SENT VIA ELECTRONIC MAIL

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Subject: Comment Letter for Casitas Municipal Water District Related to the Petition to List Southern California Steelhead Under the California Endangered Species Act

Introduction

The Casitas Municipal Water District (Casitas) appreciates the opportunity to comment on the petition by California Trout (CalTrout) to list southern California steelhead (steelhead) Distinct Population Segment (DPS) as endangered under the California Endangered Species Act (CESA). This petition was submitted to the California Fish and Game Commission (Commission) on June 7, 2021.

Casitas as well as the United States Bureau of Reclamation (Bureau) have been active participants in the recovery of steelhead in the Ventura River since the federal listing in 1997 by designing and operating a diversion with a state-of-the-art fish passage facility and fish passage lifecycle monitoring station. Additionally, Casitas developed meaningful instream flows for steelhead in coordination with the National Marine Fisheries Service (NMFS) and the California Department of Fish and Wildlife (CDFW). Casitas agrees that recovery actions are paramount to the viability and success of this species. However, after a thorough review of the petition, Casitas has some concerns and comments to share with CDFW and the Commission. This letter will address concerns Casitas has in that adding an additional permitting process will most likely delay projects, including recovery actions that are already in place or are in the advanced planning stages, as well as additional concerns regarding elements of recovery that CalTrout did not provide in their petition letter. Additionally, CDFW is already involved in steelhead recovery by partnering with NMFS on Section 7 and Section 10 federal ESA consultations and by conducting monitoring and research on the steelhead DPS. The federal and state governments are already dictating and requiring recovery actions through the NMFS recovery plan for southern California steelhead. Adding steelhead to the list of those species covered under the CESA will most likely duplicate recovery efforts already occurring resulting in unnecessary redundancies and delays. CalTrout is expecting recovery to occur in a timeframe that is not reasonable or realistic. Many recovery actions have been implemented and many large scale actions are in the advanced planning phases. The unprecedented drought that has occurred since 2007 has had a significant adverse effect on the recovery of the species resulting in no change in the steelhead numbers in the region. Would adding this species to the list of those species covered under the CESA change that or provide additional, meaningful recovery actions not already included in the federal recovery plan? Lastly, we are concerned that CalTrout is requesting

the Commission to only list the federally designated DPS of southern California steelhead, whereas the CESA does not extend beyond the species or subspecies level (i.e., it does not extend to distinct populations segments or evolutionarily significant units). The CESA defines an endangered species as "a native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, or disease" (California Fish and Game Code Section 2062). CalTrout also is requesting the Commission to only consider the anadromous form of *Oncorhynchus mykiss* and to not consider the resident form of the species for CESA listing, which we believe goes against the CESA definition of a species. The remainder of this comment letter includes these topics:

Regulatory and Permit Burdon and Redundancy

Recovery Timeframe

Recovery Actions Implemented and Planned

Effects of Drought on Recovery

The State is Already Involved in Recovery Through Federal Consultations

Other State Actions That are Supporting Recovery Outside of CESA

Regulatory and Permit Burden and Redundancy

If the Commission were to list southern California steelhead as endangered under CESA, Casitas and other entities that have projects potentially affecting steelhead will now have an additional permit process that will cause additional delays and, in our opinion, will only include redundancies that are already included in federal biological opinions and multiple other permits required to implement projects including restoration and recovery projects. A list of recovery projects that will aid in the recovery of the species and have the potential to be delayed due to an additional permit requirement are included below.

CalTrout believes if the Commission determines a listing is warranted, "CDFW will have direct authority to oversee projects proposed within the current limits of anadromy. This will provide CDFW the ability to establish species-specific mitigation measures that must be met for take coverage to be authorized" (CalTrout 2021). The CDFW is already a partner in federal consultation and recovery efforts and have developed site-specific recovery measures in collaboration with NMFS. CDFW scientists have been involved with the federal consultation at the Robles Diversion Facility and are involved with other consultations in the DPS ultimately dictating some of the conservation and recovery measures and actions CalTrout believes would only occur if the species was listed under CESA. Since CDFW is already involved in the federal consultation process, there is no need to add additional regulatory burden on applicants and CDFW staff that are already involved in recovery of the species.

