

Attachment 1 - Notice of Exemption



Filing Requested By and When Filed Return To:

Marin Municipal Water District
220 Nellen Ave
Corte Madera, CA 94925
Attn: Crystal Yezman, Director of Engineering

Project Title: Petition Requesting Approval of Temporary Urgency Change in Water Rights Permits 5633, 9390, and 18546 in Marin County

Project Location: The proposed action would occur in Lagunitas Creek in Marin County from Peters Dam/Kent Lake to the confluence with Tomales Bay. Figure 1 shows the streamflow requirements for Lagunitas Creek. The only community along this portion of Lagunitas Creek is Tocaloma.

Project Location – County: Marin

Description of Nature, Purpose and Beneficiaries of Project:

Marin Municipal Water District (Marin Water) controls and coordinates water supply releases from Peters Dam in accordance with the provisions of State Water Board Order 95-17, which the State Water Resources Control Board (SWRCB) adopted on October 26, 1995. Order 95-17 specifies the minimum instream flow requirements for Lagunitas Creek, which vary based on hydrologic conditions of Lagunitas Creek watershed. Based on these conditions, there are two main water year classifications, *Normal* year and *Dry* year, which are based on the amount of rainfall received at the Kent Lake rain gage. The January 1 water year classification is based on the total rainfall measured during the preceding 15-month period. If the total rainfall during this period is less than 48 inches, *Dry* year flow requirements are maintained from January 1 through March 31. The April 1 water year classification is based on the total rainfall during the preceding 6-month period. If the total rainfall during this 6-month period is less than 28 inches, *Dry* year flow requirements are maintained from April 1 to the first upstream migration flow in November. *Normal* water year requirements exist whenever *Dry* year conditions are not present.

Water Rights Permits 5633, 9390, and 19546 require a minimum flow of 6 cubic feet per second (cfs) in Lagunitas Creek at the USGS gage located at Samuel P. Taylor state park under all water supply conditions. Throughout the year, Order 95-17 required minimum flows at this location are: November 1st or 15th through December 31, 20 cfs; from January 1st to March 15th, 25 cfs for Normal water supply conditions, 20 cfs for Dry conditions; March 15th to March 31st 20 cfs; April 1st through April 30th 16 cfs for Normal conditions, 14 cfs for Dry conditions; May 1st through June 15th 12 cfs for Normal conditions, 10 cfs for Dry conditions; June 16th through November 1st or 15th 8 cfs for Normal conditions, 6 cfs for Dry conditions. Order 95-17 has variation between November 1st or 15th for the minimum flow of 20 cfs in that it shall begin following the first storm that produces a “trigger” flow of 25 cfs as measured at the USGS gage. In the absence of a storm causing a “trigger” flow, the 20 cfs flow requirement shall begin on November 15th of each year. Additionally, there are four upstream migration flows required at a minimum flow of 35 cfs that are to occur between November 1st and February 3rd at roughly the beginning of each month.

Marin Water is requesting that the SWRCB make the following temporary urgency change to Water Rights Permits 5633, 9390, and 18546 to preserve Marin Water’s water supply in case below-normal rainfall and hydrologic conditions continue. Starting November 1, 2021, Marin Water is proposing the following minimum instream flows schedule for the 180 day period: November 1st to November 15th, 6 cfs; November 15th to November 30th, 6 cfs unless a storm above 25 cfs occurs; December 1st or December 15th to March 31st, 16 cfs; April 1st to April 30th, 14 cfs. Between November 15th and November 30th, flows would remain at 6 cfs unless a flow event greater than 25 cfs occurs as measured at the USGS gage. If this happens, flows would increase to 10 cfs and monitoring for coho spawning would take place for one week following the event. If no coho spawning is observed within the one-week period, flows would return to 6 cfs until December 1st unless a subsequent storm event occurs. If coho spawning is observed within the one-week period, flows would increase to 16 cfs and remain there until March 31st. The proposal has variation between December 1st or 15th for the minimum flow of 16 cfs in that it shall begin following the first storm that produces a trigger flow of 25 cfs as measured at the USGS gage. In the absence of a storm causing a trigger flow, the 16 cfs flow requirement shall begin on December 15th. Additionally, the other three upstream

migration flows required at a minimum flow of 35 cfs would occur between December 1st and February 3rd at roughly the beginning of each month.

