

## STAFF SUMMARY FOR AUGUST 7-8, 2019

**13. WILDLIFE AND INLAND FISHERIES NON-REGULATORY REQUESTS****Today's Item**Information Action 

This is a standing agenda item for FGC to act on non-regulatory requests from the public that concern wildlife and inland fisheries. For this meeting:

- (A) Action on non-regulatory requests received at the Jun 2019 meeting
- (B) Update on pending non-regulatory requests referred to FGC staff or DFW for review

**Summary of Previous/Future Actions**

- FGC receipt of requests Jun 12-13, 2019; Redding
- **Today's action on requests Aug 7-8, 2019; Sacramento**

**Background**

FGC provides direction regarding requests from the public received by mail and email and during public forum at the previous FGC meeting. Public requests for non-regulatory action follow a two-meeting cycle to ensure proper review and consideration.

- (A) **Non-regulatory requests.** Non-regulatory requests scheduled for consideration today were received at the Jun 2019 meeting in one of three ways: (1) submitted by the comment deadline and published as tables in the meeting binder, (2) submitted by the late comment deadline and delivered at the meeting, or (3) received during public comment.

Today, one non-regulatory request received via email (Exhibit A1) is scheduled for action. The Friends of Five Creeks has requested that FGC "...*examine [its] policies and practice with an eye toward encouraging professionals to take into account citizens' local knowledge and possible contributions, and encouraging that CDFW statements appropriately acknowledge uncertainty.*"

- (B) **Pending non-regulatory requests.** This item is an opportunity for staff to provide a recommendation on non-regulatory requests that were scheduled for action at a previous meeting and referred by FGC to staff or DFW for further review.

There are no pending non-regulatory requests.

**Significant Public Comments (N/A)****Recommendation**

- (A) **FGC staff:** FGC has an established Cooperation Policy (Exhibit A2), which sets expectations for FGC and DFW cooperative efforts with agencies and all interested persons, groups or organizations. The request has been shared with DFW; no further action recommended.

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**Exhibits**

- A1. [Email from Susan Schwartz, representing Friends of Five Creeks](#), received May 10, 2019
- A2. [FGC Cooperation Policy](#)

**Motion/Direction**

Moved by \_\_\_\_\_ and seconded by \_\_\_\_\_ that the Commission adopts the staff recommendation for action on the June 2019 non-regulatory request.

**OR**

Moved by \_\_\_\_\_ and seconded by \_\_\_\_\_ that the Commission action for the Jun 2019 non-regulatory request is \_\_\_\_\_.

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**From:** FGC  
**Sent:** Monday, May 13, 2019 7:43 AM  
**To:** FGC  
**Subject:** Fw: Attn: Wildlife Resources Committee, for May 16 meeting, letter, re Apr. 3 fish kill  
**Attachments:** F5CFishGameCommWRCLetterforMay16.pdf

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**From:** Friends of Five Creeks <f5creeks@gmail.com>  
**Sent:** Friday, May 10, 2019 04:06 PM  
**To:** FGC  
**Cc:** Tira, Peter@Wildlife; Garrett, Clint@Wildlife  
**Subject:** Attn: Wildlife Resources Committee, for May 16 meeting, letter, re Apr. 3 fish kill

Dear Commission members:

I hope that the attached letter can be given to members of the Wildlife Resources Committee for their May 16 meeting, and as time permits to all members of the Commission.

Thank you for your time, and for considering these thoughts from our 23-year-old, all-volunteer creek- and watershed group..

Susan Schwartz, President  
Friends of Five Creeks  
510 848 9358  
[f5creeks@gmail.com](mailto:f5creeks@gmail.com)  
[www.fivecreeks.org](http://www.fivecreeks.org)



# Friends of Five Creeks

*Volunteers preserving and restoring watersheds of  
North Berkeley, Albany, Kensington, south El Cerrito and Richmond since 1996  
1236 Oxford St., Berkeley, CA 94709  
510 848 9358*

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May 10, 2019

California Fish and Game Commission  
Attn.: Wildlife Resources Committee, for May 16 meeting  
By email

Members of the Fish and Game Commission:

Twenty years ago, our volunteer group spotted *Oncorhynchus mykiss* (rainbow trout or steelhead) in Codornices Creek, a small but perennial urban creek on the Berkeley-Albany border in Alameda County. Even after we legally electrofished, producing photographic evidence, we found agencies and so-called experts resisted accepting that these trout existed. Yours was the first agency to act, closing the creek to fishing and later requiring that early plans for "restoration" include some provision for trout habitat. Eventually, professionals accepted that the trout were real and found them convenient in obtaining millions of dollars to "restore" the creek and wrap it in tight regulations. (There is no evidence that any of that work or any of those rules helped the trout. Comparing fish counts before restoration<sup>1</sup> to the numbers killed April 3 would indicate that there were more trout before.)