Recovery Timeframe

CalTrout's petition includes concerns about the lack of increased fish numbers since the listing in 1997. The federal recovery plan discusses the complexities in recovery planning and the timeframe required for biologically meaningful and quantifiable recovery based on objective, measurable criteria. This paragraph is included on page 5-1 of the recovery plan (NMFS 2012).

"The West Coast's salmon and steelhead populations have always been sensitive to the variability of the northeast Pacific climate-ocean system . . . So steelhead recovery as a form of human stewardship has to be judged over a broader timeline, with multi-year setbacks in population size considered to be a normal and expected event, and progress judged at the scale of multiple decades and even multiple human generations."

Dr. David A. Boughton, Chair, NOAA Fisheries South-Central/Southern California Steelhead Technical Recovery Team, 2010

Although the most recent NMFS 5-year review (NMFS 2016) determined there has been no appreciable increase in steelhead numbers since the listing, there are numerous large scale recovery and restoration actions in the planning stages with goals to increase steelhead numbers within the southern California DPS and neighboring segments. There are also large scale recovery actions occurring or that have already occurred in the neighboring south-central steelhead DPS (San Clemente Dam decommissioning, Los Padres dam fish passage design, Arroyo Grande Creek and watershed improvement projects) intended to aid in the recovery of the south-central California steelhead DPS, but will also aid in recovery of the southern California steelhead DPS. These recovery actions take time to develop through scientific research, advanced and sometimes unprecedented engineering design, and lengthy consultations with resource agencies. Adding additional consultation under CESA would only introduce redundancies to current requirements and consultations already involving CDFW, with potential consequences of delaying important recovery actions.

Recovery Actions Implemented and Planned

Numerous small- and large-scale recovery actions are occurring in the DPS. Many are in the advanced planning stages and could be implemented within the next ten years and some are already in place. These actions are anticipated to result in a measurable increase in steelhead numbers in the DPS over a reasonable timeframe as described in the NMFS recovery plan. Below is a list of recovery actions that have already occurred or are in the planning process. Note that this is not an exhaustive list and other recovery projects may exist of which we are unaware.

Robles Fish Passage Facility

Casitas completed an $8 million dollar steelhead fish passage improvement project to the Robles Diversion Facility on the Ventura River in 2005. This project was completed in part with CDFW grants. Casitas worked with CDFW, NMFS, and others to design this facility, which is now operated under a NMFS Biological Opinion. This passage facility now provides access to historic spawning and rearing habitat upstream of the facility. As of 2020, a total of 1,341 *O. mykiss* have been documented passing upstream or downstream through the facility. This facility is just one of many improvement projects undertaken that will aid in the recovery of steelhead in the DPS.

Matilija Dam Ecosystem Restoration Project

The Matilija Dam Ecosystem Restoration Project has been in the design and planning stages for decades. Delays due to funding, complexities with sediment, etc., are an indication of the diverse complexities that can occur with a large-scale recovery/restoration project. The good news is that upfront projects required before the dam can be removed started this year after years of planning and consultations. This project is similar to the San Clemente Dam decommissioning project that occurred on the Carmel

River in 2015. Monitoring results indicate that steelhead and other anadromous fish (Pacific lamprey) are now utilizing important habitats upstream in the Carmel River. The removal of Matilija Dam will be a big step toward improving steelhead numbers in the Ventura River and the DPS overall. The current projection timeline for dam removal is ten years.

Foster Park Fish Passage Improvement Project

The City of Ventura will be providing fish passage over an exposed subterranean diversion dam and exposed pipeline crossing over the next two years. This project is on the lower Ventura River and will provide unimpeded passage conditions for steelhead to reach high quality spawning and rearing habitats upstream.

