

Attachment B: Biological Opinion Phases of Work as They Relate to the Standby Letters of Credit

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.

In anticipation of a new biological opinion in FY2024/25 with potentially new terms for financial assurances, Sonoma Water staff recommended and the Board approved 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.