



COUNTY OF SONOMA

575 ADMINISTRATION
DRIVE, ROOM 102A
SANTA ROSA, CA 95403

SUMMARY REPORT

Agenda Date: 8/22/2023

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): Countywide

Title:

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

Recommended Action:

Authorize Sonoma County Water Agency's General Manager to undertake actions necessary to obtain a Fourth 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.

(4/5th Vote Required)

Executive Summary:

On September 24, 2008, the National Marine Fisheries Service (NMFS) issued its Biological Opinion and Incidental Take Statement under the federal Endangered Species Act requiring the Sonoma County Water Agency (Sonoma Water) to undertake projects in the Russian River and its tributaries to protect endangered salmon and steelhead in the river system. On September 22, 2009, Sonoma Water requested and received a Consistency Determination from the State of California, Department of Fish and Wildlife (CDFW). The Biological Opinion and Incidental Take Statement under the federal Endangered Species Act form the basis of the Consistency Determination with respect to coho salmon. 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 Incidental Take Statement as it pertains to coho-related activities. Financial security provisions required under the Consistency Determination are guided by a Memorandum of Agreement approved by the Board of Directors (Board) and signed by Sonoma Water's General Manager and CDFW on October 5, 2009.

The term end date for the Biological Opinion and Incidental Take Statement under the federal Endangered Species Act is September 23, 2023. The expiration of the Biological Opinion and Incidental Take Statement results in the expiration of CDFW's Consistency Determination under the California Endangered Species Act. The October 2009 Memorandum of Agreement remains in force during the term of the federal Biological Opinion and Incidental Take Statement and for 365 days following the expiration of the state Consistency Determination. Sonoma Water is required to provide a standby Letter of Credit for 365 days following the expiration of the Consistency Determination.

Sonoma Water has been working with the U.S. Army Corps of Engineers, NMFS, and CDFW to prepare a Biological Assessment for the next Biological Opinion. A draft Biological Assessment was submitted to NMFS and CDFW in February 2023 and revisions to the draft are currently being prepared. Financial security provisions for activities under the next Biological Opinion have not yet been established.

This agenda item requests authorization for Sonoma Water's General Manager to undertake actions necessary to obtain a Fourth Amendment and Notice of Extension of a standby Letter of Credit from U.S. Bank in the amount of \$12,765,840 for Phase 3 Biological Opinion activities related to coho salmon, as proof of available funding, 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.

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 as a result 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.

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 CDFW draws on the standby Letter of Credit, it must use all proceeds to complete coho-related work under the Biological Opinion. The phases of work and the standby Letter of Credit requirements for each phase are summarized below.

Phase 1 from 2009 to 2014: A standby Letter of Credit with North Coast Bank for \$7,770,280 was approved by Sonoma Water's Board on September 22, 2009. The standby Letter of Credit was secured by a certificate of deposit held by North Coast Bank. Phase 1 work included Biological Opinion activities in the Russian River estuary, Russian River tributaries, and the Coho Salmon Captive Broodstock Program, as well as construction

of mile 1 and design of miles 2 and 3 of the Dry Creek Habitat Enhancement Project. Sonoma Water completed Phase 1 Biological Opinion activities in 2014, and on January 9, 2015, CDFW executed a Certificate of Cancellation of the Phase 1 standby Letter of Credit with North Coast Bank as contemplated by the Memorandum of Agreement.

Phase 2 from 2015 to 2016: A standby Letter of Credit with U.S. Bank for \$8,700,000 for a 2-year period was approved by Sonoma Water's Board on December 9, 2014, for Phase 2 Biological Opinion activities. Security for the standby Letter of Credit is described in detail below. Phase 2 added construction of miles 2 and 3, and planning and initial design of miles 4 through 6 of the Dry Creek Habitat Enhancement Project, as well as monitoring and maintenance of completed work. Phase 2 construction work is complete and monitoring is ongoing.

Phase 3 from 2017 to 2023: A first amended standby Letter of Credit with U.S. Bank for \$12,765,840 and notice of extension for a 2-year period (2017-2018) was approved by Sonoma Water's Board on December 13, 2016, for Phase 3 Biological Opinion activities. While the principal amount increased pursuant to the requirements of the Memorandum of Agreement, the terms and rates for the standby Letter of Credit remained unchanged. Phase 3 added completion of construction of miles 4 through 6 of the Dry Creek Habitat Enhancement Project, as well as monitoring and maintenance of completed work. The first amended standby Letter of Credit expired on December 30, 2018.

