

Proposed Readoption of the Emergency Regulation for Mill and Deer Creeks

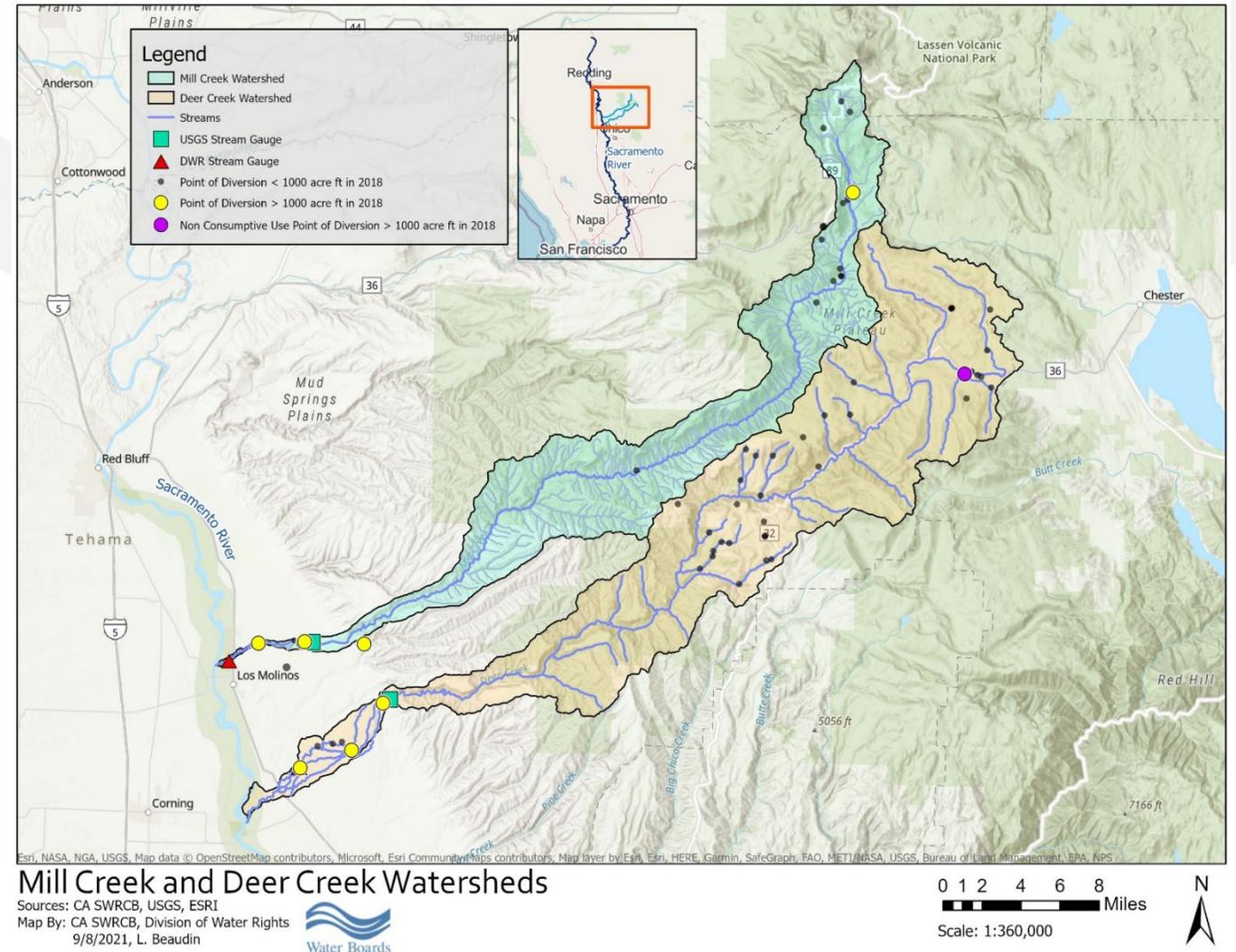
Agenda Item 5
August 16, 2022



Division of Water Rights

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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- Lauren Beaudin
- Robert McCarthy
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- Daniel Menten
- Karen Niiya

