

DEPARTMENT OF FISH AND GAME

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ATTACHMENT 2

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April 15, 2004

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MPWMD

Board of Directors  
Monterey Peninsula Water Management District  
Post Office Box 85  
Monterey, CA 93942  
Via Fax: (831) 644-9560

Dear Members of the Board:

Monterey Peninsula Water Management District  
Water Allocation Program/Mitigation Program

In 1990, as part of consideration of the Monterey Peninsula Water Management District's (MPWMD) Water Allocation Program, specific mitigation measures were required during approval of the program. The Department of Fish and Game (DFG) supports the implementation of the required mitigation measures which directly benefit public trust resources, including steelhead. The South/Central California Coast Evolutionarily Significant Unit (ESU) of steelhead are listed as threatened under the Federal Endangered Species Act (FESA). This letter is to express DFG's support for the continued implementation of the MPWMD Water Allocation Program's mitigation program, as required with the approval of the program's Environmental Impact Report (EIR).

Required mitigation measures include monitoring steelhead populations within the Carmel River; rescuing trapped juveniles and adults from portions of the river drying up due to water removal; and rearing rescued steelhead in MPWMD's Sleepy Hollow Steelhead Rearing Facility. The mitigation program also requires propagation, planting, and otherwise restoring riparian vegetation in the watershed and improvement of lagoon habitat through additional monitoring of lagoon water levels and water quality. In addition, it provides additional hydrologic data through gauging of stream and groundwater quantity; potentially reduces water demand through MPWMD's water conservation program; and monitors water use throughout the watershed.

The above measures substantially benefit the natural resources found in the Carmel River watershed. Implementation of these mitigation measures contributes to the maintenance of steelhead and red-legged frog, are considered essential to

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resource management and protection, and are being conducted as mitigation for the up to 7,909 acre feet of ongoing illegal diversions being made by the California-American Water Company (Cal-Am) (under MPWMD oversight) to meet the water demand of the Monterey Peninsula. Failure to conduct the fish rescues and operate the Sleepy Hollow Rearing Facility, in particular, would lead directly to a reduction in the size of the Carmel River steelhead run within two years of cessation of these operations.

MPWMD committed to conducting the mitigation program as outlined in the EIR. Condition 11 of the EIR states that Cal-Am shall be responsible for implementing all measures in the Mitigation Program for MPWMD's Water Allocation Program that are not implemented by the MPWMD after June 30, 1996. We are concerned that Cal-Am has stated in recent public meetings that they believe they have no, or only partial, responsibility for these mitigation efforts.

In order to ensure that the mitigation measures and project revisions identified in the EIR are implemented, CEQA requires that the lead agency adopt a program for monitoring and reporting on measures it has imposed to mitigate or avoid significant environmental effects. As the lead agency, MPWMD may delegate the responsibility to implement, monitor and/or report on mitigation measures to another public agency or private entity, which accepts the delegation; however, until mitigation measures have been completed, the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program (CEQA Guidelines Section 15097).

We are concerned that failure to continue implementation of these measures may result in a violation of the FESA, in addition to rendering the Water Allocation Program as out-of-compliance with the adopted EIR. In the event that Cal-Am does not take over the responsibility for these required measures, MPWMD remains responsible for their implementation.

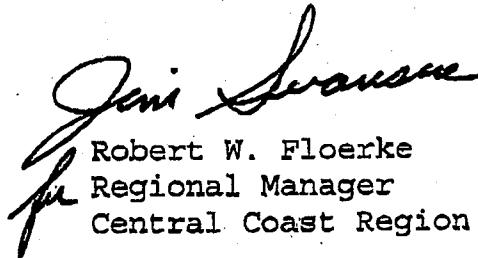
The MPWMD Board has suggested that DFG may take on some of the cost and responsibility of these measures. However, DFG is not responsible for implementation of the mitigation measures required in the approved EIR for the program, and will not

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assume responsibility, nor expend public monies, for implementation of these mitigation measures. DFG will continue to work with MPWMD, through the Fisheries Restoration Grants program, to conduct beneficial habitat improvement projects within the Carmel River watershed that are above and beyond the mitigation requirements of the Water Allocation Program. However, the legislation which created the Fisheries Restoration Grants program precludes the use of those funds to satisfy the mitigation requirements of another State or Federal permitting process.

We appreciate this opportunity to express our support for this worthwhile and necessary mitigation program, and to remind you that MPWMD (and Cal-Am) are legally committed to implementing the program. If you have any questions regarding this matter, please contact Mr. Mike Hill, Associate Fishery Biologist, at (805) 489-7355; or Mr. Kevan Urquhart, Senior Fisheries Biologist, at (831) 649-2882.

Sincerely,



Robert W. Floerke  
Regional Manager  
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cc: Ms. Joyce Ambrosius  
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