
State Water Resources Control Board

June 28, 2021

Via Electronic Mail

Bill Hardwick
Los Molinos Mutual Water Company
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Dear Bill Hardwick:

**RESPONSE TO PROPOSED OUTLINE OF KEY TERMS FOR DROUGHT YEAR 2021
ACTIONS ON MILL CREEK**

This letter is a response from State Water Resources Control Board (State Water Board) staff regarding drought conditions on Mill Creek, tributary to the Sacramento River located in Tehama County. Mill Creek supports multiple natural populations of anadromous salmonids, including Central Valley spring-run Chinook salmon and California Central Valley steelhead, and protecting and restoring these populations is recognized as significant to the recovery of these threatened species. As you are aware, on April 23, 2021, State Water Board staff in coordination with California Department of Fish and Wildlife (CDFW) staff and National Marine Fisheries Service (NMFS) staff held a Mill Creek watershed meeting with stakeholders to discuss possible measures this year to protect Central Valley spring-run Chinook salmon and California Central Valley steelhead in Mill Creek. During the meeting, State Water Board staff presented information on current hydrologic conditions and CDFW staff presented information on the science and status of fisheries in Mill Creek. As discussed during the meeting, as a result of low winter precipitation for the second straight year, hydrologic conditions are very dry in the Sacramento Valley and additional actions are needed to protect threatened Chinook salmon and steelhead populations in Mill Creek during the current drought conditions. State Water Board staff requested that Los Molinos Mutual Water Company (LMMWC) document proposed voluntary actions that could be implemented this year to protect these threatened fish species. In response to this request, LMMWC provided an *Outline of Key Terms for Drought Year 2021 Actions on Mill Creek* (Outline) to State Water Board, CDFW, and NMFS staff on May 14, 2021.

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

State Water Board staff appreciates LMMWC's participation in the April 23, 2021 Mill Creek watershed meeting and LMMWC's May 14, 2021 submittal. State Water Board staff has reviewed the content of the Outline in collaboration with CDFW and NMFS staff. State Water Board staff supports voluntary actions to protect Chinook salmon and steelhead in Mill Creek. However, as discussed in the following paragraphs, revisions to the Outline are needed to adequately protect Chinook salmon and steelhead populations in Mill Creek. In addition, the Outline contains certain elements that are not feasible as currently written.

Environmental Permits and Approvals

The Outline requests certain environmental permits, approvals, and immunities, including Safe Harbor Agreements with NMFS under the federal Endangered Species Act (ESA) and CDFW under the California Endangered Species Act (CESA). The Outline also requests that the State Water Board not pursue emergency regulations, waste and unreasonable use claims, or other enforcement proceedings for diversions in 2021. State Water Board, CDFW, and NMFS staff do not have the authority to waive regulatory requirements. For example, as discussed in CDFW's May 18, 2021 letter to Mike Wallace (Stanford Vina Ranch Irrigation Company) and Bill Hardwick (LMMWC) titled Drought Conditions on Deer and Mill Creeks, CDFW does not have the authority to authorize take under the CESA. However, LMMWC may pursue Safe Harbor Agreements with CDFW and NMFS through the Safe Harbor Agreement application process.

The Outline also requests regulatory approvals for design and implementation of a Mill Creek channel restoration project. State Water Board staff encourages LMMWC to pursue appropriate channel restoration projects in combination with flow measures to benefit Chinook salmon and steelhead in Mill Creek. However, the State Water Board, CDFW, and NMFS do not have the authority to waive regulatory responsibilities for the issuance of environmental permits or other regulatory approvals that may be required for restoration projects.

State of California Financial Assistance

The Outline requests funding from the State of California in the amount of \$2.1 million for the "purpose of implementing, in Water Users' discretion, water conservation, water efficiency, system improvement, or other water related improvements within their respective service areas." While financial assistance programs may be available for specific water related improvement projects, it is not feasible to provide State of California funding for the purpose of funding local water projects in water users' discretion. State Water Board staff requests that LMMWC revise the Outline to propose specific water conservation, water use efficiency, or other flow related improvement projects that would enhance Mill Creek streamflows. State Water Board staff is available to provide more information regarding possible financial assistance programs, including loans and grants, for specific water related improvement projects. Information regarding the State Water Board's financial assistance programs is also available at: https://www.waterboards.ca.gov/water_issues/programs/grants_loans/.