Office of Chief Counsel

- Marianna Aue
- David Rose

Consultant

- Mike Taylor

Background and Implementation

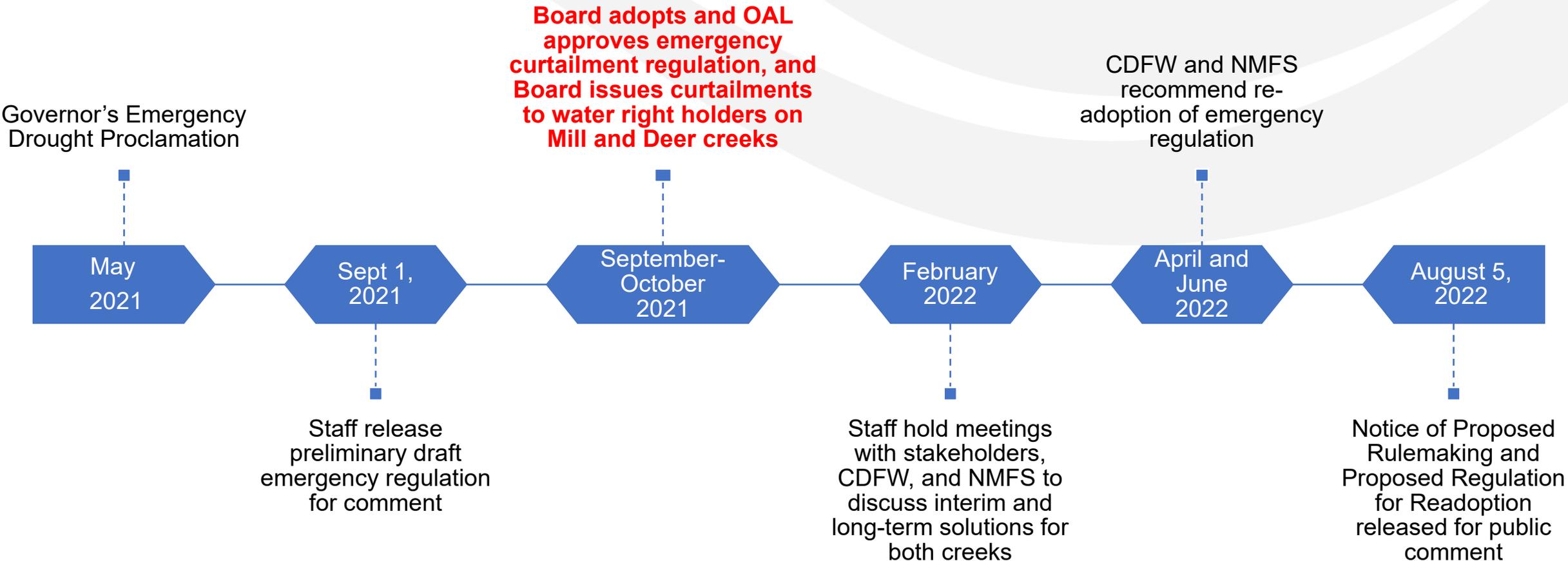


Division of Water Rights, Bay Delta Section

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



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



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Voluntary Efforts

