

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

**DIVISION OF WATER RIGHTS**

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In the Matter of License 9847 (Application 17913)

**City of Santa Cruz**

**ORDER RENEWING  
TEMPORARY URGENCY CHANGE ORDER**

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SOURCES: Newell Creek tributary to the San Lorenzo River thence Monterey Bay

COUNTY: Santa Cruz

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BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

**1.0 SUBSTANCE OF PETITION**

The City of Santa Cruz (right holder) requests that the State Water Resources Control Board (State Water Board) renew the Temporary Urgency Change Order (TUC Order) issued to the right holder on February 14, 2014 and subsequently renewed on August 13, 2014. The TUC Order temporarily authorized the right holder to reduce the release or bypass amount required by License 9847 from a minimum flow of 1 cubic foot per second (cfs) to 0.2 cfs.

**2.0 BACKGROUND**

**2.1 Water Rights**

The right holder is authorized to divert up to 5,600 acre-feet of water per year from Newell Creek tributary to the San Lorenzo River thence Monterey Bay under License 9847 (Application 17913). The water is authorized for storage in Newell Creek Reservoir, formerly Loch Lomond Reservoir. The season of diversion is September 1 of each year through July 1 of the succeeding year, and the purposes of use are Municipal, Domestic, Industrial, Recreational and Fire Protection. License 9847 is subject to a release or bypass requirement of 1 cfs at Newell Creek Dam.

The right holder is also authorized under Permit 16123 to divert water from the San Lorenzo River, for the season of September 1 of each year through June 1 of the succeeding year, and under Permit 16601 to divert from the San Lorenzo River from October 1 of each year through June 1 of the succeeding year. The right holder also has two other licenses on the San Lorenzo River, as well as pre-1914 appropriative water right claims on several small coastal streams.

**2.2 Petition for Temporary Urgency Change**

On January 31, 2014, the right holder filed a Petition for Temporary Urgency Change requesting that the State Water Board temporarily reduce the release or bypass amount required by License 9847 from 1 cfs

to 0.2 cfs. On February 14, 2014, the State Water Board issued the TUC Order approving the change subject to specific terms and conditions and was subject to expiration on August 13, 2014.

On July 24, 2014, the right holder filed a Petition for Temporary Urgency Change requesting renewal of the TUC Order for an additional 180 days. On August 13, 2014, the State Water Board issued a TUC Order that renewed the original TUC Order approving the change subject to specific terms and conditions and is subject to expiration on February 9, 2015.

On February 3, 2015, the right holder filed a Petition for Temporary Urgency Change requesting renewal of the TUC Order for an additional 180 days.

### **2.3 Compliance with Temporary Urgency Change Order**

The right holder has substantially complied with all terms and conditions provided in the TUC Order. The three primary conditions of the TUC Order were to: 1) reduce water demand by 20 percent of normal water use by instituting water rationing and promoting conservation; 2) monitor the effects of the reduced release or bypass amount on fisheries resources and take all necessary steps to avoid harm to fish in Newell Creek; and, 3) submit a written report to the Deputy Director for Water Rights that summarizes all activities conducted to ensure compliance with the requirements of this Order and the amount of water use reduction achieved.

According to data submitted to the State Water Board by the right holder, monthly water use by the right holder during 2014 was reduced by an average of 24.5 percent for the months of May through December as compared to baseline water demand with May being the only month where the 20 percent reduction target was not achieved. Monitoring data and observations from February 2014 to date by the right holder indicate that the reduced release or bypass amount has not changed passage conditions in critical riffles nor created any areas of hydrologic discontinuity. In addition, the right holder has submitted the required written reports to the Deputy Director for Water Rights summarizing all activities conducted to ensure compliance with the requirements of the TUC Order.

### **3.0 PUBLIC NOTICE OF THE PETITION**

The State Water Board will issue, as soon as practicable, a notice of the right holder's petition to renew the TUC Order pursuant to Water Code section 1438, subdivision (a). Pursuant to Water Code section 1438, subdivision (b)(1), the right holder is required to publish the notice in a newspaper having a general circulation and that is published within the counties where the points of diversion lie. The State Water Board will also mail or provide electronic copy of the notice to the interested parties who have requested notice of proposed temporary urgency changes and to other known interested parties. The State Water Board will post the notice of the Petition for Temporary Urgency Change and a copy of the petition (and accompanying materials) on its website.

