lawful users of water and instream beneficial uses.

### **7.3 No Unreasonable Effect Upon Fish, Wildlife, or Other Instream Beneficial Uses**

Prior to approval of a TUCP, the State Water Board must find that the proposed changes may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses. In addition, the State Water Board has an independent obligation to consider the effect of approval of the District's TUCPs on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346].) Public trust resources may include, but are not limited to, wildlife, fish, aquatic dependent species, streambeds, riparian areas, tidelands, and recreation in navigable waterways, as well as fisheries located in non-navigable waterways. It is also the policy of this state that all state agencies, boards, and commissions shall seek to conserve endangered species and threatened species and shall use their authority in furtherance of the purposes of the California Endangered Species Act. State agencies should not approve projects that would jeopardize the continued existence of any endangered species or threatened species if there are reasonable and prudent alternatives available consistent with conserving the species or its habitat that would prevent jeopardy. (Fish & G. Code, §§ 2053 & 2055.)

Prior to filing the TUCPs, the District prepared the *Lagunitas Creek Instream Flow Study* (Flow Study), dated September 2021, to identify potential flow reductions that avoided or minimized impacts to the three listed species. The District engaged stakeholders and the Resource Agencies to seek input on development of the Flow Study, the flow release modifications, and the development of a monitoring and adaptive management plan. The Lagunitas TAC, CDFW, NMFS, and the San Francisco Bay Water Board have met with District staff several times and been involved in the development of the Flow Study since as early as April 2021.

Results of the Flow Study indicated that observed coho spawning trends over the last 40 years show that delaying the winter baseflow release by up to one month would conserve reservoir storage until spawning salmonids are present to benefit from the pulse flow and increased base flow. Modeling of habitat suitability showed that the reduction in winter baseflow from 20 cfs to 16 cfs would maintain at least 83 percent of the suitable spawning habitat and will provide for minimum flow increases as necessary to avoid fishery impacts. The District's monitoring and adaptive management plan is discussed in Section 4.2 of this Order.

The District's Flow Study demonstrates that the flow changes requested in the TUCPs will not result in unreasonable effects on coho, steelhead, and freshwater shrimp species that are the species of concern related to the minimum flow requirements in

Order WR 95-17. As salmonids are believed to be the most sensitive aquatic species in Lagunitas Creek, minimizing impacts to them is likely to be protective to a range of other aquatic species that depend on flows in the creek for suitable habitat. Also, the proposed flow reductions are not likely to impact the riparian corridor, as the Flow Study projects that water levels will remain within an inch of those currently maintained in Lagunitas Creek. Therefore, the Flow Study demonstrates that the changes requested in the TUCPs would not result in any unreasonable effect to other fish and wildlife species or other instream beneficial uses.

State Water Board staff consulted with San Francisco Bay Water Board staff regarding the District's TUCPs. San Francisco Bay Water Board staff were concerned whether the District should maintain the six (6) cfs base flow from November 1 through December 15 in lower Lagunitas Creek at the Gallagher streamgage (at Point Reyes Station), which is five miles downstream from the Taylor State Park streamgage. Although Order WR 95-17 requires certain instream flows to be maintained at the Taylor State Park streamgage, it does not include instream flow requirements at the Gallagher streamgage. However, the Monitoring Plan, which the District is required to comply with pursuant to this Order, includes extensive monitoring and an adaptive management plan for both lower and upper Lagunitas Creek. Should the monitoring threshold values in the adaptive management plan be observed in lower Lagunitas Creek near the Gallagher gage, the District will consult with the Resource Agencies to determine which adaptive management actions should be taken, including increasing minimum flows as necessary.

To inform the State Water Board's continuing supervision of the diversion and use of water under this Order pursuant to Water Code section 1439, the District will be required to comply with the District's Monitoring Plan and provide reports to the State Water Board, CDFW, NMFS, and the San Francisco Bay Water Board as described in Section 4.2 of this Order. The State Water Board will continue to monitor precipitation, hydrology, and the District's storage conditions, in conjunction with the results of the monitoring and adaptive management plan, during the TUCP approval period. In the event that the State Water Board finds that both hydrologic and District's storage conditions have improved during the 2021 – 2022 rainy season such that the TUCP approvals are no longer needed, this Order may be revoked or canceled. With the conditions imposed by this Order, the State Water Board finds that granting the proposed temporary changes will not have an unreasonable effect on fish, wildlife, or other instream beneficial uses and protects public trust resources to the extent feasible.

#### **7.4 The Proposed Changes are in the Public Interest**

The District stated that approval of the TUCPs will provide minor temporary relief from minimum instream flow requirements for Lagunitas Creek to allow retention of previously stored water for the protection of fish, wildlife, and municipal uses next year. Approval of the TUCPs will help the District to conserve stored water in Kent Lake so

that sufficient water is available to be released throughout 2022 to maintain instream flow for all uses, including maintaining salmonid fisheries, in Lagunitas Creek.

Should the conditions that support the approval of this Order change, whether in alterations to water supply or identification of additional impacts to aquatic habitat, water quality, or other matters within the public interest, the State Water Board has the authority to revoke this approval or modify the terms and conditions of this Order as necessary to promote the interests of the public.

The State Water Board considers it in the public interest to preserve water supplies for municipal and fish and wildlife enhancement purposes under the current and potentially enduring emergency drought conditions.

## **8.0 CONCLUSIONS**

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1435.

