Proposed Readoption of the Emergency Regulation for Mill and Deer Creeks
Presentation Agenda

- Background
- Regulation Overview and Implementation
- Voluntary Agreement Efforts
- Status of Fisheries (NMFS and CDFW)
- Readoption, Proposed Amendments and Comments Received
Project Team

Division of Water Rights
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Consultant
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Background and Implementation
Background

• California is experiencing persistent drought

• Mill and Deer Creeks are tributaries to the Sacramento River in Tehama County

• Significant biological importance for threatened fish

• Mill Creek is a priority stream in the California Water Action Plan for salmonid recovery
Timeline of Water Rights Drought Response Actions in the Mill and Deer Creek Watersheds

- **May 2021**: Governor’s Emergency Drought Proclamation
- **Sept 1, 2021**: Staff release preliminary draft emergency regulation for comment
- **September-October 2021**: Board adopts and OAL approves emergency curtailment regulation, and Board issues curtailments to water right holders on Mill and Deer creeks
- **February 2022**: Staff hold meetings with stakeholders, CDFW, and NMFS to discuss interim and long-term solutions for both creeks
- **April and June 2022**: CDFW and NMFS recommend re-adoption of emergency regulation
- **August 5, 2022**: Notice of Proposed Rulemaking and Proposed Regulation for Readoption released for public comment
Emergency Regulation Overview

- Adopted September 22, 2021
- Authorizes curtailments to provide minimum instream flows for anadromous salmonids
  - Requires minimum base flows during migration periods
  - Provides for implementation of 100 cfs pulse flows when requested by the California Department of Fish and Wildlife (CDFW) or National Marine Fisheries Service (NMFS)
- Minimum flow requirements adopted in 2021 similar to flow requirements adopted during 2014/2015 drought
- Includes provisions for human health and safety and non-consumptive use exceptions and local cooperative solutions
Implementation of Emergency Regulation Flows

• Emergency Flow Requirements
  • **October 15, 2021** – 50 cfs minimum instream requirement to confluence of the Sacramento River
  • **May 26, 2022** – Pulse flow ordered on Deer Creek of 100 cfs over a 72-hour duration
  • **June 12, 2022** – Pulse flow ordered on Deer Creek and Mill Creek of 100 cfs over a 72-hour duration
  • **June 15, 2022** – Minimum instream flow requirement reduced to 20 cfs for juvenile Central Valley spring-run Chinook Salmon and California Central Valley Steelhead
  • **June 30, 2022** – Curtailments lifted on Mill and Deer creeks
Voluntary Efforts

Resolution Language (2021):

State Water Board staff shall coordinate with staff from CDFW, NMFS, and stakeholders in Deer and Mill Creeks to discuss interim and long-term resolution of needed measures to protect fisheries, including instream flow needs, water use efficiency and water conservation measures, habitat improvements, and potential funding sources.
Voluntary Agreement Efforts to Date

• Stakeholder meetings in February
  • Documents received from CDFW, Los Molinos Mutual Water Company (LMMWC) and Stanford Vina Ranch Irrigation Company (SVRIC)

• Channel modification
• DWR’s conjunctive use groundwater wells
• Funding Opportunities identified by NMFS
Request to Re-Adopt Emergency Flow Regulations on Deer and Mill Creeks
Spring-run Chinook Salmon Extinction Risk Update

Brian Ellrott
NOAA Fisheries
Central Valley Chinook Salmon and Steelhead Recovery Coordinator

State Water Resources Control Board Meeting Session – Division of Water Rights
August 16, 2022 Item 5
Spring-run Chinook salmon extinction risk

5-year Status Review Viability Analysis Results
Spring-run Chinook salmon extinction risk
Adult abundance update

*2021 and 2022 data are preliminary and have not been incorporated into the Grandtab database
NOAA Fisheries’ Recommendations

NOAA Fisheries’ supports readoption of the emergency regulations.