In the decades that followed, we have watched the increasing professionalization of conservation with some concern, as agencies, in our view, increasingly consider citizens useful mainly as sources of support, e.g. for staff, budgets, or rule-making.

We were thus disappointed in the Department of Fish and Wildlife's interactions with us following an April 3 fire in a Berkeley cardboard-recycling truck, where discharge of standard surfactant firefighting foam, using in cities and wildfires, killed many, possibly all, of the trout in this little urban creek.

The Department's public statements have been interpreted by politicians and the media as meaning that not many more than the 64 dead fish spotted in CDFW wardens' quick April 4 survey could have died.<sup>2</sup> Either wardens failed to pass on, or CDFW chose to ignore, our slower survey, documented by geolocated photos of individual fish, showing just short of 100 unique dead fish in less than half the affected creek reaches.<sup>3</sup> Spotting all the dead fish took time – probably more than your wardens spent as they passed us. We offered our photos and information to CDFW with no response. We don't expect that CDFW to accept our findings over their staff's -- but acknowledging uncertainty is basic to science and should be to government.

CDFW also made statements that were interpreted by politicians and the media as saying that you were confident that the trout populations would quickly recover.<sup>3</sup> This optimism ignores local conditions which we pointed out (emails available):

- The lethal discharge was below the highest point that trout have ever reached, making restocking from upstream extremely unlikely.

*Friends of Five Creeks is a partner project of 501(c)3 Berkeley Partners for Parks*

- Very cloudy water<sup>4</sup> and high mortality more than a mile downstream six hours after the discharge indicates that concentrations of the foam were likely very high, making recovery in this very small creek less likely. (CDFW also has not sought results from the City of Berkeley's timely samples that might establish actual concentrations; emails available.)
- There is significant doubt that these trout are steelhead<sup>1</sup>, which would make restocking from downstream less likely.
- Any trout returning from downstream would have to pass a reach where dense camps at the water's edge all but block the creek with trash and pollution including fuels (photos below), again reducing the probability of restocking from downstream.

Again, exclusive reliance on “experts” lacking local knowledge in our view led to inappropriate disregard of uncertainty. These kinds of statements have consequences. In this case, they back the view that everything will soon be fine – so no one needs to look seriously at whether there are policies that could reduce the risk of using these surfactant foams. These foams must be used and will be used increasingly as fires become more frequent. **We are seeking a no-fault inquiry into how to reduce harm.**

Two other exchanges strengthen our impression of CDFW's lack of interest in citizens' potential contributions to knowledge:

- CDFW apparently plans to electrofish the creek this summer – a way to determine whether any trout do survive. We asked to go along in publicly accessible reaches. The response was only that they would keep us informed about the electrofishing (emails available).
- On May 24, we plan to repeat a survey of benthic macroinvertebrates in Codornices done in 2018. We hope to do this again in 2020. We asked whether CDFW was interested in results, but got no response (emails available). These results might increase knowledge of effects of these surfactants on the critters that fish eat.

This is not the first time that, in our estimation, CDFW staff ignored specific local knowledge in favor of generalizations by professionals. **The Fish and Game Commission does not direct CDFW, but it does set policy. We hope that you will examine policies and practice with an eye toward encouraging professionals to take into account citizens' local knowledge and possible contributions, and encouraging that CDFW statements appropriately acknowledge uncertainty.**

We are happy to answer any questions or supply supporting documents. **Thank you for your attention.**

Sincerely,



Susan Schwartz, President  
Friends of Five Creeks

Cc: Clint Garrett, Peter Tira, CDFW

References:

Friends of Five Creeks operates under the fiscal sponsorship of 501(c)3 Berkeley Partners for Parks

## COOPERATION

It is the policy of the Fish and Game Commission that:

The Commission, its staff, and the Department shall cooperate with local, state and federal agencies and with all interested persons, groups or organizations in every way to further the aims and purposes of fish and game conservation, preservation, propagation, protection, management, and administration. To this end, agreements may be entered into with such agencies, groups or persons when authorized by law.