

Memorandum

To: Mr. Edward C. Anton, Chief
Division of Water Rights
State Water Resources Control Board
Post Office Box 2000
Sacramento, California 95812-2000

Date: September 24, 2001

From: *for* *Ray B. Stacy*
Donald B. Koch, Regional Manager
Northern California-North Coast Region
Department of Fish and Game

Subject: Petition for Extension of Time for Permitted Applications 26306 and 26307 Located in Siskiyou County

The Department of Fish and Game has reviewed your August 24, 2001, letter in which you requested a written statement of facts supporting our allegation that the proposed extension of time will have adverse environmental impacts. Your letter indicates there will be no adverse environmental impacts considering that the petitioner will only be allowed to divert water during "extremely wet years." Our protest is based on adverse environmental impacts which could result from diversions during any type of water year and changes in the status of listed species since the original permitting of the subject applications.

Following are additional facts:

Our right to protest is based on Sections 1801 of the Fish and Game Code and Sections 1243 and 1257 of the Water Code.

The Shasta River has been declared a fully appropriated stream during months in which water is requested in the permit. The present adjudication does not include water to protect instream beneficial uses. The application is to appropriate surplus water. The watermaster defines surplus water as any water left in the stream above that allocated in the adjudication.

The applicant proposes to divert 14 cubic feet per second (cfs) and 5 cfs from the Shasta River for irrigation and stock watering from February 1 to November 1 of each year in the above subject applications. These diversions will be made whenever there is surplus water over that distributed in accordance with the Shasta River adjudication.

Coho salmon are known to exist in the Shasta River. There is suitable coho spawning and rearing habitat in the area of the diversions. Due to the status of coho salmon as federally threatened and State candidate species, we do not believe the time extension is in the public interest and could have direct adverse impacts on listed species.

The extension of time to install measuring devices and develop a record of actual beneficial use will likely result in harm to the environment for the following reasons:

1. The unscreened diversion locations are within suitable habitat in a watershed where listed coho salmon (Onchorhynchus kisutch) are known to exist. Therefore, there is a high probability of take associated with extending the time for these applications to install measuring devices and develop a record of actual beneficial use. Coho salmon were listed as threatened under the Federal Endangered Species Act effective June 5, 1997, and as a candidate under the California Endangered Species Act on April 27, 2001. The listing of this species occurred after the original subject water rights permits were granted in 1984. Therefore, diversions which occur through an extension of time for these applications may create potentially significant environmental impacts through the take of a listed species. Under Section 15065 of the California Environmental Quality Act (CEQA), this project may require a mandatory finding of significance by the State Water Resources Control Board (Board) as the lead agency. Granting a time extension for these applications represents an action (project) by the Board that has the potential to "... substantially reduce the habitat of a fish or wildlife species ..." and "... reduce the number or restrict the range of an endangered, rare or threatened species"
2. The diversion structure does not provide for upstream and downstream migration of adult and juvenile fish. Adult coho salmon may not be able to pass upstream over the diversion structures. Young coho salmon could potentially be passed into the diversion ditches through the unscreened diversion structures. Both these stages of coho are likely present in the area of the diversions during seasons of diversion requested in the permits.
3. The effects of these diversions on instream habitat and water temperature are not addressed.

The Board asserts that this diversion would only be able to take water in extremely wet years when surplus water was available and thus would have no adverse impacts on aquatic habitat. This assertion does not consider the complex hydrology of the Shasta River or the inadequacy of the present water allocation system for preservation of the public trust resources. The interpretation of the term "surplus" to mean any water remaining in the channel after riparian and appropriative water rights have been met, does not speak to the public trust requirement of instream flow for aquatic beneficial uses.

The Board's records show that water has been taken under these permits during time periods which were not extremely wet. Progress reports filed with the Board indicate that water has been taken under these permits during seasons of water shortages in the Shasta River system. Board records also indicate that the existing

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permit terms have not been complied with throughout the life of the permit. In fact, permit term 15 cannot be complied with because watermaster service is not available during certain seasons of diversion. This is why in our original protest dated July 25, 2001, the first dismissal condition called for:

a field review with the applicant and the watermaster to develop suitable documented methods to determine when there is excess water available in the Shasta River system which could be available for appropriation under this permit. This meeting should document and clarify existing permit term 15 which states that 'No water shall be diverted under this permit at any time unless the watermaster has determined that excess water exists in the Shasta River and authorizes the permittee to divert water.' The determination that there is excess available water should consider stream flow conditions necessary to protect instream beneficial uses.

A study of the instream flow requirements for aquatic beneficial uses is currently being conducted on a reach by reach basis for the Shasta River. In our original protest, dismissal condition #3 discussed the necessity to modify the existing permit term 16 to increase bypass flows for protection of fish and wildlife resources. This study should be completed in the next month and should provide a basis to select appropriate bypass flows at these diversion structures.

Our original protest dismissal terms requested an extension of time for 90 days after a field meeting to develop permit language for season of diversion restrictions. We also request to use that time to modify existing permit term 16 and submit bypass flows based on the above-mentioned study.

We hope with the additional statement of facts supporting our allegation of adverse environmental impacts that our protests will be accepted and our previously submitted recommendations of dismissal terms will be applied to the subject permits.

If you have any questions or comments concerning the statements in this memorandum, please contact Environmental Specialist III Jane Vorpapel at (530) 225-2124.

DONALD B. KOCH
Regional Manager

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