



SUMMARY REPORT

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**Agenda Date:** 12/3/2024

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**To:** Board of Directors, Sonoma County Water Agency  
**Department or Agency Name(s):** Sonoma County Water Agency  
**Staff Name and Phone Number:** Lynne Rosselli 707-524-3771  
**Vote Requirement:** 4/5th  
**Supervisorial District(s):** All

**Title:**

Biological Opinion Phase 3 Letter of Credit Fifth Amendment and Notice of Extension

**Recommended Action:**

- A) Authorize Sonoma County Water Agency's General Manager to undertake actions necessary to obtain a Fifth Amendment and Notice of Extension of a standby Letter of Credit in the amount of \$12,765,840 as described in the Memorandum of Agreement with California Department of Fish and Wildlife, including execution of an agreement with U.S. Bank for such a Letter of Credit in substantially the form presented to this Board of Directors, following review and approval by County Counsel as to form.
- B) Authorize Sonoma Water's General Manager to sign a Letter of Commitment to provide a renewal of the standby Letter of Credit effective at the maturity of the existing standby Letter of Credit to the California Department of Fish and Wildlife.  
(4/5<sup>th</sup> Vote Required)

**Executive Summary:**

The Russian River Biological Opinion is a 15-year plan or determination made by the National Marine Fisheries Services (NMFS) to help restore and protect three species of fish in the watershed that are endangered or threatened: steelhead, coho salmon, and Chinook salmon. The 2008 Biological Opinion required Sonoma Water and the U.S. Army Corps of Engineers (Army Corps) to complete 6 miles of habitat enhancement in Dry Creek. As of September 2024, five miles of habitat enhancement projects have been completed. Because the final mile is incomplete, Sonoma Water is required to maintain a standby Letter of Credit. Sonoma Water's pledged total investment in U.S. Treasury Securities of \$13.4 million remains unchanged through the term of the standby Letter of Credit (December 2026), and Maintenance fees will remain the same at \$74,000 per year.

The 2008 Biological Opinion Incidental Take Statement expired in 2023. Sonoma Water has been working with the Army Corps, NMFS, and California Department of Fish and Wildlife (CDFW) to prepare a Biological Assessment for the next Biological Opinion. A final Biological Assessment was submitted to NMFS and CDFW in September 2023. A final Biological Opinion prepared by NMFS, with a new 10-year term, is anticipated in spring 2025. The Biological Opinion will guide Sonoma Water and Army Corps compliance with the federal Endangered Species Act. As was the case in 2008, California Endangered Species Act coverage from CDFW will be required for coho salmon. Instead of a Consistency Determination that covers all elements of the Biological Opinion that pertain to coho salmon, CDFW now requires entities to obtain separate Incidental Take Permits (ITPs) for actions that effect state listed species. Sonoma Water is currently preparing ITP applications for

submission to CDFW. The applications will be processed after receipt of the NMFS Biological Opinion. As with the Consistency Determination, each ITP will require financial assurances. Sonoma Water anticipates that the dollar amount of financial assurance provided by the renewed standby Letter of Credit will help satisfy the requirements of new incidental take permits.

**Discussion:**

On September 24, 2008, NMFS issued its Biological Opinion and Incidental Take Statement under the federal Endangered Species Act. Sonoma Water's water supply and flood control operation and maintenance activities in the Russian River Watershed were considered to likely affect three species of fish listed under the Endangered Species Act: Central California Coast steelhead, Central California Coast coho salmon, and California Coastal Chinook salmon. Biological Opinion implementation activities include monitoring and management of the Russian River estuary, and monitoring, management, and construction of habitat enhancement projects in Dry Creek, and the tributaries to Dry Creek. The Biological Opinion provides an Incidental Take Statement for the taking of listed salmonids that is likely to occur because of the implementation activities. Pursuant to the Incidental Take Statement, taking that is incidental to and not intended as part of Sonoma Water's activities as it implements the provisions of the Biological Opinion is not considered to be prohibited under the Endangered Species Act.

On October 5, 2009, Sonoma Water requested and received a Consistency Determination from CDFW. The Consistency Determination provides Sonoma Water with incidental take coverage under the California Endangered Species Act for the same Russian River activities as does the Biological Opinion under the federal Endangered Species Act. Under the Consistency Determination and state law, Sonoma Water is required to provide assurances that it will have adequate funding to implement and comply with the Biological Opinion and the CDFW Incidental Take Statement as it pertains to coho-related activities. Financial security provisions required under the Consistency Determination are guided by the 2009 Memorandum of Agreement (included as Attachment A).

To comply with the Consistency Determination and the terms of the Memorandum of Agreement, Sonoma Water is required to obtain a standby Letter of Credit for each phase of work in the principal amounts set forth in the agreement. CDFW's ability to draw on the standby Letter of Credit is subject to a number of conditions. Most importantly, CDFW must give Sonoma Water written notice of any alleged default by Sonoma Water in its Biological Opinion obligations, as well as an opportunity to cure any such default. If both parties agree on a cure plan within 60 days of Sonoma Water's receipt of the written notice of inconsistency, then CDFW shall withdraw the written notice. If CDFW draws on the standby Letter of Credit, it must use all proceeds to complete coho-related work under the Biological Opinion. In September 2024, Sonoma Water received confirmation from CDFW that Section X 6 of the Consistency Determination (2080-2009-016-03) requires Ensured Funding for all mitigation requirements required by the Biological Opinion in the form of a valid standby Letter of Credit.