I conclude that, based on the available evidence:

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

## **ORDER**

**NOW, THEREFORE, IT IS ORDERED THAT** the petitions filed by Marin Municipal Water District (District) for temporary urgency changes for Permits 5633, 9390, and 18546 is approved and effective until 180 days from the issuance of this Order.

All existing terms and conditions of the subject permits remain in effect, except as temporarily amended by the following provisions.

1. The Dry Year Requirements of Condition 1, Instream Flow Requirement, of Order WR 95-17, which is included in Permits 5633, 9390, and 18546, shall be temporarily amended as follows:



November 2021 – April 2022 Lagunitas Creek Flow Requirements

Time Period	Flow (cfs)
November 1 – November 14	6
November 15 – November 30	6*
December 1 or 15** – March 31	16
April 1 – April 30	14

\*If a storm occurs during this period that results in a flow of 25 cfs or greater at the USGS streamgage at Taylor State Park, the District will release sufficient water to maintain a minimum flow of 10 cfs, measured at the same location, for a period of one week. During this one-week period, spawner surveys will be conducted. If coho salmon spawning is not observed, flows will be returned to the summer baseflow level of 6 cfs. If spawning is observed, flows will be increased to 16 cfs through March 31, 2022.

\*\*If a storm occurs during this period that results in a flow of 25 cfs or greater at the USGS streamgage at Taylor State Park, the District will increase releases to maintain the winter baseflow of 16 cfs. If no such storm occurs during this period, the winter baseflow of 16 cfs will begin on December 18, following the first three-day upstream migration flow release from December 15 – 17.

2. Condition 2, Upstream Migration Flows, of Order WR 95-17, which is included in Permits 5633, 9390, and 18546, shall be temporarily amended as follows:

To provide for the upstream migration of anadromous fish, Permittee shall ensure that three upstream migration flows are provided between December 1 and February 3, as described below. An “upstream migration flow” is defined as a continuous flow of at least 35 cfs that exists for 3 days as measured at the USGS gage at Taylor State Park. A “trigger” flow is defined as a flow of 25 cfs between December 1 and December 31, or a flow of 30 cfs between January 1 and January 31, as measured at the USGS gage at Taylor State Park. Permittee shall attempt to provide upstream migration flows that coincide with natural runoff from storm events.

- a. An upstream migration flow shall be provided in conjunction with the first storm that occurs after December 1 that produces a trigger flow of 25 cfs at the Taylor State Park gage. If no storm produces a trigger flow before December 15, Permittee shall release sufficient water from Kent Lake to provide an upstream migration flow beginning on December 15.
- b. An additional upstream migration flow shall be provided in conjunction with a storm that occurs after December 4 that produces a trigger flow of 25 cfs at the Taylor State Park gage. If a trigger flow of 25 cfs does not occur before January 1, Permittee shall release sufficient water from Kent Lake to provide an upstream migration flow beginning on January 1.

- c. An upstream migration flow shall be provided in conjunction with a storm that occurs after January 4 that produces a trigger flow of 30 cfs at the park gage. If a trigger flow of 30 cfs does not occur before February 1, Permittee shall release sufficient water from Kent Lake to provide an upstream migration flow beginning on February 1.
3. The District shall comply with the "*Lagunitas Creek Temporary Urgency Change Petition Monitoring and Adaptive Management Plan*" dated August 26, 2021, as described in Section 4.2 of this Order.
4. Within 60 days of the expiration of this Order, the District shall provide to the State Water Board a summary report of operations and activities related to the TUCPs. The District shall also submit the summary report to CDFW, NMFS, USFWS, and the San Francisco Bay Water Board. The summary report must include:
  - a) information on District reservoir storage status, including specific information regarding Kent Lake, throughout the TUCP period, projected reservoir storage through September 30, 2022, and a quantitative summary of all water supplies anticipated to be available to the District to meet its water supply obligations and the flows required by Order WR 95-17 for the remainder of 2022;
  - b) water conservation status in the District throughout the TUCP approval period;
  - c) proposed conservation measures within the District through September 30, 2022, to maintain the 6 cfs summer flow in Lagunitas Creek throughout summer 2022;
  - d) rainfall totals during the TUCP period;
  - e) measured streamflow records at the Taylor State Park gage and the Gallagher gage during the TUCP period;
  - f) monitoring results relative to threshold values in the adaptive management plan;
  - g) adaptive management actions taken and/or recommended; and
  - h) an assessment of the effectiveness of the District's Water Shortage Contingency Plan during the current drought, including whether there is a need to reevaluate implementation triggers and/or implementation actions.
5. 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 & G. Code, § 2050 et seq.) or the federal Endangered Species Act (16 U.S.C § 1531 et seq.). If a "take" will result from any act authorized under this Order, the District shall obtain authorization for an incidental take permit prior to operation of the project. The District shall be responsible for meeting all requirements of the

applicable Endangered Species Act for the temporary urgency changes authorized under this Order.

6. The State Water Board shall supervise the diversion and use of water under this Order for the protection of legal users of water and instream beneficial uses and for compliance with the conditions. The District shall allow representatives of the State Water Board reasonable access to the project works to determine compliance with the terms of this Order.
7. The State Water Board reserves jurisdiction to supervise the temporary urgency changes 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.

October 29, 2021  
Dated

ORIGINAL SIGNED BY:  
Eileen Sobeck  
Executive Director