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State of California

Before the State Water Resources Control Board

Doug Cole et al., Applicant

Water Right Application No. 29449

Stanshaw Creek Tributary to Klamath River thence
Pacific Ocean

Siskiyou County, California

DIV. OF WATER RIGHTS
SACRAMENTO

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STATE WATER RESOURCES CONTROL BOARD

Public Trust Protest by California Sportfishing
Protection Alliance

In accordance with the California Code of Regulations, Title 23, the California Water Code, Federal Endangered Species Act, and other applicable statutes and regulations, the California Sportfishing Protection Alliance (hereinafter known as "CSPA") hereby formally file this public trust protest against Application 29449 as follows:

On August 2, 2000 the Division gave the CSPA an extension of time of 30 days to file a protest against Water Right Application 29449 or by September 1, 2000. This protest is timely based on the extension of time (Emphasis Added) Please see attachment to protest.

This public trust protest is based on environmental grounds as follows:

We have reviewed the public notice issued by the State Water Resources Control Board for Application 29449. The notice date for the application was January 23, 2000.

Description of Project - Application 29449

The applicant seeks a right to directly divert 3 cfs of water from Stanshaw Creek for hydroelectric power generation via a flume which is 12-inches deep, 24 inches wide, and 5,200 feet long. The penstock will utilize 200 feet of fall to generate a maximum of 33.9 kilowatts at 80% efficiency at a power plant just above Irving Creek. The maximum theoretical horsepower capable of being generated by the hydro works is 56.8 kilowatts. After use, the water will be returned to Irving Creek through the ditch (flume), thence the Klamath River.

The amount of water applied for is 3.0 cfs (Direct Diversion) not to exceed a total of 2,168.1 AFA. The applicant has requested to divert the state's water from January 1 to December 31 annually.

Statement of Facts Supporting the CSPA Protest

1. The Klamath River Watershed sustains federally listed and protected threatened coho salmon species and their habitat. It is likely Stanshaw Creek sustains threatened and federally listed Coho salmon and their habitat which are protected under the provision of the federal Endangered Species Act.

Reductions in natural daily flows as a result of the proposed project has the potential to adversely effect Coho salmon species (all life stages) and their habitat in the Stanshaw Creek watershed. Also reduction in natural flows in Stanshaw Creek as a result of the proposed project has the potential to increase water temperatures effecting all life stages of Coho salmon species.

2. The Klamath River Watershed sustains federally listed and protected threatened steelhead trout species and their habitat. It is likely Stanshaw Creek sustains threatened and federally listed steelhead trout and their habitat which are protected under the provision of the federal Endangered Species Act.

Reductions in natural daily flows as a result of the proposed project has the potential to adversely effect steelhead species (all life stages) and their habitat in the Stanshaw Creek watershed. Also reduction in natural flows in Stanshaw Creek as a result of the proposed project has the potential to increase water temperatures effecting all life stages of steelhead species.

3. The Klamath River Watershed sustains fall-run and late fall-run chinook salmon species and their habitat. Klamath River fall-run and late fall-run chinook salmon species may be listed for protection under the protection of the provisions of the federal Endangered Species Act. There is a potential that fall-run and late fall-run chinook salmon species (all life stages) use Stanshaw Creek.

4. The proposed project has the potential to effect macroinvertebrate species and their habitat in Stanshaw Creek. Macroinvertebrate species are the food base for anadromous and resident fish species.

5. There may be also other fish species (such as wild trout and their habitat), wildlife species, and plant species (riparian) in Stanshaw Creek which may be potential effected by the proposed project.

6. In the event the flume (5.2 miles long) for the proposed project is not lined to prevent the loss of the state's water, the proposed project is likely to waste the state's water which would be the unreasonable use and diversion of the state's water.

7. The flume for the proposed should be screened with a state of the art fish screen to prevent the entrainment of federally listed anadromous species, other anadromous fish species, and also resident fish species.

8. The applicant should be required by the Board to obtain a Section 401 of the Clean Water Act water quality certification from the Board to protect the beneficial uses of the state's water. Said water quality certification should require mandatory minimum daily streamflow requirements and also daily water temperature requirements to protect the beneficial uses of the state's water.

9. The Applicant should be required to install and maintain a fulltime gauging device below the point of diversion to record the daily amount of water bypassed from the proposed diversion dam.

