

# **BIG SUR RIVER HEARING**

## **TESTIMONY OF BRIAN LENEVE ON BEHALF OF CARMEL RIVER STEELHEAD ASSOCIATION**

My father worked for California State Parks at Big Sur when I was born. My first 2+ years were spent living right on the Big Sur River. As a child my parents took my sisters and me camping and fishing on the Big Sur River. I caught my first adult steelhead when I was eight years old (1950) on the Big Sur River. I fished the Big Sur River extensively from the late 1950s until 1976 when an accident prevented me from fishing for six years. Once I was able to fish again the numbers of fish on the Big Sur and other Monterey County rivers had already started to decline to a point that caused me to find other rivers to fish steelhead. My understanding from the people who continued to fish the Big Sur River is that the decline in fish numbers continued down to where very few people now fish the Big Sur River.

I say all of this to show I have spent my lifetime fishing for, observing, and studying steelhead in general and the Big Sur River in particular. Hopefully the Board will consider that, while I do not have a degree in fisheries or work in the field, I should be considered extremely knowledgeable in regards to steelhead and the Big Sur River.

I wrote the comment letter for the Carmel River Steelhead Association (CRSA) on the 2009 El Sur Ranch DEIR. In that letter I pointed out the countless inadequacies of the DEIR, those inadequacies are already part of the record. While my testimony on behalf of CRSA at this hearing will concentrate on the steelhead issue, I still believe the use specified in the 2009 DEIR is not the ultimate use the El Sur Ranch wants or plans. I still believe the amount of water requested is far in excess of what is necessary for the stated purpose. I still believe the impacts of continued pumping of 767 Acre Feet of non-permitted water should have been analyzed. My comment letter on the 2009 DEIR recommended that the “No Project/No Permit” option was and still is the only appropriate option.

The following part of my testimony will be based on the assumption that the Board will issue some permit.

In spite of what the DEIR says, the number of steelhead in the Big Sur River is not “large and healthy”. There are no surveys of fish numbers for any year so there is no way to make a statement like that other than personal observations. The El Sur Ranch has operated two wells from 1984 admittedly withdrawing water to below levels for safe fish passage. CRSA believes the El Sur Ranch being allowed to pump non-permitted water has contributed to the decline in fish numbers that most, if not all fishermen, know has happened. Since I stopped fishing the Big Sur River numerous other fishermen have stopped fishing the Big Sur River due to lack of fish. It makes no difference what the DEIR says about the number of fish or what observations of fishermen say about number of fish, the fact is steelhead in the Big Sur River are a federally threatened species and need protection to the fullest extent possible.

Some people at these hearings will testify that the decline in fish numbers is because CA State Fish and Game (DFG) altered the Gorge. Some people at these hearings will testify that the decline in fish is because of poor stewardship of CA State Parks. I have already stated the decline is in part due to un-permitted water withdrawals. The cause of the decline in fish numbers is probably a result of all of the above and more. While it is important that the cause or causes be identified and corrected, the important thing is steelhead in the Big Sur River are federally threatened and need protection to the fullest extent possible. Any person or agency that causes “take” of steelhead would be subject to an Endangered Species Act (ESA) suit.

As pumping of water from the Big Sur River has already lowered water levels to a point of unsafe fish passage, CRSA believes no permit should be issued. If any permit is issued there must be 5 conditions to protect steelhead.

- 1: Year around optimal flow requirements.
- 2: Use of accurate and verifiable gauges on all pumps, not electrical current tests.
- 3: Instantaneous shutoff capability.
- 4: Re-opening of the permit hearing once the DFG flow studies are complete.
- 5: Additional studies of the effects on the lagoon need to be required and then the permit hearing reopened once these studies are complete.

1: *Year around optimal flow requirements:*

In simple terms, steelhead at all life stages need water to survive. Steelhead need to be able to migrate upstream and downstream with different depth requirements for adults and juveniles.

As noted in the DEIR (page 4.3.29) Monterey County has adopted a Big Sur River Protected Water Way Management Plan (PWMP). That plan sets the **minimum** flow requirements for adult steelhead of .6 feet and juveniles at .5 feet. At no time should pumping be allowed if **minimum** depths are not met.

The DEIR states that adult fish begin to migrate in December, yet the same DEIR states their own surveys saw adult fish in the river in October. I have attached four letters or emails from people who have seen or caught steelhead in the river as early as September. As there has been no fishing allowed before December for quite a number of years, it is difficult to find people who visit the river in September and look for fish, but adult fish have been in the river before and undoubtedly some still enter the river in September. My own history is of having caught spawned-out dark striped steelhead in the river on the opening of steelhead season at the first of December. At low flows these fish must have come in the river in at least October to have been able to move up the shallow river, spawn, and return.

Considering that adult steelhead are in the river as early as September, the **minimum** flow period for adult steelhead must be from September to May and the **minimum** flow requirements for juveniles must be from June to August. Per the PWMP, those flows must be .6 feet from September to May and .5 feet from June to August.

