



FRIENDS OF THE SHASTA RIVER

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Wade Crowfoot
Secretary
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

April 14, 2021

Via email to: wade.crowfoot@resources.ca.gov

RE: Concerns over CDFW participation in NMFS Shasta River Safe Harbor Agreement

Dear Secretary Crowfoot,

Friends of the Shasta River would like to bring to your attention an urgent issue of the inappropriate lack of coordination between California agencies under your jurisdiction in relation to a new federal "Safe Harbor" initiative intended to address the dire situation of threatened Coho salmon in the Shasta River. We are concerned that, as currently structured and planned, this initiative neglects and bypasses important State regulatory mechanisms, the California Water Action Plan and State agencies tasked with enforcing water quality laws. As detailed in our attached briefing paper, without significant changes, this initiative will do more harm than good for salmon recovery in the Shasta River basin.

We understand that the California Department of Fish and Wildlife (CDFW) intends to issue a consistency determination authorizing incidental take of Shasta River Coho Salmon listed as threatened under the California Endangered Species Act (CESA) pursuant to a proposed National Marine Fisheries Service's (NMFS) Safe Harbor Agreement (SHA).

The SHA, the product of negotiation between the NMFS, private agricultural interests and CDFW, omits long standing stewardship measures overseen by the State Water Resources Control Board (SWRCB) as part of that agency's impaired Shasta River water quality restoration responsibility. The proposed consistency determination contravenes the California Water Action Plan (CWAP) mandate that regulatory agencies work together toward restoration of important species and habitat. The restoration of the Shasta River ecosystem and CESA threatened Coho Salmon, that depend on its clean cold-water habitat, requires inclusion of the long-standing SWRCB experience in the watershed. **The Natural Resources Agency must condition any CDFW consistency determination necessary for incidental take of CESA listed Coho Salmon on inclusion of the California Department of Water Resources in the SHA agreement.**

NMFS brokered the SHA proposal with a select group of Shasta Valley landowners (one of which is CDFW). Beyond its status as a landowner, CDFW is involved because NMFS cannot finalize the landowner agreement without the Director's determination that the incidental take permit (ITP) is consistent with conservation "methods and procedures...necessary to bring any...threatened species to the point" where Coho are no longer CESA threatened species. (Cal. F. & G. C. § 2061.) Section 2061 requires inclusion of "all activities associated with scientific resources management. **The CDFW consistency determination will contravene the CWAP because the Shasta River SHA:**

- 1) excluded meaningful public participation through confidentiality agreements;**
- 2) excluded SWRCB from negotiations which appears to have omitted that agency's preexisting regulatory stewardship efforts from the agreement.**

Friends of the Shasta River organized around collective community concern that, despite three decades of Shasta River water restoration "collaborations", declining river water conditions continue to devastate fish populations. The Shasta River's threatened Coho Salmon once thrived because of a consistent supply of clean, cold water. Shasta Coho populations over the last five years have declined to extirpation levels. The Shasta's water, listed since 1996 as impaired under the Clean Water Act's "303(d) list," remains inhospitable to rearing Coho that depend on its habitat. The primary cause of the Shasta's polluted water is persistent agricultural over-diversion and uncompromising destructive water use practices.

The impaired listing triggered total maximum daily load (TMDL) water quality improvement standards for high temperature and low dissolved oxygen through the Federal Environmental Protection Agency (EPA). The EPA agreed with California's proposal that the SWRCB assume responsibility for progress toward TMDL compliance. The North Coast Regional Water Quality Control Board's (NCRWQCB) TMDL Action Plan was approved in 2007, yet the threatened Coho have, in the last 5 years, reached extirpation levels. Alarming, there is no mention of eliminating the 303 (d) impairments or compliance with TMDL standards in the SHA proposal.

Because both the SWRCB and NCRWQCB were excluded from the negotiations they were forced to point out the inconsistencies with their duties through the SHA draft plan public comment process.

In its 2/15/20 comment letter to NMFS the SWRCB expressed frustration that its pending work to "implement instream flow objectives to support critical habitat for anadromous fish in the Shasta" is not incorporated in the SHA proposal. The SWRCB also expressed frustration that CDFW is not fulfilling its CWAP obligation to coordinate in "administrative efforts to enhance flows statewide in at least five stream systems that support critical habitat for anadromous fish, including the Shasta River" for beneficial uses beyond agriculture. Finally, the SWRCB expresses concern that CDFW's isolated role in SHA process effectuates an end run around "California Environmental Quality Act (CEQA) analysis".

NCRWQCB pointed out the following SHA deficiencies in its 2/14/20 comments:

- riparian grazing under SHA is lax compared to criteria implemented under the TMDL Action Plan;
- SHA permits harmful aquatic/emergent vegetation grazing;
- Inadequate monitoring to ensure riparian grazing compliance;
- Inadequate tailwater management requirements to protect cold water habitat;

- Inadequate dissolved oxygen monitoring;
- Insufficient requirements designed to achieve targeted 45 CFS cold water instream flow;
- Flow compliance point too high in system to protect against excessive downstream diversion.

Despite these critical comments, the NMFS final Environmental Assessment, released to the public last month, fails to address, incorporate or even reference the SWRCB and NCRWQCB concerns or the TMDL Action Plan.

Friends of the Shasta River requests the Natural Resources Agency implement CWAP's mandate to **"increase collaboration and transparency and ensure that management decisions are supported by the best available science"** through a thorough review of the logic supporting SWRCB and NCRWQCB exclusion from the SHA proposal. In order to "Protect and Restore Important Ecosystems," which specifically includes Shasta River cold water habitat, the Natural Resource Agency must ensure "[t]he State Water Board and the Department of Fish and Wildlife...implement a suite of...**coordinated administrative effort[s]**" rather than SHA's piecemeal approach. **At a minimum the CDFW incidental take permit must be conditioned on inclusion of NCRWQB TMDL Action Plan's science-based stewardship requirements.**

Absent Natural Resource oversight and enforced coordination across the California agencies charged with the intertwined issues facing Shasta water quality and its threatened Coho population, the previous decades of decline will continue to the detriment of the thoughtful foundation of California's Water Action Plan, the Porter Cologne and Clean Water Acts as well as public trust obligations. **CWAP coordination and best science goals require that Natural Resources consult with the SWRCB and NCRWQCB to ensure that the concerns detailed in their comments are adequately addressed before California ratifies the Shasta River Safe Harbor Agreement.**

Thank you for your consideration of this matter.

Yours sincerely,



Andrew Marx
President
Friends of the Shasta River

c-c: Eileen Sobeck, California State Water Resources Control Board
Mattias St. John, North Coast Regional Water Quality Control Board
Charles Bonham, California Department of Fish and Wildlife