

May 20, 2002

Director Robert Hight
 California Department of Fish and Game
 1416 Ninth Street
 Sacramento, California 95814
 Phone: (916) 445-0411
 Fax: (916) 653-1856
 rhight@dfg.ca.gov

Re: Management of the Santa Clara River

Dear Director Hight,

We would like to thank you for the work of your department to protect the natural resources of the State of California and your attention to the concerns we express in this letter.

Ongoing degradation of the Santa Clara River valley is threatening the important ecological values of this rich and diverse area. On behalf of the undersigned organizations and their members, we submit these comments and concerns about the management of the Santa Clara River.

The Santa Clara River is important habitat for many endangered species, native birds, plants, amphibians, reptiles, and fish. We have monitored many unlawful violations and environmental abuses in this area. Thus far, regulatory agencies have failed to respond to these problems. Recognizing that the mission of the Department of Fish and Game (DFG) is to manage California's diverse fish, wildlife, and plant resources — and the habitats upon which they depend — for their ecological values and for their use and enjoyment by the public, we urge you to take action to protect the resources of the Santa Clara River. Specifically, we encourage the DFG to:

- Revoke the streambed alteration agreement for Newhall Land and Farming/Valencia Company (ACOE404/CDFG1603). AKA: Valencia Company's Natural River Management Plan NRMP The agreement, based on inadequate biological data, fails to consider important concerns. A new, amended agreement must be adopted subsequent to a careful environmental impact review.
- Withhold approval on any permits or agreements for the proposed Newhall Ranch project until an unbiased, scientific review, guided by applicable federal and California environmental statutes, can inform necessary protection and mitigation measures for endangered and threatened species.

As an important part of California's natural heritage the Santa Clara River should be a high priority for conservation measures and protection from degradation. The California Department of Fish and Game has a responsibility to uphold the Public Trust by protecting wildlife and its habitat. We appreciate your consideration of this letter that describes our concerns about the ongoing Natural River Management Plan, the proposed Newhall Ranch project, and the context for those concerns.

The Santa Clara River

The Santa Clara River, southern California's last truly dynamic big river, boasts one of the largest watersheds in the South Coast region at 1,600 square miles. The Santa Clara River is the longest free-flowing river in southern California, and is the only one that extends from the desert to the coast. The river is of critical biological importance linking several major ecoregions: Coastal Plain, Coast Ranges, Transverse Ranges, and Mojave Desert. The 116-mile-long river rises on the northern slope of the San Gabriel Mountains in Los Angeles County, traverses Ventura County, lined by riparian habitat featuring willow, mulefat, and cottonwood forests — habitats so rare that they still exist in only three to five percent of their original range in the western United States. These streamside habitats are home to 12 federally endangered species among other sensitive native wildlife. Unfortunately, the Santa Clara River and its tributaries are within one of the most rapidly urbanizing watersheds in the state. This makes the area a high priority for monitoring and enforcing environmental regulations.

Wildlife

The Santa Clara River is a key wildlife corridor that connects the Los Padres and Angeles National Forests.

The habitat along the Santa Clara River supports the largest community of riparian-obligate birds between the Santa Ynez River in Santa Barbara County and the Prado Basin in Riverside County. The Audubon Society designated this area as an Important Bird Area. Some of the sensitive bird species that occur within this stretch of the Santa Clara River include: least Bell's vireo, southwestern willow flycatcher, yellow-billed cuckoo, Cooper's hawk, sharp-shinned hawk, merlin, prairie falcon, yellow breasted chat, yellow warbler, common yellowthroat, mountain plover, western burrowing owl, long-eared owl, ferruginous hawk, white-tailed kite, tri-colored blackbirds, many other sensitive raptors and songbirds.

Mammals observed or expected to occur in this area include: California leaf-nosed bat, small-footed myotis, long-eared myotis, fringed myotis, long-legged myotis, Yuma myotis, pale Townsend's big-eared bat, spotted bat, pallid bat, California mastiff bat, San Diego black-tailed jack rabbit, San Diego desert woodrat, Los Angeles pocket mouse, ringtail, mountain lion, bobcat, coyote, gray fox, American badger, and deer.