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

Pursuant to the California Environmental Quality Act (CEQA), the right holder filed a Notice of Exemption (NOE) on January 30, 2015. The right holder has determined that the change is exempt from the CEQA because it is an emergency project, it is carried out consistent with a state of emergency proclaimed by the Governor on January 17, 2014, it is consistent with the statutory exemption criteria for an emergency project, and it is consistent with a categorical exemption for existing facilities. (Pub. Resources Code, § 21080, subd. (b)(3), (4); Cal. Code Regs., tit. 14, § 15269, subd. (a) & (c), 15301.) The right holder's basis for claiming the exemptions is that its water situation continues to be dire, and that its only source of stored water for drought protection is being depleted and must be protected to mitigate the effects of the drought emergency declared by the Governor and to prevent worse effects.

The State Water Board has reviewed the information submitted by the right holder and has made its own independent finding that the change is consistent with multiple exemptions under the CEQA. The proposed change is exempt from the CEQA because it is an emergency project that is being carried out consistent with a state of emergency as proclaimed by the Governor on January 17, 2014, and expanded upon in an April 25, 2014 proclamation, it is consistent with the statutory exemption criteria for an emergency project, and it is consistent with a categorical exemption for existing facilities. (Pub. Resources Code, § 21080, subd. (b)(3), (4); Cal. Code Regs., tit. 14, §§ 15269, subd. (a) & (c), 15301.)

## **5.0 CRITERIA FOR RENEWAL OF A TEMPORARY URGENCY CHANGE ORDER**

Water Code section 1441 authorizes the State Water Board to renew a temporary urgency change order in accordance with the Water Code provisions for temporary urgency changes. Water Code section 1435 provides that a right holder who has an urgent need to change the point of diversion, place of use, or purpose of use from that specified in the water right may file a Petition for Temporary Urgency Change with the State Water Board. The State Water Board's regulations set forth the filing and other procedural requirements applicable to a Petition for Temporary Urgency Change. (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 procedural requirements that apply to changes in point of diversion, place of use, or purpose of use. (*Id.*, § 791, subd. (e).)

Before approving a Petition for Temporary Urgency Change or a renewal thereof, the State Water Board must make the following findings (Wat. Code, § 1435, subd. (b).):

1. The right holder 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.

A discussion of each finding and the information necessary to support each finding is provided below.

### **5.1 Continued Urgent Need for the Change**

The TUC Order reduced the release or bypass requirement for Newell Creek Reservoir from 1 cfs to 0.2 cfs in order to preserve the water remaining in storage so that there would be sufficient water to meet essential health and safety needs. During the effective period of the TUC Order, the right holder implemented Stage 3 (Water Shortage Emergency) water restrictions with a goal to reduce system-wide water use by 25 percent, and the right holder met this goal during the months of July, August, and September. The minimum 20 percent reduction in water use was achieved from June through December. This reduction in water use, combined with the reduction of the release or bypass amount, during 2014 helped to maintain adequate storage capacity of Newell Creek Reservoir where the lowest end-of-month storage capacity recorded was November 30, 2014 at 58 percent. The changes approved by the TUC Order have been critical to helping the right holder achieve its storage goal thus far.

The closest weather station to Newell Creek Reservoir is located in the town of Ben Lomond. According to data recorded at that station, the total precipitation for the period of October 1, 2014 through January 31, 2015 is at 89 percent of the historical average. However, during that period the station recorded total precipitation that was 203 percent of the historical average during December 2014 and zero precipitation during January 2015. If only the average monthly amount of precipitation had fallen in December 2014, the station would have recorded precipitation totals that are 55 percent of the historical average. The

long-term climate forecast which previously predicted above-average precipitation for this winter, is currently predicting above average temperatures and “equal chances” of above or below average perception through the remainder of the winter. The United States Drought Monitor indicates that the Newell Creek watershed is in a condition of extreme drought, a condition that likely will persist or intensify through April 30, 2015, according to the National Weather Service’s Climate Prediction Center.

