



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
650 Capitol Mall, Suite 5-100
Sacramento, California 95814-4700

July 30, 2021

Ms. Eileen Sobeck
Executive Director
State Water Resources Control Board
1001 I Street
Sacramento, California 95814
Eileen.Sobeck@waterboards.ca.gov

Re: Emergency Drought Regulations for Listed Salmonids during the 2021 California Drought for Mill and Deer creeks in the California Central Valley

Dear Ms. Sobeck:

NOAA's National Marine Fisheries Service (NMFS) has been working collaboratively with the California Department of Fish and Wildlife (CDFW), the State Water Resources Control Board (SWRCB), and local water users to address the ongoing drought and its impact on Federal and State listed fish species in Mill and Deer creeks, tributaries of the Sacramento River. As part of ongoing discussions, NMFS understands that, pursuant to the Governor of California's May 10, 2021, drought declaration, the SWRCB is in the process of considering emergency drought regulations for priority watersheds across the State of California. We write this letter to encourage and support the SWRCB to develop and adopt regulations for Mill and Deer creeks.

Mill and Deer creeks contain migration, spawning, and rearing habitat for some of the last remaining naturally-produced populations of State and Federally threatened Central Valley spring-run Chinook salmon (CV spring-run Chinook salmon) and Federally threatened California Central Valley steelhead (CV steelhead). These are among the most important salmonid populations in the Central Valley, as demonstrated by their high priority standing in the 2014 NMFS Recovery Plan (NMFS 2014) and the 2017 California Natural Resources Agency (CNRA) Sacramento Valley Salmon Resiliency Strategy (CNRA 2017). The spring-run Chinook salmon population in Mill and Deer creeks are particularly important because they represent two of only three extant independent CV spring-run Chinook salmon populations, along with the populations in Butte Creek. The abundance of Mill and Deer creek spring-run Chinook salmon has diminished greatly over the past decade, with an average annual run size reduced to only 135 adults on Mill Creek and 276 adults Deer Creek. The 2020 run size for both streams was the lowest on record with just 73 adults in Mill Creek and 96 adults in Deer Creek and the extinction risk for both populations has moved from moderate to high in the last five years. Their high extinction risk is perpetuated by a number of risk factors including insufficient flows and necessary to support upstream and downstream migration of adult and juvenile fish.

In May of 2021, the Los Molinos Mutual Water Company (LMMWC), on Mill Creek, and the Stanford Vina Ranch Irrigation Company (SVRIC), on Deer Creek, submitted outlines of key terms for drought year actions to address drought-related fisheries conditions (key terms) to



NMFS, CDFW, and the SWRCB. On June 11, 2021, NMFS responded to both LMMWC and SVRIC with recommendations to implement instream flows for critically dry water year types based on draft instream flow criteria for Mill Creek (CDFW 2018) and an instream flow evaluation for Deer Creek (CDFW 2017). We believe the instream flow recommendations addressed in our letters represent the best available science for instream flow requirements in critically dry water years. We did not receive a response to our letters from LMMWC or SVRIC.

On June 28, 2021, CDFW responded to the key terms and suggested that the flows identified under the SWRCB's 2015 emergency regulations are the minimum flows that should be considered. In 2015, the SWRCB adopted emergency regulations for Curtailment of Diversions due to Insufficient Flow for Specific Fisheries that, in general, identified drought minimum flows of 50 cfs for adult spring-run Chinook salmon from April 1-June 15, and 50 cfs for adult steelhead migration from October 15-March 31 along lower reaches of Mill and Deer creeks (SWRCB 2015). The drought flows were determined to be the bare minimum flows necessary during extreme water shortage conditions to protect native fish species based on the best available science and information at the time, and did not represent optimal passage conditions for CV spring-run Chinook salmon and CV steelhead.

In recognition of the immediate need for action to provide protective relief for Mill and Deer Creek CV spring-run Chinook salmon and CV steelhead, NMFS recommends the SWRCB draft emergency regulations to address the insufficient flows for these fish. At a minimum, we recommend the SWRCB consider adopting flow regulations similar to those adopted in 2015. These are not optimal flows, but the minimum, reasonable targets that will minimize the ongoing effect of emergency drought conditions while balancing fish and agricultural interests. Flows below those provided to the SWRCB would be expected to cause significant harm to target species.

Please direct questions regarding this letter to Howard Brown, Senior Policy Advisor, NMFS California Central Valley Office, at (916) 930-3608 or via e-mail at Howard.Brown@noaa.gov.

Sincerely,



Cathy Marcinkevage
Assistant Regional Administrator
California Central Valley Area Office

cc: ARN: 151422-WCR2021-SA0089

Tina Bartlett, Tina.Bartlett@wildlife.ca.gov

Jason Roberts, Jason.Roberts@wildlife.ca.gov

Erik Ekdahl, Erik.Ekdahl@waterboards.ca.gov

Diane Riddle, Diane.Riddle@waterboards.ca.gov

Nicole Williamson, Nicole.Williamson@waterboards.ca.gov

Ellen McBride, Ellen.McBride@noaa.gov

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