Reptiles include: western pond turtle, San Diego horned lizard, California horned lizard, coastal western whiptail, silvery legless lizard, rosy boa, San Bernadino ringneck snake, two-striped garter snake. Insects: riverside fairy shrimp, and San Emigdio blue.

Fish: unarmored threespined stickleback, arroyo chub, Santa Ana sucker, and steelhead trout.

Amphibians occurring include arroyo toad, western spadefoot toad, and California red-legged frog.

Many California native and rare plants are also present.

While this is not an exhaustive list of the remarkable wildlife that inhabits the Santa Clara River area, it exhibits the rich diversity and importance of preserving habitat for these species.

Streambed Alteration Agreement Requires Review and Amendment

Newhall Land and Farming Company (NLF) has been engaged in development activities in the Santa Clara River valley for decades. Such development poses a strong threat to the persistence of native wildlife and natural ecosystems. A Natural River Management Plan (NRMP) was created by Newhall Land and Farming to guide the development of the Santa Clara River valley. Since the plan was created, significant new scientific information has rendered the NRMP inadequate. Year after year, NLF has used an outdated agreement to continue development and inhibit environmental protection on hundreds of acres along the river. The NRMP streambed alteration agreement should be revoked and a comprehensive review of the Newhall Land and Farming Company's development in the Santa Clara River valley must be conducted as mandated by the California Environmental Quality Act (CEQA).

Two key factors have demonstrated the inadequacy of the current NRMP. First, the biological inventories are inadequate and overlooked several important natural resources. And second, the approved Natural River Management Plan does not provide satisfactory mitigation for the negative impact that the development has on the ecosystem.

Inadequate Biological Inventories

The current NRMP was based on surveys conducted by scientists with a conflict of interest. The scientists conducting the surveys were employed by Newhall Land and Farming Company. The biological inventories were never reviewed by independent biologists and they failed to identify many important natural resources that need to be conserved.

Originally, the use of hazing machines during wildlife surveys may have precluded an accurate count of state and federally protected species. NLF installed more than 30 hazers to scare away nesting birds along sections of the river. Officials estimate that the hazers had been in place for as many as 2 to 5 years. The river provides suitable habitat for two endangered birds, the willow flycatcher and the least Bell's vireo. As federally protected species, the hazing machines may have excluded these birds from surveys and it is likely that the machines also harassed the birds.

Also, an endangered species, the arroyo toad (*Bufo microscaphus californicus*) was not accounted for in the NRMP despite the fact that it can be found within the boundaries of the area covered by the NRMP. The arroyo toad was listed as a federal endangered species in 1994. The State of California classifies it as a Species of Special Concern. The arroyo toad has been extirpated from approximately 75 percent of its previously occupied habitat. This amphibian is a habitat specialist to the dynamic climatic regime and drainages of the central and southern California coast, and a sensitive indicator to the quality of riparian habitats and stream systems. The major reason for their decline is human alteration and use of arroyo toad habitats that include water storage reservoirs, recreational facilities, flood control structures, agriculture and urbanization. Introduction of predatory non-native fish and wildlife has also impacted the arroyo toad. Studies conducted by Dan Holland on Camp Pendleton revealed that arroyo toads travel up to 1.5 miles from the edge of the riparian ecotone to utilize upland habitats for foraging and

burrowing. In upland travel, these toads are vulnerable to predation, entrapment, and human-caused sources of mortality such as roadways. Burrowed toads are often situated a few inches below the soil surface, and can be easily crushed by pedestrian or vehicle traffic.

The first records of the arroyo toads within the vicinity of Newhall Land and Farming development were listed in the California Biodiversity Data Base in 1994. Biologists also reported presence of the arroyo toad in 1996, 1998 (egg cases), and 2000 (tadpoles). The toads in this area have been continuously overlooked by regulation agencies. The U.S. Fish and Wildlife Service failed to include land owned by NLF as critical habitat for the arroyo toad. This is a noteworthy omission since no other river system with arroyo toads lacks such designation. Subsequently, the Fish and Wildlife Service did not address impacts upon the arroyo toad in the Biological Opinions for the development projects.

