

State of California

STATE WATER RESOURCES  
CONTROL BOARD

Before the State Water Resources Control Board 2007 MAR 14 AM 11:32

In the Matter to Consider Monterey Peninsula Water Management District's  
Petition to Change Permit 7130B and 20808

Testimony of Dr. Henry Smith

I started my undergraduate work as a music major and physical education minor at San Jose State University as a junior graduating with a B.A. before entering and completing the US Navy flight training program with service aboard USS Midway as a fighter pilot. I later earned my M.A. degree with a major in music education with a minor in aviation at San Jose State University. I changed my major at the University of Northern Colorado and earned an Ed.D in education.

My life long interest in the conservation of our natural resources has been demonstrated by my volunteer service to the California Department of Fish and Game as a Hunter Safety Instructor, back country fish creel surveys; salmonoid DNA and growth surveys for the US Fish & Wildlife Service and Alaska Department of Fish Game on the Dog Salmon River on Kodiak Island, Alaska. I am also a team leader for fish rescues on the Carmel River for the Carmel River Steelhead Association. I was the coordinator for the Large Woody Debris habitat improvement Project in the Carmel River Lagoon and the aerator project.

I have attended numerous proceedings of the California Steelhead and Trout Restoration Federation. I presented the results of the very successful LWD project in the Carmel River Lagoon in Santa Rosa at the Salmonoid Restoration Conference.

I have served with the Carmel River Steelhead Association in many capacities and presently serve as the Editor of our monthly Newsletter and as the secretary of the Association.

I lead youth groups in hands on habitat improvement projects on the Carmel River and provide instruction on the life cycle and habitat requirements for Carmel River Steelhead (*Oncorhynchus mykiss*). These groups include members of the California Conservation Corps, Boy Scouts of America, and Carmel Middle School students.

My history on the Carmel River and its tributaries is life long as I was born here on the Monterey Peninsula. I have hiked over most of its watershed and continue to lead volunteer steelhead rescue teams on the main stem and its tributaries.

Based upon my close historical association with the Carmel River and the Carmel River Steelhead species, their habitat has been poorly protected by those state and federal regulatory agencies whose job it is to guard this public trust resource

With regard to the petitions to be considered at this hearing, while the concepts put forth appear to have merit for the benefit of the Carmel River surface flows during the dry parts of the year, there are some assumptions which have major flaws and they are as follows:

- 1) Surface diversions should only occur after the aquifer is fully recharged. Carmel River steelhead require healthy surface flows in order to survive. I have personally observed the Carmel River surface flow to literally dry up as you stand in the river bed when the underflow pumps which draw from the Carmel River underflow are activated. This is a common occurrence observed by many of us who volunteer to rescue steelhead on the Carmel River. We are alerted by MPWMD staff that pumps along specific sections of the river will be activated on a given day and we are requested to be ready to rescue steelhead affected by this dewatering activity. It is my understanding that this is ignored in the above permit petition and lacks a correlation and protocol to address this before water is diverted.
- 2) The permit petition needs to address all life stages of Carmel River Steelhead and their habitat. It is my understanding that factors critical to juvenile steelhead which have been known to professional fisheries biologists since 1972 are ignored in this permit application. In particular, an in-depth study by F.H. Everest and D.W. Chapman of University of Idaho, published by the Journal Fisheries Research Board of Canada, vol. 19, No. 1, 1972. P.98 " Steelhead of all sizes most often chose territories over large rubble substrate and rarely more than 15 cm off the bottom. They apparently shifted from shallow slow water at the stream margin to deeper faster water as they increased in length."
- 3) MPWMD has used a concept called the "juvenile index" to demonstrate that the Carmel River Steelhead population is gradually growing and the present rate of dewatering the Carmel River is providing for a stable fish population. I understand this method dismisses the steady decline in the number of adults which return to

the river to spawn. It is also my understanding that this, together with little attention to river "edge water" habitat requirements for steelhead is omitted from the petition.

4) It is my understanding that recent biological research on the role a healthy lagoon plays in the chances for smolts to return to the river of their birth as adults is significant. This would seem to require significant river inflows in order to maintain temperature and dissolved oxygen levels sufficient to sustain the smolts and the aquatic creatures upon which they feed. I am led to believe the present petition ignores the subject of the Carmel River Lagoon.

5) It is my understanding that the minimum flow requirements cited in the petition are just that--- minimum, and are not optimum to sustain steelhead Redds and all other life stages of Carmel River Steelhead. It is also my understanding that the adult populations of adult Carmel River Steelhead returning to the Carmel River have been declining since the year 2000.

#### Supplemental Agreement Concerns:

I see no supplemental agreement language, which prevents any water diversions from the Carmel River from May 31 thru November 30.

#### Condition 17

Supplemental Agreement language surrenders the authority of SWRCB to protect a public trust asset. Process for making amendments to agreements needs to be consistent with original public input process.

#### Condition 30

Supplemental Agreement language surrenders the authority of SWRCB to protect a public trust asset. Process for making amendments and changing definitions describing water years is preposterous at best. Changes to agreements needs to be consistent with original public input process.

In summary, I believe that if the SWRCB approves this petition without conditions which will protect all life stages of Carmel River Steelhead and their habitat it will have failed in its duty to provide protection of a public trust by an agency, which has the authority and responsibility to do so.