Proposed Forbearance/Flow Measures

The Outline includes proposed flow measures, including “base flow of not more than 25 [cubic feet per second] cfs measured at the Ward Dam May 15 to June 15, and not more than 50 cfs from October 15 to November 30” as well as pulse flows provisions. State Water Board staff appreciates the inclusion of base and pulse flows in the Outline. However, the proposed base flows are not consistent with fish passage flow volumes identified in recent drought emergency regulations or CDFW flow criteria. As you are aware, during 2014 and 2015, the State Water Board adopted emergency regulations for Curtailment of Diversions due to Insufficient Flow for Specific Fisheries (emergency regulations)¹ that identified drought minimum flows of 50 cfs for adult spring-run Chinook salmon from April 1 up to June 15, and 50 cfs for adult steelhead migration from October 15-March 31 through lower Mill Creek. The drought flows were determined to be the bare minimum flows necessary during extreme water shortage conditions to protect native fish species based on the best available science and information at the time, and do not represent optimal passage conditions for Chinook salmon and steelhead. Recent scientific information indicates that additional flow would improve passage conditions on Mill Creek. In 2018, CDFW staff completed a *Draft Instream Flow Criteria, Mill Creek, Tehama County*² (Flow Criteria) report, which identified significantly higher passage flows (140 cfs to provide adult Chinook salmon passage through critical riffles at the smallest increment of 2 feet (ft.) width at 0.9 ft. water depth, and 90 cfs to provide adult steelhead passage through critical riffles at the smallest increment of 2 ft. width at 0.7 ft. water depth). Accordingly, the flows identified under the 2015 emergency regulations are the minimum flows that should be considered in the Outline.

In addition, the base flows identified in the Outline would encompass only a portion of the spring-run Chinook salmon and steelhead migration periods on Mill Creek. In addition to base flows from October 15 to November 30 and May 15 to June 15, flows are needed during other months to provide for fish passage through lower Mill Creek. As you are aware, the State Water Board’s 2015 emergency regulations identified drought minimum flows from October 15 to March 31 for adult steelhead migration, April 1 through June 15 for adult spring-run Chinook salmon migration, and October 15 to June 30 for juvenile Chinook salmon and steelhead outmigration. State Water Board staff requests that LMMWC revise the Outline to extend the proposed forbearance/flow measures to provide for fish passage throughout the adult Chinook salmon and steelhead migration periods and juvenile salmonid outmigration periods.

Mill Creek Water Temperatures

The Outline identifies that the proposed forbearance/flow measures would cease when water temperatures exceed 68 degrees Fahrenheit on Mill Creek below Ward Dam. State Water Board staff agrees that appropriate water quality and temperature

¹ https://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/docs/mill_deer_antelope_creeks/em_regs_form400_adopted_reg_language.pdf

² <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=153384>

conditions are needed to protect native cold water fish species in Mill Creek. However, spring-run Chinook salmon and steelhead have been observed migrating through lower Mill Creek at water temperatures above 68 degrees Fahrenheit. Accordingly, State Water Board staff requests updates to the Outline to identify the cessation of flow measures based on the absence of anadromous salmonids in lower Mill Creek. In addition, it should be recognized that higher flows would help to maintain suitable water quality and habitat conditions for migrating spring-run Chinook salmon and steelhead during critical migration periods.

Conclusion

State Water Board staff appreciates LMMWC's participation in recent discussions of voluntary actions to protect threatened fish species in Mill Creek during the current drought, and LMMWC's submittal of the Outline. Revisions to the Outline that address the issues identified above are requested as soon as feasible. In accordance with Governor Newsom's May 10, 2021 Drought Emergency Proclamation³, in the absence of sufficient voluntary measures, it may be necessary to consider drought emergency regulations to establish minimum drought instream flows that provide short-term fisheries protection on Mill Creek. In the absence of sufficient voluntary measures, consideration of drought emergency regulations may be necessary as soon as August 2021. State Water Board staff also supports the development of long-term cooperative solutions on Mill Creek, and encourages LMMWC to pursue long-term voluntary actions in collaboration with CDFW and NMFS staff that provide fisheries protection on Mill Creek.

Thank you again for your submittal. If you have any questions regarding this letter or would like to discuss requested revisions to the Outline, you may contact Nicole Williamson at Nicole.Williamson@waterboards.ca.gov.

Sincerely,



Eileen Sobeck
Executive Director
State Water Resources Control Board

Attachment: May 18, 2021 CDFW letter- Drought Conditions on Deer and Mill Creeks, Tehama County

³ <https://www.gov.ca.gov/wp-content/uploads/2021/05/5.10.2021-Drought-Proclamation.pdf>