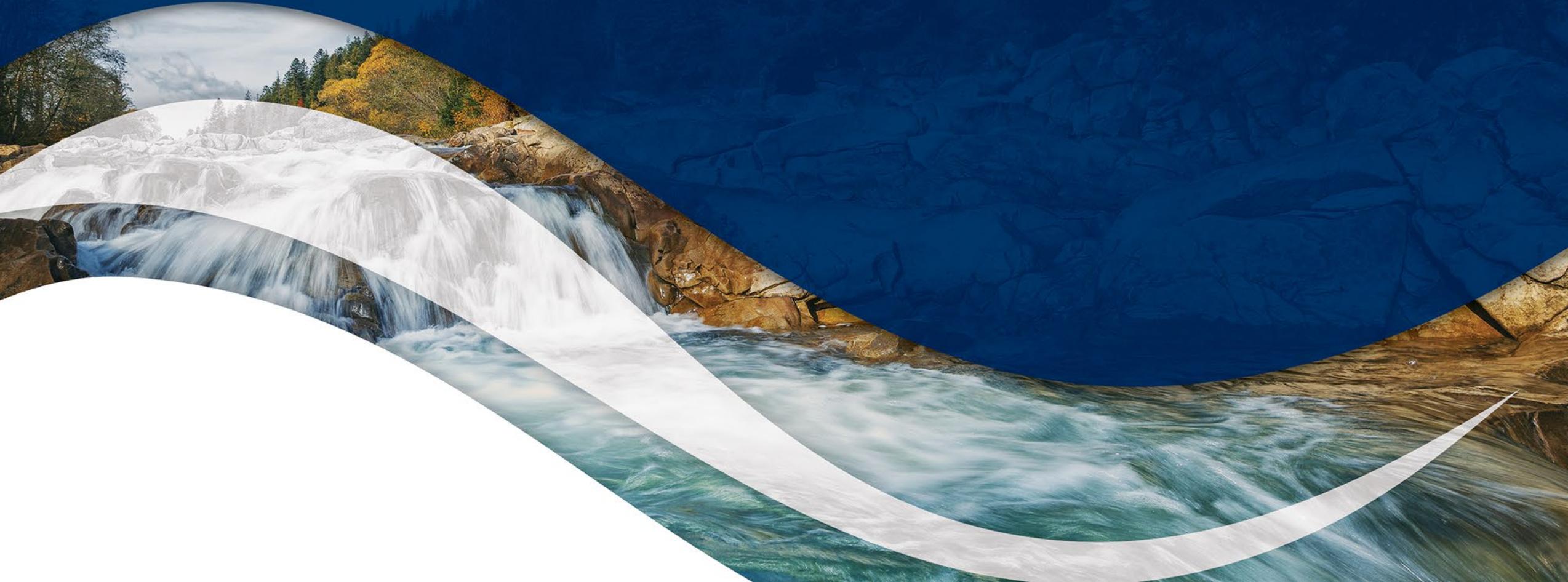
Resolution Language (2021):

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

Status of Fisheries





**NOAA
FISHERIES**

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

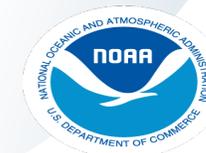
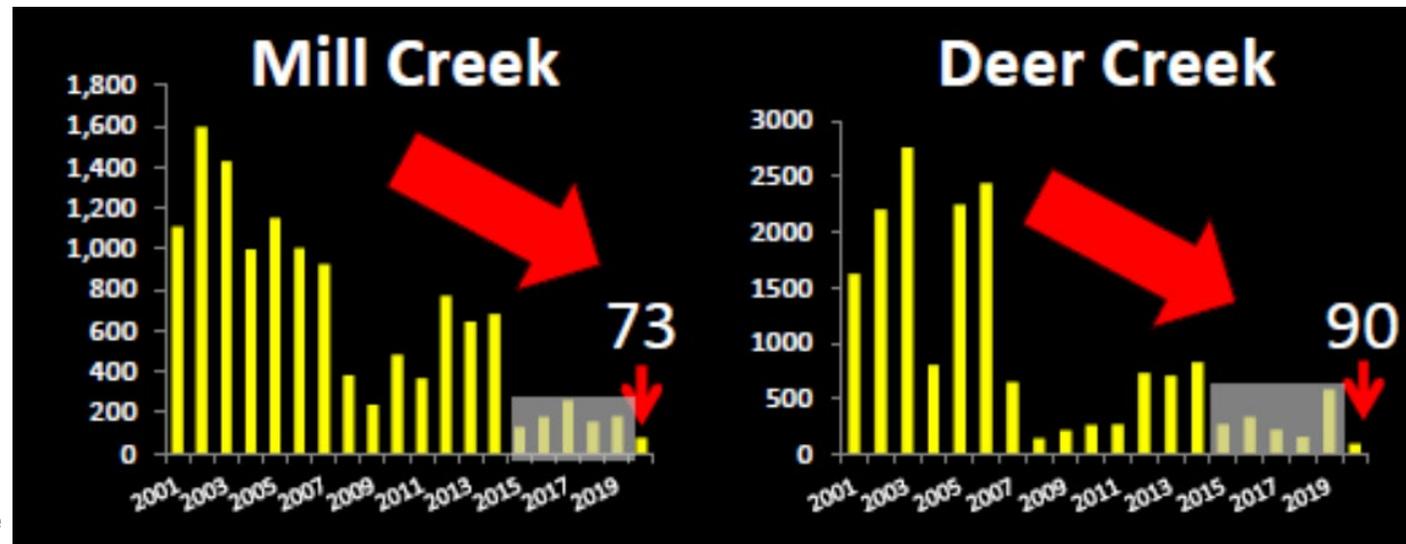
State Water Resources Control Board Meeting Session – Division of
Water Rights