Freeman Diversion HCP and Fish Passage Improvements

A draft Habitat Conservation Plan has been submitted to NMFS, the United States Fish and Wildlife Service (USFWS) and CDFW to obtain incidental take coverage for multiple species including steelhead at the Freeman Diversion on the Santa Clara River. This plan includes operations that provide instream flows that mimic the pattern, timing, magnitude and duration of flows for upstream and downstream migrating steelhead. The plan also includes a new fish passage facility at the diversion. This fish passage facility was developed through an alternatives analyses from a fish passage review panel and is designed to provide natural rate of migration past the facility for steelhead. Additional conservation measures including mitigation are included in this document that will assist in the recovery of steelhead in the DPS.

Santa Felica Dam Relicensing Project

The relicensing of the Santa Felicia Dam on Piru Creek, a tributary of the Santa Clara River, through the Federal Energy Regulatory Commission (FERC) included multiple requirements from the FERC, NMFS , the USFWS, the United States Forest Service and CDFW such as instream flows for steelhead migration and rearing, flows to maintain natural geomorphic processes, invasive species management, monitoring and adaptive management, and fish passage over Santa Felicia Dam. Some of these requirements are already in the implementation phase while others and are in the advanced planning phases.

Rindge Dam Decommissioning on Malibu Creek

The Rindge Dam on Malibu Creek is in the planning phase and CalTrout is a partner in moving this project forward. The CalTrout website states "the dam removal project is now poised to proceed into design phase, following recent authorization of the project's feasibility study led by the U.S. Army Corps of Engineers and pending formal approval in Congress. This is a major milestone, but the hard work is now ahead to complete design, put together a successful dam removal team, restore migration of the endangered southern steelhead, and secure funding for the >$200M project."

Quiota Creek Fish Passage Barrier Removals

The Cachuma Operation and Maintenance Board replaced numerous low flow crossings with bridges on Quiota Creek, a tributary to the Santa Ynez River. The original crossing were barriers to steelhead migration. They have all been replaced and passage has been restored to this creek.

Salsipuedes Creek and El Jaro Creek Fish Passage Barrier Structures

Fish passage structures have been constructed on these two tributaries to the Santa Ynez River, providing access to miles of habitat for steelhead.

Arroyo Hondo Creek Fish Passage Project

Fish passage was restored through a 300-foot culvert beneath highway 101 on Arroyo Hondo Creek on the Santa Barbara coast. This is a small coastal stream that provides excellent spawning and rearing habitat for steelhead. The CDFW has monitored fish passage in this creek using Sonar technology.

Solstice Creek Fish Passage Restoration

Passage barriers at road crossings have been removed and a passage design at the Hwy 1 crossing has been reviewed by a fish passage consultant that provided a peer review and passage design alternatives to NMFS and CalTrans. CalTrans is working with NMFS to start implementing the project. Solstice Creek is a small coastal stream located near Malibu in the Santa Monica Mountains.

Trabucco Creek Fish Passage Project

CalTrout is leading an effort to provide fish passage under the interstate 5 bridge in Trabucco Creek in the San Juan Creek watershed, Orange County, California. The project, which is in the 65% design phase will provide access to 15 miles of upstream high quality spawning and rearing habitat for steelhead.

This is not an exhaustive list of recovery efforts occurring in the DPS. The CalTrout petition states that Southern steelhead have seen little demonstrable improvement in population numbers and long-term persistence since the species' federal ESA listing in 1997. It also states that state and federal entities have had decades to address the precipitous and continuing decline in Southern steelhead populations through all manner of guidance, policy, and mandate. This contradicts the results of the NMFS 5-year review that states "while the status of the populations of steelhead within the Southern California Coast Steelhead DPS has not changed appreciably since the last status review, a number of recovery related activities have been undertaken which may result in some reduction in threats to the species, and potentially lead to a future increase in individual populations." The 5-year review highlights NMFS' belief that recovery actions will increase steelhead population numbers in the DPS and it does not conclude there is a "precipitous and continuing decline in Southern steelhead populations in the DPS" as stated in the CalTrout petition.