Summary of Marin Water Supply Sources. Marin Water supplies water to 191,000 customers in Marin County. Approximately 75 percent of Marin Water's water supply comes from water stored in a total of seven reservoirs on Mount Tamalpais and in west Marin, and approximately 25 percent of the water supply is imported from Sonoma Water via the North Marin Aqueduct. Both Marin Water and the North Marin Water District receive their imported water supply via the North Marin Aqueduct, which is owned by the North Marin Water District. Marin Water's imported water supply is received at its Ignacio Pump Station in Novato, which is located downstream of the North Marin Water District's Aqueduct turnouts. Marin Water's contracts with Sonoma Water identify the maximum volumes to be imported: 12.8 million gallons per day (mgd) during the months of May to September and 17 to 23 mgd from October to April. However, to date, Marin Water has never needed the maximum volumes, averaging 8.81 mgd during peak months over the last 5 years, with a high of 10.07 mgd in 2016.

Continuing Drought Conditions. The County of Marin and much of California is facing an extreme drought. After two successive dry winters with significantly below average rainfall, Marin Water reservoir storage volumes are at historically low levels. As of August 17, 2021, Marin Water's reservoirs are at 39.12 percent of average storage volume, or 31,128 AF, and are projected to have as little as 20,000 AF in storage on December 1, 2021 in the absence of above average rainfall and runoff over the remainder of the water year. Regarding supplies from Sonoma Water, as of July 26th, 2021, Lake Sonoma had 123,725 acre-feet of water, which is 50.5% of capacity and approximately 56% of historical average for this time of year. Sonoma Water has also filed a Temporary Urgency Change Petition to reduce their instream flow requirements due to these severely dry conditions, and has reduced allocations to its retail customers, including Marin Water. From July through September 2021, Marin Water will be restricted to 4 mgd with a slight increase in October to 4.6 mgd (compared to a typical import of 8.8 mgd). The reduced allocations are expected to continue if rainfall is below average in the fall.

Drought Response. To preserve Marin Water's limited water supply, the Marin Water's Board of Directors (Board) adopted Resolution 8624 on February 16, 2021 providing initial drought water conservation actions for Marin Water customers to voluntarily reduce their water usage. At the April 20, 2021 meeting, the Board adopted Resolution 8630 declaring a water shortage emergency and adopted an ordinance setting forth a comprehensive list of mandatory water conservation measures and water use restrictions. At the May 18, 2021 meeting, the Marin County Board of Supervisors voted unanimously to declare a local emergency and acknowledge the imminent threat of disaster related to local dry conditions and water supplies. Subsequently, on July 8, 2021, Governor Gavin Newsom added Marin County to a list of 50 out of 58 counties in California that are in a drought state of emergency and calling for state agencies to provide assistance where appropriate, including considering modifications to reservoir releases as necessary to address the drought conditions. The goal of the mandatory water use restrictions adopted by Marin Water is to achieve a 40 percent reduction in water use districtwide. Restrictions include but are not limited to the following: spray irrigation is limited to one day a week, with each community having a designated watering day; drip irrigation is limited to any two days per week; recommendation to turn off irrigation systems and spot water by hand, only when necessary; prohibition on outdoor water between 9:00 a.m. and 7:00 p.m. to prevent evaporation; all pools and spas must be covered; no washing of vehicles at home; and no power-washing of any structures or hardscape; no installation of potable water irrigated landscaping for new water services connections during the drought. In addition to implementing restrictions, Marin Water also provides ways to help save water with conservation tips, water-efficient fixtures, rebates, and other programs. As of mid-July 2021, a 23 percent reduction was observed from baseline water use. Even with these aggressive mandatory conservation measures, Marin Water's 191,000 customers are projected to run out of water as early as next July if the drought continues.