August 16, 2022 Item 5

Spring-run Chinook salmon extinction risk

5-year Status Review Viability Analysis Results

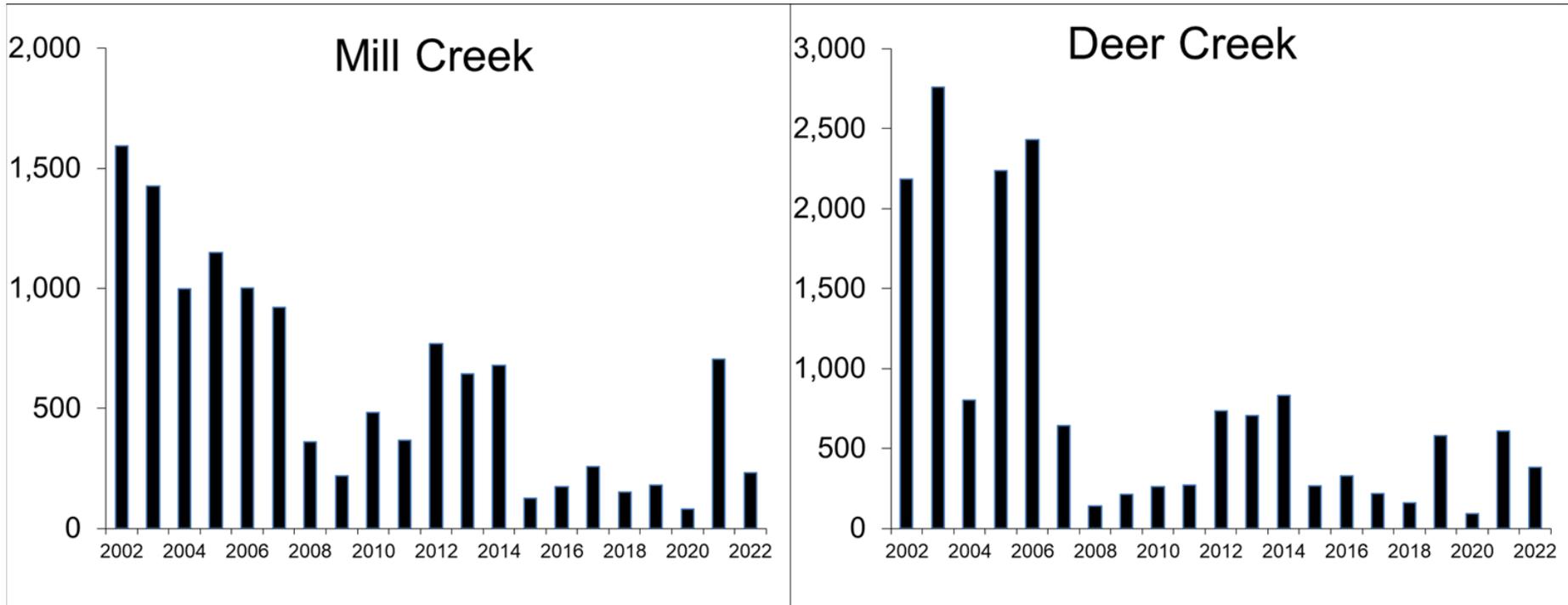
| | 2010 | 2015 | 2020 |
|-----------------|------|----------|------|
| Mill Creek | High | Moderate | High |
| Deer Creek | High | Moderate | High |
| Butte Creek | Low | Low | Low |
| Battle Creek | High | Moderate | High |
| Clear Creek | High | Moderate | High |
| Feather River H | High | High | High |



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Spring-run Chinook salmon extinction risk

Adult abundance update



*2021 and 2022 data are preliminary and have not been incorporated into the Grandtab database



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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.



