

LOS MOLINOS MUTUAL WATER COMPANY

25162 Josephine Street, P.O. Box 211, Los Molinos, CA 96055

Telephone (530) 384-2737 * Fax (530) 384-9835

Board Members

State Water Resources Control Board

P.O. Box 2000

Sacramento, CA 95812-2000



Re: Emergency Regulations on Mill, Deer, and Antelope Creeks

Dear Board Members:

Los Molinos Mutual Water Company (Los Molinos) appreciates the opportunity to meet with SWRCB staff and Board Member D'Adamo concerning the possible re-adoption of emergency regulations mandating minimum base flow and pulse flow requirements on Mill, Deer, and Antelope Creeks (Regulations). Los Molinos understands that you will consider this item at your upcoming January 19, 2016 meeting. Los Molinos requests that the SWRCB delay consideration of the Regulations until March 2016 to allow Los Molinos opportunity to meet with staff at the California Department of Fish and Wildlife (DFW) to discuss a truly voluntary approach on Mill Creek in 2016 in lieu of another year of the Regulations. A delay in adoption of the Regulations will also provide an opportunity to better assess hydrology and whether the Regulations are actually needed again in 2016.

For decades Los Molinos has worked collaboratively with DFW, Department of Water Resources (DWR), and other stakeholders to protect and enhance the Mill Creek fishery. Los Molinos has existing conjunctive use agreements with DFW and DWR providing for greater instream flows at the request of the State and offsetting groundwater for the irrigation and stockwatering needs of Los Molinos' customers. Los Molinos manages water leases that provide water for instream purposes during critical spring and fall months and has a long history of modifying operations to provide periodic pulse flows. These cooperative efforts led to the 2007 "Agreement for the Implementation of a Long-Term Cooperative Management Plan for Mill Creek" between Los Molinos, DFW, DWR, and the Mill Creek Conservancy in which the parties "commit[] to applying flexible and adaptive management practices to the restoration efforts on Mill Creek...by in good faith negotiating an acceptable agreement to continue the restoration efforts contemplated by the 1996 [water lease] Agreement, and by negotiating new leases, water right purchases or transfers, easement agreements, and other water use arrangements to provide for Chinook Flows while protecting and preserving Irrigation Water in accordance with the Decree." (Agreement, Recital K, p. 5.)

The 2014, 2015 and potentially 2016 Regulations are significantly detracting from these collaborative efforts. The Regulations stifle creative efforts to provide adequate instream flows at appropriate times and temperatures while at the same time avoiding significant impacts on Los Molinos and other water users. Los Molinos, on short notice, agreed to "voluntary" agreements in 2014 and 2015, but those

agreements were essentially non-negotiable on key terms because the Regulations were already adopted or adoption was imminent. The proposed 2016 Regulations are following a similar timeline; in fact, Los Molinos has its **first** meeting with DFW regarding a 2016 voluntary agreement scheduled for January 14, 2016 – mere days before the Regulations will be considered by the SWRCB. This strategy has been applied consistently over the last three years. DFW appears to wait until the Regulations are adopted or adoption is imminent and only then approaches water users with “voluntary” agreements that are essentially take it or leave it, non-negotiable proposals. Los Molinos and others are faced with either accepting the terms of DFW’s proposal or facing the Regulations, potential curtailment notices, and the specter of waste and unreasonable use.

Los Molinos wishes to remind Board Members of your repeated admonitions in 2014 and 2015 to DFW that the Regulations should not be the long-term solution or remedy for protection of the Mill Creek fishery. If adopted, this will now be the third straight year of “emergency” allegedly justifying imposition of the Regulations¹. During this three year period, we are not aware of any efforts undertaken by DFW to avoid further impositions of the Regulations, including actions called out in the 2007 Agreement such as “negotiating new leases, water right purchases or transfers, easement agreements, and other water use arrangements to provide for Chinook Flows while protecting and preserving Irrigation Water in accordance with the Decree.” We are not aware of any analysis by DFW of non-flow improvements, such as minor riffle modifications by hand-tools or facility enhancements that could lessen the injury to water users from the base flow and pulse flow requirements.

Long-term protection and enhancement of the Mill Creek fishery will be achieved through collaborative efforts, such as those committed to in the 2007 Agreement. The Regulations should not be used as a panacea. Los Molinos requests that consideration of the Regulations be delayed until, if necessary, the SWRCB’s March 15, 2016 Board Meeting. During this delay, Los Molinos commits to discuss in good faith, as it historically has, ways to ensure protection of the fishery in 2016 and beyond in a manner that hopefully will avoid the need for further Regulations on Mill Creek. Enclosed is a copy of Los Molinos’ letter to DFW initiating the discussion of these important issues.

On behalf of the Board of Directors

Darrell Mullins

General Manager, Los Molinos Mutual Water Co.

CC: Department of Fish and Wildlife

¹ Additionally, the declaration of “emergency” is occurring earlier each year. The 2014 Regulations were adopted May 21, 2014; the 2015 Regulations were adopted March 17, 2015; DFW requested re-adoption of the Regulations in 2016 by memorandum dated November 18, 2015 – one month into the new water year and prior to expiration of the 2015 Regulations – and the 2016 Regulations are scheduled for possible adoption at the SWRCB’s January 19, 2016 Board Meeting.

LOS MOLINOS MUTUAL WATER COMPANY

25162 Josephine Street, P.O. Box 211, Los Molinos, CA 96055

Telephone (530) 384-2737 * Fax (530) 384-9835

Cal. Department of Fish and Wildlife

Neil Manji, Regional Manager

Northern Region (Region 1)

Curtis Milliron, Program Manager

Northern Region (Region 1)

Re: Emergency Regulations on Mill, Deer, and Antelope Creeks

Gentlemen:

Please find enclosed correspondence to the State Water Resources Control Board (SWRCB) requesting a delay in consideration of the proposed 2016 emergency regulations setting base flow and pulse flow requirements on Mill, Deer, and Antelope Creeks (Regulations). Los Molinos Mutual Water Company is requesting a delay so that it may engage in good faith discussions and negotiations with the Department for a voluntary agreement that would obviate the need for the Regulations on Mill Creek in 2016. At our recently scheduled meeting on January 14, 2016, Los Molinos intends on offering a term sheet that will include, among other things, a hydrologic benchmark that would trigger the effectiveness of the voluntary agreement in 2016 as well as terms concerning base and pulse flows on Mill Creek in the critical months of 2016.

Los Molinos would appreciate the Department's support in requesting the SWRCB to delay consideration of the Regulations until, if necessary, the SWRCB's March 15, 2016 Board Meeting so that we may discuss these important issues.

On behalf of the Board of Directors

Darrell Mullins

General Manager, Los Molinos Mutual Water Co.

CC: Board Members, State Water Resources Control Board