In April of 2001, four adult arroyo toads were located in field surveys conducted by N.H. Sandburg along the Santa Clara River in the ongoing North Valencia 1 project. The riparian area and the river were incurring heavy impacts from trespassing off-highway vehicle (OHV) traffic, directly impacting burrow substrate in the area where the toads were located. In addition, a flowing tributary adjacent to the area where one toad was located was channeled by heavy equipment and denuded of riparian vegetation.

While agencies concur that the arroyo toad exists in the Newhall development area, these agencies have failed to take appropriate regulatory action:

- Newhall Land and Farming disked arroyo toad upland habitat directly above the site location of four adult toads, which most likely caused take on the arroyo toad. Again, the Fish and Wildlife Service and Army Corps declined to take regulatory action.
- Hundreds of acres of cottonwood and other vegetation types that comprised arroyo toad upland habitat has been removed and replaced by asphalt, parking lots, and roadways. Arroyo toads require and utilize upland habitats wherever accessible for foraging and burrowing. They cannot maintain populations where riparian systems have been lost.
- Large apartment complexes have been constructed directly on upland habitat of the arroyo toads most recently located. The creek directly downstream of the apartment complex has again been channeled by heavy equipment and denuded of riparian vegetation. This creek would have been an important water source and breeding habitat for the toad. The uplands continue to be developed with intensive land manipulations and roadways. Off-road traffic continues on top of breeding, foraging, and burrow habitat in the Santa Clara River bed.

Therefore, new measures must be included in an amended plan that protects the arroyo toad from harm or harassment.

Currently the implementation of the NRMP allows the "take" of endangered species that cannot be ignored. The CEQA, EIR, and NRMP documents did not acknowledge the arroyo toad, and subsequently failed to address impacts upon this endangered species with the result that irrevocable harm and take has undoubtedly occurred. Any new management plan should incorporate new biological surveys conducted by independent scientists.

Unsatisfactory Mitigation and a History of Violations

Second, the approved Natural River Management Plan does not provide satisfactory mitigation for the negative impact that the development has on the ecosystem. Newhall Land and Farming (NLF) has a history of unlawful activities along the Santa Clara River. It is imperative to monitor this company and uphold applicable environmental laws.

Some of Newhall's most significant violations to-date include:

1. In 1992, NLF unlawfully channelized Bouquet Creek near the confluence of the Santa Clara River. The company illegally poured concrete in the creek and destroyed habitat along the banks. The concrete was never removed, Newhall paid a fine of only a small portion of the cost of the damage and their wetland mitigation measures have failed miserably.
2. Newhall widened the McBean Parkway Bridge over the Santa Clara River without a permit. As a result Newhall sidestepped laws that would have required them to mitigate for threats to endangered species and habitat destruction.
3. In 2001, Friends of the Santa Clara River reported that NLF dewatered wetlands that were not identified in the Natural River Management Plan or Streambed Alteration Agreement. In the last year, vital wetlands have been destroyed and in a single day hundreds of thousands of amphibian eggs, native fish, acres of cattail/willow habitat have been wiped out.
4. In violation of the Migratory Bird Treaty Act, there have been several incidents of NLF's activities harming colonies of migratory songbirds. Biologists reported that colonies of redwings, song sparrows, and common yellowthroats along San Francisquito creek were extirpated in June 1999. Without a permit, NLF has installed hazing machines to keep endangered birds such as the least Bell's vireo from breeding and nesting in areas planned for development. Such harassment could be considered a violation of the Endangered Species Act among other laws intended to protect endangered species. The current NRMP has resulted in damage to the biological diversity of the Santa Clara River and its tributaries. A new management plan should account for these violations and incorporate mitigation for problems such as the lost wetlands. The NRMP must be pulled for CEQA review to address the problems described above.

The Newhall Ranch Project

Newhall Ranch is a "new town" proposed by the Newhall Land and Farming Company (also known as the Valencia Company). The project consists of 22,000 dwelling units on nearly 12,000 acres that will house approximately 68,000 people. The project features 323 acres of commercial and business uses, over 5,000 acres of high country and river corridor open areas, an 18-hole golf course, a 15-acre man-made lake, and a 6.9 million gallons-per-day water reclamation plant.

