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## State Water Resources Control Board

TO: Board Members

FROM:   
Thomas Howard  
Executive Director  
**EXECUTIVE OFFICE**

DATE: **APR 22 2015**

SUBJECT: CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE AND NATIONAL MARINE FISHERIES SERVICE VOLUNTARY DROUGHT AGREEMENTS ON MILL CREEK

The California Department of Fish and Wildlife (CDFW) and National Marine Fisheries Service (NMFS) have entered into Voluntary Drought Agreements (Agreements) with Los Molinos Mutual Water Company (Los Molinos MWC), Nobmann Cattle, LLC (Nobmann CC), The Nature Conservancy (TNC) and Orange Cove Irrigation District (OCID), in the Mill Creek watershed to provide minimum flows necessary to allow for adult and juvenile fish migration on lower Mill Creek. CDFW has determined the flows identified in the Agreements provide watershed-wide protection for the fishery that is comparable to or greater than that provided in California Code of Regulations, title 23, section 877. Below is a summary of the minimum flows identified in the Agreements:

### **Spring Base Flows:**

*March 15 to June 15: 50 cubic feet per second (cfs) for adult spring-run Chinook salmon and juvenile spring-run Chinook salmon and steelhead. If stream temperatures measured at the Department of Water Resources flow gauge below Highway 99 (Station ID: MCH) meet or exceed a daily minimum of 75°F for a seven day consecutive period in the month of June, adult base flows can be reduced to juvenile base-flow requirements.*

*June 16 to 30: 20 cfs for juvenile spring-run Chinook salmon and steelhead. If monitoring and evaluations conducted by CDFW determine that fish are not present in lower Mill Creek during this period, and it is mutually agreed to by NMFS, CDFW and the participant, base flows may be relaxed.*

### **Fall Base Flows:**

*October 15 to December 31: 50 cfs for upstream migration of adult steelhead and out-migrating juvenile spring-run Chinook salmon and steelhead.*

### **Pulse Flows:**

*Time period of pulse flows: April 1 through June 15, up to once every two weeks.*

*Magnitude of pulse flows: Pulse flows should be a minimum of 50 cfs over base flow or full natural flows as recorded at the USGS [United States Geological Survey] gauge station above*

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*Upper Dam. The pulse flow shall include a declining ramping flow schedule, such that each adjustment in flow reduction will not exceed 10 cfs with a minimum 3-hour period between adjustments until a return to base flow level.*

*Duration of pulse flows: 60 hours. The first 36 hours will require the full pulse flow magnitude. The remaining period of the pulse flow shall include a declining ramping flow schedule, with a minimum 3-hour period between adjustments until a return to base flow level, to be determined by Los Molinos MWC.*

The emergency regulation addressing curtailments to meet fishery flows, California Code of Regulations, title 23, article 24, section 877 et seq., was approved by the Office of Administrative Law and filed with the Secretary of the State on March 30, 2015. CDFW and NMFS, on behalf of the diverters, have requested an opinion as to whether the voluntary agreements on Mill Creek satisfy the voluntary agreement provisions in sections 877, subdivision (c), and section 878.2.

The measured flow at the USGS gauge located upstream of Upper Dam and the major valley floor diversions (Mill Creek Near Los Molinos, CA, USGS #11381500) on April 21, 2015 was 134 cfs. At this flow, the three most senior water diverters have a combined claim to 13 cfs<sup>1</sup>, while the other diverters are allocated water based on a percentage of available water. (Superior Court of Tehama County, by its Decree of August 16, 1920, No. 3811.) The Agreements represent approximately 85% of the water diverted in the lower watershed (Los Molinos MWC - 68.67%, Nobmann CC - 2.24%, TNC - 8.93% and OCID - 5.24%). Based on current and historic gauge data, this amount of water would suffice to meet the flows identified in the Agreements. Los Molinos MWC is the court-assigned watermaster for the adjudicated parties and there are no downstream diverters outside of the adjudication; therefore bypassing flows can occur without injury to other water users. There are minimal, small diversions in the upper watershed of Mill Creek; therefore staff advises that the Agreements cover substantially all of the water diverted in the watershed.

Based on the Agreements and the State Water Board's available water right information, it appears that the NMFS and CDFW Agreements on Mill Creek with Los Molinos MWC, TNC, Nobmann CC, and OCID together cover substantially all of the water diverted in the watershed. Therefore, California Code of Regulations, title 23, section 877, subdivision (c) shall not go into effect on Mill Creek as long as the Agreements remain in effect and the conditions of the Agreements are fully met. Additionally, it appears that the Agreements would also satisfy the curtailment exception provisions of section 878.2.

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<sup>1</sup>Of the three most senior water right holders identified in the 1920 adjudication only Nobmann CC has entered into a voluntary agreement at this time. Nobmann CC's current water allocation is 3 cfs, while Peyton's and Clough's are 5 cfs each.