February 3, 2022

The Honorable Peter S. Silva, President & Members
California Fish and Game Commission
P.O. Box 944209
Sacramento, CA 94244

Submitted via fgc@fgc.ca.gov

Subject: Comments on the Petition to List the Southern California Steelhead Trout Pursuant to the California Endangered Species Act and the Department of Fish and Wildlife’s Petition Evaluation

Dear President Silva and Members:

On behalf of the California Association of Sanitation Agencies (CASA), thank you for the opportunity to provide comments on the petition currently pending before the California Fish and Game Commission (Commission) to list Southern California Steelhead, *Oncorhynchus mykiss* (O. mykiss), as an Endangered Species under the California Endangered Species Act (CESA, Fish and Game Code § 2050 et seq.). CASA represents more than 125 public agencies and municipalities that engage in wastewater collection, treatment, recycling, and resource recovery. Our vision is to advance public policy and programs that promote the clean water community’s efforts in achieving environmental sustainability and the protection of public health.

CASA has a number of members that own and operate publicly owned treatment works (POTWs) located in coastal watersheds in Southern California that discharge to rivers and creeks which drain to the ocean. These facilities provide the essential public service of wastewater treatment and operate continuously. Most of these facilities provide a level of treatment that meets the State’s regulations for unrestricted non-potable reuse, and they recycle a portion of their flow, which is used for a variety of purposes, including, but not limited to agricultural irrigation, industrial use, landscape irrigation, and groundwater replenishment. If not for these facilities’ discharges, many of the streams to which they discharge would flow intermittently and be dry for many months of the year. As the Commission is undoubtedly aware, many of the rivers and streams in these Southern California watersheds were highly modified during the last century and serve as flood control channels to ensure that urbanized areas do not flood during major storm events.

CASA requests that, if the Southern California Steelhead listing process proceeds, the California Department of Fish and Wildlife (CDFW) and the Commission also develop a § 2084 regulation (and § 2081(d) rule) that is protective of the species, yet allows wastewater agencies to continue activities necessary to support their essential function of providing wastewater treatment and related services, including, but not limited to, discharge, monitoring, and the provision of recycled water. More detailed recommendations are provided below.

Toward this point, CASA recommends that any listing decision should consider the likely instream conditions, as well as current and future changes and fluctuations in discharges of recycled water and flows of other water sources in Southern California rivers and streams. These rivers may be heavily managed by flood control agencies operated by counties and the United States Army Corps of Engineers. Moreover, in reviewing stream flows in rivers and streams to which a POTW discharges, CDFW should recognize that flows may fluctuate due to diurnal and seasonal fluctuations in recycled water demand, and that the amount of wastewater treated by POTWs and available to be discharged may fluctuate over time, whether it be due to flow reductions attributable to water conservation or peak wet weather flows that occur during and immediately after storms. During winter months and during storm events, demand for recycled water is lower, and more treated wastewater must be discharged to the environment. In short, wastewater treatment and the ability to discharge must always be available, as the volume of water is significant and cannot be directly controlled by POTWs, nor can all of it be stored.
As noted above, many POTWs strive to maximize reuse. They frequently work with regional and local water agencies to develop recycled water projects, and many are actively working on the development of new projects throughout the region due to the need to develop additional local climate-resilient water supplies which can help local and regional municipalities reduce reliance on imported water and ease the pressure on distant watersheds that support habitat for a number of threatened and endangered species.

To this end, POTWs must obtain approval under California Water Code § 1211 from the State Water Resources Control Board (State Water Board) to make changes in the quantity or place of use, or the purpose of use, for recycled water. To approve a wastewater change petition, the State Water Board must be able to find that the proposed change will not injure other legal users of water, will not unreasonably harm instream uses, and is not contrary to the public interest. All petitioners must send a copy of the petition to CDFW. Sometimes the petition review process can be lengthy and take several years or more.

A further consideration of concern to CASA members is that, if a CESA listing is adopted for Southern California Steelhead, the Regional Water Quality Control Boards (Regional Water Boards) may modify their Water Quality Control Plans to update beneficial uses (e.g. for endangered species) and accompanying water quality objectives. CASA members are concerned about the potential implications of listing, and in particular about the cost, energy, and greenhouse gas emissions associated with having to construct and operate additional treatment facilities, should they be necessary. We recommend CDFW work with the State and Regional Water Boards to consider these costs and other factors when determining the appropriate regulatory measures for protecting Steelhead.

CASA understands that the Commission can adopt regulations under § 2084 of the California Fish and Game Code to authorize the taking of a candidate species, subject to terms and conditions it prescribes, based on the best available scientific information. Under § 2084, CDFW may also recommend to the Commission that it authorize the taking of an endangered, threatened or candidate species. CASA recommends that CDFW and the Commission develop a § 2084 regulation that is protective of the species yet allows POTWs to continue activities necessary to support their essential function of providing wastewater treatment services to Southern California’s residents and businesses. **We recommend that, if the Commission determines that a listing may be warranted, the Commission defer final action in order to work with our members to craft regulations to ensure that the beneficial activities conducted by our essential utilities can continue. It is important that any listing determinations be accompanied by necessary take authorizations for our utilities.**

**Incidental Take Authorizations Being Requested**

1. Take authorization as it relates to POTW § 1211 permits issued by the State Water Board. CASA requests that CDFW continue to act on new 1211 petition reviews, and take steps to expedite reviews of 1211 petitions, given the State Water Resources Control Board’s goal to recycle an additional 1.5 million acre-feet by 2030.

2. Take authorization to allow required monitoring to be conducted per NDPES permit Monitoring and Reporting Programs and any related regional or watershed-based monitoring programs.

3. Take authorization to allow POTWs to discharge more flow (compared to average or dry weather conditions) during wet weather or due to other conditions that may periodically occur, such as maintenance or repair to a recycled water system, or less flow, due to factors such as drought, water conservation, or increased water recycling (when authorized via a § 1211 permit when necessary.)

4. Take authorization to allow POTWs to implement requirements and compliance schedules in NPDES permits, including any related studies.

5. Take authorization to allow POTWs to implement public works projects that may be necessary to maintain and/or construct facilities, including sewers, recycled water pipelines, pump stations and other appurtenant structures, under rivers and streams and/or along rights-of-way adjacent to rivers and streams.
California Fish and Game Commission
February 3, 2022
Page 3 of 3

We appreciate your consideration of these comments and look forward to working with CDFW and the Commission to develop an appropriate incidental take authorization regulation, if the Commission accepts the Petition and makes the Southern California Steelhead a candidate species. For any questions, please do not hesitate to contact me at (916) 694-9269 or jvoskuhl@casaweb.org.

Thank you,

Jared Voskuhl
CASA Manager of Regulatory Affairs

cc: Melissa Miller-Henson, Executive Director, FGC
    Charles Bonham, Executive Director, CDFW