NOAA
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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):



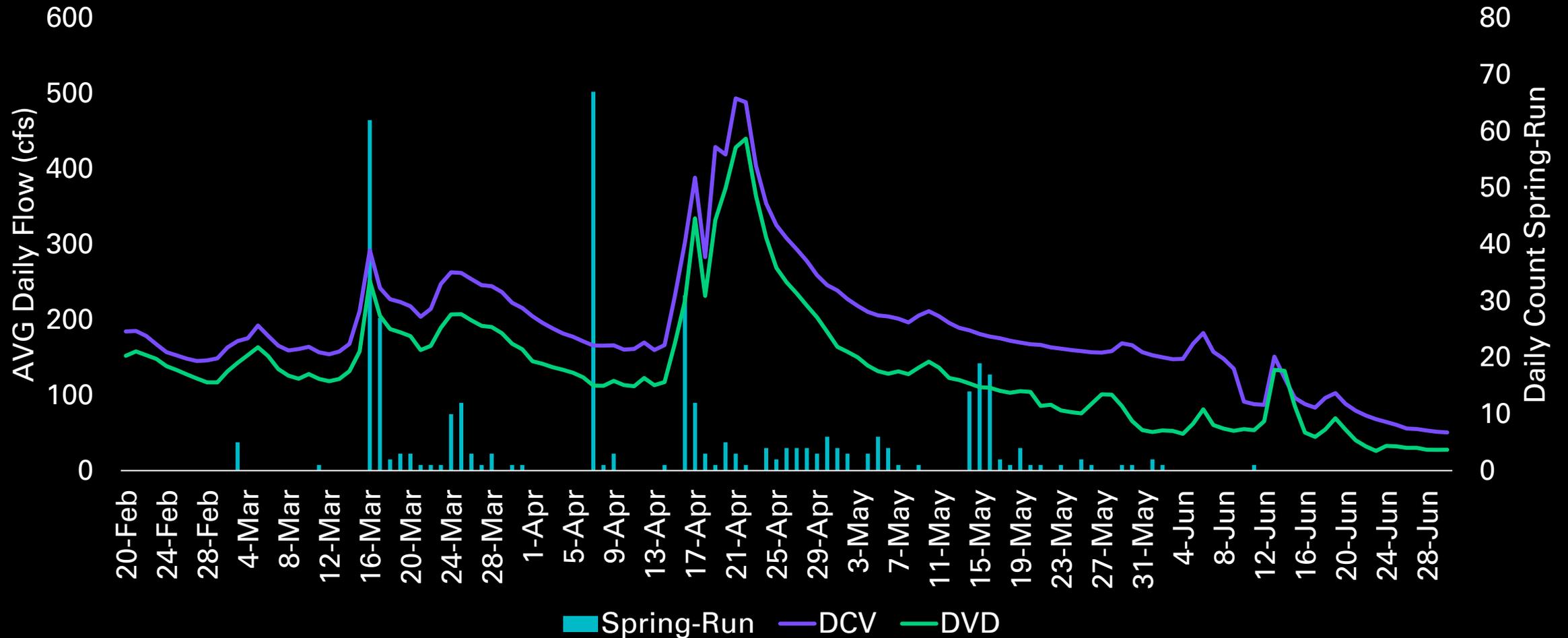
- Located at SVRIC Dam fishway(s), river mile 5.0
- Continuous, 24/7 fish passage monitoring using video camera systems
- DCVS is used to obtain salmonid life history information, develop fish population estimates and inform water management

Draft 2022 Deer Creek Video Station Adult Spring Run Chinook Data:

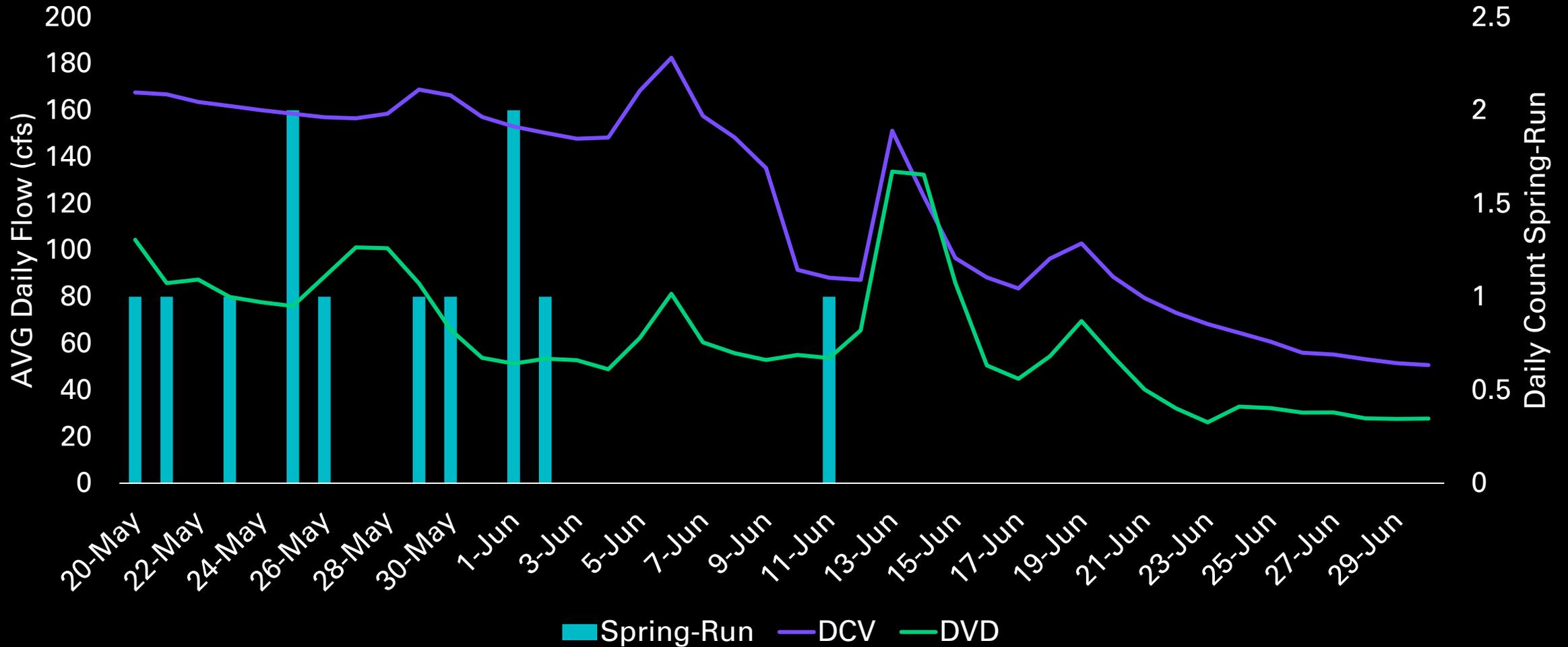


- A draft total of **383** spring-run passed SVRIC Dam in 2022
- First fish observed on March 3. Last on June 11
- Two spring-run passed during the May 26-29 pulse flow (power outage 8:30am-4:30pm on 5/27). Zero spring-run passed during the June 12-15 pulse flow

2022 Deer Creek Spring-Run Passage and Flow:



Spring 2022 Pulse Flows in Detail:





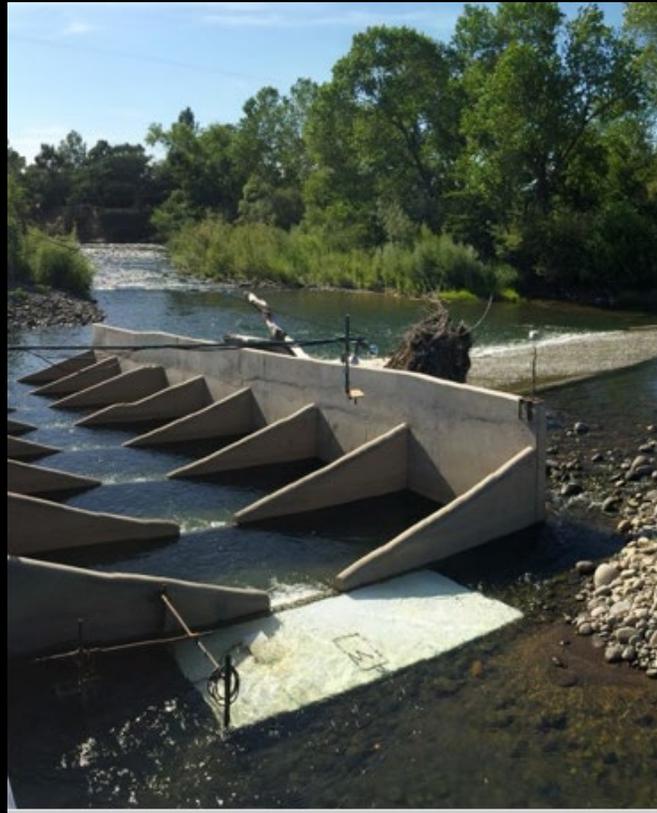
SWRCB Meeting Mill Creek Fishery Update

Matthew R Johnson

California Dept of Fish and Wildlife

August 16, 2022

Fish Passage Monitoring at the Mill Creek Video Station (MCVS):



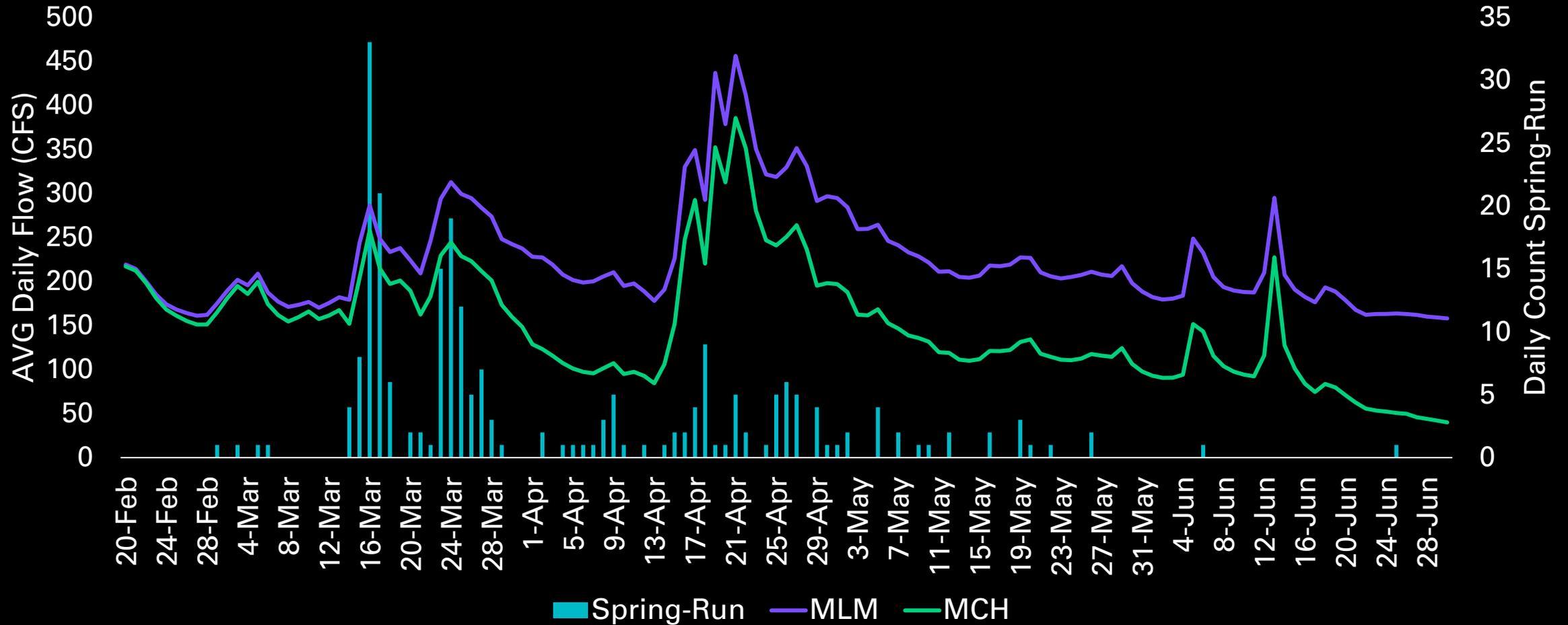
- Located at Ward Dam fishway, river mile 2.8
- Continuous, 24/7 fish passage monitoring using video camera systems and sonar
- MCVS is used to obtain salmonid life history information, develop fish population estimates and inform water management

