

Memorandum

Date: September 1, 2016

To: Felicia Marcus, Board Chair
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812
Via Fax (916) 341-5400
E-mail wrhearing@waterboards.ca.gov

Attention: Ernest Mona

From: **Neil Manji**, Regional Manager 
Region 1 – Northern
Department of Fish and Wildlife
601 Locust Street
Redding, CA 96001

Subject: **Donovan-Peters Draft Cease and Desist Order and Administrative Civil Liability Hearing, Unnamed Stream Tributary to Maple Creek Tributary to Rancheria Creek Tributary to the Navarro River in Mendocino County**

Enclosed is the Department of Fish and Wildlife's (Department) Policy Statement for the Hearing for Donovan-Peters Draft Cease and Desist Order and Administrative Civil Liability Hearing, Unnamed Stream tributary to Maple Creek tributary Rancheria Creek tributary to the Navarro in Mendocino County before the State Water Resources Control Board, October 12, 2016. Department staff will read the Policy Statement into the record at the Hearing.

If you have any questions, please contact Senior Environmental Scientist (Specialist) Jane Arnold at (707) 441-5671 or jane.arnold@wildlife.ca.gov.

Enclosure

ec: Felicia Marcus, Board Chair
State Water Resources Control Board
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Before the
State Water Resources Control Board
October 12, 2016

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| <p>In the Matter of Proposed Administrative Civil Liability Complaint and Cease and Desist Order against Nancy K. Donovan and Stephen J. Peters, Unnamed Stream tributary to Maple Creek tributary Rancheria Creek tributary to the Navarro River</p> | <p style="text-align: center;">Policy Statement of Department of Fish and Wildlife</p> |
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The Department of Fish and Wildlife (Department) thanks Hearing Officer and Board Members of the State Water Resources Control Board for the opportunity to express our interest and policy in regards to this matter. The Department's mission is to manage California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values, and for their use and enjoyment by the public.

Fish and wildlife resources are held in trust for the people of the State of California. Under Fish and Game Code section 711.7, the Department is designated as trustee for the State's fish and wildlife resources. Fish and Game Code section 1802 grants the Department jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species. Additionally, Fish and Game Code Section 1600 et seq. grants the Department jurisdiction over projects that substantially divert water from lakes, rivers, or streams.

The Department seeks to maintain native fish, wildlife, plant species, and natural communities for their intrinsic and ecological value and for their benefits to all citizens in the State. This includes habitat protection and maintenance of habitat in sufficient amounts and quality to ensure the conservation of all native species and natural communities. The Department is also responsible for oversight and assurance of the diverse uses of fish and wildlife including recreational, commercial, scientific, and educational.

As trustee agency for the aquatic resources in this State, the Department has a material interest in assuring that water flows within streams are maintained at levels that are adequate for long-term protection, maintenance, and proper stewardship of these resources. Maple and Rancheria creeks support steelhead trout and other sensitive aquatic species. Navarro River and its tributaries support Chinook and coho salmon, steelhead trout, and other sensitive aquatic species. Because of the Department's mission to conserve these resources, the Department files protests against new applications and petitions for change in the Navarro River watershed with the State Water Resources Control Board (SWRCB).

Chinook salmon and steelhead trout are listed as threatened pursuant to the federal Endangered Species Act (ESA). Coho salmon are listed as endangered pursuant to ESA and the California Endangered Species Act. Chinook and coho salmon and steelhead trout spawn and rear in the Navarro River and its tributaries during the period at issue in this hearing. The Unnamed Stream and Maple Creek not only support native aquatic species on-site, but also contribute flow crucial to supporting listed anadromous and other species in Rancheria Creek and the Navarro River.

Sufficiently low seasonal water temperatures, holding and rearing habitat, along with timely attraction flows for migration are critical to supporting all life stages of listed anadromous fish and other aquatic species in the Navarro River. In addition to their many other values, anadromous fish are important to California's economy. In 2008 and 2009, the Governor of California declared States of Emergency for commercial salmon fishing, resulting in an estimated loss of over \$500 million dollars to California's economy and thousands of jobs, according to the Governor's State of Emergency Proclamations. Recovery of listed salmonids to support commercial, recreational, and Native fisheries is important to the economy of California and an integral strategy for recovery plans for listed salmonids. In January 2014, the Governor declared a Drought State of Emergency. Since that time, the Department has received over 20,000 calls concerning stream diversions contributing to existing low streamflows. Thus, the Department believes this diversion when viewed in the context of the State of Emergency and cumulative effects of diversions in the Navarro River may be contributing to existing low stream flow conditions impacting Public Trust resources.

Water Code section 1257 requires the SWRCB to consider the relative benefit to be derived from all beneficial uses of water including but not limited to those listed for fish and wildlife resources. Categories of beneficial uses of water in the Navarro River Hydrologic Unit relevant to fish and wildlife resources include: Cold Freshwater Habitat; Migration of Aquatic Organisms; Commercial and Sport Fishery; Rare, Threatened, or Endangered; Spawning, Reproduction, and/or Early Development; and Wildlife Habitat. The Navarro River is also listed as sediment- and temperature-impaired pursuant to Clean Water Act section 303(d). These beneficial uses of water will be negatively impacted by the unpermitted rate of diversion and face value amount of water.

The Department cautions that water diversions from the Navarro River and its tributaries have the potential to cause site-specific and/or cumulative adverse impacts by degrading established instream habitat for Chinook and coho salmon, steelhead trout, and other native aquatic species. The Department understands SWRCB in this hearing is addressing Nancy K. Donovan's and Stephen J. Peters' vineyard diverting substantial amounts of water from the Unnamed Stream without an apparent basis of right for a period of more than 15 years. The Department is very concerned the Navarro River watershed fish and wildlife have already experienced deleterious effects from water diversions and cannot withstand additional water diversions, especially during low-flow periods. The Department encourages the SWRCB to place great weight on the need to preserve existing flows in Unnamed Stream, Maple Creek, and the Navarro River for protection of instream habitat as a beneficial use of water for Chinook and coho salmon, steelhead, and other native aquatic life.

The Department takes seriously its responsibility to safeguard the natural resources of California, including Navarro River aquatic resources, it holds in trust for the public. To that end, the Department firmly supports the proposed Administrative Civil Liability Complaint and Cease and Desist Order before the Board. We believe that such action is consistent with the Fish and Game Code and will be in the public's best interest overall. Because of the low-flow conditions of the Navarro River and the status of anadromous fish dependent on adequate instream flows, the Department believes the current diversions by Nancy K. Donovan and Stephen J. Peters would be substantial and thus subject to Fish and Game Code section 1600 et seq. Additionally, the diversions may not meet Fish and Game Code sections 5901 and 5937.