We must consider that the PWMP lists minimum flows. To recover a species we cannot use minimum flows but must maintain optimal flows. We must allow the fish to migrate at will and not impede their progress making them susceptible to delays or predation. As time goes on more and more people and agencies are now using .7 feet as the minimum flow for adult steelhead. My understanding is that DFG in their Big Sur River flow studies will use .7 feet as the criteria for adult steelhead migration. Based on this information, the absolute minimum flow from September to May must be at least .7 feet and to recover this species a higher depth should be used.

While it is one thing to note minimum depth requirements, it is difficult to measure on a daily basis. If measurements are required, who will take the measurements? The only logical and workable solution is to tie the depth requirements to river cfs flow. The DEIR used the USGS Gage as their basis for measurements and I will use the same gage. The DEIR (page 4.3.36) states for adult steelhead “Data from passage transects 10 and 11 did not consistently meet the passage criteria at flows just above 18 cfs in 2006 (Hanson 2007)”. The DEIR (page 4.3.37) states “For example, at passage transect 11 on October 10, 2006 site-specific instantaneous flows had come up to 21.34 cfs over the previous data point of 19.81 cfs, an increase of 1.53 cfs and yet the data indicated that neither the 25 percent nor the 10 percent criteria were met on October 10 (Hanson 2007)”. What this means is that at only .6 feet, the depth requirement was not met at 21.34 cfs. If we use .7 feet as the criteria (up slightly from the PWMP and in line with recent thinking, but below optimal depth) and without further studies, a flow of at least 25 cfs must be set where pumping must stop. Pumping at any flow below 25 cfs would result in “take” of an endangered species and could subject the parties of the pumping to an ESA suit.

While the Board did a water availability study, it did not factor in **minimum** flow requirements for steelhead. A further study of availability of water in excess of minimum flow requirements should be conducted. Without such a study, CRSA recommends the following:

**Any permit issued to El Sur Ranch must contain a condition that no pumping be allowed from September to May when flows are at or below 25 cfs as measured at the USGS Gage.**

2: *Use of accurate verifiable gauges on all pumps, not electrical current tests:*

To ensure that maximum allowable pumping is not exceeded, actual flow gauges must be installed on all pumps. Electrical current tests are not accurate and are based on the pump used at the time. Installing a modern more efficient pump could result in more water being pumped with the same amount of electricity. Flow gauges are easy to install and must be mandated.

**Any permit issued to El Sur Ranch must contain a condition that actual flow gauges are installed on all pumps.**

3: *Instantaneous shutoff capability:*

As there is a minimum flow requirement, it is critical that pumping be curtailed as soon as the minimum flow is reached. I have no faith in ranch employees monitoring the flow and manually shutting off the pumps.

**Any permit issued to El Sur Ranch must contain a condition that all pumps be tied to the river cfs flow and shut off automatically.**

*4: Re-opening of the permit hearing once the DFG flow studies are complete:*

The CA DFG is conducting a river suitability study on the Big Sur River. In talking to Robert W. Holmes, DFG Staff Environmental Scientist, I got a feeling that not only was DFG leaning towards requiring a depth of .7 feet for adult fish passage but they were realizing that a higher depth for juvenile habitat was also necessary.

This study is critical to the recovery of steelhead in the Big Sur River and must be considered when water withdrawals are permitted. CRSA is willing to accept lower flows if the completed study indicates that is what is necessary and the El Sur Ranch must be willing to accept higher flows if the completed study indicates that is what is necessary. Until the study is complete, no final permit should be issued. There is fear that if a permit is issued and new information detrimental to El Sur Ranch comes out, it could take years to re-open any hearing and more years before an amended permit is issued. Meanwhile water will continue to be removed from the Big Sur River possibly to the detriment of the riparian habitat and the fish.

**Any permit issued to El Sur Ranch before the DFG study is complete must contain a condition that a new hearing be started within 90 days of notification and publication of the DFG suitability study and the existing permit be void if hearings are not completed in one year.**

*5: Additional studies of the effects on the lagoon need to be required and then the permit hearing reopened once these studies are complete:*

The DEIR failed to analyze the affects of pumping on the Big Sur River Lagoon. Multiple studies have concluded that a lagoon/estuary is the most critical habitat for juvenile steelhead (Hayes 2008). As the lagoon is immediately downstream of the study area and wells, complete studies showing the affect of pumping and no pumping on dissolved oxygen, temperature, salinity and migration in and out of the lagoon, must be ordered. Without such studies one cannot determine what affect the project will have on the survival of aquatic species.

**Any permit issued to El Sur Ranch must order further and complete studies of the Big Sur River Lagoon and must contain a condition that a new hearing be started within 90 days of notification and publication of the lagoon study and the existing permit be void if hearings are not completed in one year.**

Sincerely;

Brian LeNeve  
President CRSA

Enclosures 4

Reference (Hayes 2008)

Transactions of the American Fisheries Society 137:114-128, 2008

Steelhead Growth in a Small Central California Watershed: Upstream and Estuarine Rearing Patterns

Sean A. Hayes,\* Morgan H. Bond, Chad V. Hanson, and Ellen V. Freund