Draft 2022 Mill Creek Video Station Adult Spring Run Chinook Data:

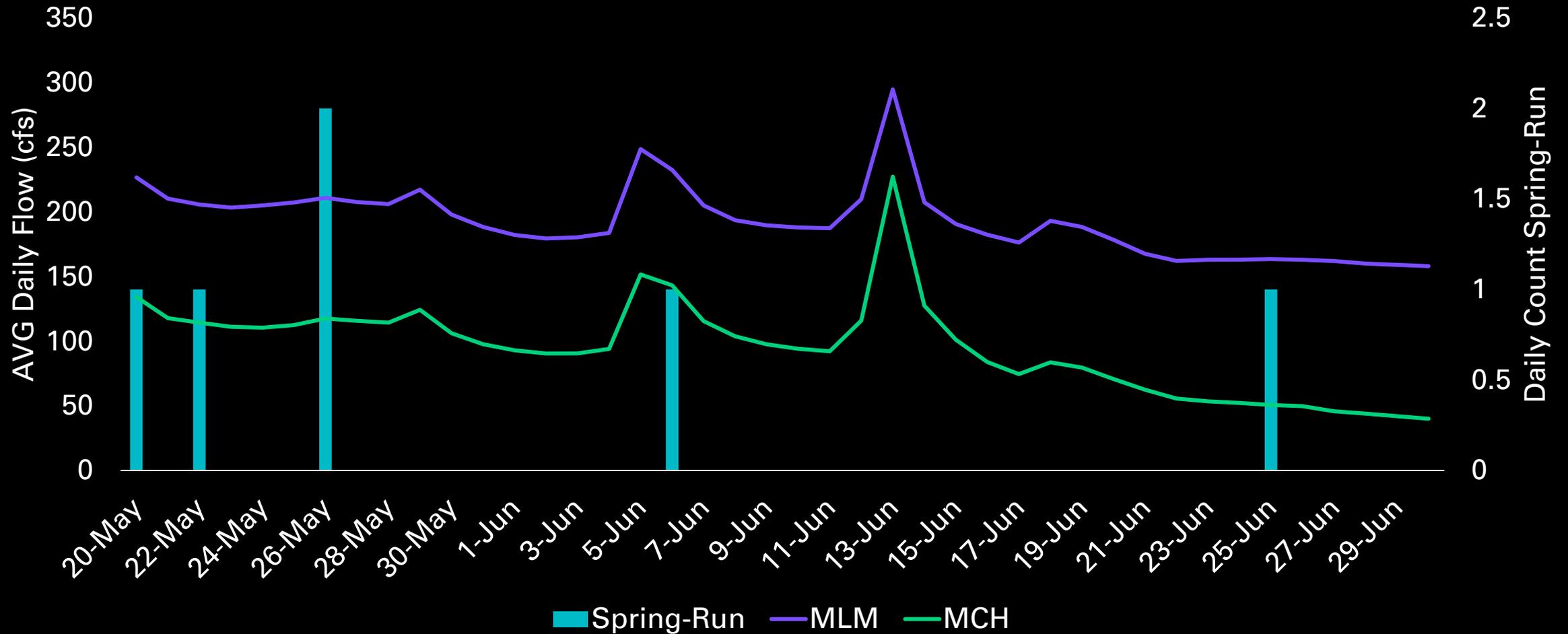


- A draft total of **232** spring-run passed Ward Dam in 2022
- First fish observed on March 1. Last on June 25
- Zero spring-run detected during the May 26-29 and June 12-15 pulse flow periods

2022 Mill Creek Spring-Run Passage and Flow:



Spring 2022 Pulse Flows in Detail:





Readoption, Proposed Amendments & Comments Received



Division of Water Rights, Bay Delta Section

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:
 - Curtailing diversions to achieve pulse flows would likely impair livestock survival
 - 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



- Draft regulation text released
- Written comment period ended at noon on August 11

- 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 consideration of proposed revised emergency regulation

- 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

- 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?