A second amended standby Letter of Credit with U.S. Bank for \$12,765,840 and notice of extension for a 3-year period (2018-2021) was approved by Sonoma Water's Board on December 11, 2018, for ongoing Phase 3 Biological Opinion activities. The principal amount remained the same pursuant to the requirements of the Memorandum of Agreement, and the terms and rates for the standby Letter of Credit also remained unchanged. The second amended standby Letter of Credit expired on December 30, 2021.

A third amended standby Letter of Credit with U.S. Bank for \$12,765,840 and notice of extension for a 2-year period (2021-2023) was approved by Sonoma Water's Board on December 14, 2021, for ongoing Phase 3 Biological Opinion activities. The principal amount remained the same pursuant to the requirements of the Memorandum of Agreement, and the terms and rates for the standby Letter of Credit also remained unchanged. The third amended standby Letter of Credit expires on September 30, 2023.

Pursuant to the Memorandum of Agreement, Sonoma Water is required to provide a standby Letter of Credit for 365 days following the September 23, 2023 expiration of the Biological Opinion and Incidental Take Statement and the resulting expiration of CDFW's Consistency Determination. Sonoma Water staff recommend that the Board approve a fourth amended standby Letter of Credit with U.S. Bank for \$12,765,840 and notice of extension with the same terms through December 31, 2024.

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. 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 U.S. Army Corps of Engineers for the cost of constructing and maintaining Warm Springs Dam. Of Sonoma Water's total investment in U.S. Treasury Securities, \$13.4 million (1.05x \$12,765,840) is required by U.S. Bank as pledged security for the standby Letter of Credit. The pledged security remains unchanged through the

term (December 2024) of the standby Letter of Credit.

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 effect this standby Letter of Credit, up to \$7,500.

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 fourth amended standby Letter of Credit with U.S. Bank through December 31, 2024, for ongoing Phase 2 and Phase 3 coho-related work under the Biological Opinion.

Sonoma Water Strategic Plan Alignment: Water Supply and Transmission System, Goal 1: Protect drinking water supply and promote water-use efficiency.

Protect water quality, improve scientific understanding of our existing water supply, and continue implementation of the Russian River Biological Opinion.

Racial Equity:

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

No

Prior Board Actions:

12/14/2021: Authorize the Sonoma County Water Agency's General Manager to undertake actions necessary for a Third 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.

12/11/2018: Authorize the Sonoma County Water Agency's General Manager to undertake actions necessary

for a Second 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.

12/13/2016: Authorized the General Manager to undertake actions necessary to procure a standby Letter of Credit in the amount of \$12,765,840, including execution of an agreement with U.S. Bank for such a Letter of Credit.

12/09/2014: Authorized the General Manager to undertake actions necessary to procure a standby Letter of Credit in the amount of \$8,606,560, including execution of an agreement with U.S. Bank for such a Letter of Credit.

09/22/2009: Authorized the General Manager to execute a Memorandum of Agreement between the Sonoma County Water Agency and California Department of Fish and Wildlife regarding implementation of financial assurances for a Consistency Determination.

09/22/2009 Approved purchase of a certificate of deposit in the amount of \$7,770,280 and authorized the General Manager to execute an Agreement for a standby Letter of Credit with North Coast Bank.

09/22/2009: Approved submission of a written request to California Department of Fish and Wildlife for a Determination of Consistency with the California Endangered Species Act for listed coho salmon.

FISCAL SUMMARY

Expenditures	FY 23-24 Adopted	FY24-25 Projected	FY 25-26 Projected
Budgeted Expenses	\$74,000	\$74,000	
Additional Appropriation Requested	\$7,500		
Total Expenditures	\$81,500	\$74,000	
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other	\$81,500	\$74,000	
Use of Fund Balance			
Contingencies			
Total Sources	\$81,500	\$74,000	

Narrative Explanation of Fiscal Impacts:

Funding is from the Warms Springs Dam Special Revenue Fund. Additional appropriations are required to process this Letter of Credit administrative expense. The current appropriation of \$74,000 was budgeted to cover Letter of Credit annual expenses for Phase 3 activities. With Board approval, appropriations for FY 2023/2024 of \$7,500 for miscellaneous bank fees and issuance costs will be included in the next quarterly consolidated budget adjustments. The value of the Letter of Credit remains the same. Appropriations of \$74,000 will be programmed in FY 2024/2025 for Letter of Credit expenses through December 31, 2024, and

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anticipated expenses for financial security assurances that may be required for the next Biological Opinion.

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

Narrative Explanation of Staffing Impacts (If Required):

N/A

Attachments:

Attachment A: Memorandum of Agreement

Related Items "On File" with the Clerk of the Board:

None.