Until all mitigation requirements are completed, this standby Letter of Credit needs to remain in effect and therefore shall be extended until that time. The phases of work and the standby Letter of Credit requirements for each phase are summarized in Attachment B.

The U.S. Bank standby Letter of Credit is secured by a first lien in favor of the bank on Sonoma Water's U.S.

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Treasury Separate Trading of Registered Interest and Principal of Securities (STRIPS) that matured in November 2022, and a regular coupon bearing U.S. Treasury Note (U.S. Treasury Securities) held by Sonoma Water's debt service fund in a U.S. Bank account. The U.S. Treasury Securities fund Biological Opinion Projects and repay the Army Corps for the cost of constructing and maintaining Warm Springs Dam.

Sonoma Water's total investment in U.S. Treasury Securities is \$13.4 million, as U.S. Bank requires an additional five percent as pledged security for the standby Letter of Credit. The terms remain unchanged through the expiration (December 2026) of the standby Letter of Credit. A draft version of the Fifth Amendment to the standby Letter of Credit is included as Attachment C.

Maintenance fees for the amended standby Letter of Credit will remain the same, calculated at 55 basis points per annum plus bank fees (\$74,000 per year) on the total amount of the standby Letter of Credit. In the event of default, an additional 100 basis points above the current pricing level would be assessed. Events of default include inability to maintain pledged security of \$13.4 million, inability to maintain 1.15 times Water Transmission System debt service coverage, non-payment of debt obligations, and any levy or proceeding against Sonoma Water property. Water Transmission System debt coverage is included because Dry Creek Habitat Enhancement miles 4 through 6 will be funded by the Water Transmission System. Based on past performance and current fiscal policies and controls, a default event is highly unlikely.

Should the Department of Fish and Wildlife need to draw on this Letter of Credit due to failure of Sonoma Water to fulfill its obligations under the Biological Opinion, any drawn portions would be charged at the Bank's prime rate plus 5%, which today would be 13.25%. This would be charged until all amounts were repaid. Sonoma Water will also pay the Bank's legal and administrative costs associated with the development of the necessary documents to affect this standby Letter of Credit, up to \$84,000.

On October 24, 2014, the Sonoma County Debt Advisory Committee reviewed and approved the Phase 2 Letter of Credit and the subsequent phases of the Letter of Credit with U.S. Bank, provided the terms and conditions remained unchanged, and following review and approval by County Counsel. At the July 14, 2023, Sonoma County Debt Advisory Committee meeting, Sonoma Water received confirmation that further review of the Biological Opinion Letter of Credit would not be required provided the terms and conditions remained unchanged. County counsel has reviewed and approved the terms and conditions of the proposed Letter of Credit renewal.

Staff recommends Board approval of a fifth amended standby Letter of Credit with U.S. Bank through December 31, 2026, for ongoing Phase 2 and Phase 3 coho-related work under the Biological Opinion.

**County of Sonoma Strategic Plan Alignment**

N/A

**Sonoma Water Strategic Plan Alignment**

This item directly supports Sonoma Water's Strategic Plan and is aligned with the following goal, strategy, and action item.

Goal: 3. Environmental Stewardship - Protect and sustain our watersheds to maintain water resources,

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ecosystems, and communities.

Strategy: 3.2 Protect, enhance, and monitor natural resources, watershed conditions, and ecosystem health that are vital to the Russian River, Petaluma River, and Sonoma Creek watersheds.

Action Item: 3.1.3 Implement the Russian River Biological Opinion.

Continued implementation of the Russian River Biological Opinion protects water quality, improves scientific understanding of our existing water supply, and protects threatened salmon species in the Russian River watershed.

**Racial Equity:**

**Was this item identified as an opportunity to apply the Racial Equity Toolkit?**

No

**Prior Board Actions:**

Prior Board Actions (2009 - 2023) are listed in Attachment D

**FISCAL SUMMARY**

<b>Expenditures</b>	<b>FY24-25 Adopted</b>	<b>FY25-26 Projected</b>	<b>FY26-27 Projected</b>
Budgeted Expenses	\$84,000	\$74,000	\$74,000
Additional Appropriation Requested			
<b>Total Expenditures</b>	<b>\$84,000</b>	<b>\$74,000</b>	<b>\$74,000</b>
<b>Funding Sources</b>			
General Fund/WA GF			
State/Federal			
Fees/Other	\$84,000	\$74,000	\$74,000
Use of Fund Balance			
General Fund Contingencies			
<b>Total Sources</b>	<b>\$84,000</b>	<b>\$74,000</b>	<b>\$74,000</b>

**Narrative Explanation of Fiscal Impacts:**

Budgeted amount of \$74,000 for Letter of Credit annual expenses and \$10,000 for miscellaneous bank fees and issuance costs is available from FY 2024/2025 appropriations for the Warm Springs Dam fund. FY 2025/2026 and FY2026/2027 appropriations will be budgeted in those fiscal years.

<b>Staffing Impacts:</b>			
<b>Position Title (Payroll Classification)</b>	<b>Monthly Salary Range (A-I Step)</b>	<b>Additions (Number)</b>	<b>Deletions (Number)</b>

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**Narrative Explanation of Staffing Impacts (If Required):**

N/A

**Attachments:**

Attachment A: Memorandum of Agreement

Attachment B: Summary of Biological Opinion Phases

Attachment C: Draft Fifth Amendment to Letter of Credit

Attachment D: Prior Board Actions

Attachment E: PowerPoint Presentation

**Related Items “On File” with the Clerk of the Board:**

None.