



April 8, 2009  
Item 14, Supporting Document 2

**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
Southwest Region  
501 West Ocean Boulevard, Suite 4200  
Long Beach, California 90802-4213

FEB 20 2009

In response refer to:  
10019SWR2009PR00097:SCG

Antonio Barrales  
State Water Resources Control Board  
Division of Water Rights  
P.O. Box 2000  
Sacramento, California 95812-2000

Dear Mr. Barrales:

NOAA's National Marine Fisheries Service (NMFS) is contacting the State Water Resources Control Board (Board) to protest the January 16, 2009, Notice of Application 31741 for the South Coast Water District (District) to appropriate water from Aliso Creek, in Orange County California. The basis for the protest is outlined below. This letter concludes with recommended measures for resolving NMFS' protest.

The proposed water diversion will occur within the endangered Southern California Distinct Population Segment (DPS) of steelhead (*Oncorhynchus mykiss*). NMFS believes steelhead were historically present in the Aliso Creek, and steelhead may use the creek for a portion of their overall life history. NMFS has documented steelhead presence recently in creeks directly adjacent to Aliso Creek; specifically, San Juan Creek, Arroyo Trabuco Creek, and San Mateo Creek. NMFS is therefore concerned that the proposed action would reduce the chances for steelhead recovery within Aliso Creek by reducing the quantity and quality of instream habitat for steelhead immigration and emigration, spawning, and rearing. Furthermore, diverting water may cause take of steelhead, which is prohibited under Section 9 of the Endangered Species Act.

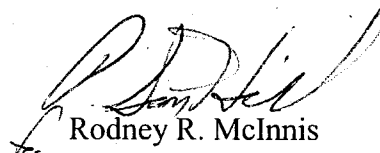
The Notice of Application (application) does not acknowledge historical presence of endangered steelhead in the Aliso Creek Watershed, and lacks an assessment of the potential effects the proposed water diversion may have on endangered steelhead. Furthermore, the application presents no proposed measures for compensating any potential effect the diversion may have on steelhead and aquatic habitat. NMFS believes the applicant's request to divert water should not be processed until an assessment of the effects of the proposed water diversion on steelhead and their aquatic habitat has been undertaken, and the potential negative effects fully compensated.

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NMFS will withdraw this protest if the water right permit contains NMFS approved terms and conditions for the purpose of avoiding take of steelhead, and minimizing adverse effects to steelhead habitat. NMFS is available to collaborate with the Board and the District as necessary to develop a mutually agreeable solution to this protest. Please contact Stan Glowacki at (562) 980-4061 or via email at Stan.Glowacki@noaa.gov if you have any questions regarding this letter or if you require additional information.

Sincerely,



Rodney R. McInnis  
Regional Administrator

cc: Matt Chirton, CDFG  
Mary Larson, CDFG  
Christine Medak, USFWS