



## Legislation Details (With Text)

**File #:** 2021-1319  
**Type:** Regular Calendar Item **Status:** Agenda Ready  
**File created:** 11/4/2021 **In control:** Sonoma County Water Agency  
**On agenda:** 12/14/2021 **Final action:**  
**Title:** Biological Opinion Phase 3 Letter of Credit Third Amendment and Notice of Extension  
**Sponsors:** Sonoma County Water Agency  
**Indexes:**  
**Attachments:** 1. Summary Report, 2. Attachment A, 3. PowerPoint Presentation

Date	Ver.	Action By	Action	Result
12/14/2021	1	Board of Supervisors	Approved as recommended	Pass

**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  
**Supervisory District(s):** Countywide

**Title:**  
Biological Opinion Phase 3 Letter of Credit Third Amendment and Notice of Extension

### Recommended Action:

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. (4/5<sup>th</sup> Vote Required)

### Executive Summary:

The National Marine Fisheries Service and California Department of Fish and Wildlife are requiring the Sonoma County Water Agency (Sonoma Water) to undertake projects in the Russian River and its tributaries in order to protect endangered salmon and steelhead in the river system. As part of implementation, Sonoma Water is required to provide assurance that it has adequate funding to complete these projects. This agenda item requests authorization for Sonoma Water's General Manager to undertake actions necessary for a Third 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. It also requests authorization for the General Manager to execute 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, the National Marine Fisheries Service issued its Biological Opinion and Incidental Take Statement under the federal Endangered Species Act. The Sonoma County Water Agency's (Sonoma Water)

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 November 9, 2009, Sonoma Water requested and received a Consistency Determination from the California Department of Fish and Wildlife (Department of Fish and Wildlife). 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 Department of Fish and Wildlife 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 Department of Fish and Wildlife on October 5, 2009.

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. The Department of Fish and Wildlife's ability to draw on the standby Letter of Credit is subject to a number of conditions. Most importantly, the Department of Fish and Wildlife 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 the Department of Fish and Wildlife 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, the Department of Fish and Wildlife 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 Improvement 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 Improvement 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 will expire on December 30, 2021.

Sonoma Water is required to provide a standby Letter of Credit for the remaining time through the term end date, September 30, 2023. Staff recommend that the Board approve a third amended agreement for the remaining 21-month term under the Biological Opinion.

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) 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. Sonoma Water's investment in U.S. Treasury Securities as of September 30, 2021 is \$17.4 million. The U.S. Treasury Securities are maturing in November 2021 and November 2022. As a result, U.S. Bank has lowered the required pledged security from \$17.23 million (1.35x \$12,765,840) to \$13.4 million (1.05x \$12,765,840) during the remaining term.

Debt payments to the U.S. Army Corps of Engineers are approximately \$6.3 million per year and will terminate in 2035. The average cash balance in the Warm Springs Dam fund, which receives all revenue from the \$9.7 million Warm Springs Dam-Russian River Project "override" property tax, is projected to be \$11.5 million over the remaining 2 years of the Biological Opinion through 2023. The cash flow and investment models demonstrate that maintaining the required standby Letter of Credit pledged security of \$13.4 million in U.S. Treasury Securities reinvested as they mature, will not affect Sonoma Water's ability to meet all of its obligations including Biological Opinion project costs and Warm Springs Dam debt service costs and coverage.

Maintenance fees for the second amended standby Letter of Credit will remain the same, calculated at 55 basis points per annum plus bank fees (\$71,700 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 3.25%. 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. Sonoma Water received confirmation from U.S. Bank and Assistant Auditor-Controller-Treasurer-Tax Collector Jonathan Kadlec on September 2, 2021, that further review by the Debt Advisory Committee would not be required. County counsel has reviewed and approved the terms and conditions of the proposed Letter of Credit renewal.

Staff recommends Board approval of a third amended standby Letter of Credit with U.S. Bank for \$12,765,840 and notice of extension for the remaining 21-month term through September 30, 2023 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.

**Prior Board Actions:**

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 21-22 Adopted	FY22-23 Projected	FY 23-24 Projected

Budgeted Expenses	\$74,000	\$71,700	
Additional Appropriation Requested	\$5,200		
<b>Total Expenditures</b>	<b>\$79,200</b>	<b>\$71,700</b>	
<b>Funding Sources</b>			
General Fund/WA GF			
State/Federal			
Fees/Other	\$79,200	\$71,700	
Use of Fund Balance			
Contingencies			
<b>Total Sources</b>	<b>\$79,200</b>	<b>\$71,700</b>	

**Narrative Explanation of Fiscal Impacts:**

Funding is from the Warms Springs Dam Special Revenue Fund. Additional appropriations are required to process this 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 2021/2022 of \$5,200 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 \$71,700 will be programmed in FY 2022/2023.

<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>

**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.