Urgent Need for the Project. An urgent need for the requested temporary change exists because of the extremely low storage levels in Marin Water's reservoirs and the fact that Sonoma Water will be restricting allocations due to their low storage levels. Without proposed changes, the applicable minimum instream flow requirements may require releases of water from Kent Lake that would risk significant depletions of storage and potential elimination of water supplies for water users in the Marin Water'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 needed for fishery protection and stable flows in Lagunitas Creek in summer 2022. As indicated above, Marin Water's 191,000 customers are projected to run out of water as early as July 2022 if the drought continues. Approval of the TUCP is therefore necessary at this time to prevent and mitigate loss of, or damage to, public health and essential public services, the environment, and fishery resources.

Public Agency Approving Project: State Water Resources Control Board – Division of Water Rights

Name of Person or Agency Carrying Out Project: Marin Municipal Water District

CEQA Exemption Status: Emergency Project (Sec. 21080 (b)(4); 15269 (c)): Specific actions necessary to prevent or mitigate an emergency.

Reasons for Exemption: The proposed action is statutorily exempt under California Environmental Quality Act (CEQA) Statute 21080(b)(4) and categorically exempt under the State CEQA Guidelines Sections 15301, 15307 and 15308.

A. Actions to Prevent or Mitigate an Emergency

California Public Resources Code, Division 13, Section 21080(b)(4) provides that specific actions necessary to prevent or mitigate an emergency are exempt from CEQA. The County of Marin and much of California is facing an extreme drought. At the April 20, 2021 meeting, the Marin Water Board of Directors adopted Resolution 8630 declaring a water shortage emergency and adopted an ordinance setting forth a comprehensive list of mandatory water conservation measures and water use restrictions. At the May 18, 2021 meeting, the Marin County Board of Supervisors voted unanimously to declare a local emergency and acknowledge the imminent threat of disaster related to local dry conditions and water supplies. Subsequently, on July 8, 2021, Governor Gavin Newsom added Marin County to a list of 50 out of 58 counties in California that are in a drought state of emergency, which Proclamation included the suspension of environmental review by state and local agencies to the extent necessary to carry out actions pertaining to the drought response and mitigation¹. As of August 23, 2021, the water supply storage level in Marin Water's reservoirs was 30,658 acre-feet, which is less 39% of capacity. The current low storage level is the result of severely low rainfall in the region. As measured at Lake Lagunitas, recorded rainfall for from January 1, 2020 through August 1, 2021 was approximately 32 inches, the lowest total rainfall for the 20-month period in 142 years. Furthermore, Marin Water typically receives about 25% of its supply from Sonoma Water, which is in similar drought conditions. As a result of this drought, Sonoma Water has begun curtailing the amount of water available to its contractors throughout this drought period and Marin Water's supply from Sonoma has been cut in half. Without significant storm events in the near future, results of modeling show storage levels in Marin Water's reservoirs to be below 25,000 acre-feet by December 2021 due in part to minimum instream flow requirements on Lagunitas Creek. If storage in Marin Water's reservoirs is depleted, then water to maintain Lagunitas Creek flows in 2022 will not be available to support the other critical life stages for aquatic species downstream of Kent Lake. Even with aggressive mandatory conservation measures, Marin Water's 191,000 customers are projected to run out of water as early as next July if the drought continues. Accordingly, the project is statutorily exempt from CEQA because it is necessary to prevent or mitigate an emergency—in this case, a proclaimed drought emergency—that poses a clear and imminent danger. (Pub. Resources Code, §§ 21060.3 & 21080, subd. (b)(4); Cal. Code Regs., tit. 14, § 15269, subd. (c).)

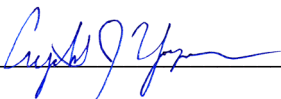
B. Actions by Regulatory Agencies for Protection of Natural Resources and the Environment

CEQA Guidelines Sections 15307 and 15308 provide that actions taken by regulatory agencies to assure the maintenance, restoration or enhancement of a natural resource and the environment are categorically exempt. The proposed temporary urgency changes to Marin Water's water right permits 5633, 9390, and 18546 would conserve water in Marin Water'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. Accordingly, these changes are categorically exempt from CEQA pursuant to Class 7 and Class 8 exemptions.

C. Minor Alteration of Existing Public Facility. CEQA Guidelines Section 15301 provide that actions consisting 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 existing or former use" are categorically exempt. The 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.