10. The Applicant should be required by the Board to conduct the following studies and assessments:

(a) Information regarding the design, construction and operation of the proposed project;

(b) In the area affected by the proposed project: identification, and quantification, to the extent possible, of fish, wildlife and botanical resources; aquatic, riparian and terrestrial habitats, hydrology, including water quality and quantity relations; geologic and soil resources; recreational demands; cultural resources; aesthetic values; specially designed or protected species, habitats, areas, or stream sections; and land use plans;

(c) The applicant's preliminary findings on the flow regime necessary to protect existing resources and beneficial use levels, and assumptions and methodologies used to make this determination;

(d) The applicant's assessment of the effect of the proposed project on existing resources and current beneficial use levels, and assumptions and methodologies used to make this determination;

(e) Other studies and assessment related to (1) Bedload; (2) Bank-full capacity; (3) Change in streamflow regime; (4) Critical reach; (5) Critical riparian/wetland area; (5) Deposition; (6) Ecosystem; (7) Erosion; (8) Flood frequency curve; (8) Groundwater recharge; (9) and others that the Board determines necessary.

11. This public trust protest is based on the following: (a) the provisions of the federal Endangered Species Act; (b) Section 401 of the federal Clean Water Act; (c) the provisions of the California Environmental Quality Act and its Guidelines; (d) California Fish and Game Code 5937; (e) the provisions of the California Water Code; (f) the provisions of the California Code of Regulations, Title 23; and (g) Federal Power Act, as amended; and (h) other applicable statues and regulations not noted.

12. Upon review of all of the requested studies and assessments, and also the CEQA document, the CSPA may dismiss this protest or request a hearing.

13. This protest is subject to amendment based on new information.

The CSPA has forwarded a copy of this protest to the Applicant by first class mail.

Respectfully Submitted



Robert J. Baiocchi, Consultant
For: California Sportfishing Protection Alliance
P.O. Box 1790
Graeagle, CA 96103
Bus Tel: 530-836-1115; Fax: 530-836-2062

Dated: August 23, 2000

Service List

Mr. Gerald E. Johns
Asst. Chief
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

Ms. Yoko Mooring, Application Unit
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000
(Original)

Mr. Doug Cole
c/o Doug Cole, et al., Applicant
92520 Highway 96
Somes Bar, CA 95568

Mr. Jim Bybee, Supervisor
U.S. National Marine Fisheries Service
777 Sonoma Avenue, Room 325
Santa Rosa, CA 95404

Mr. Donald Koch, Regional Manager
Department of Fish and Game
601 Locust Street
Redding, CA 96001

Mr. Jim Crenshaw, President
California Sportfishing Protection Alliance
1248 East Oak Avenue, Suite D
Woodland, CA 95695

Interested Parties

See Enclosure



State Water Resources Control Board



Winston H. Hickox
Secretary for
Environmental
Protection

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Gray Davis
Governor

In Reply Refer
to:331:YM:29449

AUG 02 2000

Mr. Robert J. Baiocchi
P.O. Box 1790
Graeagle, CA 96103

Dear Mr. Baiocchi:

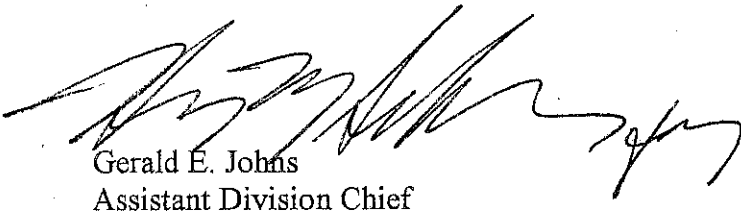
APPLICATION 29449 OF COLE--STANSHAW CREEK TRIBUTARY TO KLAMATH RIVER
IN SISKIYOU COUNTY

We received your faxed letter dated June 29, 2000, in which you requested the Division to accept your late protest against Application 29449.

We apologize for not sending the notice to the correct address. Enclosed for your review is the notice dated March 17, 2000. You are granted 30 days from the date of this letter to file a protest.

If you have any question, please call Yoko Mooring of my staff at (916) 657-1965.

Sincerely,



Gerald E. Johns
Assistant Division Chief

Enclosure

cc: Doug Cole
92520 Highway 96
Somers Bar, CA 95568