To support viable salmonid populations in Mill and Deer creeks over the long-term, more protective flows are needed. We recommend achieving instream flow criteria based on the best available science identified in CDFW 2017/2018 flow studies.
SWRCB Meeting
Deer Creek Fishery Update

Matthew R Johnson
California Dept of Fish and Wildlife
August 16, 2022
Spring Fish Passage Monitoring at the Deer Creek Video Station (DCVS):

- Located at SVRIC Dam fishway(s), river mile 5.0
- Continuous, 24/7 fish passage monitoring using video camera systems
- DCVS is used to obtain salmonid life history information, develop fish population estimates and inform water management
Draft 2022 Deer Creek Video Station Adult Spring Run Chinook Data:

- A draft total of 383 spring-run passed SVRIC Dam in 2022
- First fish observed on March 3. Last on June 11
- Two spring-run passed during the May 26-29 pulse flow (power outage 8:30am-4:30pm on 5/27). Zero spring-run passed during the June 12-15 pulse flow
2022 Deer Creek Spring-Run Passage and Flow:

![Graph showing daily count spring-run and average daily flow (cfs)]
Spring 2022 Pulse Flows in Detail:

AVG Daily Flow (cfs)

Daily Count Spring-Run

Spring-Run  DCV  DVD

SWRCB Meeting
Mill Creek Fishery Update

Matthew R Johnson
California Dept of Fish and Wildlife
August 16, 2022
Fish Passage Monitoring at the Mill Creek Video Station (MCVS):

- Located at Ward Dam fishway, river mile 2.8
- Continuous, 24/7 fish passage monitoring using video camera systems and sonar
- MCVS is used to obtain salmonid life history information, develop fish population estimates and inform water management
Draft 2022 Mill Creek Video Station Adult Spring Run Chinook Data:

- A draft total of 232 spring-run passed Ward Dam in 2022
- First fish observed on March 1. Last on June 25
- Zero spring-run detected during the May 26-29 and June 12-15 pulse flow periods
2022 Mill Creek Spring-Run Passage and Flow:

![Graph showing daily counts and flow for Spring-Run, MLM, and MCH from 20-Feb to 28-Jun.]
Spring 2022 Pulse Flows in Detail:
Readoption and Proposed Amendments

• Emergency regulation effective for one year following adoption; current regulation will expire in October 2022 unless readopted

• No changes proposed to flow schedules or instream requirements proposed for readoption

• Propose adding process to allow continued minimal diversions for livestock during scheduled pulse flows
Proposed Amendment – Petition for Livestock Watering - 876.5(b)

• Would allow water right holders to petition for limited diversions for livestock survival during scheduled pulse flow events when no other water is available
• Would require Deputy Director approval
• Would allow CDFW or NMFS to object if exception would threaten fishery resources
• Petitioner would be required to demonstrate:
  o Curtailing diversions to achieve pulse flows would likely impair livestock survival
  o No reasonable water supply alternatives (e.g., stock ponds, groundwater wells, hauled water) are available
Comments Received

• Comment letter from Los Molinos Mutual Water Company, Stanford Vina Ranch Irrigation Company, and Peyton Pacific Properties LLC in opposition to readopting the emergency regulation
Next Steps and Schedule – Overview of Regulatory Process and Schedule

Release of revised EReg
August 5
• Draft regulation text released
• Written comment period ended at noon on August 11

Notice of Rulemaking
August 5
• Includes regulation, finding of emergency, informative digest, and fiscal analysis
• Notifies public of proposed regulation at least 5 working days prior to submittal to OAL

Board Meeting
August 16
• Board consideration of proposed revised emergency regulation

Submittal to OAL
August 17-19*
• OAL notices for a 5-calendar-day comment period
• OAL reviews package within 10 calendar days of submittal
• Upon approval, OAL submits to Secretary of State

Regulation Approval
Late Aug / Early Sept
• Existing curtailment orders still in effect

OAL – Office of Administrative Law
* Dates are tentative
Resources

• Mill-Deer Drought Response
  https://www.waterboards.ca.gov/drought/mill_deer_creeks/

• Mill-Deer Email
  DWR-MillDeerDrought@Waterboards.ca.gov
Questions?