

Memorandum

2009 DEC 29 11:38

Date: December 23, 2009

To: Mr. Arthur G. Baggett, Jr., Board Member
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812
Via Fax (916) 341-5400

Attention: Mr. Ernest Mona



From: **MARK STOPHER**, Acting Regional Manager
Northern Region
Department of Fish and Game
601 Locust Street
Redding, CA 96001

Subject: **DFG Policy Statement on the Cease and Desist Order Against Thomas Hill, Steven Gomes, and Millview County Water District**

Attached is the Department of Fish and Game's Policy Statement on the Cease and Desist Order against Thomas Hill, Steven Gomes, and Millview County Water District before the State Water Resources Control Board, January 26, 2010.

If you have any questions, please contact Staff Environmental Scientist Jane Arnold at (707) 441-5671.

ec: Messrs. Kenneth Moore, William Condon, Rick Macedo, Scott Downie, and Scott Harris
Mss. Jane Arnold, Jane Vorpapel, Tracie Nelson, and Laurie Harnsberger
Department of Fish and Game
kmoore@dfg.ca.gov, wcondon@dfg.ca.gov, sdownie@dfg.ca.gov
rmacedo@dfg.ca.gov, slharris@dfg.ca.gov, jvorpapel@dfg.ca.gov,
lharnsberger@dfg.ca.gov, tnelson@dfg.ca.gov, jarnold@dfg.ca.gov

Before the
State Water Resources Control Board
January 26, 2010

In the Matter of Proposed Adoption of a Cease and Desist Order against Thomas Hill, Steven Gomes, and Millview County Water District.

Policy Statement of California
Department of Fish and Game

The Mission of the Department of Fish and Game (Department) is to manage California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public.

Fish and wildlife resources are held in trust for the people of the State of California. Under Fish and Game Code Section 711.7, the Department is designated as trustee for the State's fish and wildlife resources. Fish and Game Code Section 1802 grants the Department jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species. Additionally, Fish and Game Code Section 1600 *et seq.* grants the Department jurisdiction over projects that substantially divert water from lakes, rivers or streams.

The Department seeks to maintain native fish, wildlife, plant species and natural communities for their intrinsic and ecological value and for their benefits to all citizens in the State. This includes habitat protection and maintenance of habitat in sufficient amounts and quality to ensure the conservation of all native species and natural communities. The Department is also responsible for oversight and assurance of the diverse uses of fish and wildlife including recreational, commercial, scientific and educational.

As trustee agency for the aquatic resources in this State, the Department has a material interest in assuring that water flows within streams are maintained at levels that are adequate for long-term protection, maintenance, and proper stewardship of these resources. Flows in the Russian River support Chinook and coho salmon, steelhead trout and other aquatic species. Because of the Department's interest in the conservation of these resources, the Department filed protests in 2003 and 2008 with the State Water Resources Control Board (SWRCB) against the petitions for change filed by Millview County Water District for Water Applications A003601 and A017587.

The Upper Russian River and its tributaries support Chinook salmon and steelhead trout. Both species are listed as threatened pursuant to the federal Endangered Species Act (ESA). Coho salmon are present in the watershed downstream, and are listed as endangered pursuant to ESA and California Endangered Species Act. Chinook and coho salmon and steelhead trout spawn and rear in the Russian River and its tributaries during the period at issue in this hearing (May through November). The Upper Russian River not only supports native aquatic species onsite, but also contributes flow crucial to supporting listed anadromous and other species in the lower reaches of the watershed. In addition to their many other values, anadromous fish are important to

California's economy. The Governor's 2009 "State of Emergency Proclamation – Chinook Salmon" estimated that California's economy lost \$279 million from the closure of Chinook salmon ocean and freshwater fishing, with an estimated 2,690 jobs lost.

Water Code Section 1257 requires the SWRCB to consider the relative benefit to be derived from all beneficial uses of water including but not limited to those listed for fish and wildlife resources. Categories of beneficial uses of water in the Upper Russian River Hydrologic Unit relevant to fish and wildlife resources include Cold Freshwater Habitat; Migration of Aquatic Organisms; Commercial and Sport Fishery; Rare, Threatened, or Endangered; Spawning, Reproduction, and/or Early Development; and Wildlife Habitat. The SWRCB has designated the Russian River as fully-appropriated. The Russian River is also listed as sediment- and temperature-impaired pursuant to Clean Water Act, Section 303 (d).

The Department cautions that water diversions from the Russian River have the potential to cause site-specific and/or cumulative adverse impacts by degrading established instream habitat for Chinook and coho salmon, steelhead trout, and other native aquatic species. The Department understands SWRCB in this hearing is addressing Millview's and Hill and Gomes' attempt to divert substantial amounts of water from the Upper Russian River pursuant to water rights that have not been historically exercised in any significant quantity. The Department is very concerned that Russian River fishes have already experienced deleterious effects from water diversions and cannot withstand additional water diversions, especially during the period May through November. The Department encourages the SWRCB to place great weight on the need to preserve the existing flows in the Russian River for protection of instream habitat as a beneficial use of water for Chinook and coho salmon, steelhead trout and other native aquatic life, and to not authorize diversions in addition to those that have been in place historically.

Seasonal water temperatures, sufficiently low to protect anadromous fish and other native aquatic life, holding and rearing habitat, along with timely attraction flows for migration are critical to supporting all life stages of steelhead and other aquatic species in Russian River.

The Department takes seriously its responsibility to safeguard the natural resources of California and the Russian River aquatic resources it holds in trust for the public. To that end, the Department firmly supports the proposed Cease and Desist Order before the Board. We believe that such action is consistent with the Fish and Game Code and will be in the public's best interest overall. Because of the low-flow conditions of the Russian River and the status of anadromous fish dependent on adequate instream flows, the Department believes the current and proposed diversions (subject of this hearing) by Millview and Hill and Gomes would be substantial and thus, subject to Fish and Game Code Section 1600 *et seq.*

The Department thanks Hearing Officer and Board member Arthur G. Baggett, Jr., and the other members of the State Water Resources Control Board for the opportunity to express our interest and policy in regards to this matter.