Although steelhead numbers are low, there are few robust monitoring programs over a meaningful timescale occurring in the DPS. The minimal data that does exist as well as anecdotal information was included in the most recent paper by Dagit et al. (2020), but the authors do acknowledge the lack of data in the DPS. It is too early to use fish numbers to demonstrate progress and population data is lacking in the DPS. The number of recovery actions occurring in the DPS are based on work conducted by project proponents, federal resource agencies, CDFW and project partners and stakeholders. These projects will aid in the recovery of this species and consequently the petition didn't demonstrate how an additional listing through CESA would provide unique conservation or recovery measures that are not already included in the NMFS recovery plan and California state planning documents.

Effects of Drought on Recovery

Southern California has experienced an unprecedented drought since 2007. This has resulted in substantial reductions in migration opportunities for southern steelhead in the DPS. In arid southern

California, steelhead require elevated winter flows to open seasonally closed sandbars in coastal lagoons as well sufficient instream flows in coastal rivers and streams to migrate to high quality spawning habitats. In some instances these sandbars never opened during the driest years of the drought and when they did, instream flows were not of a sufficient magnitude and duration for steelhead to make it to spawning habitat.

Due to the drought conditions that have occurred over more than a decade, it is not reasonable or prudent for CalTrout to postulate that there is a precipitous decline in steelhead numbers and that current recovery actions will not result in an increase in the numbers of steelhead in the DPS. Once wet conditions return to the region and multiple recovery actions are in place throughout this and neighboring DPSs, steelhead will have access to a significant amount of historic habitat, and once established, population numbers should increase.

Other State Actions That are Supporting Recovery Outside of CESA

The CDFW is currently conducting instream flow evaluations in priority drainages in California. One of these priority drainages is the Ventura River. The Ventura River is also one of five priority stream systems selected as part of the California Water Action Plan (WAP) effort. The WAP was developed to move California toward more sustainable water management. As part of the WAP, the CDFW Instream Flow Program is supporting flow enhancement activities and developing flow criteria in priority streams that support critical habitat for threatened and endangered anadromous salmonids. The intention of these evaluations is to aid in steelhead recovery.

The Sustainable Groundwater Management Act (SGMA) of California is recent state legislation enacted to help protect groundwater resources over the long-term. Under SGMA, groundwater agencies must develop groundwater sustainability plans. These plans must include an analysis of groundwater dependent ecosystems including potential impacts to sensitive species from groundwater pumping. Plans are under development in the Ventura River and other priority drainages in the DPS further aiding in the recovery of southern California steelhead.

Conclusions

The overarching theme of the CalTrout petition is that the current federal recovery process is not resulting in an increase in steelhead numbers in the DPS and that a CESA listing will somehow, without any supporting evidence, provide additional and unique actions fostering an increase in steelhead numbers. CalTrout states in their petition that "a number of large, complex fish passage barriers remain in place or not fully functional, even though significant investment over the years has supported advanced engineering design. The state ESA listing is anticipated to help move these projects forward into construction to realize their potential in species recovery" (CalTrout 2021). These complex projects take significant amounts of time and funding to analyze, design, permit, and build. It is our opinion and experience that adding an additional regulatory step through CESA will not help move projects forward, but will most likely cause substantial delays. As stated above, CDFW is already a regulatory partner with NMFS on federal consultations and recovery efforts. Consequently, there is no need to list this species under CESA since the current recovery plan is being managed and implemented with CDFW as a partner to NMFS.

We urge CDFW and the Commission to deny the petition to list southern California steelhead as endangered under CESA. We appreciate your review of this comment letter and please feel free to contact me with any questions or correspondence.

Sincerely,

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Literature Cited

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