DOUGLAS AND HEIDI COLE AND MARBLE MOUNTAIN RANCH – WASTE AND UNREASONABLE USE HEARING

NOVEMBER 13, 2017

Skyler Anderson
Division of Water Rights
State Water Resources Control Board
COMPLAINTS LEADING TO INVESTIGATION

• July 17, 2013 – Complaint Diverters were dewatering Stanshaw Creek, harming public trust resources

• January 29, 2014 – Received video documenting Diverters’ POD diverting nearly entire flow of Stanshaw Creek

• December 17, 2014 – At stakeholder meeting in Orleans, CA, NOAA staff indicated fish kills occurring in Stanshaw Creek.

• Follow-up with NOAA, DFW, and Karuk Tribe.
DIVERSION WORKS

Key:
- 2" PVC domestic water line
- Partially lined ditch
- 9" steel pipe
- 4" PVC irrigation line

Diagram:
- Point of Diversion
- Stanshaw Creek
- Penstock
- Water Treatment Facility
- Irrigation water
- Potable Water Tanks
- Irving Creek
- Pond
- Hydroelectric Plant
- Irrigation Use
- Domestic Use
POINT OF DIVERSION
DIVERSION DITCH
DIVERSION DITCH
DIVERSION DITCH
SECOND OUTFALL STRUCTURE
DIVERSION DITCH
WATER TREATMENT PLANT
POWER PLANT
IRVING CREEK OUTFALL
FLOW MEASUREMENTS

Location #1 - A flow velocity of 2.23 c.f.s. was recorded.

Location #2 - A flow velocity of 1.63 c.f.s. was recorded.

Location #3 - A flow velocity of 1.23 c.f.s. was recorded.

Marble Mountain Ranch
TWO OTHER WATER RIGHTS ON STANSHAW

• One water right holder upstream - Mountain Home
• One water right holder downstream – Konrad Fisher
• Both appear to be riparian to Stanshaw Creek or its Tributaries
• Notably the upstream land owner relies hydroelectric and solar power
• The diversion are too small to create a measureable difference in stream flow or to impact public trust resources
Joint letter from Division and Regional Water Board enforcement issued December 3, 2015

Included notice of violation (“NOV”), draft cleanup and abatement order (“Draft CAO”), and Staff Inspection Report.

Included a Report of Inspection (ROI) from Division identified misuse of water and public trust impacts.

Stated Regional Water Board and Division had completed their investigations and would pursue formal enforcement if Diverters failed to respond to the letter in 30 days to discuss a response that would substantially address concerns outlined in the Regional Water Board Draft CAO and the State Water Board ROI.
1. Install a water diversion control mechanism at the POD;
2. Return water diverted from Stanshaw Creek that is not put to consumptive use;
3. Fix the leaks associated with the water treatment system;
4. Prevent unnecessary conveyance losses in the conveyance ditch by piping or lining the ditch or by other measures;
5. Implement the NMFS and DFW bypass flows to cease impacting public trust resources and habitat; and
6. Consult with DFW to determine whether a fish screen should be installed.
DIVISION REPORT OF INSPECTION

• MMR pre-1914 claim has history of contention
• Prevailing view that most of pre-1914 claim lost to forfeiture
  • 1998 Division letter – Pre-1914 right likely ranged from 0.11 cfs-0.49 cfs
  • 2002 Division investigation – No evidence of hydropower until after WWII
  • Lennihan Report – Limited hydropower, but limited to 1.16 cfs
• Millview County Water District v. State Water Resources Control Board
  • Changed rule of forfeiture
  • Required “clash of rights” for forfeiture
• ROI, in light of Millview case –
  • No evidence of clash of rights
  • Role of public trust in forfeiture unsettled
  • Pre-1914 right up to 3 cfs, but likely lower due to need to avoid misuse and public trust impacts
DIVERTERS’ COMPLIANCE EFFORTS

• January 19, 2016 – Claimed up to 3 cfs, repaired leaking water tanks, and outlined immediate and long-term solutions, but little specificity.
• February 12, 2016 – Division and Regional Water Board staff notified Diverters they would begin pursuing formal enforcement, but encouraged continued efforts at corrective actions.
• March 24, 2016 – Diverters propose series of corrective actions and timeline to eliminate misuse. Retained Joey Howard and Will Harling as consultant. Planned on installing 6” pipe in ditch.
• April 15, 2016 – Diverters state they are finalizing plans for pipe and anticipate completion by May 2016.
• May 15, 2016 – Diverters, in response to reminders from Division and Regional Water Board staff, acknowledge need to acquire necessary permits.
• August 2016 – Diverters had made some progress, but far behind, having failed to –
  • Stabilize head cut and slope at Irving Creek Outfall (due April 15, 2016)
  • Submit restoration and monitoring plan (due April 15, 2016)
  • Install 6” pipe and headgate at POD (due May 1, 2016)
  • Complete water and energy efficiency audit (due July 1, 2016)
FLOW RECOMMENDATIONS

• Division received updated flow recommendation from NMFS August 3, 2016
• Recommendation –
  • Applies to all diverters on Stanshaw Creek
  • Protective of coho by preserving cold water refugia at confluence of Klamath River
  • When diversion for hydropower are not occurring 90% of the unimpaired flow shall be by-passed at the POD.
  • When Diversion for hydropower are occurring a minimum of 2 cfs shall be bypassed at the POD and return non-consumptive water above the point of anadromy
CONSUMPTIVE USE ASSESSMENTS

• 6” inch pipe project designed to support consumptive use demands.
• Resolve questions regarding much water Diverters needed. Diverters previously claimed demand for 50 people during average business levels and up to 500 with a fire camp.
• Corresponded with Joey Howard to refine earlier consumptive use calculations.
• Determined more precise irrigated land area based on satellite maps.
• Estimated consumptive use demand 0.18 cfs without fire crew and 0.235 cfs with fire crew.
• Hearing request August 30, 2016 for order finding misuse of water and ordering corrective actions.
• Diverters notified August 30, 2016.
• Would give Diverters until June 30, 2018 to eliminate misuse, but established interim milestones.
• Project milestones based on Diverters’ proposed project and timeline.
• Coordinated with Regional Water Board CAO No. R1-2016-0031
• If the Diverters met the milestones, the parties could request a postponement.
• The Diverters did not meet the milestones.
DRAFT ORDER CORRECTIVE ACTIONS

• Energy and water use efficiency audits will provide information regarding energy and water demand, conservation methods, cost of conservation methods and amount conserved.
• Installing diversion control structure will regulate diversion.
• Measure diversion consistent with SB88 requirements.
• Eliminate unreasonable conveyance losses by piping or lining the ditch or using other methods.
• Cease discharging to Irving Creek.
• Implement NMFS bypass flows.