Potential Impacts of the Newhall Ranch Project

The development of the proposed Newhall Ranch will have many environmental impacts that must be addressed. The Newhall Ranch project plan that was created for this area has not provided adequate regulatory measures.

First, the Santa Clara River is a major wildlife corridor that will be fragmented by development. The Santa Clara River and its tributaries serve as major wildlife corridors. Newhall Land and Farming's development has substantially degraded the value of the Santa Clara River as a wildlife corridor. Already the development has hemmed in the Santa Clara River with thousands of homes, condominiums, apartments, drive through restaurants, retail stores, gas stations, car washes and various other commercial and industrial sites within no more than a 100 foot buffer zone from the river.

Second, development in the Santa Clara River valley will change water quality, flow, and may deplete water resources. The Newhall Ranch is being constructed in a flood plain. Such development requires massive alteration to the natural flow of the river. Changes to the river and the riparian habitat surrounding the river will inevitably result in changes in the flow, course, and cleanliness of the river water. This will negatively impact the wildlife in the area. Moreover, the use of water for the new town will deplete local aquifers and lower the water table upon which local vegetation depends. Increased storm runoff and channelization of the river's tributaries will result in higher water velocities and increase the likelihood of flooding. Runoff will also exacerbate water quality problems in the Santa Clara River. The proposed urban area is expected to release millions of gallons of treated sewage water into the river. Currently the water has a very high level of chemicals that have triggered an investigation by CA Regional Water Quality Control Board to determine whether treatment plant releases are responsible.

Third, endangered, threatened and other special status birds, fish, reptiles, and amphibians will be impacted from "take" and habitat destruction. The habitat along the Santa Clara River supports a large community of wildlife that is considered a high priority for protection. Several species that occur in the valley are listed as endangered or threatened pursuant to the federal Endangered Species Act. There are other imperiled species with habitat in this area that are protected under California laws. The Newhall Ranch will threaten these species through habitat destruction and direct "take" of species—that means to harass, harm, hunt, shoot, wound, kill, trap, capture, or collect.

For example, the unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*), an endangered species, is at risk. The unarmored threespine stickleback is protected both under the federal Endangered Species Act and California law. The stickleback is a small, scaleless, freshwater fish that inhabits the slow and quiet waters of streams and rivers. The stickleback depends on clean, clear water with a good diversity of algae and other plants. Historically, the stickleback was found throughout Southern California, but by 1985 it only remained in a small portion of the upper Santa Clara River drainage in Los Angeles County and the San Antonio Creek drainage in Santa Barbara County. The decline of the stickleback is attributed to urbanization in the Los Angeles area.

The cumulative impacts of the development permitted by the current Natural River Management Plan and the proposed Newhall Ranch will seriously and adversely impact the stickleback population in the San Francisquito Creek. The overall impacts of development on lower San Francisquito Creek are likely to increase the isolation of this population of the unarmored threespine stickleback. This will increase the risk of

extirpation of this population. Isolation prevents genetic exchange and the stickleback requires upstream movement in its life strategy. The second potential adverse impact is from water extraction. If the frequency, magnitude and length of time water flows are present in this area are reduced this could harm the stickleback population. Deviation from historical hydrological conditions creates greater impacts on natural ecosystems.

The impacts upon the arroyo toad and unarmored threespine stickleback have not been adequately addressed within the Natural River Management Plan and the proposed Newhall Ranch plan. This is a serious regulatory and legal failing of federal and state jurisdictional agencies. The continuing unregulated impacts of this project may cause the loss of the remaining and increasingly isolated population of arroyo toads and stickleback within the Santa Clara River valley.

Fourth, existing measures have not adequately considered or mitigated for environmental impacts. Unregulated actions by Newhall Land and Farming continue and have significant negative impacts. These actions include: habitat destruction, take of endangered species, violation of the Migratory Bird Treaty Act, paving, construction, disking, draining of wetlands, channeling streams, introduction of non-native predators, sewage run-off, and pollution. The EIR, CEQA, and NFMA documents are seriously deficient and fail to address many of these critical issues and their cumulative effects.