The end-of-month storage capacity for Newell Creek Reservoir for January 2015 was approximately 76 percent. The inflow to Newell Creek Reservoir on January 27, 2015 was 0.6 cfs, which is only 60 percent of the 1 cfs release or bypass amount that is normally required by License 9847. The end-of-month storage capacity for January 2015 is 11 percent higher than the January 2014 end-of-month storage capacity of 65 percent. This 11 percent increase in 2015 compared to 2014 is partly due to the above-average precipitation received in December 2014, however the precipitation received in December 2014 was insufficient to provide sufficient runoff after several successive dry years. Flow at the regional United States Geological Survey gage for the San Lorenzo River was significantly less than the 25th percentile flow in January 2015. A recent February 2015 storm system only raised lake level by 0.8 feet.

As upstream flows inevitably recede further and evaporation and transpiration remove water from the reservoir, the gap between inflow and outflow will become greater. Therefore, the right holder’s release of stored water pursuant to the 1957 agreement is depleting the right holder’s only source of stored water for drought protection. Consequently, without renewal of the TUC Order, the right holder will fail to achieve its use reduction goal and reservoir storage will be inadequate to meet essential health and safety needs.

## **5.2 No Injury to Any Other Lawful User of Water**

According to the State Water Board records, the right holders downstream of Newell Creek Dam consist of seven riparian claims filed in Statements of Water Diversion and Use, and the appropriative rights held by the right holder. Water being released from storage in Newell Creek for environmental purposes would not be available for diversion under the seven riparian claims.

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

The right holder’s petition to renew the TUC Order does not request any changes to the substance of the terms of the TUC Order, nor does it request the inclusion of additional terms. California Department of Fish and Wildlife and National Marine Fisheries Service both give their concurrence regarding the right holder’s petition to renew the TUC Order. Consequently, all terms of the TUC Order requiring that the right holder monitor the effects of the reduced release or bypass amount on fisheries resources and take all necessary steps to avoid harm to fish in Newell Creek will continue in effect.

## **5.4 The Proposed Change is in the Public Interest**

Since issuance of the TUC Order, the right holder has implemented Stage 3 of its March 2009 *Water Shortage Contingency Plan*. If the current weather pattern continues, the volume of water available for health and safety purposes will continue to be threatened. The right holder estimates that the TUC Order has enabled the right holder to save approximately 190 million gallons of storage in the Newell Creek Reservoir since it has been in effect, significantly improving the right holder’s ability to manage the current water shortage emergency. Continued conservation of the right holder’s limited drought protection supply can be achieved through a combination of reductions in water use and the Newell Creek Dam release requirement.

## **6.0 STATE WATER BOARD AUTHORITY**

Resolution 2012-0029 delegates to the Deputy Director for Water Rights the authority to act on temporary urgency change petitions, and the Deputy Director for Water Rights has redelegated the authority.

## 7.0 CONCLUSIONS

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

Based on the available information, the State Water Board finds that:

1. The right holder has an urgent need to make the proposed change;
2. The change may be made without injury to any other lawful user of water;
3. The change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses;
4. The change is in the public interest.

### ORDER

**NOW, THEREFORE, IT IS ORDERED THAT:** the Temporary Urgency Change Order issued by the State Water Board on February 14, 2014, and subsequently renewed by Order dated August 13, 2014, is renewed for an additional 180 days.

All existing terms and conditions of the February 14, 2014 TUC Order, as revised by Order dated August 13, 2014, and License 9847, except where revised by the February 14, 2014 and August, 13, 2014 Orders, remain in effect, except as provided below:

1. The following condition that was added to the February 14, 2014 Order on August 13, 2014 shall be modified to read as follows:

By September 1, 2015, the right holder shall submit to the Deputy Director for Water Rights a written report that summarizes all activities conducted to ensure compliance with the requirements of this Order, the February 14, 2014 Order, and the August 13, 2014 Renewal Order. The report shall, at a minimum, include the following:

- a. The results of the fishery surveys completed in Newell Creek since February 14, 2014;
- b. A description of the right holder's efforts to comply with the requirements of this Order since February 14, 2014; and
- c. The amount of reduction of water use since February 14, 2014, including percentage of normal use, achieved as a result of the right holder's efforts to comply with the requirements of this Order.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

*Barbara Evoy, Deputy Director  
Division of Water Rights*

Dated: FEB 10 2015