

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

NOVEMBER 13, 2017

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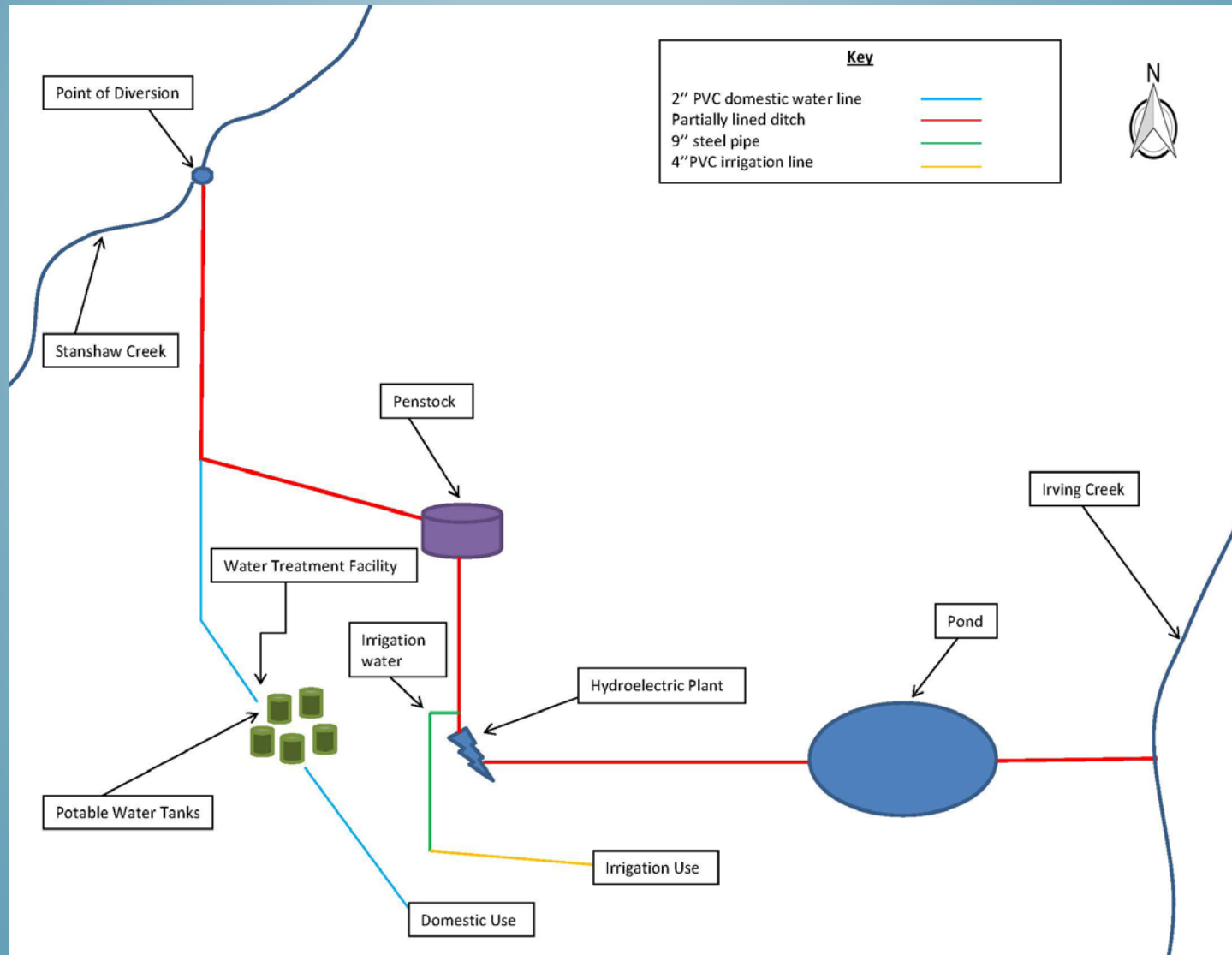
Division of Water Rights

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



POINT OF DIVERSION



DIVERSION DITCH



DIVERSION DITCH



DIVERSION DITCH



DIVERSION DITCH



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FIRST OUTFALL STRUCTURE



SECOND OUTFALL STRUCTURE



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DIVERSION DITCH



WATER TREATMENT PLANT



POWER PLANT



IRRIGATION SYSTEM



POND



IRVING CREEK OUTFALL



FLOW MEASUREMENTS



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



Solar Panel



Harris Wheel

DECEMBER 3, 2015 - JOINT LETTER FROM DIVISION AND REGIONAL WATER BOARD

- 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.

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 AND DRAFT ORDER

- 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.