The Nature Conservancy
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Eileen Sobeck
Executive Director
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

SUBJECT: Emergency Drought Regulation for Deer and Mill Creek Watersheds

Dear Ms. Sobeck:

The mission of The Nature Conservancy is to conserve the lands and waters on which all life depends. TNC has spent decades working in collaboration with partners across California on developing science and implementing solutions to balance the water needs of nature with the water needs of our communities. We have worked with partners including the Department of Fish and Wildlife in the Deer and Mill Creek Watersheds because of their importance for protecting California's unique biodiversity. Mill Creek is one of only four Central Valley streams that still supports the federal and state-listed Central Valley spring-run Chinook salmon and is also vital to the recovery of California Central Valley steelhead. In addition, Mill Creek is utilized by fall-run Chinook salmon, late fall-run Chinook salmon, and Pacific Lamprey.

Although short-term responses to the current drought are necessary, we must also plan for the future. Our climate is already changing, now is the time to act with urgency to protect fish and wildlife from future droughts and build greater drought resilience for water users, recognizing that many freshwater dependent species – especially endemic California fish, wildlife and plants are increasingly imperiled. This is the second emergency regulations in these basins in the last 5 years – we need long-term solutions to ensure we are building resilience to a new climate reality. The investments that are needed in Mill Creek: clear and enforceable flow criteria, flexible water management strategies, and improved monitoring - are examples of what is needed in watersheds across the state to ensure water is available when and where it is needed for people and nature, now and into the future.

TNC holds three pre-1914 appropriative water rights in the adjudicated Mill Creek basin, and we support the SWRCB's emergency drought regulation for Mill and Deer creeks. Curtailments are needed to ensure that critical instream flows for species are protected. While supportive, the emergency minimum flows should be required all year long including the summer months and when fish are not present. We urge the Board to adopt a flow regime that includes all months of the year regardless of fish presence, following the Department of Fish and Wildlife's 2018 draft instream flow criteria (https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=153384&inline), This will be particularly important if the drought continues into next year to ensure Mill Creek does not go dry.

For any emergency regulatory actions in Mill Creek (and elsewhere) to be fully effective they need to be enforceable which is not possible without better flow measurement. Mill Creek does

not currently have a flow gage that is reliable for tracking, reporting, and enforcement. For Mill Creek, the only location where a permanent flow gage would provide accurate, reliable, and accessible measurement data is at Ward Dam. To protect fish, wildlife, and water rights holders in Mill Creek, TNC urges the State Water Resources Control Board to consider including a provision in the emergency regulation, or other appropriate order, requiring expedited installation of a flow gage at Ward Dam on Mill Creek under the supervision of the Department of Water Resources and the State Water Resources Control Board with support from TNC.

Adequate flow is vital for the protection and recovery of the fish species of concern in Mill Creek, and the ecosystem that supports them; however, currently there are no environmental flow requirements for Mill Creek. The California Department of Fish and Wildlife (DFW) provided draft ecological flow criteria for Mill Creek in 2018 (but the state has failed to adopt environmental flow criteria for this critical watershed. Currently, multiple state and local agencies across California share responsibility for setting flow criteria that protect and improve the health of California's water resources. These approaches historically have not been coordinated at the statewide level, resulting in fragmented and siloed flow management programs. As a result, very few California streams have established environmental flow criteria. Without such criteria, there is little clarity about the flow necessary to meet multiple needs in and along these streams, resulting in increased conflicts between water users and between people and nature when water becomes scarce. Voluntary actions are used to meet the bare minimum, but ultimately that is proving inadequate in Mill Creek and in other watersheds critically impacted by extended drought conditions. We encourage the SWRCB to adopt the California Environmental Flows Framework (citation) to define and implement functional flow regimes to protect our state's unique freshwater biodiversity.

As noted here, TNC has worked extensively to pursue voluntary solutions in Mill Creek to enhance flow and habitat conditions for federal and state listed salmonids, including investing private and public funds in acquiring water rights and demonstrating how these rights can be used to better balance the needs of people and nature. Despite our efforts, this dry year, during the irrigation season, TNC's water rights (which amount to about 10 cfs under current flow conditions) is the only water left instream in Mill Creek. The Watermaster fully appropriates the remainder of streamflow. TNC has spent millions of dollars to secure water rights in the basin to help contribute toward a broader solution that includes all water users from Mill Creek; however, in absence of flow criteria, the water TNC leaves instream only provides the bare minimum in almost all year types, especially in summer months. Establishing flow requirements in Mill Creek is necessary to recover listed fish and other freshwater dependent species – and meeting those requirements should be the responsibility of all water rights holders in the basin in a manner proportionate to the volume of the water right. TNC can use our remaining water to dedicate to instream flow above and beyond the regulatory minimum to help support ecosystem functions in Mill Creek and the recovery of listed species.

To improve instream conditions during this critically dry year, TNC has directed the Mill Creek watermaster to make our water rights available for instream beneficial use in Mill Creek to the Sacramento River confluence. After serving this critical purpose, TNC is making a portion of the water available to a downstream user for critical domestic water needs, maximizing the value of this resource. TNC is also seeking to dedicate our water rights to instream beneficial use via the 1707 process. The 1707 process is difficult to navigate, slow, and expensive, and lower in priority than processing transfer requests in drought years. There is a real need to simplify and streamline the 1707 process for water rights holders to dedicate water instream, and

measurement and enforcement is needed after a 1707 petition is granted to ensure the water is protected. Increased capacity is needed at the State Board to support these actions. If the State is relying on and encouraging voluntary actions as a method for addressing instream flow needs, then it needs to ensure that it adequately supports the effective use of those processes.
Finally, we will only know if voluntary actions, adopted flow criteria, and emergency curtailments are successful in addressing instream flow needs if there is accurate gaging and accounting. Currently there is no accurate accounting in Mill Creek downstream of all major diversions. As recommended above, an investment in an additional gage at Ward Dam location is needed. The current gages on Mill Creek are inadequate for providing a basis for emergency drought regulations and curtailments;

- allowing the SWRCB to fulfill its long-term regulatory role with respect to Mill Creek;
- ensuring that water left instream pursuant to a water right protected by a Section 1707 approval is left instream; and
- ensuring that water transferred to a downstream user is left instream.

The drought affects us all. Our response must consider the species and natural systems that make our water, our air, our food, and our existence possible. Mill Creek represents a microcosm of the challenges impacting freshwater ecosystems, but building upon on-going work in this watershed, we can create a model for future actions to conserve freshwater ecosystems in California. In the absence of decisive action however, freshwater ecosystems and the species that depend upon them are at increased risk of decline and ultimately, extirpation. If we continue the current trajectory, one-half of the plants and animals that are dependent on freshwater could go extinct in this century. This future is closer than you think—but working together, we can still act to ensure water is managed more sustainably.

Sincerely,

Jay Ziegler
Director of External Affairs & Public Policy
California Chapter, The Nature Conservancy

Sandi Matsumoto
Director, California Water Program
California Chapter, The Nature Conservancy

Cc: The Honorable Members of the State Water Resources Control Board:
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