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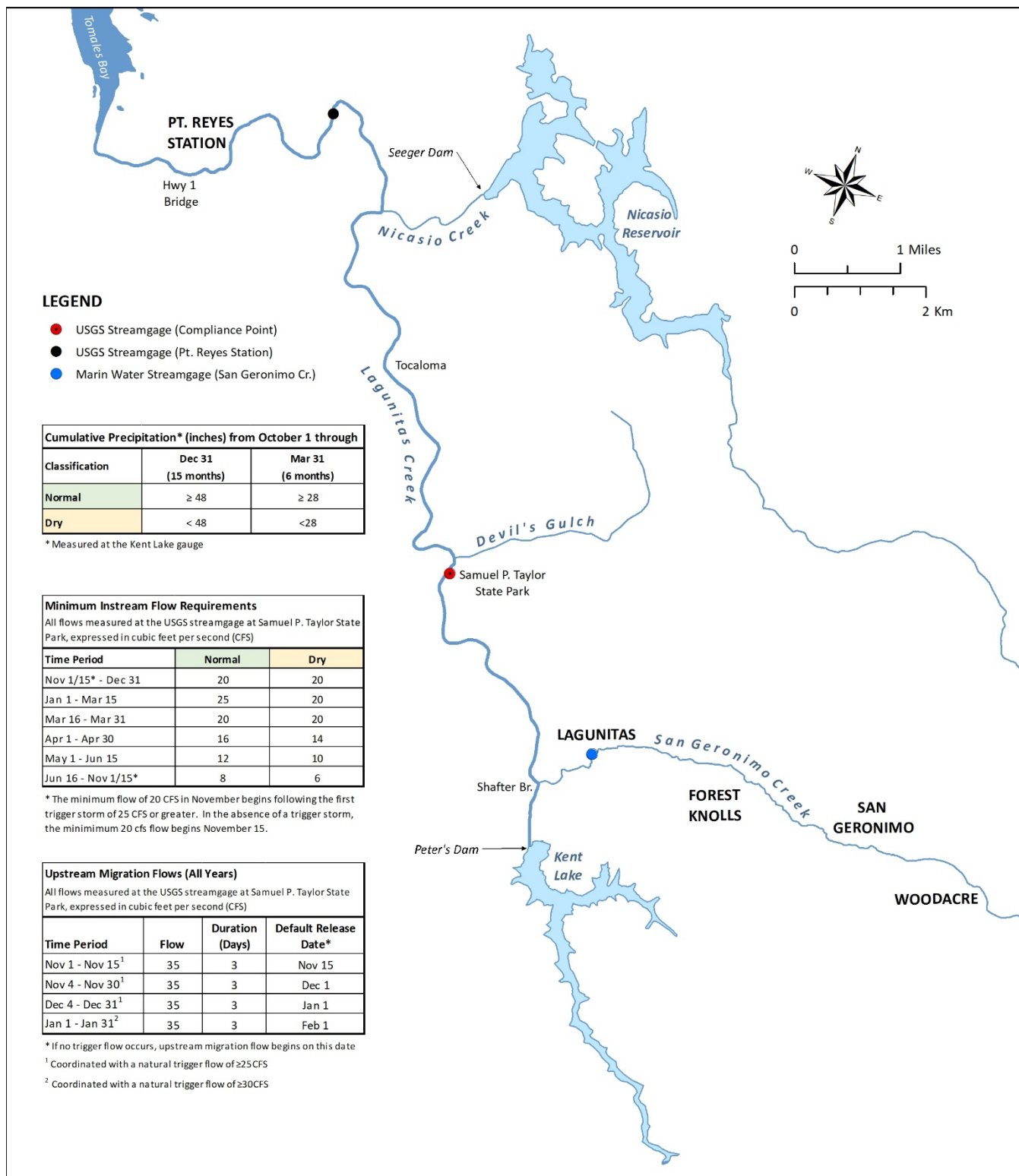


08/30/2021

Crystal Yezman, Director of Engineering

Date

1. Emergency Declaration Executive Order N-10-21. <https://www.gov.ca.gov/wp-content/uploads/2021/07/7.8.21-Conservation-Executive-Order-N-10-21-.pdf>



Lagunitas Creek Streamflow Requirements

Per State Water Resources Control Board Order WR95-17

Figure 1

