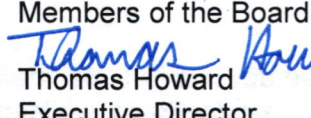


State Water Resources Control Board

TO: Members of the Board
FROM: 
Thomas Howard
Executive Director
EXECUTIVE OFFICE

DATE: June 4, 2014

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

The National Marine Fisheries Service (NMFS) and California Department of Fish and Wildlife (CDFW) have entered into Voluntary Drought Agreements (Agreements) with Los Molinos Mutual Water Company (Los Molinos MWC), Nobmann Cattle, LLC (Nobmann CC), Peyton Pacific Properties (Peyton), and the Nature Conservancy (TNC) in the Mill Creek watershed to provide minimum flows necessary to allow for adult and juvenile fish migration on lower Mill Creek. NMFS and CDFW have 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:

April 1 to June 14: 50 cubic feet per second (cfs) for adult spring-run Chinook and juvenile young of the year spring-run Chinook salmon and steelhead.

June 15 to 30: 25 cfs for juvenile young of the year spring-run Chinook salmon and steelhead. If monitoring and evaluations conducted by CDFW determine that fish are not present in Lower during this period, and it is mutually agreed to by NMFS, CDFW and the participant, base flows may be reduced below 25 cfs.

Fall Base flows:

October 15 to December 31: 50 cfs for out-migrating yearling juvenile spring-run Chinook and steelhead and the upstream migration of adult steelhead. In the event of a rain freshet, base flows could start on October 1 if mutually agreed to by NMFS, CDFW and participant.

Pulse flows:

Time period of pulse flows: April 15 through June 14, at a minimum of 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 gage station above Upper Dam.

Duration of pulse flows: Minimum of 24 hours.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

Emergency regulations addressing curtailments to meet fishery flows, at California Code of Regulations, title 23, article 24, section 877 et seq., were approved at the Office of Administrative Law and filed with the Secretary of the State on June 2, 2014. 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.

In the lower watershed with today's measured flows rounded down to 140 cfs, measured at the USGS gauge, the three most senior water diverters have a claim to 13 cfs, while other diverters take 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 87% of the water diverted in the lower watershed (Los Molinos MWC - 72.6%, Nobmann CC - 2.14%, Peyton - 3.57%, and TNC - 8.96%). Based on current and historic gage data, this amount of water would suffice to meet the flows identified in the Agreements. Los Molinos MWC is the court-assigned water master 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. Most diversions in the upper watershed are junior diversions that have received curtailment notices, with the exception of some small riparian diversions. Staff therefore advises that the Agreements cover substantially all of the water diverted in the watershed.

I have considered staff's recommendation and have determined that implementation of the NMFS and CDFW Agreements on Mill Creek with Los Molinos MWC, Nobmann CC, Peyton, and TNC 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 also appears that the Agreements would satisfy the curtailment exception provisions of proposed section 878.2.