Newhall Ranch Is Already Moving Ahead Prior to Official Approval

Newhall Land and Farming destroyed the Spineflower, an important plant that was once thought extinct. Although the San Fernando Valley Spineflower was once assumed to be extinct, it has been properly identified on the proposed site of the Newhall Ranch. The San Fernando Valley Spineflower is listed as Endangered under the California Endangered Species Act and is a candidate under the federal ESA (Endangered Species Act). Recently, biologists have observed that the activities of NLF have systematically destroyed the habitat and threatened the survival of this rare species. Impacts to rare species, especially rare plants, are extremely difficult and expensive to mitigate. A study by Dr. Peggy Fiedler demonstrated that mitigation measures for rare plant species, such as the Spineflower, have failed over 90 percent of the time.

Major alterations were made to the Santa Clara River prior to preparing the required Environmental Impact Report. In 1992 NLF engaged in major alterations to the Santa Clara River at the proposed Newhall Ranch site. Some controversy exists over whether these alterations took place prior to completing measures required by law. Photos of the streambed alterations compared with overlays of the proposed Newhall Ranch project substantiate that the alterations happened before an adequate environmental review.

Responsibilities of the California Department of Fish and Game

The mandate of the California Department of Fish and Game requires the DFG to uphold environmental laws and ensure that California's diverse wildlife, plants, and their habitat are preserved for their ecological values. As a part of this commitment the Department of Fish and Game must take action to ensure that the Santa Clara River Valley is protected

as a part of California's natural heritage. Additionally, due to the sensitive issues around the Newhall Ranch project we are concerned that employees may face retaliatory actions or may be reprimanded for reporting violations. DFG employees who take proactive steps toward assuring that the DFG complies with environmental laws and its mission should be commended. As an interested party in the protection of the Santa Clara River we intend to monitor the actions of the Department of Fish and Game and its compliance and enforcement of environmental laws.

1

Conclusion

The Newhall Land and Farming's Natural River Management Plan has failed to protect the diversity and natural resources in the Santa Clara River valley. The plan was approved before important natural resources were identified. These poor management practices are a precursor to the destruction the Newhall Ranch project may impose on the Santa Clara River if approved. The Natural River Management Plan has permitted the destruction of portions of the Santa Clara River and will continue the devastation up the San Francisquito Creek and down the river through the proposed Newhall Ranch project area unless the Department of Fish and Game requires further CEQA review and depends upon sound, unbiased scientific studies to ensure adequate mitigation measures. The Department of Fish and Game needs to take proactive measures to monitor the actions of Newhall Land and Farming Company and must uphold the strictest environmental regulations to protect the biologically important Santa Clara River valley.

We urge the Department of Fish and Game to revoke the streambed alteration agreement until the Natural River Management Plan accounts for the impacts described above and withhold new permits until adequate CEQA reviews and mitigation measures can protect the ecological values in this region.

Thank you, again, for your attention to this letter and the concerns expressed above.
Sincerely,

Kris Ohlenkamp
Audubon Society / San Fernando Valley Chapter

David Magney
California Native Plant Society

Peter Galvin
Center for Biological Diversity

Ron Bottorff, Chairman; Barbara Wampole, Vice chair; Teresa Savaike
Friends of the Santa Clara River

Lynne Plambeck
SCOPE (Santa Clarita Organization for Planning and the Environment)

034. Letter from Audubon Society, California Native Plant Society, Center for Biological Diversity, Friends of the Santa Clara River, and SCOPE, dated May 20, 2002

Response 1

This letter was submitted to the California Department of Fish and Game (CDFG) on May 20, 2002, and pertains to a planning document known as the Natural River Management Plan (NRMP). This letter was prepared more than seven years ago and does not address the adequacy of the environmental analysis provided in the Draft EIS/EIR. Please refer to **Topical Response 3: Natural River Management Plan Projects and Mitigation**, for additional information regarding implementation of the NRMP. The comment also addresses existing biological conditions on the Project site, which received extensive analysis in the Draft EIS/EIR, including **Section 4.5**, Biological Resources. Please also see revised **Section 4.5** of the Final EIS/EIR. Since this comment does not raise any specific issues regarding the analysis provided by the Draft EIS/EIR, specific responses are not provided. However, the comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Project.